

Article 5.  
Individual Employers.

**§ 97-165. Definitions.**

As used in this Article:

- (1) "Act" means the Workers' Compensation Act established in Article 1 of this Chapter.
- (1a) "Affiliate of" or "person affiliated with" a specific person means a person that indirectly through one or more intermediaries or directly controls, is controlled by, or is under common control with the person specified.
- (1b) "Association Aggregate Security System" means the security system established pursuant to G.S. 97-133 whereby individual self-insurers collectively secure their aggregate self-insured workers' compensation liabilities under the Act through the North Carolina Self-Insurance Security Association.
- (2) "Certified audit" means an audit on which a certified public accountant or a foreign registered public accounting firm expresses his or her professional opinion that the accompanying statements fairly present the financial position of the self-insurer or the guarantor, in conformity with accounting principles generally accepted in the United States or prepared in accordance with International Financial Reporting Standards.
- (3) "Certified public accountant" or "CPA" means a CPA who is in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice. A CPA shall be recognized as independent as long as the CPA conforms to the standards of the profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code. The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on financial statements prepared in accordance with United States Generally Accepted Accounting Principles or International Financial Reporting Standards. The Commission may require the self-insurer or the guarantor to replace the CPA with another whose relationship with the self-insurer or the guarantor is independent within the meaning of this definition.
- (4) "Commissioner" means the Commissioner of Insurance.
- (4a) "Control", "controlling", "controlled by", and "under common control with" mean the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person through ownership of or through proxies for voting of greater than fifty percent (50%) of the voting securities, or in the case of a not-for-profit entity, the power to direct or cause the direction of the management and policies of the entity.
- (5) "Corporate surety" means an insurance company authorized by the Commissioner to write surety business in this State.
- (5a) "Financial statement" means a financial statement as defined by accounting principles generally accepted in the United States or a financial statement prepared in accordance with International Financial Reporting Standards.
- (6) "Foreign registered public accounting firm" means a public accounting firm that is organized and operates under the laws of a non-United States jurisdiction, government, or political subdivision and is registered and in

1 good standing with the Public Company Accounting Oversight Board and  
2 authorized by the Board to prepare or issue any audit report with respect to  
3 any issuer.

4 (6a) "Guarantor" means a person within the same holding company system who  
5 controls the applicant, whose financial statement is used by the applicant to  
6 become a self-insurer under the Act, and who has guaranteed the payment of  
7 the self-insurer's liability under the Act.

8 (7) "Hazardous financial condition" means that, based on its present or  
9 reasonably anticipated financial condition, a self-insurer or guarantor is  
10 insolvent or, although not yet financially impaired or insolvent, is unlikely to  
11 be able to meet its obligations with respect to known claims and reasonably  
12 anticipated claims or to pay other obligations in the normal course of  
13 business.

14 (7a) "Holding company system" means an entity comprising two or more  
15 affiliated persons.

16 (8) "Management" means those persons who are authorized to direct or control  
17 the operations of a self-insurer.

18 (8a) "Person" means an individual, corporation, partnership, limited liability  
19 company, association, joint stock company, trust, unincorporated  
20 organization, or any similar entity or any combination of the foregoing  
21 acting in concert.

22 (9) "Qualified actuary" means a member in good standing of the Casualty  
23 Actuarial Society or a member in good standing of the American Academy  
24 of Actuaries, who has been approved as qualified for signing casualty loss  
25 reserve opinions by the Casualty Practice Council of the American Academy  
26 of Actuaries, and is in compliance with G.S. 58-2-171.

27 (10) "Self-insurer" means an individual self-insurer as defined by G.S.  
28 97-130(5b).

29 (11) "Subsidiary of" a specific person means an affiliate controlled by such  
30 person indirectly through one or more intermediaries or an affiliate directly  
31 controlled by such person. (1997-362, s. 4; 1999-132, s. 13.5; 2004-199, s.  
32 20(h); 2005-400, s. 9; 2009-172, s. 5.)

33  
34 **§ 97-170. License applications; required information.**

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

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

46 (c) Only an applicant whose total fixed assets amount to five hundred thousand dollars  
47 (\$500,000) or more may apply for a license. In judging the applicant's financial strength and  
48 liquidity relative to its ability to comply with the Act, the Commissioner shall consider all of  
49 the following relative to the applicant:

- 50 (1) Organizational structure and management.  
51 (2) Financial strength.

- 1 (3) Source and reliability of financial information.
- 2 (4) Risks to be retained.
- 3 (5) Workers' compensation loss history.
- 4 (6) Number of employees.
- 5 (7) Claims administration.
- 6 (8) Excess insurance.
- 7 (9) Access to excess insurance.

8 (d) The license application shall be comprised of the following information:

- 9 (1) Applicant name; organizational structure of the applicant, including any  
10 controlling entity, subsidiaries, or affiliates; location of principal office;  
11 contact person; organization date; type of operations within this State;  
12 management background; and addresses of all plants or offices in this State.
- 13 (2) Certified audited financial statements prepared by a CPA or submitted by a  
14 foreign registered public accounting firm for the two most recent years. The  
15 financial statement presentation shall facilitate application of ratio and trend  
16 analysis.
- 17 (3) Evidence of the insurance required by G.S. 97-190.
- 18 (4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
- 19 (5) For applicants with 20 or more full-time employees, a certificate or other  
20 evidence of safety inspection, satisfactory to the Commissioner, that certifies  
21 that all safety requirements of the Department of Labor have been met.
- 22 (6) Summary of workers' compensation benefits paid for the last three calendar  
23 years and the total liability for all open claims within 30 days or some other  
24 period acceptable to the Commissioner not to exceed 90 days, before the  
25 filing of the application.
- 26 (7) Summary, by risk classification, of annual payroll and number of employees  
27 within the State.
- 28 (8) Repealed by Session Laws 2005-400, s. 10, effective January 1, 2006.
- 29 (9) Proof of compliance with the claims administration provisions of Article 47  
30 of Chapter 58 of the General Statutes.
- 31 (10) A letter of approval for membership by the North Carolina Self-Insurance  
32 Security Association.

33 (e) Every applicant shall execute and file with the Commissioner an agreement, as part  
34 of the application, in which the applicant agrees to participate in the Association Aggregate  
35 Security System, or if excluded from the Association Aggregate Security System, to deposit  
36 with the Commissioner pursuant to G.S. 97-185 cash, acceptable securities, an irrevocable  
37 letter of credit in a form acceptable to the Commissioner issued by a bank acceptable to the  
38 Commissioner, or a surety bond issued by a corporate surety, or a combination thereof, that will  
39 guarantee the applicant's compliance with this Article and the Act. (1997-362, s. 4; 1999-132,  
40 ss. 13.6, 13.7; 2003-212, s. 25; 2005-400, s. 10; 2009-172, s. 6.)

#### 41 § 97-175. License.

42 (a) After the review of the application and all supporting materials, the Commissioner  
43 shall either grant or deny a license. If a license is denied, the Commissioner shall notify the  
44 applicant of the denial and inform the applicant of the deficiencies that constitute the basis for  
45 denial.

46 (b) If the deficiencies are resolved within 60 days after the Commissioner's notice of  
47 denial, the applicant shall be granted a license. The applicant may be granted additional time to  
48 remedy the deficiencies in its application. A request for an extension of time shall be made in  
49 writing by the applicant within 30 days after notice of denial by the Commissioner. If the  
50

1 requirements of this Article have not been met, the application shall be withdrawn or denied.  
2 (1997-362, s. 4.)

3  
4 **§ 97-177. License covering applicant and any subsidiary or applicant relying on a**  
5 **guarantor; procedure; requirements.**

6 (a) The Commissioner may, in the Commissioner's discretion, upon request by an  
7 applicant, issue a license to an applicant or to an applicant and one or more of its subsidiaries if  
8 all of the following requirements are satisfied:

9 (1) The applicant or a guarantor of the applicant executes a guaranty agreement,  
10 in a form prescribed by the Commissioner, for the payment of all workers'  
11 compensation liabilities covered under the Act. For any applicant or  
12 guarantor that is a corporation, there shall be submitted, along with the  
13 guaranty agreement, a board of directors' resolution from the respective  
14 corporation authorizing the guaranty of the liabilities of the subsidiary  
15 company or companies and granting signature authority to each person or  
16 officer executing the agreement.

17 (2) The applicant or guarantor files a statement with the Commissioner that lists  
18 the percentage of ownership of voting securities or proxies representing  
19 voting securities owned or held by the applicant or guarantor for each  
20 subsidiary, or in the case of a not-for-profit entity, documentation acceptable  
21 to the Commissioner evidencing control.

22 (3) The applicant and its guarantor or the applicant and its subsidiaries,  
23 whichever applies, satisfy the requirements of G.S. 97-170(c).

24 (4) All other applicable requirements for licensure under the Act are satisfied.

25 (b) A license issued by the Commissioner pursuant to this section shall include the  
26 name of the applicant, the name of each licensed subsidiary, and the date of issuance for each  
27 licensed subsidiary.

28 (c) If a self-insurer requests to add a subsidiary to its license, the Commissioner shall  
29 review the request in accordance with this section. Upon approval, the Commissioner shall  
30 issue to the self-insurer a new license that includes the newly licensed subsidiary and the date  
31 of license issuance for the newly licensed subsidiary, and the self-insurer shall return the  
32 original license to the Commissioner.

33 (d) A self-insurer shall neither include nor delete a subsidiary from its license without  
34 the Commissioner's prior written approval.

35 (e) If a controlling relationship or guaranty agreement terminates, the self-insurer shall  
36 retain all liabilities under the Act that were incurred by the self-insurer during the period of  
37 self-insurance and shall account for all such liabilities until discharged, as evidenced by reports  
38 filed with the Commissioner. Termination of a guaranty agreement does not affect the  
39 guarantor's liability for payment of liabilities arising prior to termination of the agreement.  
40 (2005-400, s. 11.)

41  
42 **§ 97-180. Reporting and records.**

43 (a) Every self-insurer shall submit, within 120 days after the end of its fiscal year, a  
44 certified audited financial statement, prepared by a CPA or submitted by a foreign registered  
45 public accounting firm, for that fiscal year. The financial statement presentation shall facilitate  
46 the application of ratio and trend analysis. If the self-insurer was issued a license pursuant to  
47 G.S. 97-177, the financial statement required under this subsection shall be that of the  
48 guarantor.

49 (b) Every self-insurer shall submit within 120 days after the end of its fiscal year a  
50 report from a qualified actuary setting forth an opinion certifying the loss and loss adjustment  
51 expense reserves for workers' compensation obligations in North Carolina. The report shall

1 show liabilities, excess insurance carrier and other qualifying credits, if any, and net retained  
2 workers' compensation liabilities.

3 (c) Every self-insurer shall submit within 120 days after the end of its fiscal year a  
4 report in the form of a sworn statement prescribed by the Commissioner, setting forth the total  
5 workers' compensation benefits paid in the previous fiscal year, and the total outstanding  
6 workers' compensation liabilities for each loss year, recorded at the close of its fiscal year for  
7 the net retained liability.

8 (d) Upon the request of the Commissioner, every self-insurer shall submit a report of its  
9 annual payroll information. The report shall summarize payroll, by annual amount paid, and the  
10 number of employees, by classification, using the rules, classifications, and rates in the most  
11 recently approved Workers' Compensation and Employers' Liability Insurance Manual  
12 governing the audits of payrolls and the adjustments of premiums. Every self-insurer shall  
13 maintain true and accurate payroll records. These payroll records shall be maintained to allow  
14 for verification of the completeness and accuracy of the annual payroll report.

15 (e) Every self-insurer shall report promptly to the Commissioner changes in the name  
16 or address of the self-insurer or guarantor; significant changes in the financial condition of the  
17 self-insurer, guarantor, or any affiliate, including bankruptcy filings; and changes in its  
18 organizational structure, including its subsidiaries and affiliates. Any change shall be reported  
19 in writing to the Commissioner within 10 days after the effective date of the change. Upon  
20 request by the Commissioner, a self-insurer shall provide the Commissioner copies of  
21 documents or information deemed necessary to determine whether any change has affected the  
22 privilege of the employer to self-insure. (1997-362, s. 4; 1999-132, ss. 13.8, 13.9; 2005-400, s.  
23 12; 2009-172, s. 7.)  
24

#### 25 **§ 97-185. Deposits; surety bonds; letters of credit.**

26 (a) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

27 (a1) All individual self-insurers as defined in G.S. 97-130(5b) shall participate in the  
28 Association Aggregate Security System established under G.S. 97-131 unless excluded by the  
29 Board of Directors of the North Carolina Self-Insurance Security Association. The Board of  
30 Directors of the North Carolina Self-Insurance Security Association shall exclude all of the  
31 following from the Association Aggregate Security System:

- 32 (1) Individual self-insurers whose licenses have previously been revoked by the  
33 Commissioner.
- 34 (2) Individual self-insurers with a debt rating as established by Standard &  
35 Poor's Rating Service or by Moody's Investor Service, below the minimum  
36 Standard & Poor's or Moody's ratings if a minimum debt rating has been  
37 established by the Board of Directors of the North Carolina Self-Insurance  
38 Security Association for the Association Aggregate Security System.
- 39 (3) Individual self-insurers that have defaulted on the payment of their  
40 self-insured workers' compensation liabilities.
- 41 (4) Individual self-insurers that fail to submit sufficient financial information to  
42 enable the Association to determine their total outstanding workers'  
43 compensation liabilities, or their creditworthiness, or both.

44 The Board of Directors of the North Carolina Self-Insurance Security Association shall  
45 notify the Commissioner of the individual self-insurers that are excluded from participating in  
46 the Association Aggregate Security System.

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

48 (b1) Repealed by Session Laws 2005-400, s. 13, effective January 1, 2006.

49 (b2) An individual self-insurer that is excluded from participation in the Association  
50 Aggregate Security System, including individual self-insurers that are granted a license to  
51 self-insure after the North Carolina Self-Insurance Security Association annually implements

1 the Association Aggregate Security System, shall deposit with the Commissioner an amount  
2 not less than one hundred percent (100%) of the individual self-insurer's total undiscounted  
3 outstanding claims liability per the most recent report from a qualified actuary as required by  
4 G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such greater  
5 amount as the Commissioner prescribes based on, but not limited to, the financial condition of  
6 the individual self-insurer and the risk retained by the individual self-insurer.

7 (b3) During any period of time that no Association Aggregate Security System is in  
8 effect, individual self-insurers with a debt rating of BBB or better from Standard & Poor's  
9 Rating Service, a division of McGraw Hill, Inc., or an equivalent rating from another national  
10 rating agency shall deposit with the Commissioner an amount not less than fifty percent (50%)  
11 of the individual self-insurer's total undiscounted outstanding claims liability per the most  
12 recent report from a qualified actuary as required by G.S. 97-180(b), but not less than five  
13 hundred thousand dollars (\$500,000). An individual self-insurer licensed pursuant to G.S.  
14 97-177 may utilize the debt rating of its guarantor for the purpose of establishing the  
15 application of this subsection. The Commissioner shall consider and may, in the  
16 Commissioner's discretion, increase or reduce the deposit to a greater or lesser percentage of  
17 the individual self-insurer's claims liability based on the financial strength of the individual  
18 self-insurer and other financial information submitted by the individual self-insurer. All other  
19 individual self-insurers shall deposit with the Commissioner an amount not less than one  
20 hundred percent (100%) of the individual self-insurer's total undiscounted outstanding claims  
21 liability per the most recent report from a qualified actuary as required by G.S. 97-180(b), but  
22 not less than five hundred thousand dollars (\$500,000), or such greater amount as the  
23 Commissioner prescribes based on, but not limited to, the financial condition of the individual  
24 self-insurer and the risk retained by the individual self-insurer.

25 (c) Deposits received, changes to existing deposits, or deposits exchanged after the  
26 effective date of this section, shall be comprised of one or more of the following:

- 27 (1) Interest-bearing bonds of the United States of America.
- 28 (2) Interest-bearing bonds of the State of North Carolina, or of its cities or  
29 counties.
- 30 (3) Certificates of deposit issued by any solvent bank domesticated in the State  
31 of North Carolina that have a maturity of one year or greater.
- 32 (4) Surety bonds in a form acceptable to the Commissioner and issued by a  
33 corporate surety. A surety bond deposited pursuant to this subsection shall  
34 require that the surety reimburse the Commissioner, or his successors,  
35 assigns, or transferees, for any costs incurred in the collection of the  
36 proceeds of the surety bond, including reasonable attorneys' fees, and any  
37 costs incurred in administering the insolvent self-insurer's workers'  
38 compensation claims.
- 39 (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued  
40 by a bank acceptable to the Commissioner. An irrevocable letter of credit  
41 deposited pursuant to this subsection shall require that the bank reimburse  
42 the Commissioner, or his successors, assigns, or transferees for any costs  
43 incurred in the collection of the proceeds of the letter of credit, including  
44 reasonable attorneys' fees.
- 45 (4b) The reimbursement of attorneys' fees and collections cost provided for in  
46 subdivisions (4) and (4a) of this subsection shall be no greater than fifteen  
47 percent (15%) of the penal amount of the bond and shall not come from the  
48 proceeds of the bond or the letter of credit but shall be in addition to the  
49 proceeds of the bond or the letter of credit.
- 50 (5) Any other investments that are approved by the Commissioner.

1 (d) All bonds or securities that are posted as a security deposit shall be valued annually  
2 at market value. If the market value is less than the face value, the Commissioner may require  
3 the self-insurer to post additional securities. In making this determination, the Commissioner  
4 shall consider the self-insurer's or guarantor's financial condition, the amount by which market  
5 value is less than face value, and the likelihood that the securities will be needed to provide  
6 benefits.

7 (e) Securities deposited under this section shall be assigned to the Commissioner, the  
8 Commissioner's successors, assigns, or trustees, on a form prescribed by the Commissioner in a  
9 manner that renders the securities negotiable by the Commissioner. If a self-insurer or  
10 guarantor is deemed by the Commissioner to be in a hazardous financial condition, the  
11 Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet  
12 the self-insurer's obligations under the Act. In the case of a letter of credit, the Commissioner  
13 may draw the full amount of a letter of credit if the letter of credit is not renewed within 90  
14 days prior to its expiration or at any time that the bank issuing the letter of credit is no longer  
15 acceptable to the Commissioner. Interest accruing on any negotiable security deposited under  
16 this Article shall be collected and transmitted to the self-insurer if the self-insurer or guarantor  
17 is not in a hazardous financial condition.

18 (f) No judgment creditor, other than a claimant entitled to benefits under the Act, may  
19 levy upon any deposits made under this section.

20 (g) Pursuant to the provisions of this section and with the approval of the  
21 Commissioner, deposits held by the Commissioner may be replaced with other acceptable  
22 forms of deposit in amount determined by the Commissioner. Any deposit to be replaced with  
23 another form of deposit shall not be released until the approved replacement deposit is received  
24 by the Commissioner.

25 (h) Any self-insurer that ceases to self-insure, whether by voluntary termination or by  
26 revocation of license, shall continue to secure and be liable for its obligations under the Act and  
27 shall continue to report to the Commissioner pursuant to G.S. 97-180. Upon the request of the  
28 Commissioner, a self-insurer that ceases to self-insure shall submit filings, as prescribed in G.S.  
29 97-180, to determine whether the deposit is sufficient to satisfy those workers' compensation  
30 obligations incurred during the period that the self-insurer was licensed as a self-insurer. The  
31 Commissioner may require an increase in the deposit amount or may grant a reduction in the  
32 deposit amount to ensure that the deposit is sufficient to cover all existing and future  
33 obligations incurred by the self-insurer while subject to the provisions of the Act.

34 (i) An endorsement to a surety bond shall be filed with the Commissioner within 90  
35 days after the effective date of the endorsement. (1997-362, s. 4; 2003-115, ss. 3, 4, 5;  
36 2005-400, s. 13; 2009-242, ss. 2, 3, 4; 2011-196, s. 11.)  
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### 38 **§ 97-190. Excess insurance.**

39 (a) Every self-insurer, as a prerequisite for licensure under this Article, shall maintain  
40 specific and aggregate excess loss coverage through an insurance policy. A self-insurer shall  
41 maintain limits and retentions commensurate with its risk. A self-insurer's retention shall be the  
42 lowest retention suitable for the self-insurer's exposures and level of annual premium. The  
43 Commissioner may require different levels, or waive the requirement, of specific and aggregate  
44 excess loss coverage consistent with the market availability of excess loss coverage, the  
45 self-insurer's claims experience, and the self-insurer's or guarantor's financial condition.

46 (b) An excess insurance policy required by this section shall be issued by either an  
47 insurance company licensed in this State or an eligible surplus lines insurer as defined in G.S.  
48 58-21-10 and shall:

- 49 (1) Provide for at least 30 days' written notice of cancellation by registered or  
50 certified mail, return receipt requested, to the self-insurer and to the  
51 Commissioner.

1 (2) Be renewable automatically at its expiration, except upon 30 days' written  
2 notice of nonrenewal by certified mail, return receipt requested, to the  
3 self-insurer and to the Commissioner.

4 (c) Every self-insurer shall provide to the Commissioner evidence of coverage and any  
5 amendments within 30 days after their effective dates. Every self-insurer shall, at the request of  
6 the Commissioner, furnish copies of its excess insurance policies and amendments. (1997-362,  
7 s. 4; 2005-400, s. 14.)  
8

9 **§ 97-195. Revocation, suspension or restriction of license.**

10 (a) Repealed by Session Laws 2005-400, s. 15, effective January 1, 2006.

11 (a1) The Commissioner may, upon at least 45 days notice and opportunity for a hearing,  
12 revoke, suspend, or restrict the license of a self-insurer if any of the following apply:

- 13 (1) The self-insurer fails or refuses to comply with any law, order, or rule  
14 applicable to the self-insurer.
- 15 (2) There is a determination of insolvency by a court of competent jurisdiction.
- 16 (3) The self-insurer is in a hazardous financial condition.
- 17 (4) The self-insurer has experienced a material loss or deteriorating operating  
18 trends, or has reported a deficit financial position.
- 19 (5) Any affiliate or subsidiary is insolvent, threatened with insolvency, or  
20 delinquent in payment of its monetary or any other obligation.
- 21 (6) The self-insurer has failed to pay premium taxes pursuant to Article 8B of  
22 Chapter 105 of the General Statutes.
- 23 (7) Contingent liabilities, pledges, or guaranties that either individually or  
24 collectively involve a total amount that in the Commissioner's opinion may  
25 affect a self-insurer's solvency.
- 26 (8) The management of a self-insurer has failed to respond to the  
27 Commissioner's inquiries about the condition of the self-insurer or has  
28 furnished false and misleading information in response to an inquiry by the  
29 Commissioner.
- 30 (9) The management of a self-insurer has filed any false or misleading sworn  
31 financial statement, has released a false or misleading financial statement to  
32 a lending institution or to the general public, or has made a false or  
33 misleading entry or omitted an entry of material amount in the filed financial  
34 information.
- 35 (10) The self-insurer has experienced, or will experience in the foreseeable  
36 future, cash flow or liquidity problems.
- 37 (11) The self-insurer has failed to make proper and timely payment of claims, as  
38 required by this Article.
- 39 (12) Failure to pay any North Carolina Self-Insurance Security Association  
40 assessments made pursuant to G.S. 97-133.
- 41 (13) Failure to participate in the Association Aggregate Security System or, if  
42 excluded from participation in the Association Aggregate Security System,  
43 failure to provide and maintain the deposit required by G.S. 97-185.

44 (b) Repealed by Session Laws 2005-400, s. 15, effective January 1, 2006.

45 (c) Any self-insurer subject to license revocation, suspension, or restriction under  
46 subsection (a1) of this section may request an administrative hearing before the Commissioner  
47 to review that order. If a hearing is requested, a notice of hearing shall be served, and the notice  
48 shall state the time and place of hearing and the conduct, condition, or ground on which the  
49 Commissioner based the order. Unless mutually agreed upon between the Commissioner and  
50 the self-insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice  
51 is served and shall be either in Wake County or in some other place designated by the

1 Commissioner. The Commissioner shall hold all hearings under this section privately unless the  
2 self-insurer requests a public hearing, in which case the hearing shall be public. The request for  
3 a hearing shall not stay the effect of the order. (1997-362, s. 4; 2003-221, s. 15; 2005-400, s.  
4 15.)

5  
6 **§ 97-196. Civil penalties or restitution for violations; administrative procedure.**

7 (a) Whenever the Commissioner has reason to believe that a self-insurer has violated  
8 any of the provisions of this Article, and the violation subjects the license of the self-insurer to  
9 suspension or revocation, the Commissioner may, after notice and opportunity for a hearing,  
10 proceed under the appropriate subsections of this section.

11 (b) If the Commissioner finds a violation of this Article, the Commissioner may, in  
12 addition to or instead of suspending or revoking the license, order the payment of a monetary  
13 penalty as provided in subsection (c) of this section or petition the Superior Court of Wake  
14 County for an order directing payment of restitution as provided in subsection (d) of this  
15 section, or both. Each day during which a violation occurs constitutes a separate violation.

16 (c) If the Commissioner orders the payment of a monetary penalty pursuant to  
17 subsection (b) of this section, the penalty shall not be less than one hundred dollars (\$100.00)  
18 nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the  
19 Commissioner shall consider the degree and extent of harm caused by the violation, the amount  
20 of money that inured to the benefit of the violator as a result of the violation, whether the  
21 violation was committed willfully, and the prior record of the violator in complying or failing  
22 to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the  
23 penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.  
24 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of  
25 any other penalty for a violation of the criminal laws of this State.

26 (d) Upon petition of the Commissioner, the court may order the self-insurer who  
27 committed a violation specified in subsection (b) of this section to make restitution in an  
28 amount that would make whole any person harmed by the violation. The petition may be made  
29 at any time, and the petition may be made in any appeal of the Commissioner's order.

30 (e) Restitution to any State agency for extraordinary administrative expenses incurred  
31 in the investigation and hearing of the violation may also be ordered by the court in such  
32 amount that would reimburse the agency for the expenses.

33 (f) Nothing in this section prevents the Commissioner from negotiating a mutually  
34 acceptable agreement with any self-insurer as to the status of the self-insurer's license or as to  
35 any civil penalty or restitution.

36 (g) Unless otherwise specifically provided for, all administrative proceedings under this  
37 Article are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's  
38 orders under this section shall be governed by G.S. 58-2-75. (2005-400, s. 16.)

39  
40 **§ 97-200. Claims administration.**

41 (a) A self-insurer shall not utilize any claims adjuster unless the adjuster is licensed  
42 under G.S. 58-33-25.

43 (b) Every self-insurer shall comply with the provisions of Article 47 of Chapter 58 of  
44 the General Statutes that are related to claims administration. (1997-362, s. 4.)