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Short Title: Workers' Comp. Self-Insurance Security.

(Public)

Sponsors:

Referred to:

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. 97-133 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 that 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 that 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. 97-130 and G.S. 97-165 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 60 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 60 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 subdivision
29 (3a) of this subsection.
30 e. If the Commissioner disapproves the plan for any year, every
31 self-insurer shall deposit with the Commissioner, or continue to
32 deposit, the amount required by G.S. 97-185(b3) in the manner
33 prescribed by G.S. 97-185(c).
34 (3) ~~Administer a fund, to be known as the North Carolina Self-Insurance~~
35 ~~Guaranty Fund, which shall receive the assessments required in~~
36 ~~subdivision (2) of this subsection. Once the Fund reaches five million~~
37 ~~dollars (\$5,000,000), no further assessments shall be made except~~
38 ~~initial assessments of new member self insurers that are required to be~~
39 ~~made in subdivision (2)d. of this subsection. Assessments may be~~
40 ~~subsequently made only to maintain the Fund at a level of five million~~
41 ~~dollars (\$5,000,000). In its discretion, the Board may determine that~~
42 ~~the assets of the Fund should be segregated, or, that a separate~~
43 ~~accounting shall be made, in order to identify that portion of the Fund~~
44 ~~which represents assessments paid by individual self insurers and that~~

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

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

30 (3a) Assess members of the Association as follows:

- 31 a. Association Aggregate Security System assessments. – The
32 Association shall assess each member participating in the
33 Association Aggregate Security System a security system
34 assessment. The amount of the security system assessment
35 charged to each member participating in the Association
36 Aggregate Security System shall be based on the Association's
37 reasonable consideration of all of the following factors:
- 38 1. The total amount of assessments necessary to provide
39 aggregate security for all participating members.
 - 40 2. The member's total workers' compensation liabilities
41 under the Act.
 - 42 3. The financial strength and creditworthiness of the
43 member.
 - 44 4. Any other relevant factors.

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

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

1 shall be in the proportion that the annual gross premiums of the group
2 member self insurer for the premium calendar year bears to the annual
3 gross premiums of all group member self insurers for the preceding
4 calendar year.

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

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

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

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

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

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

33 **"§ 97-134. Plan of Operation.**

34 The Plan is as follows:

35 (1) The Association shall submit to the Commissioner a Plan and any
36 amendments necessary or suitable to assure the fair, reasonable, and
37 equitable administration of the Association. The Plan and any
38 amendments become effective upon approval in writing by the
39 Commissioner. If the Association at any time fails to submit a suitable
40 Plan or suitable amendment to the Plan the Commissioner shall, after
41 notice and hearing, adopt such reasonable rules as are necessary or
42 advisable to effectuate this Article. Such rules shall continue in force
43 until modified by the Commissioner or superseded by a Plan submitted
44 by the Association and approved by the Commissioner.

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

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

32 "**§ 97-135. Insolvency.**

33 A member self-insurer shall be insolvent for the purposes of this ~~Article—Article,~~

34 ~~other than the definition of insolvency adopted by the Board for the purposes of the~~

35 ~~Association Aggregate Security System, under any of the following circumstances:~~

- 36 (1) Determination of insolvency by a court of competent ~~jurisdiction;~~
- 37 ~~or jurisdiction.~~
- 38 (2) Institution of bankruptcy proceedings by or regarding the member
- 39 ~~self-insurer;~~ or self-insurer.
- 40 (3) The Board determines that the self-insurer's total liabilities exceed its
- 41 total assets or the self-insurer is unable or ceases to pay its debts as
- 42 they fall due or in the ordinary course of business."

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

44 "**§ 97-140. Nonduplication of recovery.**

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

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

7 "**§ 97-143. Use of deposits made by insolvent member self-insurers.**

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

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

21 "(1a) "Association Aggregate Security System" means the security system
22 established pursuant to G.S. 97-133 whereby self-insurers collectively
23 secure their aggregate self-insured workers' compensation liabilities
24 under the Act through the North Carolina Self-Insurance Security
25 Association."

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

27 "**§ 97-170. License applications; required information.**

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

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

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

- 43 (1) Organizational structure and ~~management;~~management.
- 44 (2) Financial ~~strength;~~strength.

- 1 (3) Source and reliability of financial ~~information;~~information.
2 (4) Risks to be ~~retained;~~retained.
3 (5) Workers' compensation loss ~~history;~~history.
4 (6) Number of ~~employees;~~employees.
5 (7) Claims ~~administration;~~administration.
6 (8) Excess ~~insurance;~~ and insurance.
7 (9) Access to excess insurance.
- 8 (d) The license application shall comprise the following information:
9 (1) Company name, organizational structure, location of principal office,
10 contact person, organization date, type of operations within this State,
11 management background, and addresses of all plants or offices in this
12 State.
13 (2) Certified audited GAAP financial statements prepared by a CPA for
14 the two most recent years. The financial statement formulation shall
15 facilitate application of ratio and trend analysis.
16 (3) Evidence of the insurance required by G.S. 97-190.
17 (4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
18 (5) For applicants with 20 or more full-time employees, a certificate or
19 other evidence of safety inspection, satisfactory to the Commissioner,
20 that certifies that all safety requirements of the Department of Labor
21 have been met.
22 (6) Summary of workers' compensation benefits paid for the last three
23 calendar years, as well as the total liability for all open claims within
24 30 days or some other period acceptable to the Commissioner not to
25 exceed 90 days, before the filing of the application.
26 (7) Summary, by risk classification, of annual payroll and number of
27 employees within the State.
28 (8) Book value of fixed assets located within the State.
29 (9) Proof of compliance with the claims administration provisions of
30 Article 47 of Chapter 58 of the General Statutes.
31 (10) A letter of ~~assent, stipulating the applicant's acceptance of membership~~
32 ~~status in approval by the North Carolina Self-Insurance Guaranty~~
33 ~~Security Association under Article 4 of this Chapter.~~Chapter upon the
34 granting of a license to the applicant.
- 35 (e) Every applicant shall execute and file with the Commissioner an agreement,
36 as part of the application, in which the applicant agrees to participate in the Association
37 Aggregate Security System, or if excluded from the Association Aggregate Security
38 System, to deposit with the Commissioner pursuant to G.S. 97-185, cash, acceptable
39 securities, or a surety bond issued by a corporate surety that will guarantee the
40 applicant's compliance with this Article and the Act pursuant to G.S. 97-185.Act."

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

42 "**§ 97-185. Deposits; surety bonds; letters of credit.**

43 (a) ~~(Effective January 1, 2005, until January 1, 2006) Every self insurer shall~~
44 ~~deposit with the Commissioner an amount not less than seventy five percent (75%) of~~

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

6 (a) ~~(Effective January 1, 2006)~~ Every self insurer shall deposit with the
7 Commissioner an amount not less than one hundred percent (100%) of the self insurer's
8 total undiscounted outstanding claim liability per the most recent certification from a
9 qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand
10 dollars (\$500,000), or such other greater amount as the Commissioner prescribes based
11 on, but not limited to, the financial condition of the self insurer and the risk retained by
12 the self insurer.

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

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

30 (b1) Notwithstanding ~~subsection (a)~~ subsection (b3) of this section, member self
31 insurers with a debt rating of BBB or better from Standard and Poor's Rating Service, a
32 division of McGraw Hill, Inc., or an equivalent rating from another national rating
33 agency shall deposit with the Commissioner an amount not less than twenty five percent
34 (25%) of the self insurer's total undiscounted outstanding claim liability per the most
35 recent certification from a qualified actuary as required by G.S. 97-180(b), but not less
36 than five hundred thousand dollars (\$500,000). The Commissioner shall consider and
37 may, in the Commissioner's discretion, increase or reduce the deposit to a greater or
38 lesser percentage of the member self insurer's claims liability based on the financial
39 strength of the self insurer and other financial information submitted by the self insurer.

40 (b2) A self-insurer that is excluded from participation in the Association
41 Aggregate Security System, including self-insurers that are granted a license to
42 self-insure after the North Carolina Self-Insurance Security Association annually
43 implements the Association Aggregate Security System, shall deposit with the
44 Commissioner an amount not less than one hundred percent (100%) of the self-insurer's

1 total undiscounted outstanding claims 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 greater amount as the Commissioner prescribes based on,
4 but not limited to, the financial condition of the self-insurer and the risk retained by the
5 self-insurer.

6 (b3) During any period of time that no Association Alternative Security System is
7 in effect, every self-insurer shall deposit with the Commissioner an amount not less than
8 one hundred percent (100%) of the self-insurer's total undiscounted outstanding claims
9 liability per the most recent certification from a qualified actuary as required by
10 G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such
11 greater amount as the Commissioner prescribes based on, but not limited to, the
12 financial condition of the self-insurer and the risk retained by the self-insurer.

13 ..."

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

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

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

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