

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-115
SENATE BILL 471**

**AN ACT TO AMEND THE LAWS GOVERNING THE SELF-INSURANCE
GUARANTY ASSOCIATION.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-133(a)(2) reads as rewritten:

"(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%)~~ two percent (2%) of the annual 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~~ May 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual 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 gross premiums. Each group member self-insurer shall be annually assessed an amount equal to ~~one quarter of one percent (0.25%)~~ two percent (2%) of the annual 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~~ May 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%)~~ two percent (2%) 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.~~ two percent (2%) assessment. 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 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-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."

SECTION 2. G.S. 97-133(a)(4) reads as rewritten:

- "(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.~~"

SECTION 3. G.S. 97-185 reads as rewritten:

"§ 97-185. Deposits or surety bond. Deposits; surety bonds; letters of credit.

(a) Every self-insurer shall deposit with the Commissioner an amount ~~equal to twenty five percent (25%)~~ not less than fifty percent (50%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer.

~~(b) A self insurer organized and authorized before the effective date of this section shall have 24 months from the effective date of this section to comply with this section.~~

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

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

- (1) Interest-bearing bonds of the United States of America.
- (2) Interest-bearing bonds of the State of North Carolina, or of its cities or counties.
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina that have a maturity of one year or greater.
- (4) Surety bonds in a form acceptable to the Commissioner and issued by a corporate surety. A surety bond deposited pursuant to this subsection shall require that the surety reimburse the Commissioner, or his successors, assigns, or transferees, for any costs incurred in the collection of the proceeds of the surety bond, including reasonable attorneys' fees, and any costs incurred in administering the insolvent self-insurer's workers' compensation claims.
- (4a) Irrevocable letters of credit in a form acceptable to the Commissioner issued by a bank acceptable to the Commissioner. An irrevocable letter

of credit deposited pursuant to this subsection shall require that the bank reimburse the Commissioner, or his successor, assigns, or transferees for any costs incurred in the collection of the proceeds of the letter of credit, including reasonable attorneys' fees.

(4b) The reimbursement of attorneys' fees and collections cost provided for in subdivisions (4) and (4a) of this subsection shall be no greater than fifteen percent (15%) of the penal amount of the bond and shall not come from the proceeds of the bond or the letter of credit but shall be in addition to the proceeds of the bond or the letter of credit.

(5) Any other investments that are approved by the Commissioner.

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

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

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

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

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

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

SECTION 4. Effective January 1, 2005, G.S. 97-185(a), as amended in Section 3 of this act, reads as rewritten:

"(a) Every self-insurer shall deposit with the Commissioner an amount ~~not less than fifty percent (50%)~~ not less than seventy-five percent (75%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other greater amount as the Commissioner prescribes based

on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer."

SECTION 5. Effective January 1, 2006, G.S. 97-185(a), as amended in Sections 3 and 4 of this act, reads as rewritten:

"(a) Every self-insurer shall deposit with the Commissioner an amount ~~not less than seventy five percent (75%)~~ not less than one hundred percent (100%) of the self-insurer's total undiscounted outstanding claim liability per the most recent certification from a qualified actuary as required by G.S. 97-180(b), but not less than five hundred thousand dollars (\$500,000), or such other greater amount as the Commissioner prescribes based on, but not limited to, the financial condition of the self-insurer and the risk retained by the self-insurer."

SECTION 6. G.S. 97-141 reads as rewritten:

"§ 97-141. Stay of proceedings.

All claims or 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 later of the date of notice to the Association of the insolvency or the date the Association is notified of a claim or proceeding under this Chapter 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."

SECTION 7. Section 3 of this act becomes effective January 1, 2004. Section 4 of this act becomes effective January 1, 2005. Section 5 of this act becomes effective January 1, 2006. Section 6 of this act is effective when this act becomes law and applies to claims filed on or after that date. The remainder of this act is effective when this act becomes law and applies to assessments made on or after that date.

In the General Assembly read three times and ratified this the 22nd day of May, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 6:15 p.m. this 1st day of June, 2003