

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

HOUSE BILL 306  
RATIFIED BILL

AN ACT TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO CONDUCT HEARINGS AND ADOPT CERTAIN RULES RELATED TO THE BEACH AND FAIR PLANS, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO APPROVE ADDITIONAL BEDS FOR CONTINUING CARE RETIREMENT FACILITIES UNDER CERTAIN CIRCUMSTANCES, TO REVISE THE LAW PROHIBITING DISCRIMINATION IN THE TREATMENT OF HANDICAPPED AND DISABLED PERSONS, TO GOVERN MANAGED CARE WITH REGARD TO WORKERS' COMPENSATION, TO EXEMPT COMMERCIAL AIRCRAFT INSURANCE FROM STATE REGULATION, TO REQUIRE ADDITIONAL INFORMATION FROM SURPLUS LINES LICENSEES, TO CLARIFY WHICH SECTIONS OF THE GENERAL STATUTES APPLY TO SURPLUS LINES INSURANCE, TO AUTHORIZE THE SECRETARY OF REVENUE TO PROVIDE THE NORTH CAROLINA SELF-INSURANCE GUARANTY ASSOCIATION WITH INFORMATION ON SELF-INSURERS' PREMIUMS, TO REPEAL THE REQUIREMENT FOR A BIENNIAL REPORT FROM THE DEPARTMENT OF INSURANCE, TO REPEAL THE AGENCY BUSINESS CESSATION LAW, TO AUTHORIZE THE COMMISSIONER TO ADOPT RULES RECOGNIZING NEW ANNUITY MORTALITY TABLES, AND TO CLARIFY THAT MECHANICAL BREAKDOWN AND RELATED INSURANCE ARE NOT UNDER THE JURISDICTION OF THE RATE BUREAU.

The General Assembly of North Carolina enacts:

PART I. HEARINGS AND FAIR AND BEACH PLANS APPEALS.

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

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

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

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

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

Any person or any insurer who may be aggrieved by an act, ruling or decision of the Association other than an act, ruling or decision relating to the cause or amount of a claimed loss, may, within 30 days after ~~such ruling~~ the ruling, appeal to the Commissioner. Any hearings held by the Commissioner ~~pursuant to such an~~ under the appeal shall be in accordance with ~~the procedure set forth in G.S. 58-2-50;~~ rules adopted by the Commissioner. Provided, however, the Commissioner is authorized to appoint a

member of ~~his~~ the Commissioner's staff as deputy commissioner for the purpose of hearing ~~such those~~ appeals and a ruling based upon ~~such the~~ hearing shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved by any order or decision of the Commissioner may appeal as is provided ~~by the provisions of in~~ G.S. 58-2-75.

No later than ~~20~~ 10 days before each hearing, the appellant shall file with the Commissioner or ~~his~~ the Commissioner's designated hearing officer and shall serve on the appellee a written statement of ~~his the~~ appellant's case and any evidence ~~he that the~~ appellant intends to offer at the hearing. No later than five days before ~~such the~~ hearing, the appellee shall file with the Commissioner or ~~his the~~ designated hearing officer and shall serve on the appellant a written statement of ~~his the~~ appellee's case and any evidence ~~he that the~~ appellee intends to offer at the hearing. Each ~~such~~ hearing shall be recorded and may be transcribed. ~~The~~ If the matter is between an insurer and the Association, the cost of such the recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. If the matter is between an insured and the Association, the cost of transcribing shall be borne equally by the appellant and appellee; provided that the Commissioner may order the Association to pay recording or transcribing costs for which the insured is financially unable to pay. Each party shall, on a date determined by the Commissioner or ~~his the~~ designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his the~~ designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his the~~ designated hearing officer shall then issue an order."

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

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

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

No later than ~~20~~ 10 days before each hearing, the appellant shall file with the Commissioner or ~~his the~~ designated hearing officer and shall serve on the appellee a written statement of ~~his the~~ appellant's case and any evidence ~~he that the~~ appellant intends to offer at the hearing. No later than five days before ~~such the~~ hearing, the appellee shall file with the Commissioner or ~~his the~~ designated hearing officer and shall serve on the appellant a written statement of ~~his the~~ appellee's case and any evidence ~~he that the~~ appellee intends to offer at the hearing. Each ~~such~~ hearing shall be recorded and may be transcribed. ~~The~~ If the matter is between an insurer and the Association, the cost of such the recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. If the matter is between an insured and the Association, the cost of transcribing shall be borne equally by the appellant and appellee; provided that the Commissioner may order the Association to

pay recording or transcribing costs for which the insured is financially unable to pay. Each party shall, on a date determined by the Commissioner or ~~his~~ the designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or ~~his~~ the designated hearing officer and serve on the other party, a proposed order. The Commissioner or ~~his~~ the designated hearing officer shall then issue an order."

## **PART II. CONTINUING CARE RETIREMENT RECEIVERSHIPS.**

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

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

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

## **PART III. HANDICAPPED PERSONS.**

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

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

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

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

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

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

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

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

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

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

## PART V. COMMERCIAL AIRCRAFT INSURANCE.

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

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

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

"(a) Except as otherwise provided, this Article applies to all kinds of insurance authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all insurance companies licensed by the Commissioner to write those kinds of insurance. This Article does not apply to insurance written under Articles 21, 36, 37, 45 or 46 of this Chapter; insurance written for residential risks in conjunction with insurance written under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to personal inland marine insurance; to ~~aviation commercial aircraft~~ insurance; to policies issued in this State covering risks with multistate locations, except with respect to coverages applicable to locations within this State; to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan."

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

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

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

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

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this ~~Chapter~~, Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the ~~Commissioner~~, Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such ~~policy~~, policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy ~~of such~~ for the insurance was lawfully issued and delivered in a state ~~where~~ in which the company was authorized to transact ~~business~~, business.
- (5) Transactions in this State involving all policies of insurance issued ~~prior to before~~ before July 1, ~~1967~~, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear ~~insured~~, insured. As used in this subdivision, 'nuclear insured' means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this ~~section~~, section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim."

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

**"§ 58-1-5. Definitions.**

In this Chapter, unless the context clearly requires otherwise:

- (1) 'Alien company' means a company incorporated or organized under the laws of any jurisdiction outside of the United States.
- (1a) 'Commercial aircraft' means aircraft used in domestic, flag, supplemental, commuter, or on-demand operations, as defined in Federal Aviation Administration Regulations, 14 C.F.R. § 119.3, as amended.
- (2) 'Commissioner' means the Commissioner of Insurance of North Carolina or an authorized designee of the Commissioner.
- (3) 'Company' or 'insurance company' or 'insurer' includes any corporation, association, partnership, society, order, individual or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations. 'Company' or 'insurance company' or 'insurer' does not mean the State of North Carolina or any

- county, city, or other political subdivision of the State of North Carolina.
- (4) 'Department' means the Department of Insurance of North Carolina.
- (5) 'Domestic company' means a company incorporated or organized under the laws of this State.
- (6) 'Foreign company' means a company incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.
- (7) 'NAIC' means the National Association of Insurance Commissioners.
- (8) ~~" Nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.~~
- (9) 'Person' means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity, or any combination of the foregoing acting in concert. 'Person' does not mean the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina.
- (10) The singular form ~~shall include~~ includes the plural, and the masculine form ~~shall include~~ includes the feminine wherever appropriate."

#### PART VI. SURPLUS LINES FILINGS.

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

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

- (a) ~~Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall execute and file with the Commissioner.~~ Commissioner a
- (1) ~~A written report in a format prescribed by the Commissioner regarding the insurance and including the following information:~~
- a. ~~(1) The name and address of the insured;~~ insured.
- b. ~~(2) The identity of the insurer or insurers;~~ insurers.
- e. ~~(3) A description of the subject and location of the risk;~~ risk.
- d. ~~(4) The amount of premium charged for the insurance; and~~ insurance.
- e. ~~Such other pertinent information as the Commissioner may reasonably require; and~~
- (5) The amount of premium tax for the insurance.
- (6) The policy period.
- (7) The policy number.
- (8) The name, address, telephone number, facsimile telephone number, and electronic mail address of the licensee, as applicable.
- (9) Any other relevant information the Commissioner may reasonably require.
- (2) ~~An~~
- (b) The licensee shall complete and retain an affidavit as to the efforts to place the coverage with admitted insurers and the results thereof of the efforts, in accordance with G.S. 58-21-15. The report and affidavit required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100."

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

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

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

**PART VII. WORKERS' COMPENSATION SELF-INSURANCE.**

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

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

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

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

(a) The Association shall:

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

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

a. Each individual member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual standard premium gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium gross premiums for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium gross premiums. Each group member self-insurer shall be annually assessed an amount equal to one-quarter of one percent (0.25%) of the annual premium collected by gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c), of the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this one-quarter of one percent (0.25%) assessment. Assessments paid by members pursuant to this subdivision shall be credited toward the tax paid by self-insurers under Article 8B of Chapter 105 of the General Statutes. For the purpose of making the assessments authorized by this subsection and subsections (c) and (d) of this section, the Secretary of Revenue shall provide to the Association the self-insurer premium and payroll information as determined under G.S. 105-228.5(b), (b1), and (c), and the Commissioner shall provide to the Association the group self-insurer premium information

- reported to the Commissioner under G.S. 58-47-75 and G.S. 58-2-165.
- b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.
  - c. If a self-insurer is a member of the Association for less than a full calendar year, the annual ~~standard premium-gross premiums~~ shall be adjusted by that portion of the year the self-insurer is not a member of the Association.
  - d. If application of the contribution rates referenced in ~~sub-subdivisions a. and b.~~ sub-subdivision a. of this subdivision would produce an amount in excess of the five million dollar (\$5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board, regardless of the size of the fund at the time the member joins the Association.
- (3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches five million dollars (\$5,000,000), no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of five million dollars (\$5,000,000). In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.

The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure



- that information so received is used only for this purpose and is not otherwise disclosed;
- (4) Be obligated to the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by the self-insurer of workers' compensation insurance as otherwise required under this Chapter. The Association shall pay claims against a self-insurer that are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings that occurred prior to the effective date of this Article.
  - (5) After paying any claim resulting from a self-insurer's insolvency, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents;
  - (6) Assess the Fund in an amount necessary to pay only:
    - a. The obligations for the Association under this Article subsequent to an insolvency;
    - b. The expenses of handling covered claims subsequent to an insolvency;
    - c. The cost of examinations under G.S. 97-137; and
    - d. Other expenses authorized by this Article;
  - (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;
  - (8) Notify such persons as the Commissioner directs under G.S. 97-136;
  - (9) Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;
  - (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association;
  - (11) Pay the other expenses of the Association authorized by this section; and
  - (12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions ~~(1)~~, ~~(2)~~, ~~(2)~~ and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.
- (b) The Association may:
- (1) Employ or retain such persons as are necessary to handle claims and perform other duties of the Association;
  - (2) Borrow funds necessary to effect the purposes of this Article in accord with the Plan;
  - (3) Sue or be sued;
  - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section; and
  - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
- (c) In the event that the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall impose an additional

assessment upon its members, which shall be known as a post-insolvency assessment which shall be imposed as follows:

- (1) Each individual member self-insurer shall be assessed in an amount not to exceed two percent (2%) each year of the annual ~~standard premium-gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),~~ that would have been paid by that member self-insurer during the prior calendar year. The assessments of each individual member self-insurer shall be in the proportion that the annual ~~standard premium-gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),~~ of the individual member self-insurer for the premium calendar year bears to the annual ~~standard premium-gross premiums~~ of all individual member self-insurers for the preceding calendar year. For group member self-insurers, the assessment shall not exceed two percent (2%) each year the annual premium collected by that group member self-insurer during the prior calendar year. The assessments of each group member self-insurer shall be in the proportion that the annual ~~collected premium-gross premiums~~ of the group member self-insurer for the premium calendar year bears to the annual ~~collected premium-gross premiums~~ of all group member self-insurers for the preceding calendar year.
- (2) Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.
- (3) The Association may exempt or defer, in whole or in part, the assessment of any member self-insurer, if the assessment would cause that member's financial statement to reflect liabilities in excess of assets.
- (4) Delinquent assessments, except as provided in subdivision (3) of this subsection, shall bear interest at the rate to be established by the Board, but not to exceed the discount rate of the Federal Reserve Bank, Richmond, Virginia, on the due date of the assessment, plus four percent (4%) annually, computed from the due date of the assessment.
- (5) The Association shall establish in the Plan a mechanism to calculate the assessments required by subdivision (1) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year.

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

#### **PART VIII. REPEAL REQUIREMENT OF BIENNIAL REPORT.**

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

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

~~The Commissioner shall biennially submit to the General Assembly, through the Governor, a report of his official acts, including a summary of official rulings and regulations.~~ The Commissioner shall, from time to time, report to the Governor and the

General Assembly any change ~~or changes which that~~ in his the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to his department. ~~On or before the first day of February of each year in which the General Assembly is in session he shall make to the Governor the recommendations called for in this section, to be transmitted to the General Assembly, with the last annual report of this Department, including receipts and disbursements. the Department.~~"

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

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

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

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

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

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

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

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

#### **PART XI. MECHANICAL BREAKDOWN INSURANCE.**

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

"(3) The Bureau shall ~~have the duty and responsibility of promulgating and proposing~~ promulgate and propose rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to nonfleet private passenger ~~(nonfleet)~~ motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured and underinsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and, as provided in G.S. 58-36-100, for loss costs and residual market rate filings for workers' compensation and employers' liability insurance written in connection therewith. ~~The provisions of this~~ This subdivision ~~shall~~ does not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the

Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles. The Bureau shall have no jurisdiction over excess workers' compensation insurance for employers qualifying as self-insurers as provided in ~~G.S. 97-93; Article 47 of this Chapter or Article 5 of Chapter 97 of the General Statutes~~; nor shall the Bureau's jurisdiction include farm buildings, farm dwellings and their appurtenant structures, farm personal property or other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles, unless insured under policies covering nonfleet private passenger motor vehicles; mechanical breakdown insurance covering nonfleet private passenger motor vehicles and other incidental coverages written in connection with this insurance, including emergency road service assistance, trip interruption reimbursement, rental car reimbursement, and tire coverage; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance, except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium."

**PART XII. EFFECT OF HEADINGS.**

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

**PART XIII. EFFECTIVE DATE.**

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

In the General Assembly read three times and ratified this the 16th day of June, 1999.

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Dennis A. Wicker  
President of the Senate

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James B. Black  
Speaker of the House of Representatives

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James B. Hunt, Jr.  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_ , 19