

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 1013  
SENATE BILL 881

AN ACT TO MAKE SUBSTANTIVE CHANGES IN THE INSURANCE LAW AS  
RECOMMENDED BY THE INSURANCE REGULATION STUDY  
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 97 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"North Carolina Self-Insurance Guaranty Association.

**"§ 97-130. Definitions.** – As used in this Article:

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

(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 Fund established by G.S. 97-133.

(6) 'Plan' means the Plan of Operation authorized by G.S. 97-134.

(7) 'Self-insurer' or 'member self-insurer' means either: (i) an individual employer who has demonstrated under G.S. 97-93 the financial ability to directly pay compensation in the amounts and manner and when due as provided in this Chapter or (ii) a group of two or more employers who have agreed to pool their liabilities under this Chapter pursuant to G.S. 97-93.

**"§ 97-131. Creation.** –(a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Self-Insurance Guaranty Association. The Association is to provide mechanisms for the payment of covered claims under self-insurance coverage, to avoid excessive delay in payment, to avoid financial loss to claimants because of the insolvency of a self-insurer, and to assist, when called upon to do so by the Commissioner, in the detection of self-insurer insolvencies. It is declared that the Association is an instrumentality of the State, provided that the debts and liabilities of the Association shall not constitute debts and liabilities of the State.

(b) All individual and group self-insurers shall be and remain members of the Association as a condition of authority to self-insure in this State under G.S. 97-93. The

Association shall perform its functions under a Plan of Operation established or amended, or both, and approved by the Commissioner, and shall exercise its powers through the Board.

- (1) A self-insurer shall be deemed to be a member of the association for purposes of another self-insurer's insolvency, as defined in G.S. 97-135, when:
  - a. The self-insurer is a member of the Association when an insolvency occurs, or
  - b. The self-insurer has been a member of the Association at some point in time during the 12-month period immediately preceding the insolvency in question.
- (2) A self-insurer shall be deemed to be a member of the Association for purposes of its own insolvency when:
  - a. The self-insurer is a member of the Association when the insolvency occurs, but claims relating to a compensable event that occurred prior to the date the self-insurer joined the Association are not included hereunder; or
  - b. The self-insurer becomes insolvent after leaving the Association, but claims relating to a compensable event that occurred prior to the date the self-insurer joined the Association are not included hereunder, and claims relating to a compensable event that occurred after the self-insurer ceased to be an approved self-insurer are not to be afforded coverage hereunder.
- (3) In determining the membership of the Association pursuant to subdivisions (1) and (2) of this subsection for any date after the effective date of this Article, no employer or group of employers claiming self-insurer status may be deemed to be a member of the Association on any date after the effective date of this Article, unless that employer or group of employers is at that time authorized as a self-insurer by the Commissioner pursuant to G.S. 97-93, 97-94, and 97-96.

**"§ 97-132. Board of directors.** – The Board shall consist of not less than nine persons serving terms as established in the Plan. The members of the Board shall be selected by the member self-insurers, subject to the approval of the Commissioner, until the next annual meeting of the Board. If no members of the Board are selected within 60 days after the effective date of this Article, the Commissioner may appoint the initial members of the Board. In approving selections to the Board, the Commissioner shall consider, among other things, whether all member self-insurers are fairly represented. Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board.

**"§ 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 each 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. These reports shall be due on or before July 15th 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-half of one percent (0.5%) of the annual standard premium 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 15th 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 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. Each group member self-insurer shall be annually assessed an amount equal to one-half of one percent (0.5%) of the annual premium collected by the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than September 15th 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-half of one percent (0.5%) assessment.
  - 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 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 referred to in subdivisions a. and b. of this subdivision would produce an amount in excess of the limits of the Fund, an equitable proration shall be made;
- (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 one million dollars (\$1,000,000), no further assessments shall be made except subsequent initial assessments of new member self-insurers that are required to be made in subdivision (2) of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of one

million dollars (\$1,000,000). The costs of administration 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 or more of its members. Any excess insurance so purchased shall be limited to coverage of post-assessment liability of the Association's members; 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 funds available but that have not been raised by imposition of any pre-assessment or post-assessment. 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 ensure 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;
- (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 costs of examinations under subdivision (8) of this subsection; 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 subdivision (7) of this subsection;
  - (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), 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) The following pertains to post-insolvency assessment:
- (1) In the event the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association shall make an additional assessment of each individual member self-insurer in an amount not in excess of two percent (2%) each year of the annual standard premium 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 of the individual member self-insurer for the premium calendar year bears to the annual standard premium 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 of 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 of the group member self-insurer for the premium calendar year bears to the annual collected premium 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 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 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.

**"§ 97-134. Plan of Operation.** – The Plan is as follows:

- (1) The Association shall submit to the Commissioner a Plan and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The Plan and any amendments become effective upon approval in writing by the Commissioner. If the Association fails to submit a suitable Plan within 90 days after the effective date of this Article, or if at any time thereafter the Association fails to submit suitable amendments to the Plan, the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate this Article. Such rules shall continue in force until modified by the Commissioner or superseded by a Plan submitted by the Association and approved by the Commissioner.
- (2) All member self-insurers shall comply with the Plan.
- (3) The Plan shall:

- a. Establish the procedures whereby all the powers and duties of the Association under G.S. 97-133 will be performed;
- b. Establish procedures for handling assets of the Association;
- c. Adopt a reasonable mechanism and procedure to achieve equity in assessing the funds required in G.S. 97-133. Consideration shall be given to adjustments for audited payroll, differential effects caused by rate changes, and other relevant factors;
- d. Establish the amount and method of reimbursing members of the Board under G.S. 97-132;
- e. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. A list of such claims shall be periodically submitted to the Association;
- f. Establish regular places and times for meetings of the Board;
- g. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board;
- h. Provide that any member self-insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or decision;
- i. Establish the procedures whereby selections for the Board shall be submitted to the Commissioner; and
- j. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

**"§ 97-135. Insolvency.** – A member self-insurer shall be insolvent for the purposes of this Article under the following circumstances:

- (1) Determination of insolvency by a court of competent jurisdiction; and
- (2) Institution of bankruptcy proceedings by or regarding the member self-insurer.

**"§ 97-136. Powers and duties of the Commissioner.** – (a) The Commissioner shall notify the Association of the existence of an insolvent member self-insurer not later than 30 days after he receives notice of an insolvency pursuant to the standards set forth in G.S. 97-135.

- (b) The Commissioner may:
  - (1) Require that the Association notify the insureds of the insolvent member self-insurer and any other interested parties of the insolvency and of their rights under this Article. Such notifications shall be by mail at their last known addresses, where available; but if required information for notification is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient; and
  - (2) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

**"§ 97-137. Examination of the Association.** – The Association shall be subject to examination and regulation by the Commissioner. The Board shall submit, not later than

March 30th of each year, a financial report for the preceding calendar year in a form approved by the Commissioner.

**"§ 97-138. (Reserved)**

**"§ 97-139. Immunity.** – There shall be no liability on the part of and no cause of action of any nature may arise against any member self-insurer, the Association, or its agents or employees, the Board or its individual members, or the Commissioner or his representatives for any acts or omissions taken by them in the performance of their powers and duties under this Article. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable.

**"§ 97-140. Nonduplication of recovery.**–Any person having a covered claim that may be recovered under more than one insurance or self-insurance guaranty association or its equivalent shall seek recovery first from the association of the place or residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

**"§ 97-141. Stay of proceedings.**–All proceedings under this Chapter to which the insolvent member self-insurer is a party either before the Industrial Commission or a court in this State and the running of all time periods against either the insolvent member self-insurer or the Association under this Chapter shall be stayed for 60 days from the date of notice to the Association of the insolvency in order to permit the Association to investigate, prosecute, or defend properly any petition, claim, or appeal under this Chapter, provided that the payment of weekly compensation for incapacity is made whenever time periods or proceedings affecting the payment of weekly compensation are stayed.

**"§ 97-142. Disposition of assets upon dissolution.**–In the event of dissolution of the Association, all assets remaining after provision for satisfaction of all outstanding claims shall be distributed to the State Treasurer for establishment of a reserve to satisfy potential claims against the Association and, all such claims being satisfied, for inclusion in the General Fund of the State."

Sec. 2. G.S. 58-16 is amended in the second sentence by inserting "or, in the Commissioner's discretion, as often as once in five years" between "three years" and "he shall".

Sec. 3. Article 1 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-18.1. Immunity from liability for reporting insurance fraud.** – (a)For the purpose of this section, a 'fraudulent insurance act' is committed by any person who, knowingly and with the intent to defraud: (1) presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent or employee thereof, any written statement as part of an insurance policy, or in support of an insurance policy, an application for the issuance of an insurance policy, or the rating of an insurance policy, or a claim for payment or other benefit pursuant to an insurance policy, that he knows to contain materially false information concerning any material fact; or (2) conceals information concerning any material fact.



(b) In the absence of fraud or bad faith, no person is subject to civil liability for defamation for filing reports or furnishing other information, without malice, required by this Chapter or required by the Commissioner under the authority granted in this Chapter; and no cause of action for defamation arises against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from the Commissioner, his designee, or law enforcement officials or their agents and employees; (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this Chapter; or (3) for any such information furnished in reports to the Insurance Fraud Bureau of The National Association of Insurance Commissioners or any organization established to detect and prevent fraudulent insurance acts, or their agents, employees or designees; nor shall the Commissioner or any employee of the Insurance Frauds Bureau, acting without malice, in the absence of fraud or bad faith, be subject to liability for defamation , and no cause of action for defamation arises against such person for the publication of any confidential report or bulletin related to the official activities of the Insurance Frauds Bureau. Nothing in this section abrogates or modifies any common law or statutory privilege or immunity enjoyed by any person.

(c) During the course of an investigation of a suspected fraudulent insurance act, the Commissioner may personally or through his representative request any insurer to furnish copies of any information relative to that suspected act that is in the insurer's possession. The insurer shall release the information requested and cooperate with the Commissioner or his representative pursuant to this subsection. The information shall include without limitation to:

- (1) Any insurance policy and application therefor relevant to a suspected fraudulent insurance act under investigation;
- (2) Policy premium payment records;
- (3) History of previous loss claims made by the insured;
- (4) Material relating to the investigation by the insurer of the suspected act, including statements of any person, proof of loss, and any other relevant evidence."

Sec. 4. G.S. 58-433(d) is rewritten to read:

"(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars (\$1,000) and be subject to such other penalties as provided by law."

Sec. 5. G.S. 58-423(2) is rewritten to read:

"(2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this State. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this State; and".

Sec. 6. G.S. 58-27 is amended by inserting between "shall" and "be deemed guilty" the following:

"be subject to suspension or revocation of his license under this Chapter; and shall".

Sec. 7. Article 6 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

**"§ 58-75.1. Maintenance and removal of records and assets.**— (a) Every domestic insurer that has its home or principal office in a location outside this State shall nevertheless maintain an office or offices in this State and keep therein for such period as the Commissioner may by regulation require complete records of its assets, transactions, and affairs, specifically including:

- (1) Financial records;
- (2) Corporate records;
- (3) Reinsurance document;
- (4) Access to all accounting transactions and access in this State, upon demand by the Commissioner, to all original accounting documents;
- (5) Claim files; and
- (6) Payment of claims, in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(b) Every domestic insurer that has its home or principal office in a location outside this State shall have and maintain its assets in this State, except as to:

- (1) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; and
- (2) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices, and operations offices, located outside this State as referred to in G.S. 58-75.2.

(c) The removal from this State of all or a material part of the records or assets of a domestic insurer that has its home or principal office outside this State except pursuant to a plan of merger or consolidation approved by the Commissioner under or for such reasonable purposes and periods of time as may be approved by the Commissioner in writing in advance of such removal, or concealment of such records or assets or material part thereof from the Commissioner is prohibited. Any person who, without the prior approval of the Commissioner, removes or attempts to remove such records or assets or such material part thereof from the office or offices in which they are required to be kept and maintained under subsection (a) of this section or who conceals or attempts to conceal such records from the Commissioner, in violation of this subsection, shall be guilty of a Class J felony. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this State, beyond the period therefor specified in the consent of the Commissioner under which consent the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the Commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of Article 17A of this Chapter.

(d) This section is subject to the exceptions provided for in G.S. 58-75.2.

**"§ 58-75.2. Exceptions to requirements of G.S. 58-75.1.** – The provisions of G.S. 58-75.1 shall not be deemed to prohibit or prevent an insurer from:

(1) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the Commissioner at his request.

(2) Having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside this State as required by other jurisdictions as a condition of transacting insurance in such jurisdictions reasonably and customarily required in the regular course of its business.

(3) Establishing and maintaining its principal operations offices, its usual operations records, and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:

- a. That the Commissioner consents in writing to such removal of offices, records, and assets from this State upon evidence satisfactory to him that the same will facilitate and make more economical the operations of the insurer, and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this State and elsewhere;
- b. That the insurer will continue to maintain in this State its principal corporate office or place of business, and maintain therein available to the inspection of the Commissioner complete records of its corporate proceedings and a copy of each financial statement of the insurer current within the preceding five years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;
- c. That, upon the written request of the Commissioner, the insurer will with reasonable promptness produce at its principal corporate offices in this State for examination or for subpoena, its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the Commissioner in his request; and
- d. That if at any time the Commissioner finds that the conditions justifying the maintenance of such offices, records, and assets outside of this State no longer exist, or that the insurer has willfully and knowingly violated any of the conditions stated in sub-subdivisions b. and c., the Commissioner may order the return of such offices, records, and assets to this State within such reasonable time, not less than six months, as may be specified in the order; and that for failure to comply with such

order, as thereafter modified or extended, if any, the Commissioner shall suspend or revoke the insurer's certificate of authority.

(4) Placing its investment assets in one or more custodial accounts inside or outside of this State with banks, trust companies, or other similar institutions pursuant to custodial agreements approved by the Commissioner.

(5) Permitting policyholder and certificate holder records and claims and other information to be kept and maintained by agents, general agents, third-party administrators, creditors, employers, associations, and others in the ordinary course of business in a manner customary or suitable to the kind or kinds of insurance transacted; provided, however, that the insurer shall, upon reasonable notice, make available to the Commissioner or his designee any records or other information permitted by this subsection to be maintained outside this State."

Sec. 8. Chapter 58 of the General Statutes is amended by adding a new Article 40 to read:

"Article 40.

"Product Liability Risk Retention Groups.

"§ 58-505. **Purpose.** – The purpose of this Article is to regulate the formation and operation of risk retention groups in this State formed under the provisions of the Federal Product Liability Risk Retention Act of 1981 (Public Law 97-45) and to protect the public by the appropriate regulation of these risk retention groups.

"§ 58-506. **Definitions.** – In this Article:

(1) 'Another state' means the District of Columbia or any state of the United States.

(2) 'Completed operations liability' means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

a. A person who performs that work; or

b. A person who hires an independent contractor to perform that work.

(3) 'Insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting or distributing risk that is determined to be insurance under the law of this State.

(4) 'Insurance regulator of another state' includes the commissioner, director, or superintendent of insurance in another state.

(5) 'Product liability' means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(6) 'Risk retention group' means a corporation or other limited liability association taxable as a corporation or as an insurance company formed under this Article:

a. that is organized for the primary purpose of assuming and spreading the product liability or completed operations liability risk exposure of its members;

b. whose primary activity consists of assuming and spreading all or any part of the product liability or completed operations liability risk exposure of its group members; and

c. that is composed of members each of whose principal activity consists of the manufacture, design, import, distribution, packaging, labeling, lease, or sale of a product.

(7) 'Service provider' means a person providing insurance- related services or management services to or for a risk retention group, including an agent, broker, claims appraiser or adjuster, insurer, actuary, or financial or management consultant.

**"§ 58-507. Risk retention groups chartered in this State.** – (a) A person may not engage in business as a risk retention group unless the person has complied with this Article.

(b) Except as required by this Article, a risk retention group seeking to be chartered in this State must be chartered and licensed as an insurance company authorized by this Chapter and must comply with all of the laws, rules, and requirements applicable to insurers chartered and licensed under this Chapter.

**"§ 58-508. Risk retention groups not chartered in this State.**–(a) A risk retention group chartered in another state, Bermuda, or the Cayman Islands and seeking to do business as a risk retention group in this State must:

- (1) Register with the Commissioner;
- (2) Designate the Commissioner as its agent for service of process and receipt of legal documents;
- (3) File with the Commissioner not later than March 1 of each year its annual statement as filed with the insurance regulator of another state in which it is chartered;
- (4) File with the Commissioner a copy of the last examination, if any, made of the risk retention group, certified by the insurance regulator of another state in which it is chartered;
- (5) File with the Commissioner not later than March 1 of each year a product liability loss experience data report;
- (6) File with the Commissioner, not more than 30 days after filing with the insurance regulator of another state in which it is chartered or of another state conducting any examination or investigation of its financial condition or impairment, a copy of each document filed by it in connection with the examination or investigation; and
- (7) File with the Commissioner not more than 30 days after filing with the insurance regulator of another state in which it is chartered any document concerning its financial condition.

(b) A risk retention group chartered in Bermuda or the Cayman Islands, in addition to the requirements of subsection (a) of this section, must:

- (1) Be chartered or licensed and authorized to do business under the laws of Bermuda or the Cayman Islands before January 1, 1985;

- (2) File with the Commissioner a copy of the certification filed with the insurance regulator of another state, showing that it satisfies the capitalization requirements of that state, together with evidence that the certification has been accepted by the insurance regulator of that state as meeting the requirements of that state; and
- (3) File with the insurance regulator of another state in which it certifies its capitalization a waiver of any secrecy laws of the jurisdiction in which it is chartered.

**"§ 58-509. Agents.** –(a) A person who is a resident of this State, who is acting or offering to act as an agent or broker for a risk retention group, and whose activities include the solicitation, negotiation, or placement of insurance on behalf of a risk retention group operating in this State, or any of its members in this State, must obtain a license as an agent or broker under Article 3 of this Chapter.

(b) An agent or broker licensed by another state and residing outside of this State may act as an agent or broker for a risk retention group operating in this State, or any of its members in this State, in the same manner as a resident agent or broker on obtaining a license under the provisions of Article 3 of this Chapter relating to licensing of nonresident agents or brokers.

(c) An agent or broker licensed as provided by subsection (a) or (b) of this section must report to the Commissioner not later than March 1 of each year the activities and scope of services being provided to the risk retention group.

(d) Before placing business with a risk retention group, each agent or broker shall secure from the appropriate insurance regulator a certified copy of the certificate of authority verifying that the insurer is authorized in its domiciliary jurisdiction to write the product liability or completed operations insurance policy proposed to be procured from it by the agent or broker.

(e) Every contract of insurance placed by an agent or broker with a risk retention group chartered or licensed in this State shall have printed on its face in not less than 10-point bold red type and in contrasting color, the following statement:

'THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP LICENSED IN THE STATE OF NORTH CAROLINA, BUT IN THE EVENT OF INSOLVENCY, THIS RISK RETENTION GROUP IS NOT PROTECTED BY ANY GUARANTY FUND IN THE STATE OF NORTH CAROLINA.'

(f) Each contract of insurance placed by an agent or broker with a risk retention group not chartered or licensed in this State shall have printed on its face in not less than 10-point bold red type and in contrasting color, the following statement:

'THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP NOT LICENSED BY THE STATE OF NORTH CAROLINA, NOT SUBJECT TO ITS SUPERVISION, AND NOT PROTECTED, IN THE EVENT OF THE INSOLVENCY, BY ANY GUARANTY OR SOLVENCY FUND IN THE STATE OF NORTH CAROLINA.'

**"§ 58-510. Other service providers.** –(a) A service provider that is not a licensed agent or broker must:

- (1) Register with the Commissioner; and
- (2) Report, not later than March 1 of each year in which any activities or services are provided, the activities and scope of services that it is providing to the risk retention group.

(b) This section may not be construed to allow service providers whose activities otherwise require licensing in another state to act on behalf of a risk retention group without such a license.

**"§ 58-511. (Reserved)**

**"§ 58-512. Restrictions.**—A risk retention group may not:

- (1) Insure risks other than those of its member companies;
- (2) Provide an insurance or insurance-related service other than for product liability or completed operations unless the risk retention group obtains a certificate of authority in this State and becomes subject to all the laws and rules of this State with respect to those additional lines of insurance and related services; or
- (3) Exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person.

**"§ 58-513. Exemption from compulsory associations.** – A risk retention group, with respect to its product liability or completed operations insurance, may not be a member of or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this State, nor may a risk retention group or its insured receive any benefit from any guaranty fund or similar mechanism for claims arising out of the operations of the risk retention group for product liability or completed operations insurance.

**"§ 58-514. Countersignature not required.** – A policy or contract of insurance issued to a risk retention group or any member of that group is not required to be countersigned as provided by G.S. 58-44.

**"§ 58-515. Unfair claims settlement practices.** – A risk retention group doing business in this State is subject to G.S. 58-39(5) and to Article 3A of this Chapter.

**"§ 58-516. Examination for financial impairment.** – (a) A risk retention group chartered in this State must submit to examination to determine its financial condition as considered necessary by the Commissioner. The examination shall be conducted in accordance with the laws, rules, and procedures applicable to insurers licensed in this State under this Chapter.

(b) A risk retention group that is not chartered in this State but is doing business in this State must submit to the same type of examination as if it were chartered in this State if:

- (1) The Commissioner has reason to believe the risk retention group is or may be in a hazardous financial condition; and
- (2) The insurance regulator of another state in which the group is chartered has not begun or has refused to initiate an examination of the group comparable in scope to an examination by this State.

**"§ 58-517. Delinquency proceedings.** – (a) A risk retention group chartered and licensed in this State is subject to Article 17A of this Chapter and must comply with all lawful orders issued in any delinquency proceeding commenced by the Commissioner.

(b) A risk retention group not chartered in this State but doing business in this State is subject to Article 17A of this Chapter and must comply with a lawful order issued in any delinquency proceeding commenced by the Commissioner relating to its operations and financial affairs in this State.

**"§ 58-518. Penalties.** – (a) A risk retention group that is chartered and licensed under G.S. 58-507 or G.S. 58-508 and that violates this Article is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under this Chapter, including revocation of its license and the right to do business in this State.

(b) A risk retention group doing business in this State that is not chartered or licensed under G.S. 58-507 or G.S. 58-508 is considered an unauthorized insurer and is subject to Articles 3B, 3C, and 17A of this Chapter."

Sec. 9. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-21.3. Insurance Regulatory Information System and similar program test data not public records.** – Financial test ratios and other data received or generated by the Commissioner pursuant to the NAIC Insurance Regulatory Information System, any successor program, or any similar program developed by the Commissioner, are not public records and are not subject to Chapter 132 of the General Statutes or G.S. 58-11."

Sec. 10. G.S. 58-77(5)d is amended by substituting "five counties in this State that are adjacent to the county in which its home office is located" for "three adjacent counties in this State".

Sec. 10.1. G.S. 58-124.28 and G.S. 58-131.60 are each amended by substituting "its" for "their" and by substituting "five counties in this State that are adjacent to the county in which its home office is located" for "three adjacent counties".

Sec. 11. G.S. 58-21, as found in the 1985 Supplement, is amended by adding the following language:

"The Commissioner may require statements under this section, G.S. 58-21.1, G.S. 58-21.2, and G.S. 58-25.1 to be filed in a format that can be read by electronic data processing equipment; and may require such readable statements to be filed on a monthly basis."

Sec. 12. G.S. 58-40 is amended by adding a new subsection to read:

"(g) Nothing in G.S. 58-51.1 or in G.S. 58-39.4(p) permits a person to simultaneously hold an agent's license and an adjuster's license."

Sec. 13. The section heading of G.S. 58-44.5 is rewritten to read:

**"§ 58-44.5. Rebates and charges in excess of premium prohibited."**

Sec. 14. G.S. 58-44.5 is amended by designating the present section as subsection (a) and by adding the following subsection:

"(b) No broker or agent may knowingly charge, demand, or receive any consideration that exceeds the filed and approved premium for any policy of insurance unless the applicant for insurance consents before any services are rendered. Any fee charged by a broker or agent for the purpose of compensation for the filling out and completion of applications or forms or the rendering of services associated with the issuance or renewal of a policy of insurance is not allowed, absent the applicant's prior



consent, if a commission will be paid by an insurer to the agent or broker on the issuance or renewal of the policy."

Sec. 15. G.S. 58-194.3(c) is amended by adding the following at the end:

"Notwithstanding any other provision of the General Statutes, once an employee has selected an insurance product for payroll deduction, that product may not be removed from payroll deduction for that employee without his or her specific written consent."

Sec. 16. G.S. 58-433(c)(2) is amended by inserting between "license" and "shall" the following: "and who are surplus lines licensees".

Sec. 17. G.S. 58-131.63, as enacted by the 1985 General Assembly, Regular Session 1986, is amended by rewriting subdivision (3) to read:

"(3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:

a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;

b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;

c. Information on notice of any occurrence, including date and description of occurrence."

Sec. 18. Sections 3, 4, 5, 8, 12, and 17 of this act shall become effective September 1, 1986. Sections 1 and 7 of this act shall become effective October 1, 1986. Section 15 of this act is effective May 21, 1985. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1986.