

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 452
Commerce and Insurance Committee Substitute Adopted 4/25/23

Short Title: NC Department of Insurance Omnibus .-AB

(Public)

Sponsors:

Referred to:

April 3, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE LAWS OF NORTH
3 CAROLINA, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.
4 The General Assembly of North Carolina enacts:
5

6 PART I. SURPLUS LINES ACT CLARIFYING CHANGES

7 SECTION 1.(a) G.S. 58-21-10 reads as rewritten:

8 "§ 58-21-10. Definitions.

9 As used in this Article:

- 10 (1) ~~"Admitted insurer" means an~~ Admitted insurer. – An insurer licensed to
11 engage in the business of insurance in this State.
- 12 (1a) ~~"Affiliate" means, with~~ Affiliate. – With respect to an insured, includes any
13 entity that controls, is controlled by, or is under common control with the
14 insured.
- 15 (1b) ~~"Affiliated group" means any~~ Affiliated group. – Any group of entities that
16 are all affiliated.
- 17 (2) ~~"Capital", as~~ Capital. – As used in the financial requirements of
18 G.S. 58-21-20, ~~means~~ includes funds paid in for stock or other evidence of
19 ownership.
- 20 (2a) ~~"Control" means an~~ Control. – An entity ~~that has 'control'~~ control over another
21 entity if either of the following occurs:
22 a. The entity directly or indirectly or acting through one or more other
23 persons owns, controls, or has the power to vote twenty-five percent
24 (25%) or more of any class of voting securities of the other entity.
25 b. The entity controls in any manner the election of a majority of the
26 directors or trustees of the other entity.
- 27 (3) ~~"Eligible surplus lines insurer" means an~~ Eligible surplus lines insurer. – An
28 alien insurer as defined in G.S. 58-21-17, a nonadmitted domestic surplus
29 lines insurer, or a nonadmitted insurer with which a surplus lines licensee may
30 place surplus lines insurance under G.S. 58-21-20.
- 31 (4) ~~"Export" means to~~ Export. – To place surplus lines insurance with a
32 nonadmitted domestic surplus lines insurer or a nonadmitted insurer.
- 33 (4a) ~~"Nonadmitted domestic surplus lines insurer" means an~~ Nonadmitted
34 domestic surplus lines insurer. – An insurer that is domiciled in and authorized
35 pursuant to G.S. 58-21-21 to transact surplus lines insurance in this State.



- 1 (5) ~~"Nonadmitted insurer" means an~~ Nonadmitted insurer. – An insurer not
 2 licensed to do an insurance business in this State. "Nonadmitted insurer"
 3 includes insurance exchanges authorized under the laws of various states.
 4 "Nonadmitted insurer" does not include a risk retention group, as defined in
 5 G.S. 58-22-10(10).
- 6 (6) ~~"Producing broker" means an~~ Producing broker. – An insurance producer
 7 licensed under Article 33 of this Chapter who deals directly with the party
 8 seeking insurance and who may also be a surplus lines licensee.
- 9 (6a) ~~"Salary protection insurance" means insurance~~ Salary protection insurance. –
 10 Insurance against financial loss caused by the cessation of earned income
 11 because of disability from sickness, ailment, or bodily injury.
- 12 (7) ~~"Surplus", as~~ Surplus. – As used in the financial requirements of
 13 G.S. 58-21-20, ~~means~~ includes funds over and above liabilities and capital of
 14 the company for the protection of policyholders.
- 15 (8) ~~"Surplus lines insurance" means any~~ Surplus lines insurance. – Any insurance
 16 in this State of risks resident, located, or to be performed in this State,
 17 permitted to be placed through a surplus lines licensee with a nonadmitted
 18 domestic surplus lines insurer or a nonadmitted insurer eligible to accept ~~such~~
 19 that insurance, including salary protection insurance. The term does not
 20 include ~~reinsurance, commercial aircraft insurance, wet marine and~~
 21 ~~transportation insurance, insurance independently procured pursuant to~~
 22 ~~G.S. 58-28-5, life and accident or health insurance, and annuities.~~ any of the
 23 following:
 24 a. Reinsurance.
 25 b. Commercial aircraft insurance.
 26 c. Insurance of property and operations of railroads engaged in interstate
 27 or foreign commerce.
 28 d. Wet marine and transportation insurance.
 29 e. Insurance independently procured pursuant to G.S. 58-28-5.
 30 f. Life and accident or health insurance, and annuities.
 31 g. Personal and commercial automobile liability insurance required to be
 32 written by licensed insurers pursuant to G.S. 58-37-5, excluding
 33 excess automobile liability insurance.
- 34 (9) ~~"Surplus lines licensee" means a~~ Surplus lines licensee. – A person licensed
 35 under G.S. 58-21-65 to place insurance on risks resident, located, or to be
 36 performed in this State with a nonadmitted domestic surplus lines insurer or
 37 with nonadmitted insurers eligible to accept ~~such~~ that insurance.
- 38 (10) ~~"Wet marine and transportation insurance" means any~~ Wet marine and
 39 transportation insurance. – Includes any of the following:
 40 ...
 41 e. Ocean marine insurance, as defined in G.S. 58-48-20."

SECTION 1.(b) G.S. 58-21-40 reads as rewritten:

"§ 58-21-40. Surplus lines regulatory support organization.

(a) The North Carolina Surplus Lines Association (NCSLA) shall serve as the regulatory support organization of surplus lines licensees and shall carry out the following functions:

- 46 ...
- 47 (5) Provide other services to its members that are incidental or related to the
 48 purposes of the association.
 49"

SECTION 1.(c) G.S. 58-21-85 reads as rewritten:

"§ 58-21-85. Surplus lines tax.

1 ...
2 (b) ~~At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each~~
3 ~~surplus lines licensee shall pay the premium receipts tax due for the period covered by the~~
4 ~~report.~~ Payment of the premium receipts tax shall be due:

5 (1) For risk purchasing groups, at the same time the licensee files a quarterly
6 report with the Commissioner.

7 (2) For surplus lines insurers receiving invoices issued by the North Carolina
8 Surplus Lines Stamping Office SLIP system, 30 days after the end of each
9 quarter.

10"

11
12 **PART II. TECHNICAL CORRECTION TO REFLECT COMPENDIUM NAME**
13 **CHANGE**

14 **SECTION 2.(a)** G.S. 58-51-59 reads as rewritten:

15 **"§ 58-51-59. Coverage of certain prescribed drugs for cancer treatment.**

16 (a) No policy or contract of accident or health insurance, and no preferred provider
17 benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994,
18 and that provides coverage for prescribed drugs approved by the federal Food and Drug
19 Administration for the treatment of certain types of cancer shall exclude coverage of any drug on
20 the basis that the drug has been prescribed for the treatment of a type of cancer for which the
21 drug has not been approved by the federal Food and Drug Administration. The drug, however,
22 must be approved by the federal Food and Drug Administration and must have been proven
23 effective and accepted for the treatment of the specific type of cancer for which the drug has been
24 prescribed in any one of the following established reference compendia:

25 ...
26 (2) ~~The ThomsonMicromedex DrugDex;~~ Micromedex DrugDex System;
27"

28 **SECTION 2.(b)** G.S. 58-65-94 reads as rewritten:

29 **"§ 58-65-94. Coverage of certain prescribed drugs for cancer treatment.**

30 (a) No insurance certificate or subscriber contract under any hospital service plan or
31 medical service plan governed by this Article and Article 66 of this Chapter, and no preferred
32 provider benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after
33 January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food
34 and Drug Administration for the treatment of certain types of cancer shall exclude coverage of
35 any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for
36 which the drug has not been approved by the federal Food and Drug Administration. The drug,
37 however, must be approved by the federal Food and Drug Administration and must have been
38 proven effective and accepted for the treatment of the specific type of cancer for which the drug
39 has been prescribed in any one of the following established reference compendia:

40 ...
41 (2) ~~The ThomsonMicromedex DrugDex;~~ Micromedex DrugDex System;
42"

43 **SECTION 2.(c)** G.S. 58-67-78 reads as rewritten:

44 **"§ 58-67-78. Coverage of certain prescribed drugs for cancer treatment.**

45 (a) No health care plan written by a health maintenance organization and in force, issued,
46 renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs
47 approved by the federal Food and Drug Administration for the treatment of certain types of
48 cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the
49 treatment of a type of cancer for which the drug has not been approved by the federal Food and
50 Drug Administration. The drug, however, must be approved by the federal Food and Drug
51 Administration and must have been proven effective and accepted for the treatment of the specific

1 type of cancer for which the drug has been prescribed in any one of the following established
2 reference compendia:

3 ...

4 (2) ~~The ThomsonMicromedex DrugDex;~~Micromedex DrugDex System;

5"

7 PART III. CHANGES RELATED TO THE INSURANCE GUARANTY ACT

8 SECTION 3.(a) G.S. 58-48-20 reads as rewritten:

9 "§ 58-48-20. Definitions.

10 As used in this Article:

11 (1) ~~"Account" means any Account.~~ – Any one of the three accounts created by
12 G.S. 58-48-25.

13 (1a) ~~"Affiliate" means a Affiliate.~~ – A person who directly, or indirectly, through
14 one or more intermediaries, controls, is controlled by, or is under common
15 control with an insolvent insurer on December 31 of the year next preceding
16 the date the insurer becomes an insolvent insurer.

17 (2) ~~"Association" means the Association.~~ – The North Carolina Insurance
18 Guaranty Association created under G.S. 58-48-25.

19 (2a) ~~"Claimant" means any Claimant.~~ – Any insured making a first party claim or
20 any person instituting a liability claim; provided that no person who is an
21 affiliate of the insolvent insurer may be a claimant.

22 (3) Repealed by Session Laws 1991, c. 720, s. 6.

23 (3a) ~~"Control" means the Control.~~ – The possession, direct or indirect, of the power
24 to direct or cause the direction of the management and policies of a person,
25 whether through the ownership of voting securities, by contract, other than a
26 commercial contract for goods or nonmanagement services, or otherwise,
27 unless the power is the result of an official position with or corporate office
28 held by the person. Control shall be presumed to exist if any person, directly
29 or indirectly owns, controls, holds with the power to vote, or holds proxies
30 representing ten percent (10%) or more of the voting securities of any other
31 person. This presumption may be rebutted by a showing that control does not
32 exist in fact.

33 (4) ~~"Covered claim" means an Covered claim.~~ – An unpaid claim, including one
34 of unearned premiums, which is in excess of fifty dollars (\$50.00) and arises
35 out of and is within the coverage and not in excess of the applicable limits of
36 an insurance policy to which this Article applies as issued by an insurer, if
37 such that insurer becomes an insolvent insurer after the effective date of this
38 Article and (i) the claimant or insured is a resident of this State at the time of
39 the insured event; or (ii) the property from which the claim arises is
40 permanently located in this State. "Covered claim" shall not include any
41 amount awarded (i) as punitive or exemplary damages; (ii) sought as a return
42 of premium under any retrospective rating plan; or (iii) due any reinsurer,
43 insurer, insurance pool, or underwriting association, as subrogation or
44 contribution recoveries or otherwise. "Covered claim" also shall not include
45 finer or penalties, including ~~attorneys~~attorneys' fees, imposed against an
46 insolvent insurer or its insured or claims of any claimant whose net worth
47 exceeds fifty million dollars (\$50,000,000) on December 31 of the year
48 preceding the date the insurer becomes insolvent.

49 (5) ~~"Insolvent insurer" means Insolvent insurer.~~ – An insurer: (i) an insurer
50 licensed and authorized to transact insurance in this State either at the time the
51 policy was issued or when the insured event occurred and (ii) against whom

1 an order of liquidation with a finding of insolvency has been entered after the
 2 effective date of this Article by a court of competent jurisdiction in the
 3 insurer's state of domicile or of this State under the provisions of Article 30 of
 4 this Chapter, and which order of liquidation has not been stayed or been the
 5 subject of a writ of supersedeas or other comparable order.

6 (6) ~~"Member insurer" means any Member insurer.~~ – Any person who (i) writes
 7 any kind of insurance to which this Article applies under G.S. 58-48-10,
 8 including the exchange of reciprocal or interinsurance contracts, and (ii) is
 9 licensed and authorized to transact insurance in this State.

10 (7) ~~"Net direct written premiums" means direct~~ Net direct written premiums. –
 11 Direct gross premiums written in this State on insurance policies to which this
 12 Article applies, less return premiums thereon and dividends paid or credited
 13 to policyholders on such that direct business. "Net direct written premiums"
 14 does not include premiums on contracts between insurers or reinsurers.

15 (7a) ~~"Ocean marine insurance" includes~~ Ocean marine insurance. – Includes: (i)
 16 marine insurance as defined in G.S. 58-7-15(20)a., except for inland marine,
 17 (ii) marine protection and indemnity insurance as defined in G.S. 58-7-15(21),
 18 and (iii) any other form of insurance, regardless of the name, label, or
 19 marketing designation of the insurance policy, which insures against maritime
 20 perils or risks and other related perils or risks, which are usually insured by
 21 traditional marine insurance such as hull and machinery, marine builders'
 22 risks, and marine protection and indemnity. The perils and risks insured
 23 against include loss, damage, or expense, or legal liability of the insured for
 24 loss, damage, or expense, arising out of, or incident to, ownership, operation,
 25 chartering, maintenance, use, repair, or construction of any vessel, craft, or
 26 instrumentality in use in ocean or inland waterways, including liability of the
 27 insured for personal injury, illness, death, or for loss or damage to the property
 28 of the insured or another person. "Ocean marine insurance" does not include
 29 insurance on vessels or vehicles under five tons gross weight.

30 (8) ~~"Person" means any~~ Person. – Any individual, corporation, partnership,
 31 association or voluntary organization.

32 (9) ~~"Policyholder" means the~~ Policyholder. – The person to whom an insurance
 33 policy to which this Article applies was issued by an insurer which has become
 34 an insolvent insurer.

35 (10) ~~"Resident" means:~~ Resident. – Includes all of the following:
 36"

37 **SECTION 3.(b)** G.S. 58-48-35 reads as rewritten:

38 **"§ 58-48-35. Powers and duties of the Association.**

39 (a) The Association shall:

40 (1) Be obligated to the extent of the covered claims existing prior to the
 41 determination of insolvency and arising within 30 days after the determination
 42 of insolvency, or before the policy expiration date if less than 30 days after
 43 the determination, or before the insured replaces the policy or causes its
 44 cancellation, if he does so within 30 days of the determination. This obligation
 45 includes only the amount of each covered claim that is in excess of fifty dollars
 46 (\$50.00) and is less than ~~three hundred thousand dollars (\$300,000).~~ five
 47 hundred thousand dollars (\$500,000). However, the Association shall pay the
 48 full amount of a covered claim for benefits under a workers' compensation
 49 insurance coverage, and shall pay an amount not exceeding ten thousand
 50 dollars (\$10,000) per policy for a covered claim for the return of unearned

premium. The Association has no obligation to pay a claimant's covered claim, except a claimant's workers' compensation claim, if:

- a. The insured had primary coverage at the time of the loss with a solvent insurer equal to or in excess of ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) and applicable to the claimant's loss; or
- b. The insured's coverage is written subject to a self-insured retention equal to or in excess of ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000).

If the primary coverage or the self-insured retention is less than ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000), the Association's obligation to the claimant is reduced by the coverage and the retention. The Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage to a claimant notwithstanding any self-insured retention, but the Association has the right to recover the amount of the self-insured retention from the employer.

In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim ~~arises~~ arises, including any applicable specific and aggregate limits. Notwithstanding any other provision of this Article, a covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

...."

SECTION 3.(c) This section becomes effective October 1, 2023, and applies to covered claims arising from orders of liquidation becoming final on or after that date.

PART IV. CHANGES RELATED TO TRANSACTIONS WITHIN AN INSURANCE HOLDING COMPANY SYSTEM

SECTION 4.(a) G.S. 58-19-30 reads as rewritten:

"§ 58-19-30. Standards and management of an insurer within an insurance holding company system.

(a) Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to all of the following standards:

...

(7) If the Commissioner determines that the continued operation of an insurer subject to this Article is hazardous to the insurer's policyholders, creditors, or the general public under G.S. 58-30-60(b), then the Commissioner may require the insurer to elect between securing and maintaining either (i) a deposit held by the Commissioner or (ii) a bond with respect to any contract or agreement entered into by the insurer. The bond or deposit shall be maintained until the existing contract or agreement is no longer affected by the existence of the hazardous condition. The Commissioner shall determine the amount of the deposit or bond, not to exceed the total annual value of the contracts or agreements affected by the existence of the hazardous condition.

(8) All records and data of the insurer held by an affiliate remain the property of the insurer and are subject to control of the insurer. For purposes of this subdivision, "records and data" includes claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar

- 1 information within the possession, custody, or control of the affiliate. An
- 2 affiliate holding the records and data of an insurer shall do all of the following:
- 3 a. Ensure, at no additional cost to the insurer, that the records and data
- 4 controlled by the insurer are identifiable and segregated, or readily
- 5 capable of segregation, from all other persons' records and data.
- 6 b. Provide to any receiver of the insurer, upon request: (i) a complete set
- 7 of all records and data of any type that pertain to the insurer's business,
- 8 (ii) access to the operating systems on which the records and data are
- 9 maintained, and (iii) the software that runs those systems either
- 10 through assumption of licensing agreements or otherwise. The
- 11 receiver may restrict the use of the records and data by the affiliate if
- 12 the affiliate is not operating the insurer's business.
- 13 c. In the event of the affiliate's default under a lease or other agreement,
- 14 secure a waiver of any landlord lien or other encumbrance to provide
- 15 the insurer access to all records and data.

16 (9) Premiums or other funds belonging to the insurer that are collected by or held
 17 by an affiliate are the exclusive property of the insurer and are subject to the
 18 control of the insurer. Any right of offset in the event an insurer is placed into
 19 receivership shall be subject to Article 30 of this Chapter.

20 (b) The following transactions involving a domestic insurer and any person in its holding
 21 company system, including amendments or modifications of affiliated agreements that were
 22 previously filed pursuant to this section and that are subject to any materiality standards contained
 23 in ~~subdivision (1) through (7) of this section~~ subdivisions (1) through (6) of this subsection, may
 24 not be entered into unless the insurer has notified the Commissioner in writing of its intention to
 25 enter into the transaction at least 30 days before the transaction, or ~~such a~~ shorter period as the
 26 Commissioner permits, and the Commissioner has not disapproved it within that period. The
 27 notice for amendments or modifications shall include the reason for the change and the financial
 28 impact on the domestic insurer. Informal notice shall be given to the Commissioner, within 30
 29 days after termination of a previously filed agreement, so that the Commissioner may determine
 30 the type of filing required, if any. An insurer required to give notice of a proposed transaction
 31 pursuant to this subsection shall furnish the required information on a Form D, as prescribed by
 32 the Commissioner:

33 ...
 34 (4) All management agreements, service contracts, tax allocation agreements, or
 35 cost-sharing arrangements. ~~Management agreements, service contracts, and~~
 36 ~~cost-sharing arrangements shall at a minimum and shall~~, as applicable:

- 37 ...
- 38 f. Define ~~books and records~~ and data of the insurer to include all ~~books~~
 39 ~~and records~~ information developed or maintained under or related to
 40 the ~~agreement~~ contract or agreement that are otherwise the property of
 41 the insurer. The definition of records and data shall include claims and
 42 claim files, policyholder lists, application files, litigation files,
 43 premium records, rate books, underwriting manuals, personnel
 44 records, financial records, or similar information within the
 45 possession, custody, or control of the affiliate.
- 46 g. Specify that all ~~books and records~~ and data of the insurer are and
 47 insurer: (i) remain the property of the insurer and are subject to the
 48 control of the insurer. insurer, (ii) are subject to the control of the
 49 insurer, and (iii) must, at no additional cost to the insurer, be held in a
 50 manner that ensures that the records and data controlled by the insurer

- 1 are identifiable and segregated, or readily capable of segregation, from
2 all other persons' records and data.
3 ...
4 i. Include standards for termination of the contract or agreement with
5 and without cause.
6 j. Include provisions for indemnification of the ~~insurer~~ insurer: (i) in the
7 event of gross negligence or willful misconduct on the part of the
8 affiliate providing the ~~services~~ services or (ii) if the affiliate violates
9 the terms required by sub-subdivisions k. through o. of this
10 subdivision.
11 k. Specify that, if the insurer is placed in supervision, conservatorship, or
12 receivership or seized by the Commissioner under Article 30 of this
13 Chapter:
14 1. All of the rights of the insurer under the contract or agreement
15 extend to the ~~receiver~~ receiver, conservator, or Commissioner.
16 2. All ~~books and records will immediately be made available to~~
17 ~~the receiver or the Commissioner and shall be turned over to~~
18 ~~the receiver or Commissioner immediately upon the receiver's~~
19 ~~or the Commissioner's request.~~ and data of the insurer shall, at
20 no additional cost to the receiver or Commissioner, be
21 identifiable and segregated, or readily capable of segregation,
22 from all other persons' records and data.
23 3. All records and data of the insurer shall be turned over to the
24 receiver or Commissioner immediately upon the receiver's or
25 the Commissioner's request. The records and data shall be
26 turned over in a usable format, and the cost to transfer the
27 records and data to the receiver or the Commissioner shall be
28 fair and reasonable.
29 4. At the direction of the receiver or Commissioner, the affiliate
30 shall make available all employees required to maintain the
31 continued performance of operations or services of the insurer
32 deemed essential by the receiver or Commissioner.
33 l. Specify that the affiliate has no automatic right to terminate the
34 agreement if the insurer is placed in ~~receivership~~ pursuant to
35 supervision, conservatorship, or receivership, or seized by the
36 Commissioner under Article 30 of this Chapter.
37 m. Specify ~~that the affiliate will continue to maintain any systems,~~
38 ~~programs, or other infrastructure notwithstanding a seizure by the~~
39 ~~Commissioner under Article 30 of this Chapter, and will make them~~
40 ~~available to the receiver, for so long as the affiliate continues to receive~~
41 ~~timely payment for services rendered.~~ all of the following with respect
42 to the performance of services after termination of the contract or
43 agreement if the insurer is placed in supervision, conservatorship,
44 receivership, or seized by the Commissioner under Article 30 of this
45 Chapter.
46 1. That the affiliate shall, at the direction of the conservator or
47 Commissioner, provide services deemed essential after
48 termination of the contract or agreement.
49 2. That the contract or agreement shall specify the minimum
50 period of time essential services shall be performed after the
51 termination of the contract or agreement.

1 **PART V. TECHNICAL CORRECTION TO REFLECT REPEAL OF PART 2 OF**
2 **ARTICLE 38 AND ENACTMENT OF ARTICLE 38A OF CHAPTER 1 OF THE**
3 **GENERAL STATUTES**

4 **SECTION 5.** G.S. 58-30-1 reads as rewritten:

5 **"§ 58-30-1. Construction and purpose.**

6 (a) This Article does not limit powers granted to the Commissioner by any other
7 provision of law. To the extent practicable, the Commissioner may supplement the provisions of
8 this Article with those of ~~Part 2 of Article 38~~ Article 38A of Chapter 1 of the General Statutes.

9"

10
11 **PART VI. CHANGES RELATED TO THE ADMINISTRATION OF WORKERS'**
12 **COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL**
13 **IN LIQUIDATION PROCEEDINGS**

14 **SECTION 6.(a)** Article 30 of Chapter 58 of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 58-30-262. Administration of large deductible policies and insured collateral.**

17 (a) Definitions. – The following definitions apply in this section:

18 (1) Association. – As defined in G.S. 58-48-20.

19 (2) Collateral. – Any cash, letters of credit, surety bond, or any other form of
20 security posted by or on behalf of the insured or any person to secure the
21 obligation of the insured under the large deductible policy to pay deductible
22 claims or to reimburse the insurer for deductible claim payments. Collateral
23 may also secure an insured's obligation to reimburse or pay to the insurer as
24 may be required for other secured obligations.

25 (3) Commercially reasonable. – To act in good faith using prevailing industry
26 practices and making all reasonable efforts considering the facts and
27 circumstances of the matter.

28 (4) Deductible claim. – Any claim, including a claim for loss and defense and cost
29 containment expense, unless those expenses are excluded, under a large
30 deductible policy that is within the deductible.

31 (5) Large deductible policy. – Includes any of the following:

32 a. A combination of one or more workers' compensation policies and
33 endorsements issued to an insured and contracts or security
34 agreements entered into between the insurer and the insured in which
35 the insured has agreed with the insurer to do either of the following:

36 1. Pay directly the initial portion of any claim under the policy up
37 to a specified dollar amount, or the expenses related to any
38 claim.

39 2. Reimburse the insurer for its payment of any claim or related
40 expenses under the policy up to the specified dollar amount of
41 the deductible.

42 b. Any policy which contains an aggregate limit on the insured's liability
43 for all deductible claims in addition to a per claim deductible limit.
44 The primary purpose and distinguishing characteristic of a large
45 deductible policy is the shifting of a portion of the ultimate financial
46 responsibility under the large deductible policy to pay claims from the
47 insurer to the insured, even though the obligation to initially pay
48 claims may remain with the insurer.

49 c. Any policy with a deductible of one hundred thousand dollars
50 (\$100,000) or greater.

1 "Large deductible policy" does not include: (i) policies, endorsements, or
2 agreements which provide that the initial portion of any covered claim shall
3 be self-insured and further that the insurer shall have no payment obligation
4 within the self-insured retention or (ii) policies that provide for retrospectively
5 rated premium payments by the insured or reinsurance arrangements or
6 agreements, except to the extent that those arrangements assume, secure, or
7 pay the large deductible obligations of an insured.

8 (6) Other secured obligations. – Obligations of an insured to an insurer other than
9 those under or resulting from a large deductible policy, such as those under a
10 reinsurance agreement or other agreement involving retrospective premium
11 obligations the performance of which is secured by collateral that also secures
12 obligations of an insured under a large deductible policy.

13 (b) Applicability. – This section shall apply to workers' compensation large deductible
14 policies insuring workers' compensation liabilities under the Workers' Compensation Act of this
15 State issued by an insurer subject to an order of liquidation as set forth in G.S. 58-30-105 that
16 has become final in the state of entry, whether the liquidation order is entered in this State or in
17 a reciprocal state.

18 (c) Exceptions. – This section shall not apply to claims funded by the Association or a
19 foreign guaranty association net of the deductible unless subsection (d) of this section applies.

20 (d) Handling of Large Deductible Claims. – Large deductible policies shall be
21 administered in accordance with their terms, except to the extent those terms conflict with this
22 section. All large deductible claims resulting from the handling or administration of one or more
23 covered claims of a claimant as defined by G.S. 58-48-20 or the applicable guaranty laws of a
24 foreign guaranty association, including those that may have been funded by an insured before
25 liquidation, shall be turned over to the Association for handling and administration or shall be
26 turned over to the foreign guaranty association in the state where the claim is pending for
27 handling and administration. To the extent the insured funds or pays the deductible claim,
28 pursuant to an agreement with the Association or a foreign guaranty association or otherwise, the
29 funding or payment of a deductible claim directly or to the Association or a foreign guaranty
30 association by or on behalf of the insured will extinguish the obligations, if any, of the liquidator,
31 the Association, or the foreign guaranty association to pay the claim. No charge or claim of any
32 kind shall be made against the liquidator, the Association, or a foreign guaranty association on
33 the basis of the funding or payment of a deductible claim by or on behalf of an insured.

34 (e) Deductible Claims Paid by the Association or a Foreign Guaranty Association. –

35 (1) To the extent the Association or a foreign guaranty association pays any
36 deductible claim for which the insurer would have been entitled to
37 reimbursement from the insured, the Association or foreign guaranty
38 association shall be entitled to the full amount of the reimbursement and
39 available collateral as provided for under this section to the extent necessary
40 to reimburse the Association or the foreign guaranty association.
41 Reimbursements paid to the Association or to a foreign guaranty association
42 pursuant to this subdivision shall not be included in any proposal submitted to
43 the court to disburse assets under G.S. 58-30-180 in any report submitted to
44 the court under G.S. 58-30-225, or as any distribution of assets by the
45 liquidator in the domiciliary state.

46 (2) To the extent that the Association or a foreign guaranty association pays a
47 deductible claim that is not reimbursed either from collateral or by payments
48 by an insured, or incurred expenses in connection with large deductible
49 policies that are not reimbursed under this section, the Association or a foreign
50 guaranty association shall be entitled to assert a claim for those amounts in the
51 liquidation proceeding in this State or in the domiciliary state.

1 (3) Nothing in this subsection limits any rights of the Association or a foreign
2 guaranty association that may otherwise arise or exist under applicable law to
3 obtain reimbursement from insureds for claim payments made by the
4 Association or the foreign guaranty association under policies of the insurer
5 or for the Association's or foreign guaranty association's related expenses,
6 including without limitation, those rights arising under G.S. 58-48-35 and
7 G.S. 58-48-50, or those arising or existing under similar laws of other states.

8 (f) Collections. –

9 (1) Unless otherwise agreed to with the liquidator of the insurer in this State or
10 the domiciliary state, the Association or a foreign guaranty association shall
11 collect reimbursements owed for deductible claims as provided for herein and
12 shall take all commercially reasonable actions to collect those
13 reimbursements. The Association or a foreign guaranty association shall
14 promptly bill insureds for reimbursement of covered claims paid by the
15 Association or a foreign guaranty association. The liquidator of the insurer in
16 this State or the domiciliary state shall have the obligation to collect all other
17 reimbursements owed for deductible claims and shall promptly bill insureds
18 or the other responsible persons for reimbursement of deductible claims (i)
19 paid by the insurer prior to liquidation or (ii) paid by the liquidator.

20 (2) If the insured does not make payment within the time specified in the large
21 deductible policy, or within 60 days after the date of billing if no time is
22 specified, the liquidator, the Association, or a foreign guaranty association
23 shall take all commercially reasonable actions to collect any reimbursements
24 owed.

25 (3) Neither the insolvency of the insurer, nor its inability to perform any of its
26 obligations under the large deductible policy, shall be a defense to the
27 insured's reimbursement obligations under the large deductible policy.

28 (4) Allegations of improper handling or excessive or wrongful payment of a
29 deductible claim by the insurer, by the liquidator of the insurer in this State or
30 the domiciliary state, or by the Association or foreign guaranty association
31 shall not be a defense to the insured's reimbursement obligations under the
32 large deductible policy.

33 (5) The liquidator of the insurer in this State or the domiciliary state is entitled to
34 recover through billings to the insured all reasonable expenses incurred in
35 fulfilling the liquidator's collection obligations pursuant to subdivision (1) of
36 this subsection.

37 (g) Collateral. –

38 (1) Subject to the provisions of this subsection and the rights of the Association
39 or a foreign guaranty association, the liquidator of the insurer in this State or
40 the domiciliary state shall utilize collateral, when available, to secure the
41 obligation of the insured to fund or reimburse deductible claims or other
42 secured obligations. The Association or a foreign guaranty association shall
43 be entitled to all collateral as provided for in this subsection to the extent
44 needed to reimburse the Association or a foreign guaranty association for the
45 payment of deductible claims. Any distributions made to the Association or
46 to a foreign guaranty association pursuant to this subsection shall not be
47 included in any proposal submitted by the liquidator to the court to disburse
48 assets under G.S. 58-30-180, or in any report submitted to the court under
49 G.S. 58-30-225, or as any distribution of assets in the domiciliary state.

50 (2) All claims against the collateral shall be paid in the order received, and no
51 claim of the liquidator of the insurer in this State or the domiciliary state,

1 including those described in or arising under this subsection, shall supersede
2 or take priority over any other claim against the collateral made by the
3 Association or a foreign guaranty association. However, to the extent that the
4 collateral is subject to other known secured obligations, or if more than one
5 creditor has a valid claim against the same collateral and the available
6 collateral, including future billing and collection efforts, are together
7 insufficient to pay each creditor in full, the liquidator of the insurer in this
8 State or in the domiciliary state may prorate payments from the proceeds of
9 the collateral based on the ratio of the amount of claims each creditor has to
10 the sum or all claims of all creditors with claims against the involved
11 collateral.

- 12 (3) The liquidator of the insurer in this State or the domiciliary state shall draw
13 down collateral to the extent necessary in the event that the insured fails to do
14 any of the following:
- 15 a. Perform its funding or payment obligations under any large deductible
16 policy.
 - 17 b. Pay deductible claim reimbursements within the time specified in the
18 large deductible policy or within 60 days after the date of the billing if
19 no time is specified.
 - 20 c. Pay amounts due the estate for pre-liquidation obligations.
 - 21 d. Timely fund any other secured obligation.
 - 22 e. Timely pay expenses.
- 23 (4) Excess collateral may be returned to the insured as determined by the
24 liquidator of the insurer in this State or the domiciliary state after a periodic
25 review of claims paid, outstanding case reserves and a factor for incurred but
26 not reported claims.
- 27 (5) This section shall not limit or adversely affect any rights or powers the
28 Association or a foreign guaranty association may have pursuant to other
29 applicable state law to obtain reimbursement from certain classes of
30 policyholders for claims payments made by the Association or a foreign
31 guaranty association arising under policies of the insolvent insurer, or for
32 related expenses the Association or a foreign guaranty association incurs.
- 33 (6) Notwithstanding any other provision of this section, if the liquidator of the
34 insurer in this State or the domiciliary state and the Association or a foreign
35 guaranty association agree that the liquidator will collect reimbursements
36 owed for deductible claims, the liquidator is entitled to deduct from the large
37 deductible claim collateral or from the deductible reimbursements reasonable
38 and actual expenses incurred in connection with the collection of the large
39 deductible claim collateral and deductible reimbursements."

40 **SECTION 6.(b)** This section becomes effective October 1, 2023, and applies to
41 insurance contracts issued, renewed, or amended on or after that date.

42 **PART VII. TECHNICAL CORRECTION TO ADD OMITTED WORD TO G.S. 58-33-5**

43 **SECTION 7.** G.S. 58-33-5 reads as rewritten:

44 **"§ 58-33-5. License required.**

45 A person shall not sell, solicit, or negotiate insurance in this State for any kind of insurance
46 unless the person is licensed for that line of authority in accordance with this Article."
47

48 **PART VIII. AMEND ON-SITE AUDIT REQUIREMENTS FOR THIRD-PARTY** 49 **ADMINISTRATORS**

50 **SECTION 8.** G.S. 58-56-26(c) reads as rewritten:
51

"(c) In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an ~~on-site~~ audit of the operations of the TPA. The insurer may conduct that audit either on-site or virtually. On July 1, 2010, and annually thereafter, every insurer shall file with the Commissioner a certification of completion of the audits as required by this subsection and performed during the previous calendar year, in the format, content, and manner as specified by the Commissioner. The insurer shall maintain in its corporate records documentation of the audits conducted to support its certification of audits for a period of five years or, if a domestic insurer, until the completion of the next quinquennial examination."

PART IX. INCREASE OR IMPLEMENT CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS

SECTION 9.(a) G.S. 58-2-161 reads as rewritten:

"§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

(a) Definitions. – For the purposes of this section:

...

(b) ~~Any person who, Prohibited Act.~~ – It is unlawful for a person to, with the intent to injure, defraud, or deceive an insurer or insurance ~~claimant~~:claimant, do either of the following:

(1) ~~Presents~~Present or ~~causes~~cause to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the ~~claim~~, or claim.

(2) ~~Assists, abets, solicits, or conspires~~Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the ~~claim~~claim.

~~is guilty of a Class H felony.~~ Each claim shall be considered a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determination of the amount of restitution pursuant to G.S. 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim in the investigation of, and efforts to recover damages arising from, the claim, may be considered part of the damage caused by the defendant arising out of the offense.

...

(c) Punishment. – Violations of this section are punishable as follows:

(1) If the amount of the claim for payment or other benefit is less than one hundred thousand dollars (\$100,000), a violation shall be punishable as a Class H felony.

(2) If the amount of the claim for payment or other benefit is one hundred thousand dollars (\$100,000) or more, a violation shall be punishable as a Class C felony."

SECTION 9.(b) Article 33A of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33A-93. Criminal penalties.

Except as otherwise provided in this Article, any person who willfully and knowingly conducts business as a public adjuster in violation of this Article is guilty of a Class 1 misdemeanor."

1 SECTION 9.(c) This section becomes effective December 1, 2023, and applies to
2 offenses committed on or after that date.

3
4 **PART X. ADDITIONAL CERTIFICATE OF INSURANCE PROHIBITIONS**

5 SECTION 10.(a) G.S. 58-3-149 reads as rewritten:

6 "**§ 58-3-149. Certificates of insurance.**

7 ...

8 (c) It is unlawful for any person to knowingly prepare, issue, request, or require a
9 certificate of insurance that meets any of the following criteria:

10 ...

11 (4) Includes information not contained in the underlying insurance policy.

12 "

13 SECTION 10.(b) This section becomes effective October 1, 2023.

14
15 **PART XI. AUTHORIZE INSURANCE PREMIUM CONVENIENCE FEES**

16 SECTION 11.(a) G.S. 58-3-145 reads as rewritten:

17 "**§ 58-3-145. Solicitation, negotiation or payment of premiums on insurance policies.**

18 (a) An insurer or insurance producer may accept ~~payment~~ electronic payment, as defined
19 in G.S. 147-86.20, of an insurance premium ~~by credit card or debit card~~ if the insurer ~~accepting~~
20 ~~payment by credit card or debit card~~ meets the following conditions:

21 (1) ~~The insurer or insurance producer~~ complies with the prohibition against unfair
22 discrimination contained in G.S. 58-63-15(7).

23 (2) ~~The insurer pays the fees charged by the credit card company or debit card~~
24 ~~issuer for the payment of premiums by credit card or debit card.~~

25 (b) An insurer or insurance producer accepting electronic payment by credit or debit card
26 may charge the person using electronic payment a convenience fee in an amount not to exceed
27 four percent (4%) of the electronic payment."

28 SECTION 11.(b) This section becomes effective October 1, 2023.

29
30 **PART XII. INCREASE MINIMUM LIABILITY LIMITS FOR INSURANCE**
31 **REQUIRED BY THE STATE**

32 SECTION 12.(a) G.S. 20-279.1 reads as rewritten:

33 "**§ 20-279.1. Definitions.**

34 The following words and phrases, when used in this Article, shall, for the purposes of this
35 Article, have the meanings respectively ascribed to them in this section, except in those instances
36 where the context clearly indicates a different meaning:

37 ...

38 (11) "Proof of financial responsibility": Proof of ability to respond in damages for
39 liability, on account of accidents occurring subsequent to the effective date of
40 said proof, arising out of the ownership, maintenance or use of a motor
41 vehicle, in the amount of ~~thirty thousand dollars (\$30,000)~~ fifty thousand
42 dollars (\$50,000) because of bodily injury to or death of one person in any one
43 accident, and, subject to said limit for one person, in the amount of ~~sixty~~
44 ~~thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000) because
45 of bodily injury to or death of two or more persons in any one accident, and
46 in the amount of ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand
47 dollars (\$50,000) because of injury to or destruction of property of others in any one
48 accident. Nothing contained herein shall prevent an insurer and an insured
49 from entering into a contract, not affecting third parties, providing for a
50 deductible as to property damage at a rate approved by the Commissioner of
51 Insurance.

1"

2 SECTION 12.(b) G.S. 20-279.5 reads as rewritten:

3 "§ 20-279.5. Security required unless evidence of insurance; when security determined;
4 suspension; exceptions.

5 ...

6 (c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

7 ...

8 No such policy or bond shall be effective under this section unless issued by an insurance
9 company or surety company authorized to do business in this State, except that if such motor
10 vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere
11 than in this State at the effective date of the policy or bond, or the most recent renewal thereof,
12 or if such operator not an owner was a nonresident of this State, such policy or bond shall not be
13 effective under this section unless the insurance company or surety company if not authorized to
14 do business in this State shall execute a power of attorney authorizing the Commissioner to accept
15 service on its behalf of notice or process in any action upon such policy, or bond arising out of
16 such accident, and unless said insurance company or surety company, if not authorized to do
17 business in this State, is authorized to do business in the state or other jurisdiction where the
18 motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner
19 who was a nonresident of this State, unless said insurance company or surety company, if not
20 authorized to do business in this State, is authorized to do business in the state or other jurisdiction
21 of residence of such operator; provided, however, every such policy or bond is subject, if the
22 accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not
23 less than ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) because of bodily
24 injury to or death of one person in any one accident and, subject to said limit for one person, to
25 a limit of not less than ~~sixty thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000)
26 because of bodily injury to or death of two or more persons in any one accident, and, if the
27 accident has resulted in injury to or destruction of property, to a limit of not less than ~~twenty-five~~
28 ~~thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) because of injury to or destruction of
29 property of others in any one accident."

30 SECTION 12.(c) G.S. 20-279.15 reads as rewritten:

31 "§ 20-279.15. Payment sufficient to satisfy requirements.

32 In addition to other methods of satisfaction provided by law, judgments herein referred to
33 shall, for the purpose of this Article, be deemed satisfied:

- 34 (1) When ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) has
35 been credited upon any judgment or judgments rendered in excess of that
36 amount because of bodily injury to or death of one person as the result of any
37 one accident; or
- 38 (2) When, subject to such limit of ~~thirty thousand dollars (\$30,000)~~ sixty thousand
39 dollars (\$60,000) because of bodily injury to or death of one person, the sum
40 of ~~sixty thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000)
41 has been credited upon any judgment or judgments rendered in excess of that
42 amount because of bodily injury to or death of two or more persons as the
43 result of any one accident; or
- 44 (3) When ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000)
45 has been credited upon any judgment or judgments rendered in excess of that
46 amount because of injury to or destruction of property of others as a result of
47 any one accident;

48 Provided, however, payments made in settlement of any claims because of bodily injury,
49 death or property damage arising from a motor vehicle accident shall be credited in reduction of
50 the amounts provided for in this section."

51 SECTION 12.(d) G.S. 20-279.21(b)(2) reads as rewritten:

"(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ~~sixty thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident; and"

SECTION 12.(e) G.S. 20-281 reads as rewritten:

"§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.

From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident, and ~~sixty thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this Article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for."

SECTION 12.(f) G.S. 58-37-35 reads as rewritten:

"§ 58-37-35. The Facility; functions; administration.

...

(b) The Facility shall reinsure for each coverage available in the Facility to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the Facility's plan of operation as follows:

- (1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
 - a. Bodily injury liability: ~~thirty thousand dollars (\$30,000)~~ fifty thousand dollars (\$50,000) each person, ~~sixty thousand dollars (\$60,000)~~ one hundred thousand dollars (\$100,000) each accident;
 - b. Property damage liability: ~~twenty five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) each accident;
 - c. Medical payments: one thousand dollars (\$1,000) each person; except that this coverage shall not be available for motorcycles or mopeds;

