

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 319

Short Title: Workers' Comp. Self-Insurance Security. (Public)

Sponsors: Senators Clodfelter; Berger of Rockingham, Dalton, Garrou, Hartsell,
Rand, Swindell, Thomas, and Weinstein.

Referred to: Judiciary I.

March 3, 2005

A BILL TO BE ENTITLED
AN ACT ESTABLISHING THE NORTH CAROLINA SELF-INSURANCE
SECURITY SYSTEM AND MAKING CONFORMING CHANGES TO THE
WORKERS' COMPENSATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-130 reads as rewritten:

"§ 97-130. Definitions.

As used in this Article:

(1) "Association" means the North Carolina Self-Insurance ~~Guaranty~~
Security Association established by G.S. 97-131.

(1a) "Association Aggregate Security System" means the security system
established by the Association pursuant to G.S. 97-1333 whereby
self-insurers collectively secure their aggregate self-insured workers'
compensation liabilities through the North Carolina Self-Insurance
Security Association.

(2) "Board" means the Board of Directors of the Association established
by G.S. 97-132.

(3) "Commissioner" means the North Carolina Commissioner of
Insurance.

(4) "Covered claim" means an unpaid claim against an insolvent
self-insurer that relates to an injury that occurs while the self-insurer is
a member of the Association and that is compensable under this
Chapter.

(5) "Fund" means the North Carolina Self-Insurance ~~Guaranty~~ Security
Fund established by G.S. 97-133.

(6) "Member self-insurer" or "member" means a self-insurer ~~which is~~
authorized that retains liability pursuant to G.S. 97-93 and G.S. 97-94

1 and is licensed by the Commissioner to self-insure pursuant to
2 ~~G.S. 97-93 and G.S. 97-94.~~ Article 5 of this Chapter.

3 (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.

4 (8) "Self-insurer" means either: (i) an individual employer ~~who has~~
5 ~~demonstrated under G.S. 97-93 the financial ability to directly pay~~
6 ~~compensation in the amounts and manner and when due as provided in~~
7 licensed to self-insure pursuant to Article 5 of this Chapter or (ii) a
8 group of two or more employers ~~who have agreed to pool their~~
9 ~~liabilities under this Chapter pursuant to G.S. 97-93.~~ licensed to
10 self-insure pursuant to Article 47 of Chapter 58 of the General Statutes.

11 (9) "Servicing facility" means those persons that are delegated the
12 authority to settle and compromise claims and expend Fund assets to
13 pay claims pursuant to a delegation of authority from the Board."

14 **SECTION 2.** G.S. 97-131 reads as rewritten:

15 **"§ 97-131. Creation.**

16 (a) There is created a nonprofit unincorporated legal entity to be known as the
17 North Carolina Self-Insurance ~~Guaranty Security Association.~~ The Association is to
18 provide mechanisms for the payment of covered claims ~~under self insurance coverage,~~
19 against member self-insurers, to avoid excessive delay in ~~payment,~~ payment of covered
20 claims, to avoid financial loss to claimants because of the insolvency of a member
21 self-insurer, and to assist, when called upon to do so by the Commissioner, to assist the
22 Commissioner in the detection of self-insurer insolvencies, insolvencies, to fund the
23 Association Aggregate Security System, and to capitalize the Fund to insure the
24 availability of financial resources to pay covered claims and to fund the activities of the
25 Association.

26 (b) All individual and group self-insurers shall be and remain members of the
27 Association as a condition ~~of authority being licensed to self-insure in this State under~~
28 ~~G.S. 97-93.~~ State. The Association shall perform its functions under a Plan of Operation
29 established or amended, or both, by the Board and approved by the Commissioner, and
30 shall exercise its powers through the Board.

31 (1) A self-insurer shall be deemed to be a member of the Association for
32 purposes of another self-insurer's insolvency, as defined in
33 G.S. 97-135, when:

34 a. The self-insurer is a member of the Association when an
35 insolvency occurs, or

36 b. The self-insurer has been a member of the Association at some
37 point in time during the 12-month period immediately
38 preceding the insolvency in question.

39 (2) A self-insurer shall be deemed to be a member of the Association for
40 purposes of its own insolvency if it is a member when the
41 compensable injury occurs.

42 (3) In determining the membership of the Association ~~pursuant to for the~~
43 purposes of subdivisions (1) and (2) of this subsection for any date
44 after the effective date of this Article, no employer or group of

1 employers claiming self-insurer status may be deemed to be a member
2 of the Association on any date after the effective date of this Article,
3 unless that employer ~~or is on that date licensed as a self-insurer by the~~
4 Commissioner pursuant to Article 5 of this Chapter or a group of
5 employers is at that time authorized licensed as a group self-insurer by
6 the Commissioner pursuant to G.S. 97-93 and G.S. 97-94. Article 47 of
7 Chapter 58 of the General Statutes."

8 **SECTION 3.** G.S. 97-132 reads as rewritten:

9 **"§ 97-132. Board of directors.**

10 The Board shall consist of not less than nine ~~persons~~ Directors serving terms as
11 established in the Plan. The ~~members of the Board~~ Directors shall be selected by the
12 ~~member self-insurers, members of the Association,~~ subject to the approval of the
13 Commissioner, and shall serve for ~~terms which shall not exceed three years. If no~~
14 ~~members of the Board are selected within 60 days after the effective date of this Article,~~
15 ~~the Commissioner may appoint the initial members of the Board.~~ three-year terms and
16 until a successor is elected and qualified. There is no limitation on the number of terms
17 a Director may serve. In approving selections to the Board, the Commissioner shall
18 consider, among other things, whether all member individual and group self-insurers are
19 fairly represented. Members of the Board Directors may be reimbursed from the assets
20 of the Association for expenses incurred by them as members of the Board Directors."

21 **SECTION 4.** G.S. 97-133 reads as rewritten:

22 **"§ 97-133. Powers and duties of the Association.**

23 (a) The Association shall:

24 (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.

25 (1a) Administer a fund, to be known as the North Carolina Self-Insurance
26 Security Fund, which shall receive the assessments required by
27 subdivision (2a) of this subsection and any other sums received by the
28 Association. In its discretion, the Board may determine that the assets
29 of the Fund should be segregated or that a separate accounting shall be
30 made in order to identify that portion of the Fund which represents
31 assessments paid by individual self-insurers and that portion of the
32 Fund which represents assessments paid by group self-insurers. If the
33 Board determines to segregate the Fund in this manner, the
34 Association shall thereafter pay covered claims against individual
35 member self-insurers from that portion of the Fund which represents
36 assessments against individual self-insurers and shall thereafter pay
37 covered claims against group member self-insurers from that portion
38 of the Fund which represents assessments against group self-insurers.
39 The costs of administering the Association shall be borne by the Fund.
40 The Association is authorized to secure insurance, primary excess
41 insurance, reinsurance, bonds, other insurance, financial guarantees
42 and related financial instruments to effectuate the purposes of the
43 Association. The Board will invest the Fund assets and the earnings

1 from investment of Fund assets shall be placed in or credited to the
2 Fund.

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

4 a. ~~Each individual member self-insurer shall be annually assessed~~
5 ~~an amount equal to two percent (2%) of the annual gross~~
6 ~~premiums, as determined under G.S. 105-228.5(b), (b1), and~~
7 ~~(c), that would have been paid by that member self-insurer for~~
8 ~~workers' compensation insurance during the prior calendar year;~~
9 ~~and payment to the Association shall be made no later than May~~
10 ~~15 following the close of that calendar year. Where any such~~
11 ~~assessment is paid based in whole or in part upon estimates of~~
12 ~~annual gross premiums for the prior calendar year, there shall~~
13 ~~be made in the next year's assessment an adjustment of the~~
14 ~~assessment of such prior year based on actual audited annual~~
15 ~~gross premiums. Each group member self-insurer shall be~~
16 ~~annually assessed an amount equal to two percent (2%) of the~~
17 ~~annual gross premiums, as determined under G.S. 105-228.5(b),~~
18 ~~(b1), and (c), of the group member self-insurer during the prior~~
19 ~~calendar year; and payment to the Association shall be made no~~
20 ~~later than May 15 following the close of that calendar year.~~
21 ~~Regardless of the size of the Fund, during its first 12 months of~~
22 ~~membership, no member self-insurer may discount or reduce~~
23 ~~this two percent (2%) assessment. For the purpose of making~~
24 ~~the assessments authorized by this subsection and subsections~~
25 ~~(c) and (d) of this section, the Secretary of Revenue shall~~
26 ~~provide to the Association the self-insurer premium and payroll~~
27 ~~information as determined under G.S. 105-228.5(b), (b1) and~~
28 ~~(c), and the Commissioner shall provide to the Association the~~
29 ~~group self-insurer premium information reported to the~~
30 ~~Commissioner under G.S. 58-47-75 and G.S. 58-2-165.~~

31 b. ~~Each member self-insurer shall be notified of the assessment no~~
32 ~~later than 30 days before it is due.~~

33 e. ~~If a self-insurer is a member of the Association for less than a~~
34 ~~full calendar year, the annual gross premiums shall be adjusted~~
35 ~~by that portion of the year the self-insurer is not a member of~~
36 ~~the Association.~~

37 d. ~~If application of the contribution rates referenced in~~
38 ~~sub-subdivision a. of this subdivision would produce an amount~~
39 ~~in excess of the five million dollar (\$5,000,000) limits of the~~
40 ~~fund, an equitable proration may be made; provided that every~~
41 ~~self-insurer that becomes a member of the Association shall pay~~
42 ~~an initial assessment, in an amount established by the Board,~~
43 ~~regardless of the size of the fund at the time the member joins~~
44 ~~the Association.~~

- 1 (2a) Establish, operate, and maintain the Association Aggregate Security
2 System as defined in G.S. 97-165 and G.S. 97-130 as follows:
- 3 a. The Association shall annually prepare and submit to the
4 Commissioner a written plan to provide an Association
5 Aggregate Security System through a combination of cash on
6 deposit in the Fund, securities, surety bonds, irrevocable letters
7 of credit, insurance or other financial instruments or guarantees
8 owned or entered into by the Association and acceptable to the
9 Commissioner. The noncash elements of the composite security
10 may be one-year or multiple-year instruments.
- 11 b. Within 30 days following the submission of the plan pursuant to
12 sub-subdivision a. of this subdivision, the Commissioner shall
13 either approve or disapprove the plan and shall notify the
14 Association in writing. If the Commissioner does not approve
15 or disapprove the plan within 30 days following submission,
16 then the plan shall be deemed to be approved by the
17 Commissioner.
- 18 c. The Commissioner shall also determine the total undiscounted
19 claims liability of each self-insurer that will participate in the
20 Association Aggregate Security System as well as the aggregate
21 total undiscounted outstanding claims liabilities of all the
22 self-insurers that are to participate in the Association Aggregate
23 Security System and shall notify the Guaranty Association of
24 this determination.
- 25 d. Upon approval by the Commissioner of the Association's plan
26 for the Association Aggregate Security System, the Association
27 shall assess the member self-insurers that participate in the
28 Association Aggregate Security System pursuant to subdivison
29 (3a) of this subsection.
- 30 (3) ~~Administer a fund, to be known as the North Carolina Self Insurance~~
31 ~~Guaranty Fund, which shall receive the assessments required in~~
32 ~~subdivision (2) of this subsection. Once the Fund reaches five million~~
33 ~~dollars (\$5,000,000), no further assessments shall be made except~~
34 ~~initial assessments of new member self-insurers that are required to be~~
35 ~~made in subdivision (2)d. of this subsection. Assessments may be~~
36 ~~subsequently made only to maintain the Fund at a level of five million~~
37 ~~dollars (\$5,000,000). In its discretion, the Board may determine that~~
38 ~~the assets of the Fund should be segregated, or, that a separate~~
39 ~~accounting shall be made, in order to identify that portion of the Fund~~
40 ~~which represents assessments paid by individual self insurers and that~~
41 ~~portion of the Fund which represents assessments paid by group~~
42 ~~self insurers. If the Board determines to segregate the Fund in this~~
43 ~~manner, the Association shall thereafter pay covered claims against~~
44 ~~individual member self insurers from that portion of the Fund which~~

1 represents assessments against individual self insurers and shall
2 thereafter pay covered claims against group member self insurers from
3 that portion of the Fund which represents assessments against group
4 self-insurers. The cost of administration incurred by the Association
5 shall be borne by the Fund and the Association is authorized to secure
6 reinsurance and bonds and to otherwise invest the assets of the Fund to
7 effectuate the purpose of the Association, subject to the approval of the
8 Commissioner. All earnings from investment of Fund assets shall be
9 placed in or credited to the Fund.

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

26 (3a) Assess members of the Association as follows:

- 27 a. Association Aggregate Security System assessments. The
28 Association shall assess each member participating in the
29 Association Aggregate Security System a security system
30 assessment. The amount of the security system assessment
31 charged to each member participating in the Association
32 Aggregate Security System shall be based on the Association's
33 reasonable consideration of the following factors:
34 (1) The total amount of assessments necessary to provide
35 aggregate security for all participating members;
36 (2) The member's total workers' compensation liabilities
37 under the Act;
38 (3) The financial strength and creditworthiness of the
39 member; and
40 (4) Any other relevant factors.
41 b. Special assessment. In the event that there are covered claims
42 against an insolvent member or members and the assets of the
43 Fund are not sufficient to pay the obligations of the Association
44 then the Association may collect a special assessment from the

- 1 members in an amount sufficient to pay the aggregate value of
2 such covered claims. Each member's special assessment shall
3 be determined by the Board and shall be based on the
4 proportion of the member's total obligations under the Act to
5 the aggregate total of all members' obligations under the Act.
6 c. Initial assessments. A self-insurer that becomes a member and
7 does not initially participate in the Association Aggregate
8 Security System shall pay an initial assessment to the
9 Association in an amount determined by the Board.
10 d. Each member shall be notified of assessments no later than 30
11 days before the assessment is due.
12 e. Delinquent assessments, except as otherwise provided, shall
13 bear interest at a rate to be established by the Board.
14 (4) ~~Be obligated to the extent of covered claims occurring prior to the~~
15 ~~determination of the member self insurer's insolvency, or occurring~~
16 ~~after such determination but prior to the obtaining by the self insurer~~
17 ~~of workers' compensation insurance as otherwise required under this~~
18 ~~Chapter. pay covered claims.~~
19 (5) ~~After paying any claim resulting from a self insurer's insolvency,~~
20 ~~covered claim, be subrogated to the rights of the injured employee and~~
21 ~~dependents and be entitled to enforce liability against the self-insurer~~
22 ~~or any third party by any appropriate action brought in its own name or~~
23 ~~in the name of the injured employee and dependents; dependents.~~
24 (6) ~~Assess the Fund in an amount necessary to pay only; Expend Fund~~
25 ~~assets in amounts necessary to pay:~~
26 a. ~~The obligations for of the Association under this Article~~
27 ~~subsequent to an insolvency;~~
28 b. ~~The expenses of handling covered claims subsequent to an~~
29 ~~insolvency;~~
30 c. ~~The cost of examinations under G.S. 97-137; and~~
31 d. The costs of implementing and operating the Association
32 Aggregate Security System; and
33 e. Other expenses authorized by this Article; Article.
34 (7) Investigate claims brought against the Association and adjust,
35 compromise, settle, and pay covered claims to the extent of the
36 Association's obligation; and deny all other claims. The Association
37 may review settlements to which the insolvent self-insurer was a party
38 to determine the extent to which such settlements may be properly
39 ~~contested; contested.~~
40 (8) Notify such persons as the Commissioner directs under
41 ~~G.S. 97-136; G.S. 97-136.~~
42 (9) Handle claims through its ~~employees~~ Directors, its employees, or
43 through one or more self-insurers or other persons designated as
44 servicing facilities. Designation of a servicing facility is subject to the

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

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

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

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

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

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

28 **SECTION 5.** G.S. 97-134 reads as rewritten:

29 **"§ 97-134. Plan of Operation.**

30 The Plan is as follows:

- 31 (1) The Association shall submit to the Commissioner a Plan and any
32 amendments necessary or suitable to assure the fair, reasonable, and
33 equitable administration of the Association. The Plan and any
34 amendments become effective upon approval in writing by the
35 Commissioner. If the Association at any time fails to submit a Plan or
36 suitable amendment to the Plan the Commissioner shall, after notice
37 and hearing, adopt such reasonable rules as are necessary or advisable
38 to effectuate this Article. Such rules shall continue in force until
39 modified by the Commissioner or superseded by a Plan submitted by
40 the Association and approved by the Commissioner.
- 41 (2) All member self-insurers shall comply with the Plan.
- 42 (3) The Plan shall:
- 43 a. Establish the procedures whereby all the powers and duties of
44 the Association under G.S. 97-133 will be performed;

- 1 b. Establish procedures for ~~handling—assets—of—the~~
2 ~~Association;~~investing and managing fund assets.
- 3 c. Adopt a reasonable mechanism and procedure to achieve equity
4 in assessing ~~the funds required in G.S. 97-133. Consideration~~
5 ~~shall be given to adjustments for audited payroll, differential~~
6 ~~effects—caused—by—rate—changes,—and—other—relevant~~
7 ~~factors;~~members pursuant to G.S. 97-133.
- 8 d. Establish the amount and method of reimbursing members of
9 the Board under ~~G.S. 97-132;~~G.S. 97-132.
- 10 e. Establish procedures by which claims may be filed with the
11 Association and establish acceptable forms of proof of covered
12 claims. ~~A list of such claims shall be periodically submitted to~~
13 ~~the Association;~~
- 14 f. Establish regular places and times for meetings of the Board;
- 15 g. Establish procedures for records to be kept of all financial
16 transactions of the Association, its agents, and the ~~Board;~~Board.
- 17 h. Provide that any member self-insurer aggrieved by any final
18 action or decision of the Association may appeal to the
19 Commissioner within 30 days after the action or
20 ~~decision;~~decision.
- 21 i. Establish the procedures whereby selections for the Board shall
22 be submitted to the ~~Commissioner;~~ and Commissioner.
- 23 j. Contain additional provisions necessary or proper for the
24 execution of the powers and duties of the Association."

25 **SECTION 6.** G.S. 97-135 reads as rewritten:

26 **"§ 97-135. Insolvency.**

27 A member self-insurer shall be insolvent for the purposes of this ~~Article—Article,~~
28 ~~other than the definition of insolvency adopted by the Board for the purposes of the~~
29 ~~Association Aggregate Security System,~~ under the following circumstances:

- 30 (1) Determination of insolvency by a court of competent jurisdiction; or
31 (2) Institution of bankruptcy proceedings by or regarding the member
32 self-insurer; or
33 (3) The Board determines that the self-insurer's total liabilities exceed its
34 total assets or the self-insurer is unable or ceases to pay its debts as
35 they fall due or in the ordinary course of business."

36 **SECTION 7.** G.S. 97-140 reads as rewritten:

37 **"§ 97-140. Nonduplication of recovery.**

38 Any person having a covered claim that may be recovered under more than one
39 insurance or self-insurance guaranty or security association or its equivalent shall seek
40 recovery first from the association of the place or residence of the claimant. Any
41 recovery under this Article shall be reduced by the amount of recovery from any other
42 insurance guaranty or security association or its equivalent."

43 **SECTION 8.** G.S. 97-143 reads as rewritten:

44 **"§ 97-143. Use of deposits made by insolvent member self-insurers.**

1 After the Commissioner has notified the Association, under G.S. 97-136(a), that a
2 member is insolvent, the Commissioner shall assign and deliver to the Association, and
3 the Association is authorized to expend ~~the any~~ deposit made by the insolvent member
4 under G.S. 58-47-90 or G.S. 97-185, to the extent the deposit is needed by the
5 Association to pay covered claims against the insolvent member as required by this
6 Article, and to the extent the deposit is needed to pay expenses of the Association
7 relating to covered claims against the insolvent member. For insolvent members that
8 participate in the Association Aggregate Security System, the Association is authorized
9 to pursue recovery under every instrument, contract, and form of security comprising
10 the composite security. The Association shall account to the Commissioner and the
11 insolvent member or its successor for all deposits received from the Commissioner
12 under this section."

13 **SECTION 9.** G.S. 97-165 is amended by adding a new subdivision to read:

14 "(11) "Association Aggregate Security System" means the security system
15 established pursuant to G.S. 97-131 whereby self-insurers collectively
16 secure their aggregate self-insured workers' compensation liabilities
17 under the Act through the North Carolina Self-Insurance Security
18 Association."

19 **SECTION 10.** G.S. 97-170 reads as rewritten:

20 **"§ 97-170. License applications; required information.**

21 (a) No employer shall self-insure its workers' compensation liabilities under the
22 Act unless it is licensed by the Commissioner under this Article. This subsection does
23 not apply to an employer authorized to self-insure its workers' compensation liabilities
24 under the Act prior to December 1, 1997, whose authority to self-insure its workers'
25 compensation liabilities under the Act has not terminated after that date.

26 (b) An applicant for a license as a self-insurer shall file with the Commissioner
27 the information required by subsection (d) of this section on a form prescribed by the
28 Commissioner at least 90 days before the proposed licensing date. No application is
29 complete until the Commissioner has received all required information. A copy of the
30 application must also be filed with the North Carolina Self-Insurance Association at
31 least 120 days before the proposed licensing date.

32 (c) Only an applicant whose total fixed assets amount to five hundred thousand
33 dollars (\$500,000) or more may apply for a license. In judging the applicant's financial
34 strength and liquidity relative to its ability to comply with the Act, the Commissioner
35 shall consider the applicant's:

- 36 (1) Organizational structure and management;
- 37 (2) Financial strength;
- 38 (3) Source and reliability of financial information;
- 39 (4) Risks to be retained;
- 40 (5) Workers' compensation loss history;
- 41 (6) Number of employees;
- 42 (7) Claims administration;
- 43 (8) Excess insurance; and
- 44 (9) Access to excess insurance.

1 (d) The license application shall comprise the following information:

- 2 (1) Company name, organizational structure, location of principal office,
3 contact person, organization date, type of operations within this State,
4 management background, and addresses of all plants or offices in this
5 State.
6 (2) Certified audited GAAP financial statements prepared by a CPA for
7 the two most recent years. The financial statement formulation shall
8 facilitate application of ratio and trend analysis.
9 (3) Evidence of the insurance required by G.S. 97-190.
10 (4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
11 (5) For applicants with 20 or more full-time employees, a certificate or
12 other evidence of safety inspection, satisfactory to the Commissioner,
13 that certifies that all safety requirements of the Department of Labor
14 have been met.
15 (6) Summary of workers' compensation benefits paid for the last three
16 calendar years, as well as the total liability for all open claims within
17 30 days or some other period acceptable to the Commissioner not to
18 exceed 90 days, before the filing of the application.
19 (7) Summary, by risk classification, of annual payroll and number of
20 employees within the State.
21 (8) Book value of fixed assets located within the State.
22 (9) Proof of compliance with the claims administration provisions of
23 Article 47 of Chapter 58 of the General Statutes.
24 (10) A letter of ~~assent, stipulating the applicant's acceptance of membership~~
25 ~~status in approval by the North Carolina Self-Insurance Guaranty~~
26 ~~Security Association under Article 4 of this Chapter.~~Chapter upon the
27 granting of a license to the applicant.

28 (e) Every applicant shall execute and file with the Commissioner an agreement,
29 as part of the application, in which the applicant agrees to participate in the Association
30 Aggregate Security System or if included in the Association Aggregate Security
31 System, to deposit with the Commissioner pursuant to G.S. 97-185, cash, acceptable
32 securities, or a surety bond issued by a corporate surety that will guarantee the
33 applicant's compliance with this Article and the Act pursuant to G.S. 97-185.Act."

34 **SECTION 11.** G.S. 97-185 reads as rewritten:

35 "**§ 97-185. Deposits; surety bonds; letters of credit.**

36 (a) ~~(Effective January 1, 2005, until January 1, 2006) Every self insurer shall~~
37 ~~deposit with the Commissioner an amount not less than seventy five percent (75%) of~~
38 ~~the self insurer's total undiscounted outstanding claim liability per the most recent~~
39 ~~certification from a qualified actuary as required by G.S. 97-180(b), but not less than~~
40 ~~five hundred thousand dollars (\$500,000), or such other greater amount as the~~
41 ~~Commissioner prescribes based on, but not limited to, the financial condition of the~~
42 ~~self insurer and the risk retained by the self insurer.~~

43 (a) ~~(Effective January 1, 2006) Every self insurer shall deposit with the~~
44 ~~Commissioner an amount not less than one hundred percent (100%) of the self insurer's~~

1 total undiscounted outstanding claim liability per the most recent certification from a
2 qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand
3 dollars (\$500,000), or such other greater amount as the Commissioner prescribes based
4 on, but not limited to, the financial condition of the self-insurer and the risk retained by
5 the self-insurer

6 (a1) All self-insurers shall participate in the Association Aggregate Security
7 System established pursuant to G.S. 97-131 unless excluded by the Board of Directors
8 of the North Carolina Self-Insurance Security Association. The Board of Directors of
9 the North Carolina Self-Insurance Security Association shall notify the Commissioner
10 of the self-insurers that are excluded from participating in the Association Aggregate
11 Security System. The Board of Directors of the North Carolina Self-Insurance Security
12 Association shall exclude all self-insurers whose licenses have previously been revoked
13 by the Commissioner. The Board of Directors of the North Carolina Self-Insurance
14 Security Association shall exclude self-insurers with a debt rating as established by
15 Standard & Poor's Rating Service or by Moody's Investor Service, below the minimum
16 Standard & Poor's and Moody's ratings established in the written plan for the
17 Association Aggregate Security System submitted by the Association and approved by
18 the Commissioner pursuant to G.S. 97-131. The Board of Directors of the North
19 Carolina Self-Insurance Security Association shall exclude all self-insurers that have
20 defaulted on the payment of its self-insured worker's compensation liabilities from
21 participation in the Association Aggregate Security System.

22 (b) Repealed by Session Laws 2003-115, s. 3, effective January 1, 2004.

23 ~~(b1) Notwithstanding subsection (a) of this section, member self-insurers with a~~
24 ~~debt rating of BBB or better from Standard and Poor's Rating Service, a division of~~
25 ~~McGraw Hill, Inc., or an equivalent rating from another national rating agency shall~~
26 ~~deposit with the Commissioner an amount not less than twenty five percent (25%) of~~
27 ~~the self-insurer's total undiscounted outstanding claim liability per the most recent~~
28 ~~certification from a qualified actuary as required by G.S. 97-180(b), but not less than~~
29 ~~five hundred thousand dollars (\$500,000). The Commissioner shall consider and may, in~~
30 ~~the Commissioner's discretion, increase or reduce the deposit to a greater or lesser~~
31 ~~percentage of the member self-insurer's claims liability based on the financial strength~~
32 ~~of the self-insurer and other financial information submitted by the self-insurer.~~

33 (b2) A self-insurer that is excluded from participation in the Association
34 Aggregate Security System, including self-insurers that are granted a license to
35 self-insure after the North Carolina Self-Insurance Security Association annually
36 implements the Association Aggregate Security System, shall deposit with the
37 Commissioner an amount not less than one hundred percent (100%) of the self-insurer's
38 total undiscounted outstanding claims liability per the most recent certification from a
39 qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand
40 dollars (\$500,000), or such greater amount as the Commissioner prescribes based on,
41 but not limited to, the financial condition of the self-insurer and the risk retained by the
42 self-insurer.

43 (c) Deposits received, changes to existing deposits, or deposits exchanged after
44 the effective date of this section, shall comprise one or more of the following:

- 1 (1) Interest-bearing bonds of the United States of America.
2 (2) Interest-bearing bonds of the State of North Carolina, or of its cities or
3 counties.
4 (3) Certificates of deposit issued by any solvent bank domesticated in the
5 State of North Carolina that have a maturity of one year or greater.
6 (4) Surety bonds in a form acceptable to the Commissioner and issued by
7 a corporate surety. A surety bond deposited pursuant to this subsection
8 shall require that the surety reimburse the Commissioner, or his
9 successors, assigns, or transferees, for any costs incurred in the
10 collection of the proceeds of the surety bond, including reasonable
11 attorneys' fees, and any costs incurred in administering the insolvent
12 self-insurer's workers' compensation claims.
13 (4a) Irrevocable letters of credit in a form acceptable to the Commissioner
14 issued by a bank acceptable to the Commissioner. An irrevocable letter
15 of credit deposited pursuant to this subsection shall require that the
16 bank reimburse the Commissioner, or his successor, assigns, or
17 transferees for any costs incurred in the collection of the proceeds of
18 the letter of credit, including reasonable attorneys' fees.
19 (4b) The reimbursement of attorneys' fees and collections cost provided for
20 in subdivisions (4) and (4a) of this subsection shall be no greater than
21 fifteen percent (15%) of the penal amount of the bond and shall not
22 come from the proceeds of the bond or the letter of credit but shall be
23 in addition to the proceeds of the bond or the letter of credit.
24 (5) Any other investments that are approved by the Commissioner.
25 (d) All bonds or securities that are posted as a security deposit shall be valued
26 annually at market value. If market value is less than face value, the Commissioner may
27 require the self-insurer to post additional securities. In making this determination, the
28 Commissioner shall consider the self-insurer's financial condition, the amount by which
29 market value is less than face value, and the likelihood that the securities will be needed
30 to provide benefits.
31 (e) Securities deposited under this section shall be assigned to the Commissioner,
32 the Commissioner's successors, assigns, or trustees, on a form prescribed by the
33 Commissioner in a manner that renders the securities negotiable by the Commissioner.
34 If a self-insurer is deemed by the Commissioner to be in a hazardous financial
35 condition, the Commissioner may sell or collect, or both, such amounts that will yield
36 sufficient funds to meet the self-insurer's obligations under the Act. In the case of a
37 letter of credit, the Commissioner may draw the full amount of a letter of credit if the
38 letter of credit is not renewed within 90 days prior to its expiration or at any time that
39 the bank issuing the letter of credit is no longer acceptable to the Commissioner. Interest
40 accruing on any negotiable security deposited under this Article shall be collected and
41 transmitted to the self-insurer if the self-insurer is not in a hazardous financial condition.
42 (f) No judgment creditor, other than a claimant entitled to benefits under the Act,
43 may levy upon any deposits made under this section.

1 (g) Securities held by the Commissioner under this section may be exchanged or
2 replaced by the self-insurer with other securities of like nature and amount as long as
3 the self-insurer is not in a hazardous financial condition. No release shall be effectuated
4 until replacement securities or bonds of an equal value have been substituted. Any
5 surety bond may be exchanged or replaced with another surety bond that meets the
6 requirements of this section if 90 days' advance written notice is given to the
7 Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with
8 an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and
9 may recover all or a portion of the securities deposited with the Commissioner upon
10 posting instead an acceptable special release bond issued by a corporate surety in an
11 amount equal to the total value of the securities. The special release bond shall cover all
12 existing liabilities under the Act plus an amount to cover future loss development and
13 shall remain in force until all obligations under the Act have been discharged fully.

14 (h) If a self-insurer ceases to self-insure, no deposits shall be released by the
15 Commissioner until the self-insurer has discharged fully all of the self-insurer's
16 obligations under the Act.

17 (i) An endorsement to a surety bond shall be filed with the Commissioner within
18 90 days after the effective date of the endorsement."

19 **SECTION 12.** G.S. 97-195(a) reads as rewritten:

20 "(a) The Commissioner summarily may revoke a license if there is satisfactory
21 evidence for the revocation. In determining whether to revoke a license summarily, the
22 Commissioner may consider any or all of the following:

- 23 (1) Determination of insolvency by a court of competent jurisdiction.
- 24 (2) Institution of bankruptcy proceedings.
- 25 (3) If the self-insurer is in a hazardous financial condition.
- 26 (4) Failure to pay any North Carolina Self-Insurance Security Association
27 assessments made pursuant to G.S. 97-133.
- 28 (5) Failure to participate in the Association Aggregate Security System or,
29 if excluded from participation in the Association Aggregate Security
30 System, failure to provide and maintain the deposit required by
31 G.S. 97-185."

32 **SECTION 13.** This act becomes effective January 1, 2006.