

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS65193-LT-77 (3/15)

Short Title: Workers' Comp./Self-Insured Guaranty Assoc. (Public)

Sponsors: Senator Hoyle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE FUNCTIONING OF THE WORKERS'
COMPENSATION SELF-INSURED GUARANTY ASSOCIATION AND THE
ENFORCEMENT AUTHORITY WITH RESPECT TO WORKERS'
COMPENSATION SELF-INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-130 reads as rewritten:

"§ 97-130. Definitions.

As used in this Article:

- (1) "Association" means the North Carolina Self-Insurance Guaranty 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) "Member self-insurer" or "member" means a self-insurer which is authorized by the Commissioner to self-insure pursuant to G.S. 97-93 and G.S. 97-94.
- (7) "Plan" means the Plan of Operation authorized by G.S. 97-134.
- (8) "Self-insurer" means either: (i) an individual employer who ~~has demonstrated under G.S. 97-93 the financial ability to directly pay~~

1 ~~compensation in the amounts and manner and when due as provided in~~
2 retains liability under the Act and is licensed under Article 5 of this
3 Chapter or (ii) a group of two or more employers who have agreed to
4 pool their liabilities under this Chapter pursuant to G.S. 97-93."

5 **SECTION 2.** G.S. 97-135 reads as rewritten:

6 "**§ 97-135. Insolvency.**

7 A member self-insurer shall be insolvent for the purposes of this Article under the
8 following circumstances:

- 9 (1) ~~Determination~~ Upon a determination of insolvency by a court of
10 competent jurisdiction; or
11 (2) ~~Institution of bankruptcy proceedings by or regarding the member~~
12 ~~self-insurer; or~~
13 (3) ~~The Board determines~~ Upon a determination by the Board that the
14 self-insurer's total liabilities exceed its total assets or the self-insurer is
15 unable or ceases to pay its debts as they fall due or in the ordinary
16 course of business."

17 **SECTION 3.** G.S. 97-165 reads as rewritten:

18 "**§ 97-165. Definitions.**

19 As used in this Article:

- 20 (1) 'Act' means the Workers' Compensation Act established in Article 1 of
21 this Chapter.
22 (1a) 'Affiliate of' or 'person affiliated with' a specific person means a person
23 that indirectly through one or more intermediaries or directly controls,
24 is controlled by, or is under common control with the person specified.
25 (2) 'Certified audit' means an audit on which a certified public accountant
26 expresses his or her professional opinion that the accompanying
27 statements fairly present the financial position of the ~~self-insurer,~~
28 self-insurer or the guarantor, in conformity with generally accepted
29 ~~accounting principles.~~ accounting principles generally accepted in the
30 United States.
31 (3) 'Certified public accountant' or 'CPA' means a CPA who is in good
32 standing with the American Institute of Certified Public Accountants
33 and in all states in which the CPA is licensed to practice. A CPA shall
34 be recognized as independent as long as the CPA conforms to the
35 standards of the profession, as contained in the Code of Professional
36 Ethics of the American Institute of Certified Public Accountants and
37 Rules and Regulations and Code of Ethics and Rules of Professional
38 Conduct of the North Carolina State Board of Certified Public
39 Accountant Examiners, or similar code. The Commissioner may hold a
40 hearing to determine whether a CPA is independent and, considering
41 the evidence presented, may rule that the CPA is not independent for
42 purposes of expressing an opinion on the GAAP financial statement
43 and require the ~~individual~~ self-insurer or the guarantor to replace the

- 1 CPA with another whose relationship with the ~~individual self-insurer~~
2 or the guarantor is independent within the meaning of this definition.
- 3 (4) 'Commissioner' means the Commissioner of Insurance.
- 4 (4a) 'Control', 'controlling', 'controlled by', and 'under common control with'
5 mean the direct or indirect possession of the power to direct or cause
6 the direction of the management and policies of a person through
7 ownership of or through proxies for voting of greater than fifty percent
8 (50%) of the voting securities, or in the case of a not-for-profit entity,
9 the power to direct or cause the direction of the management and
10 policies of the entity.
- 11 (5) 'Corporate surety' means an insurance company authorized by the
12 Commissioner to write surety business in this State.
- 13 (6) 'GAAP financial statement' means a financial statement as defined by
14 ~~generally accepted accounting principles.~~ principles generally accepted
15 in the United States.
- 16 (6a) 'Guarantor' means a person within the same holding company system
17 who controls the applicant, whose financial statement is used by the
18 applicant to become a self-insurer under the Act, and who has
19 guaranteed the payment of the self-insurer's liability under the Act.
- 20 (7) 'Hazardous financial condition' means that, based on its present or
21 reasonably anticipated financial condition, a self-insurer or guarantor
22 is insolvent or, although not yet financially impaired or insolvent, is
23 unlikely to be able to meet its obligations with respect to known claims
24 and reasonably anticipated claims or to pay other obligations in the
25 normal course of business.
- 26 (7a) 'Holding company system' means an entity comprising two or more
27 affiliated persons.
- 28 (8) 'Management' means those persons who are authorized to direct or
29 control the operations of a self-insurer.
- 30 (8a) 'Person' means an individual, corporation, partnership, limited liability
31 company, association, joint stock company, trust, unincorporated
32 organization, or any similar entity or any combination of the foregoing
33 acting in concert.
- 34 (9) 'Qualified actuary' means a member in good standing of the Casualty
35 Actuarial Society or a member in good standing of the American
36 Academy of Actuaries, who has been approved as qualified for signing
37 casualty loss reserve opinions by the Casualty Practice Council of the
38 American Academy of Actuaries, and is in compliance with
39 G.S. 58-2-171.
- 40 (10) 'Self-insurer' means an employer who retains liability under the Act
41 and is licensed under this Article.
- 42 (11) 'Subsidiary of' a specific person means an affiliate controlled by such
43 person indirectly through one or more intermediaries or an affiliate
44 directly controlled by such person."

1 **SECTION 4.** G.S. 97-170 reads as rewritten:

2 "**§ 97-170. License applications; required information.**

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

8 (b) An applicant for a license as a self-insurer shall file with the Commissioner
9 the information required by subsection (d) of this section ~~on~~in a form prescribed by the
10 Commissioner at least 90 days before the proposed licensing date. No application is
11 complete until the Commissioner has received all required information.

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

- 16 (1) Organizational structure and management;
- 17 (2) Financial strength;
- 18 (3) Source and reliability of financial information;
- 19 (4) Risks to be retained;
- 20 (5) Workers' compensation loss history;
- 21 (6) Number of employees;
- 22 (7) Claims administration;
- 23 (8) Excess insurance; and
- 24 (9) Access to excess insurance.

25 (d) The license application shall ~~comprise~~be comprised of the following
26 information:

- 27 (1) ~~Company name, Applicant name; organizational structure, structure of~~
28 the applicant, including any controlling entity, subsidiaries, or
29 affiliates; location of principal office, office; contact person, person;
30 organization date, date; type of operations within this State, State;
31 management background, background; and addresses of all plants or
32 offices in this State.
- 33 (2) Certified audited GAAP financial statements prepared by a CPA for
34 the two most recent years. The financial statement ~~formulation~~
35 presentation shall facilitate application of ratio and trend analysis.
- 36 (3) Evidence of the insurance required by G.S. 97-190.
- 37 (4) Repealed by Session Laws 1999-132, s. 13.7, effective June 4, 1999.
- 38 (5) For applicants with 20 or more full-time employees, a certificate or
39 other evidence of safety inspection, satisfactory to the Commissioner,
40 that certifies that all safety requirements of the Department of Labor
41 have been met.
- 42 (6) Summary of workers' compensation benefits paid for the last three
43 calendar years, ~~as well as~~ years and the total liability for all open
44 claims within 30 days or some other period acceptable to the

1 Commissioner not to exceed 90 days, before the filing of the
2 application.

3 (7) Summary, by risk classification, of annual payroll and number of
4 employees within the State.

5 ~~(8) Book value of fixed assets located within the State.~~

6 (9) Proof of compliance with the claims administration provisions of
7 Article 47 of Chapter 58 of the General Statutes.

8 (10) A letter of assent, stipulating the applicant's acceptance of membership
9 status in the North Carolina Self-Insurance Guaranty Association
10 under Article 4 of this Chapter.

11 (e) Every applicant shall execute and file with the Commissioner an agreement,
12 as part of the application, in which the applicant agrees to deposit with the
13 Commissioner cash, acceptable securities, ~~or an irrevocable letter of credit,~~ a surety
14 bond issued by a corporate ~~surety~~ surety, or a combination thereof, that will guarantee
15 the applicant's compliance with this Article and the Act pursuant to G.S. 97-185."

16 **SECTION 5.** Article 5 of Chapter 97 of the General Statutes is amended by
17 adding the following new section to read:

18 **"§ 97-177. License covering applicant and any subsidiary or applicant relying on a**
19 **guarantor; procedure; requirements.**

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

23 (1) The applicant or a guarantor of the applicant executes a guaranty
24 agreement, in a form prescribed by the Commissioner, for the payment
25 of all workers' compensation liabilities covered under the Act. For any
26 applicant or guarantor that is a corporation, there shall be submitted,
27 along with the guaranty agreement, a board of directors' resolution
28 from the respective corporation authorizing the guaranty of the
29 liabilities of the subsidiary company or companies and granting
30 signature authority to each person or officer executing the agreement.

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

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

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

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

43 (c) If a self-insurer requests to add a subsidiary to its license, the Commissioner
44 shall review the request in accordance with this section. Upon approval, the

1 Commissioner shall issue to the self-insurer a new license that includes the newly
2 licensed subsidiary and the date of license issuance for the newly licensed subsidiary,
3 and the self-insurer shall return the original license to the Commissioner.

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

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

12 **SECTION 6.** G.S. 97-180 reads as rewritten:

13 **"§ 97-180. Reporting and records.**

14 (a) Every self-insurer shall submit, within 120 days after the end of its fiscal
15 year, a certified audited GAAP financial statement, prepared by a CPA, for that fiscal
16 year. The financial statement ~~formulation-presentation~~ shall facilitate the application of
17 ratio and trend analysis. If the self-insurer was issued a license pursuant to G.S. 97-177,
18 the financial statement required under this subsection shall be that of the guarantor.

19 (b) Every self-insurer shall submit within 120 days after the end of its fiscal year
20 a ~~certification-report~~ from a qualified actuary setting forth ~~the actuary's-an~~ opinion
21 ~~relating to certifying the loss~~ and loss adjustment expense reserves for workers'
22 compensation obligations ~~for-in~~ North Carolina. The ~~certification-report~~ shall show
23 liabilities, excess insurance carrier and other qualifying credits, if any, and net retained
24 workers' compensation liabilities. ~~The qualified actuary shall present an annual report to~~
25 ~~the self-insurer on the items within the scope of and supporting the certification, within~~
26 ~~90 days after the close of the self-insurer's fiscal year. Upon request, the report shall be~~
27 ~~submitted to the Commissioner.~~

28 (c) Every self-insurer shall submit within 120 days after the end of its fiscal year
29 a report in the form of a sworn statement prescribed by the Commissioner, setting forth
30 the total workers' compensation benefits paid in the previous fiscal year, ~~as well as and~~
31 the total outstanding workers' compensation liabilities for each loss year, recorded at the
32 close of its fiscal year for the net retained liability.

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

41 (e) Every self-insurer shall report promptly to the Commissioner changes in the
42 ~~names and addresses-name or address~~ of the ~~businesses it self insures or intends to~~
43 ~~self insure, as well as self-insurer or guarantor;~~ significant changes in the financial
44 ~~condition, condition of the self-insurer, guarantor, or any affiliate, including bankruptcy~~

1 ~~filings, filings;~~ and changes in its ~~business-organizational~~ structure, including its
2 ~~divisions, subsidiaries, affiliates, and internal organization.~~ subsidiaries and affiliates.
3 Any change shall be reported in writing to the Commissioner within 10 days after the
4 effective date of the change. Upon request by the Commissioner, a self-insurer shall
5 provide the Commissioner copies of documents or information deemed necessary to
6 determine whether any change has affected the privilege of the employer to self-insure."

7 **SECTION 7.** G.S. 97-185 reads as rewritten:

8 **"§ 97-185. Deposits; surety bonds; letters of credit.**

9 (a) **(Effective January 1, 2005, until January 1, 2006)** Every self-insurer shall
10 deposit with the Commissioner an amount not less than seventy-five percent (75%) of
11 the self-insurer's total undiscounted outstanding claim liability per the most recent
12 ~~certification-report~~ from a qualified actuary as required by G.S. 97-180(b), but not less
13 than five hundred thousand dollars (\$500,000), or such other greater amount as the
14 Commissioner prescribes based on, but not limited to, the financial condition of the
15 self-insurer or guarantor and the risk retained by the self-insurer.

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

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

24 (b1) Notwithstanding subsection (a) of this section, ~~member~~ self-insurers with a
25 debt rating of BBB or better from Standard and Poor's Rating Service, a division of
26 McGraw Hill, Inc., or an equivalent rating from another national rating agency shall
27 deposit with the Commissioner an amount not less than twenty-five percent (25%) of
28 the self-insurer's total undiscounted outstanding claim liability per the most recent
29 ~~certification-report~~ from a qualified actuary as required by G.S. 97-180(b), but not less
30 than five hundred thousand dollars (\$500,000). If a person is self-insured pursuant to
31 G.S. 97-177, the self-insurer may utilize the debt rating of its guarantor to satisfy the
32 requirements of this subsection. The Commissioner shall consider and may, in the
33 Commissioner's discretion, increase or reduce the deposit to a greater or lesser
34 percentage of the ~~member~~ self-insurer's claims liability based on the financial strength
35 of the self-insurer or guarantor and other financial information submitted by the
36 self-insurer.

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

- 40 (1) Interest-bearing bonds of the United States of America.
- 41 (2) Interest-bearing bonds of the State of North Carolina, or of its cities or
42 counties.
- 43 (3) Certificates of deposit issued by any solvent bank domesticated in the
44 State of North Carolina that have a maturity of one year or greater.

1 (4) Surety bonds in a form acceptable to the Commissioner and issued by
2 a corporate surety. A surety bond deposited pursuant to this subsection
3 shall require that the surety reimburse the Commissioner, or his
4 successors, assigns, or transferees, for any costs incurred in the
5 collection of the proceeds of the surety bond, including reasonable
6 attorneys' fees, and any costs incurred in administering the insolvent
7 self-insurer's workers' compensation claims.

8 (4a) Irrevocable letters of credit in a form acceptable to the Commissioner
9 issued by a bank acceptable to the Commissioner. An irrevocable letter
10 of credit deposited pursuant to this subsection shall require that the
11 bank reimburse the Commissioner, or his ~~successor~~, successors,
12 assigns, or transferees for any costs incurred in the collection of the
13 proceeds of the letter of credit, including reasonable attorneys' fees.

14 (4b) The reimbursement of attorneys' fees and collections cost provided for
15 in subdivisions (4) and (4a) of this subsection shall be no greater than
16 fifteen percent (15%) of the penal amount of the bond and shall not
17 come from the proceeds of the bond or the letter of credit but shall be
18 in addition to the proceeds of the bond or the letter of credit.

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

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

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

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

40 (g) ~~Securities Pursuant to the provisions of this section and with the approval of~~
41 ~~the Commissioner, deposits held by the Commissioner under this section may be~~
42 ~~exchanged or replaced by the self-insurer with other securities of like nature and amount~~
43 ~~as long as the self-insurer is not in a hazardous financial condition. No release shall be~~
44 ~~effectuated until replacement securities or bonds of an equal value have been~~

1 ~~substituted.~~ acceptable forms of deposit in an amount determined by the Commissioner.
2 ~~Any surety bond may deposit to be exchanged or replaced with another surety bond that~~
3 ~~meets the requirements of this section if 90 days' advance written notice is given to the~~
4 ~~Commissioner. If a self-insurer ceases to self-insure or desires to replace securities with~~
5 ~~an acceptable surety bond or bonds, the self-insurer shall notify the Commissioner, and~~
6 ~~may recover all or a portion of the securities deposited with the Commissioner upon~~
7 ~~posting instead an acceptable special release bond issued by a corporate surety in an~~
8 ~~amount equal to the total value of the securities. The special release bond shall cover all~~
9 ~~existing liabilities under the Act plus an amount to cover future loss development and~~
10 ~~shall remain in force until all obligations under the Act have been discharged fully.~~
11 another form of deposit shall not be released until the approved replacement deposit is
12 received by the Commissioner.

13 (h) ~~If a~~ Any self-insurer that ceases to be a self-insure, ~~self-insurer no deposits~~
14 ~~shall be released by the Commissioner shall,~~ according to the provisions of this Article,
15 continue to secure its obligations under the Act until the self-insurer has discharged
16 fully all of the self-insurer's its obligations under the Act. When a self-insurer ceases to
17 be a self-insurer, the Commissioner may approve a reduction in the deposit amount if
18 the remaining deposit is sufficient to cover all existing liabilities under the Act, as well
19 as an amount determined by the Commissioner to be sufficient to cover future loss
20 development.

21 (i) An endorsement to a surety bond shall be filed with the Commissioner within
22 90 days after the effective date of the endorsement."

23 **SECTION 8.** G.S. 97-190 reads as rewritten:

24 "**§ 97-190. Excess insurance.**

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

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

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

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

42 (c) Every self-insurer shall provide to the Commissioner evidence of coverage
43 and any amendments within 30 days after their effective dates. Every self-insurer shall,

1 at the request of the Commissioner, furnish copies of its excess insurance policies and
2 amendments."

3 **SECTION 9.** G.S. 97-195 is repealed.

4 **SECTION 10.** Article 5 of Chapter 97 of the General Statutes is amended by
5 adding the following new sections:

6 "**§ 97-196. Revocation, suspension, or restriction of license.**

7 (a) The Commission may, after notice and opportunity for a hearing, revoke,
8 suspend, or restrict the license of a self-insurer if any of the following apply:

9 (1) The self-insurer fails or refuses to comply with any law, order, or rule
10 applicable to the self-insurer.

11 (2) There is a determination of insolvency by a court of competent
12 jurisdiction.

13 (3) The self-insurer is in a hazardous financial condition.

14 (4) The self-insurer has experienced a material loss or deteriorating
15 operating trends, or has reported a deficit financial position.

16 (5) Any affiliate or subsidiary is insolvent, threatened with insolvency, or
17 delinquent in payment of its monetary or any other obligation.

18 (6) The self-insurer has failed to pay premium taxes pursuant to Article 8B
19 of Chapter 105 of the General Statutes.

20 (7) Contingent liabilities, pledges, or guaranties that either individually or
21 collectively involve a total amount that in the Commissioner's opinion
22 may affect a self-insurer's solvency.

23 (8) The management of a self-insurer has failed to respond to the
24 Commissioner's inquiries about the condition of the self-insurer or has
25 furnished false and misleading information in response to an inquiry
26 by the Commissioner.

27 (9) The management of a self-insurer has filed any false or misleading
28 sworn financial statement, has released a false or misleading financial
29 statement to a lending institution or to the general public, or has made
30 a false or misleading entry or omitted an entry of material amount in
31 the filed financial information.

32 (10) The self-insurer has experienced, or will experience in the foreseeable
33 future, cash flow or liquidity problems.

34 (11) The self-insurer has failed to make proper and timely payment of
35 claims, as required by this Article.

36 (b) Any self-insurer subject to license revocation, suspension, or restriction under
37 subsection (a) of this section may request an administrative hearing before the
38 Commissioner to review that order. If a hearing is requested, a notice of hearing shall be
39 served, and the notice shall state the time and place of hearing and the conduct,
40 condition, or ground on which the Commissioner based the order. Unless mutually
41 agreed upon between the Commissioner and the self-insurer, the hearing shall occur not
42 less than 10 days nor more than 30 days after notice is served and shall be either in
43 Wake County or in some other place designated by the Commissioner. The
44 Commissioner shall hold all hearings under this section privately unless the self-insurer

1 requests a public hearing, in which case the hearing shall be public. The request for a
2 hearing shall not stay the effect of the order.

3 **"§ 97-197. Civil penalties or restitution for violations; administrative procedure.**

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

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

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

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

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

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

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

39 **SECTION 11.** This act becomes effective October 1, 2005.