

1 BUSINESS CESSATION LAW, TO AUTHORIZE THE COMMISSIONER TO
2 ADOPT RULES RECOGNIZING NEW ANNUITY MORTALITY TABLES, AND
3 TO CLARIFY THAT MECHANICAL BREAKDOWN AND RELATED
4 INSURANCE ARE NOT UNDER THE JURISDICTION OF THE RATE BUREAU.
5 The General Assembly of North Carolina enacts:

6
7 PART I. HEARINGS AND FAIR AND BEACH PLANS APPEALS.

8 Section 1.1. G.S. 58-2-50 reads as rewritten:

9 **"§ 58-2-50. ~~Examinations~~ Examinations, hearings, and investigations.**

10 All ~~examinations~~ examinations, hearings, and investigations provided for by this
11 Chapter may be conducted by the Commissioner personally or by one or more deputies,
12 investigators, actuaries, examiners or employees designated for the purpose. If the
13 Commissioner or any investigator appointed to conduct the investigations is of the
14 opinion that there is evidence to charge any person or persons with a criminal violation of
15 any provision of this Chapter, the Commissioner may arrest with warrant or cause the
16 person or persons to be arrested. All hearings shall, unless otherwise specially provided,
17 be held in accordance with this Article and Article 3A of Chapter 150B of the General
18 Statutes and at a time and place designated in a written notice given by the Commissioner
19 to the person cited to appear. The notice shall state the subject of inquiry and the specific
20 charges, if any."

21 Section 1.2. G.S. 58-45-50 reads as rewritten:

22 **"§ 58-45-50. Appeal from acts of Association to Commissioner; appeal from**
23 **Commissioner to superior court.**

24 Any person or any insurer who may be aggrieved by an act, ruling or decision of the
25 Association other than an act, ruling or decision relating to the cause or amount of a
26 claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the
27 Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the
28 appeal shall be in accordance with the procedure set forth in G.S. 58-2-50: rules adopted by
29 the Commissioner: Provided, however, the Commissioner is authorized to appoint a
30 member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of
31 hearing ~~such~~ those appeals and a ruling based upon ~~such~~ the hearing shall have the same
32 effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or
33 decision of the Commissioner may appeal as is provided ~~by the provisions of~~ in G.S. 58-2-
34 75.

35 No later than ~~20~~ 10 days before each hearing, the appellant shall file with the
36 Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall serve on the
37 appellee a written statement of ~~his~~ the appellant's case and any evidence ~~he~~ that the
38 appellant intends to offer at the hearing. No later than five days before ~~such~~ the hearing,
39 the appellee shall file with the Commissioner or ~~his~~ the designated hearing officer and
40 shall serve on the appellant a written statement of ~~his~~ the appellee's case and any evidence
41 ~~he~~ that the appellee intends to offer at the hearing. Each ~~such~~ hearing shall be recorded
42 and may be transcribed. ~~The~~ If the matter is between an insurer and the Association, the
43 cost of ~~such~~ the recording and transcribing shall be borne equally by the appellant and

1 appellee; provided that upon any final adjudication the prevailing party shall be
2 reimbursed for his share of such costs by the other party. If the matter is between an
3 insured and the Association, the cost of transcribing shall be borne equally by the
4 appellant and appellee; provided that the Commissioner may order the Association to pay
5 recording or transcribing costs for which the insured is financially unable to pay. Each
6 party shall, on a date determined by the Commissioner or ~~his~~the designated hearing
7 officer, but not sooner than 15 days after delivery of the completed transcript to the party,
8 submit to the Commissioner or ~~his~~the designated hearing officer and serve on the other
9 party, a proposed order. The Commissioner or ~~his~~the designated hearing officer shall
10 then issue an order."

11 Section 1.3. G.S. 58-46-30 reads as rewritten:

12 "**§ 58-46-30. Appeals; judicial review.**

13 The association shall provide reasonable means, to be approved by the Commissioner,
14 whereby any person or insurer affected by any act or decision of the administrators of the
15 Plan or underwriting association, other than an act or decision relating to the cause or
16 amount of a claimed loss, may be heard in person or by an authorized representative,
17 before the governing board of the association or a designated committee. Any person or
18 insurer aggrieved by any decision of the governing board or designated committee, may
19 be appealed to the Commissioner within 30 days ~~from~~after the date of ~~such~~the ruling or
20 decision. The Commissioner, after a hearing held ~~pursuant to the procedure set forth in G.S.~~
21 ~~58-2-50, under rules adopted by the Commissioner,~~ shall issue an order approving or
22 disapproving the act or decision with respect to the matter ~~which~~that is the subject of
23 appeal. The Commissioner ~~is authorized to~~may appoint a member of ~~his~~the
24 Commissioner's staff as deputy commissioner for the purpose of hearing ~~such~~the appeals
25 and a ruling based on ~~such~~the hearing ~~shall have~~has the same effect as if heard by the
26 ~~Commissioner personally.~~Commissioner. All persons or insurers or their representatives
27 aggrieved by any order or decision of the Commissioner may appeal as provided ~~by the~~
28 provisions of in G.S. 58-2-75.

29 No later than ~~20~~10 days before each hearing, the appellant shall file with the
30 Commissioner or ~~his~~the designated hearing officer and shall serve on the appellee a
31 written statement of ~~his~~the appellant's case and any evidence ~~he~~that the appellant intends
32 to offer at the hearing. No later than five days before ~~such~~the hearing, the appellee shall
33 file with the Commissioner or ~~his~~the designated hearing officer and shall serve on the
34 appellant a written statement of ~~his~~the appellee's case and any evidence ~~he~~that the
35 appellee intends to offer at the hearing. Each ~~such~~ hearing shall be recorded and may be
36 transcribed. ~~The~~If the matter is between an insurer and the Association, the cost of ~~such~~
37 the recording and transcribing shall be borne equally by the appellant and appellee;
38 provided that upon any final adjudication the prevailing party shall be reimbursed for his
39 share of such costs by the other party. If the matter is between an insured and the
40 Association, the cost of transcribing shall be borne equally by the appellant and appellee;
41 provided that the Commissioner may order the Association to pay recording or
42 transcribing costs for which the insured is financially unable to pay. Each party shall, on
43 a date determined by the Commissioner or ~~his~~the designated hearing officer, but not

1 sooner than 15 days after delivery of the completed transcript to the party, submit to the
2 Commissioner or ~~his~~the designated hearing officer and serve on the other party, a
3 proposed order. The Commissioner or ~~his~~the designated hearing officer shall then issue
4 an order."

6 PART II. CONTINUING CARE RETIREMENT RECEIVERSHIPS.

7 Section 2. Article 64 of Chapter 58 of the General Statutes is amended by
8 adding a new section to read:

9 "§ 58-64-46. Receiverships; exception for facility beds.

10 When the Commissioner has been appointed as a receiver under Article 30 of this
11 Chapter for a provider or facility subject to this Article, the Department of Health and
12 Human Services may, notwithstanding any other provision of law, accept and approve the
13 addition of adult care home beds for that facility if it appears to the court, upon petition of
14 the Commissioner or the provider, or on the court's own motion, that (i) the best
15 interests of the facility or (ii) the welfare of persons who have previously contracted with
16 the provider or may contract with the facility, may be best served by the addition of adult
17 care home beds."

18 PART III. HANDICAPPED PERSONS.

19 Section 3.1. G.S. 168-10 reads as rewritten:

20 "§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.

21 Each handicapped person shall have the same consideration as any other person for
22 individual accident and health insurance coverage, and no insurer, service corporation,
23 multiple employer welfare arrangement, or health maintenance organization subject to
24 Chapter 58 of the General Statutes solely on the basis of ~~such~~the person's handicap, shall
25 deny such coverage or benefits. The availability of ~~such insurance coverage or benefits~~
26 shall not be denied solely ~~due to because of the handicap, provided, however, that no such~~
27 insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions
28 from such coverage, and further provided that handicap; however, any such insurer may
29 charge the appropriate premiums or fees for the risk insured on the same basis and
30 conditions as insurance issued to other ~~persons.~~persons, in accordance with actuarial and
31 underwriting principles and other coverage provisions prescribed in Chapter 58 of the
32 General Statutes. Nothing contained herein or in any other statute shall restrict or preclude any
33 insurer governed by Chapter 58 of the General Statutes from setting and charging a premium or
34 fee based upon the class or classes of risks and on sound actuarial and underwriting principles as
35 determined by such insurer, or from applying its regular underwriting standards applicable to all
36 classes of risks. The provisions of this section shall apply to both corporations governed by
37 Chapter 58 of the General Statutes. ~~No insurer, service corporation, multiple employer~~
38 welfare arrangement, or health maintenance organization subject to Chapter 58 of the
39 General Statutes shall be prohibited from excluding by waiver or otherwise, any
40 preexisting conditions from coverage as prescribed in G.S. 58-51-15(a)(2)b."

41 Section 3.2. G.S. 168-22(b) reads as rewritten:
42

1 "(b) A family care home shall be deemed a residential use of property for the
2 purposes of determining charges or assessments imposed by political subdivisions or
3 businesses for water, sewer, power, telephone service, cable television, garbage and trash
4 collection, repairs or improvements to roads, streets, and sidewalks, and other services,
5 utilities, and ~~improvements, and for purposes of classification for insurance.~~ improvements."
6

7 **PART IV. WORKERS' COMPENSATION MANAGED CARE.**

8 Section 4.1. G.S. 58-50-65(a) reads as rewritten:

9 "(a) Nothing in Articles 50 through 55 of this Chapter ~~shall apply~~ applies to or affect
10 affects any policy of liability or workers' compensation insurance, except that the
11 provisions of ~~G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55~~ G.S. 58-50-56(g)
12 and (h) shall apply to policies of workers' compensation insurance. ~~insurance and to~~
13 individual and group self-funded workers' compensation insurance plans. If there is any
14 conflict between managed care provisions of this Chapter and managed care provisions of
15 Chapter 97 of the General Statutes with respect to workers' compensation insurance, the
16 provisions of Chapter 97 govern."

17 Section 4.2. G.S. 97-2(21) reads as rewritten:

18 "(21) Managed care organization. – The term 'managed care organization'
19 means a preferred provider organization or a health maintenance
20 organization regulated under Chapter 58 of the General Statutes.
21 'Managed care organization' also means a preferred provider benefit
22 plan of an insurance company, hospital, or medical service corporation
23 in which utilization review or quality management programs are used to
24 manage the provision of health care services and benefits under this
25 Chapter."
26

27 **PART V. COMMERCIAL AIRCRAFT INSURANCE.**

28 Section 5.1. G.S. 58-7-15(19) reads as rewritten:

29 "(19) 'Motor vehicle ~~and or~~ aircraft insurance,' meaning insurance against loss
30 of or damage resulting from any cause to motor vehicles or aircraft and
31 their equipment, and against legal liability of the insured for loss or
32 damage to another's property resulting from the ownership, maintenance
33 or use of motor vehicles or aircraft and against loss, damage or expense
34 incident to a claim of such liability. This subdivision does not apply to
35 commercial aircraft as defined in G.S. 58-1-5."

36 Section 5.2. G.S. 58-41-10(a) reads as rewritten:

37 "(a) Except as otherwise provided, this Article applies to all kinds of insurance
38 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all
39 insurance companies licensed by the Commissioner to write those kinds of insurance.
40 This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this
41 Chapter; insurance written for residential risks in conjunction with insurance written
42 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to
43 personal inland marine insurance; to ~~aviation~~ commercial aircraft insurance; to policies

1 issued in this State covering risks with multistate locations, except with respect to
2 coverages applicable to locations within this State; to any town or county farmers mutual
3 fire insurance association restricting its operations to not more than six adjacent counties
4 in this State; nor to domestic insurance companies, associations, orders, or fraternal
5 benefit societies doing business in this State on the assessment plan."

6 Section 5.3. G.S. 58-21-10(8) reads as rewritten:

7 "(8) 'Surplus lines insurance' means any insurance in this State of risks
8 resident, located, or to be performed in this State, permitted to be placed
9 through a surplus lines licensee with a nonadmitted insurer eligible to
10 accept such insurance, other than reinsurance, ~~aviation~~commercial
11 aircraft insurance, wet marine and transportation insurance, insurance
12 independently procured pursuant to G.S. 58-28-5, life and accident or
13 health insurance, and annuities."

14 Section 5.4. G.S. 58-28-5(a) reads as rewritten:

15 "(a) Except as ~~hereinafter provided~~, otherwise provided in this section, it ~~shall be~~is
16 unlawful for any company to enter into a contract of insurance as an insurer or to transact
17 insurance business in this State as set forth in G.S. 58-28-10, without a ~~certificate of~~
18 ~~authority~~license issued by the Commissioner. This section ~~shall~~does not apply to the
19 following acts or transactions:

- 20 (1) The procuring of a policy of insurance upon a risk within this State
21 where the applicant is unable to procure coverage in the open market
22 with admitted companies and is otherwise in compliance with Article 21
23 of this ~~Chapter~~Chapter.
- 24 (2) Contracts of reinsurance; but not including assumption reinsurance
25 transactions, whereby the reinsuring company succeeds to all of the
26 liabilities of and supplants the ceding company on the insurance
27 contracts that are the subject of the transaction, unless prior approval
28 has been obtained from the ~~Commissioner~~Commissioner.
- 29 (3) Transactions in this State involving a policy lawfully solicited, written
30 and delivered outside of this State covering only subjects of insurance
31 not resident, located or expressly to be performed in this State at the
32 time of issuance, and which transactions are subsequent to the issuance
33 of such ~~policy~~policy.
- 34 (4) Transactions in this State involving group life insurance, group
35 annuities, or group, blanket, or franchise accident and health insurance
36 where the master policy ~~of such~~for the insurance was lawfully issued
37 and delivered in a state ~~where~~in which the company was authorized to
38 transact ~~business~~business.
- 39 (5) Transactions in this State involving all policies of insurance issued ~~prior~~
40 ~~to~~before July 1, ~~1967~~1967.
- 41 (6) The procuring of contracts of insurance issued to a nuclear ~~insured~~
42 insured. As used in this subdivision, 'nuclear insured' means a public

1 utility procuring insurance against radioactive contamination and other
2 risks of direct physical loss at a nuclear electric generating plant.

3 (7) Insurance independently procured, as specified in subsection (b) of this
4 ~~section;~~ section.

5 (8) Insurance on vessels or craft, their cargoes, marine builders' risks,
6 marine protection and indemnity, or other risks commonly insured
7 under marine insurance policies, as distinguished from inland marine
8 insurance policies.

9 (9) Transactions in this State involving commercial aircraft insurance,
10 meaning insurance against (i) loss of or damage resulting from any
11 cause to commercial aircraft and its equipment, (ii) legal liability of the
12 insured for loss or damage to another person's property resulting from
13 the ownership, maintenance, or use of commercial aircraft, and (iii) loss,
14 damage, or expense incident to a liability claim."

15 Section 5.5. G.S. 58-1-5 reads as rewritten:

16 "**§ 58-1-5. Definitions.**

17 In this Chapter, unless the context clearly requires otherwise:

18 (1) 'Alien company' means a company incorporated or organized under the
19 laws of any jurisdiction outside of the United States.

20 (1a) 'Commercial aircraft' means aircraft used in domestic, flag,
21 supplemental, commuter, or on-demand operations, as defined in
22 Federal Aviation Administration Regulations, 14 C.F.R. § 119.3, as
23 amended.

24 (2) 'Commissioner' means the Commissioner of Insurance of North
25 Carolina or an authorized designee of the Commissioner.

26 (3) 'Company' or 'insurance company' or 'insurer' includes any corporation,
27 association, partnership, society, order, individual or aggregation of
28 individuals engaging or proposing or attempting to engage as principals
29 in any kind of insurance business, including the exchanging of
30 reciprocal or interinsurance contracts between individuals, partnerships
31 and corporations. 'Company' or 'insurance company' or 'insurer' does not
32 mean the State of North Carolina or any county, city, or other political
33 subdivision of the State of North Carolina.

34 (4) 'Department' means the Department of Insurance of North Carolina.

35 (5) 'Domestic company' means a company incorporated or organized under
36 the laws of this State.

37 (6) 'Foreign company' means a company incorporated or organized under
38 the laws of the United States or of any jurisdiction within the United
39 States other than this State.

40 (7) 'NAIC' means the National Association of Insurance Commissioners.

41 (8) ~~"Nuclear insured" means a public utility procuring insurance against~~
42 ~~radioactive contamination and other risks of direct physical loss at a~~
43 ~~nuclear electric generating plant.~~

1 (9) 'Person' means an individual, partnership, firm, association, corporation,
2 joint-stock company, trust, any similar entity, or any combination of the
3 foregoing acting in concert. 'Person' does not mean the State of North
4 Carolina or any county, city, or other political subdivision of the State
5 of North Carolina.

6 (10) The singular form ~~shall include~~ includes the plural, and the masculine
7 form ~~shall include~~ includes the feminine wherever appropriate."
8

9 PART VI. SURPLUS LINES FILINGS.

10 Section 6.1. G.S. 58-21-35 reads as rewritten:

11 "§ 58-21-35. Duty to file evidence of insurance and affidavits. reports and retain 12 affidavits.

13 (a) Within 30 days after the placing of any surplus lines insurance, the surplus
14 lines licensee shall ~~execute and file with the Commissioner.~~ Commissioner a

15 (1) ~~A written report in a format prescribed by the Commissioner~~ regarding
16 the insurance and including the following information:

17 ~~a-~~(1) ~~The name and address of the insured;~~ insured.

18 ~~b-~~(2) ~~The identity of the insurer or insurers;~~ insurers.

19 ~~e-~~(3) ~~A description of the subject and location of the risk;~~ risk.

20 ~~d-~~(4) ~~The amount of premium charged for the insurance;~~ and insurance.

21 e. ~~Such other pertinent information as the Commissioner may~~
22 ~~reasonably require;~~ and

23 (5) The amount of premium tax for the insurance.

24 (6) The policy period.

25 (7) The policy number.

26 (8) The name, address, telephone number, facsimile telephone number, and
27 electronic mail address of the licensee, as applicable.

28 (9) Any other relevant information the Commissioner may reasonably
29 require.

30 (2) ~~An~~

31 (b) The licensee shall complete and retain an affidavit as to the efforts to place the
32 coverage with admitted insurers and the results thereof of the efforts, in accordance with
33 G.S. 58-21-15. The report and affidavit required by this section and the quarterly report
34 required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed
35 by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

36 Section 6.2. Article 21 of Chapter 58 of the General Statutes is amended by
37 adding a new section to read:

38 "§ 58-21-2. Relationship to other insurance laws.

39 Unless surplus lines insurance, surplus lines licensees, or nonadmitted insurers are
40 specifically referenced in a particular section of this Chapter, no sections contained in
41 Articles of this Chapter other than this Article apply to surplus lines insurance, surplus
42 lines licensees, or nonadmitted insurers."
43

PART VII. WORKERS' COMPENSATION SELF-INSURANCE.

Section 7.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(16a) To provide the North Carolina Self-Insurance Guaranty Association information on self-insurers' premiums as determined under G.S. 105-228.5(b), (b1), and (c) for the purpose of collecting the assessments authorized in G.S. 97-133(a)."

Section 7.2. G.S. 97-133 reads as rewritten:

"§ 97-133. Powers and duties of the Association.

(a) The Association shall:

(1) ~~Obtain from each member self-insurer and file with the Commissioner individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the annual standard premium that would have been paid by the individual member self-insurer during the previous calendar year, pursuant to manual rates established by the North Carolina Rate Bureau and using the experience rating procedure approved by the Commissioner for that member self-insurer or the annual premium collected by each group member self-insurer during the prior calendar year. These reports shall be due on or before July 15 following the close of that calendar year, except that this deadline may be extended by the Commissioner for up to three additional months for good cause shown.~~

(2) Assess each member of the Association as follows:

a. Each individual member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual ~~standard premium gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),~~ that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual ~~standard premium gross premiums~~ for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual ~~standard premium gross premiums.~~ Each group member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual ~~premium collected by gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),~~ of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this one-quarter of

- 1 one percent (0.25%) assessment. Assessments paid by members
2 pursuant to this subdivision shall be credited toward the tax paid
3 by self-insurers under Article 8B of Chapter 105 of the General
4 Statutes. For the purpose of making the assessments authorized
5 by this subsection and subsections (c) and (d) of this section, the
6 Secretary of Revenue shall provide to the Association the self-
7 insurer premium and payroll information as determined under
8 G.S. 105-228.5(b), (b1), and (c), and the Commissioner shall
9 provide to the Association the group self-insurer premium
10 information reported to the Commissioner under G.S. 58-47-75
11 and G.S. 58-2-165.
- 12 b. Each member self-insurer shall be notified of the assessment no
13 later than 30 days before it is due.
- 14 c. If a self-insurer is a member of the Association for less than a full
15 calendar year, the annual ~~standard premium-gross premiums~~ shall
16 be adjusted by that portion of the year the self-insurer is not a
17 member of the Association.
- 18 d. If application of the contribution rates referenced in ~~sub-~~
19 ~~subdivisions a. and b.~~ sub-subdivision a. of this subdivision would
20 produce an amount in excess of the five million dollar
21 (\$5,000,000) limits of the fund, an equitable proration may be
22 made; provided that every self-insurer that becomes a member of
23 the Association shall pay an initial assessment, in an amount
24 established by the Board, regardless of the size of the fund at the
25 time the member joins the Association.
- 26 (3) Administer a fund, to be known as the North Carolina Self-Insurance
27 Guaranty Fund, which shall receive the assessments required in
28 subdivision (2) of this subsection. Once the Fund reaches five million
29 dollars (\$5,000,000), no further assessments shall be made except initial
30 assessments of new member self-insurers that are required to be made in
31 subdivision (2)d. of this subsection. Assessments may be subsequently
32 made only to maintain the Fund at a level of five million dollars
33 (\$5,000,000). In its discretion, the Board may determine that the assets
34 of the Fund should be segregated, or, that a separate accounting shall be
35 made, in order to identify that portion of the Fund which represents
36 assessments paid by individual self-insurers and that portion of the Fund
37 which represents assessments paid by group self-insurers. If the Board
38 determines to segregate the Fund in this manner, the Association shall
39 thereafter pay covered claims against individual member self-insurers
40 from that portion of the Fund which represents assessments against
41 individual self-insurers and shall thereafter pay covered claims against
42 group member self-insurers from that portion of the Fund which
43 represents assessments against group self-insurers. The cost of

1 administration incurred by the Association shall be borne by the Fund
2 and the Association is authorized to secure reinsurance and bonds and to
3 otherwise invest the assets of the Fund to effectuate the purpose of the
4 Association, subject to the approval of the Commissioner. All earnings
5 from investment of Fund assets shall be placed in or credited to the
6 Fund.

7 The Association may purchase primary excess insurance from an
8 insurer licensed by the Commissioner for the appropriate lines of
9 authority to defray its exposure to loss occasioned by the default of one
10 of its members. The terms of any excess insurance so purchased shall be
11 limited to providing coverage of liabilities which exceed the Fund's
12 assets after the payment by member self-insurers of the maximum post-
13 insolvency assessment provided in subdivision (c)(1) of this section
14 herein and the Association shall fund any such purchase by levying a
15 special assessment on its members for this purpose or by application of
16 any unencumbered earnings of the Fund or any other available funds.
17 The Association may obtain from each member any information the
18 Association may reasonably require in order to facilitate the securing of
19 this primary excess insurance. The Association shall establish
20 reasonable safeguards designed to insure that information so received is
21 used only for this purpose and is not otherwise disclosed;

22 (4) Be obligated to the extent of covered claims occurring prior to the
23 determination of the member self-insurer's insolvency, or occurring
24 after such determination but prior to the obtaining by the self-insurer of
25 workers' compensation insurance as otherwise required under this
26 Chapter. The Association shall pay claims against a self-insurer that are
27 not or have not been paid as a result of a determination of insolvency or
28 the institution of bankruptcy or receivership proceedings that occurred
29 prior to the effective date of this Article.

30 (5) After paying any claim resulting from a self-insurer's insolvency, be
31 subrogated to the rights of the injured employee and dependents and be
32 entitled to enforce liability against the self-insurer by any appropriate
33 action brought in its own name or in the name of the injured employee
34 and dependents;

35 (6) Assess the Fund in an amount necessary to pay only:

36 a. The obligations for the Association under this Article subsequent
37 to an insolvency;

38 b. The expenses of handling covered claims subsequent to an
39 insolvency;

40 c. The cost of examinations under G.S. 97-137; and

41 d. Other expenses authorized by this Article;

42 (7) Investigate claims brought against the Association and adjust,
43 compromise, settle, and pay covered claims to the extent of the

- 1 Association's obligation; and deny all other claims. The Association
2 may review settlements to which the insolvent self-insurer was a party
3 to determine the extent to which such settlements may be properly
4 contested;
- 5 (8) Notify such persons as the Commissioner directs under G.S. 97-136;
- 6 (9) Handle claims through its employees or through one or more self-
7 insurers or other persons designated as servicing facilities. Designation
8 of a servicing facility is subject to the approval of the Commissioner,
9 but designation of a member self-insurer as a servicing facility may be
10 declined by such self-insurer;
- 11 (10) Reimburse each servicing facility for obligations of the Association paid
12 by the facility and for expenses incurred by the facility while handling
13 claims on behalf of the Association;
- 14 (11) Pay the other expenses of the Association authorized by this section;
15 and
- 16 (12) Establish in the Plan a mechanism to calculate the assessments required
17 by subdivisions ~~(1)~~, ~~(2)~~, (2) and (3) of this subsection by a simple and
18 equitable means to convert from policy or fund years that are different
19 from a calendar year.
- 20 (b) The Association may:
- 21 (1) Employ or retain such persons as are necessary to handle claims and
22 perform other duties of the Association;
- 23 (2) Borrow funds necessary to effect the purposes of this Article in accord
24 with the Plan;
- 25 (3) Sue or be sued;
- 26 (4) Negotiate and become a party to such contracts as are necessary to carry
27 out the purpose of this section; and
- 28 (5) Perform such other acts as are necessary or proper to effectuate the
29 purpose of this section.
- 30 (c) In the event that the assets of the Fund are not sufficient to pay the obligations
31 of the Association, then the Association shall impose an additional assessment upon its
32 members, which shall be known as a post-insolvency assessment which shall be imposed
33 as follows:
- 34 (1) Each individual member self-insurer shall be assessed in an amount not
35 to exceed two percent (2%) each year of the annual ~~standard premium~~
36 gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),
37 that would have been paid by that member self-insurer during the prior
38 calendar year. The assessments of each individual member self-insurer
39 shall be in the proportion that the annual ~~standard premium gross~~
40 premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the
41 individual member self-insurer for the premium calendar year bears to
42 the annual ~~standard premium gross premiums~~ of all individual member
43 self-insurers for the preceding calendar year. For group member self-

1 insurers, the assessment shall not exceed two percent (2%) each year the
2 annual premium collected by that group member self-insurer during the
3 prior calendar year. The assessments of each group member self-insurer
4 shall be in the proportion that the annual ~~collected premium gross~~
5 premiums of the group member self-insurer for the premium calendar
6 year bears to the annual ~~collected premium gross premiums~~ of all group
7 member self-insurers for the preceding calendar year.

8 (2) Each member self-insurer shall be notified of the assessment no later
9 than 30 days before it is due.

10 (3) The Association may exempt or defer, in whole or in part, the
11 assessment of any member self-insurer, if the assessment would cause
12 that member's financial statement to reflect liabilities in excess of assets.

13 (4) Delinquent assessments, except as provided in subdivision (3) of this
14 subsection, shall bear interest at the rate to be established by the Board,
15 but not to exceed the discount rate of the Federal Reserve Bank,
16 Richmond, Virginia, on the due date of the assessment, plus four
17 percent (4%) annually, computed from the due date of the assessment.

18 (5) The Association shall establish in the Plan a mechanism to calculate the
19 assessments required by subdivision (1) of this subsection by a simple
20 and equitable means to convert from policy or fund years that are
21 different from a calendar year.

22 (d) No individual member self-insurer may be assessed in any calendar year an
23 amount greater than two and one-half percent (2.5%) of the annual ~~standard premium gross~~
24 premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been
25 paid by that individual member self-insurer during the prior calendar year. No group
26 member self-insurer may be assessed in any calendar year an amount greater than two
27 and one-half percent (2.5%) of the annual ~~premium collected by gross premiums~~ of that
28 group member self-insurer during the prior calendar year. If the maximum assessment
29 does not provide in any one year an amount sufficient to make all necessary payments,
30 the funds available shall be prorated and the unpaid portion shall be paid as soon
31 thereafter as funds become available. There shall be established in the Plan a mechanism
32 to calculate the assessments required by this section by a simple and equitable means to
33 convert from policy or fund years that are different from a calendar year."
34

35 PART VIII. REPEAL REQUIREMENT OF BIENNIAL REPORT.

36 Section 8. G.S. 58-2-120 reads as rewritten:

37 "§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.

38 ~~The Commissioner shall biennially submit to the General Assembly, through the~~
39 ~~Governor, a report of his official acts, including a summary of official rulings and~~
40 ~~regulations.~~ The Commissioner shall, from time to time, report to the Governor and the
41 General Assembly any change or changes which that in his the Commissioner's opinion
42 should be made in the laws relating to insurance and other subjects pertaining to his
43 department. On or before the first day of February of each year in which the General

1 Assembly is in session he shall make to the Governor the recommendations called for in
2 this section, to be transmitted to the General Assembly, with the last annual report of this
3 Department, including receipts and disbursements. the Department."
4

5 **PART IX. REPEAL THE AGENCY BUSINESS CESSATION LAW.**

6 Section 9. G.S. 58-41-35 is repealed.

7 Section 9.1. G.S. 58-41-40(a) reads as rewritten:

8 "(a) There is no liability on the part of and no cause of action for defamation or
9 invasion of privacy arises against any insurer or its authorized representatives, agents, or
10 employees, or any licensed insurance agent or broker, for any communication or
11 statement made, unless shown to have been made in bad faith with malice, in any of the
12 following:

- 13 (1) A written notice of cancellation under ~~G.S. 58-41-15~~, G.S. 58-41-15 or of
14 nonrenewal under G.S. 58-41-20, ~~or of cessation of business through an~~
15 ~~agency under G.S. 58-41-35~~, specifying the reasons therefor; for
16 cancellation.
- 17 (2) Communications providing information pertaining to ~~such cancellation,~~
18 ~~nonrenewal, or cessation of business through an agency;~~ the cancellation or
19 nonrenewal.
- 20 (3) Evidence submitted at any court proceeding, administrative hearing, or
21 informal inquiry in which ~~such cancellation, nonrenewal, or cessation of~~
22 ~~business through an agency~~ the cancellation or nonrenewal is an issue."
23

24 **PART X. MORTALITY TABLE AND RESERVES UPDATE.**

25 Section 10. G.S. 58-58-50(k) reads as rewritten:

26 "(k) The Commissioner shall adopt rules containing the minimum standards
27 applicable to the valuation of health plans. The Commissioner may also adopt rules for
28 the purpose of recognizing new annuity mortality tables for use in determining reserve
29 liabilities for annuities and may adopt rules that govern minimum valuation standards for
30 reserves of life insurance companies. In adopting these rules, the Commissioner may
31 consider model laws and regulations promulgated and amended from time to time by the
32 NAIC."
33

34 **PART XI. MECHANICAL BREAKDOWN INSURANCE.**

35 Section 11. G.S. 58-36-1(3) reads as rewritten:

36 "(3) The Bureau shall ~~have the duty and responsibility of~~
37 ~~promulgating and proposing~~ promulgate and propose rates for insurance
38 against loss to residential real property with not more than four
39 housing units located in this State and any contents thereof or valuable
40 interest therein and other insurance coverages written in connection
41 with the sale of such property insurance; for insurance against theft of
42 or physical damage to nonfleet private passenger (~~nonfleet~~) motor
43 vehicles; for liability insurance for such motor vehicles, automobile

1 medical payments insurance, uninsured and underinsured motorists
2 coverage and other insurance coverages written in connection with the
3 sale of such liability insurance; and, as provided in G.S. 58-36-100,
4 for loss costs and residual market rate filings for workers'
5 compensation and employers' liability insurance written in connection
6 therewith. ~~The provisions of this~~ This subdivision ~~shall~~ does not apply
7 to motor vehicles operated under certificates of authority from the
8 Utilities Commission, the Interstate Commerce Commission, or their
9 successor agencies, where insurance or other proof of financial
10 responsibility is required by law or by regulations specifically
11 applicable to such certificated vehicles. The Bureau shall have no
12 jurisdiction over excess workers' compensation insurance for
13 employers qualifying as self-insurers as provided in ~~G.S. 97-93;~~
14 Article 47 of this Chapter or Article 5 of Chapter 97 of the General
15 Statutes; nor shall the Bureau's jurisdiction include farm buildings,
16 farm dwellings and their appurtenant structures, farm personal
17 property or other coverages written in connection with farm real or
18 personal property; travel or camper trailers designed to be pulled by
19 private passenger motor vehicles, unless insured under policies
20 covering nonfleet private passenger motor vehicles; mechanical
21 breakdown insurance covering nonfleet private passenger motor
22 vehicles and other incidental coverages written in connection with this
23 insurance, including emergency road service assistance, trip
24 interruption reimbursement, rental car reimbursement, and tire
25 coverage; residential real and personal property insured in multiple
26 line insurance policies covering business activities as the primary
27 insurable interest; and marine, general liability, burglary and theft,
28 glass, and animal collision insurance, except when such coverages are
29 written as an integral part of a multiple line insurance policy for
30 which there is an indivisible premium."

31 32 **PART XII. EFFECT OF HEADINGS.**

33 Section 12. The headings to the parts of this act are a convenience to the
34 reader and are for reference only. The headings do not expand, limit, or define the text of
35 this act.

36 37 **PART XIII. EFFECTIVE DATE.**

38 Section 13. Sections 5.1 through 5.5 of this act become effective October 1,
39 1999. Section 6.1 of this act becomes effective January 1, 2000. The remainder of this
40 act is effective when it becomes law, but Sections 1.1, 1.2, and 1.3 of this act shall not
41 apply to appeals pending on the date this act becomes law.