| | |
|---|---|
| STATE OF NORTH CAROLINA<br><br>COUNTY OF WAKE | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION<br>24CV_____ |
| ROLANDA BRANDON, on behalf of F.B., a minor,<br><br>Plaintiff,<br>v.<br><br>NORTH CAROLINA STATE BOARD OF EDUCATION and NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION,<br><br>Defendants. | **COMPLAINT** |

NOW COMES Plaintiff Rolanda Brandon, on behalf of F.B., a minor, through undersigned counsel, and hereby seeks a declaratory judgment under N.C. Gen. Stat. §§ 1-253, *et seq.* and North Carolina Rule of Civil Procedure 57, as well as a preliminary and permanent injunction under North Carolina Rule of Civil Procedure 65. In support of these claims, Plaintiff alleges and says:

## INTRODUCTION

1. On July 1, 2024, the North Carolina State Board of Education (the "Board") banned every public high school athlete from using his or her name, image, and likeness ("NIL") for commercial purposes. In doing so, the Board disregarded the limitations on its rulemaking authority imposed by the General Assembly under Section XVII of Senate Bill 452, 2023 N.C. Sess. L. 133, which directed the Board to *regulate*—not wholesale prohibit—public high school athletes' "use" of their NIL. By imposing a full ban, the Board exceeded its authority under Senate Bill 452 and has harmed F.B.—widely regarded as the nation's top-rated high school football recruit

in his class—by unlawfully restricting his right to freely use his NIL, which he and he alone owns, thereby jeopardizing his ability to capitalize on life-changing opportunities currently available to him and provide himself and his family with financial security.

2. Three years ago, on July 1, 2021, the National Collegiate Athletic Association ("NCAA") implemented interim policies permitting athletes at its member schools to utilize their names, images, and likenesses ("NIL") for commercial purposes. Athletes competing at NCAA member institutions could now enter endorsement deals while simultaneously preserving their eligibility to compete in NCAA athletics. This reflected a recognition by the NCAA that licensing one's NIL does not affect a student's amateur status—a notion long adopted and understood in the Olympics.

3. Not long after, NIL activities emerged at the high school level. In North Carolina, the North Carolina High School Athletic Association ("NCHSAA") had prohibited NIL activities for its members. Private schools competing in the North Carolina Independent Schools Athletic Association ("NCISAA"), however, were not so prohibited. Thus, from approximately July 2021 through May 2023, North Carolina students attending private schools could capitalize license and make commercial use of their NIL, whereas public schools (and a handful of NCHSAA-member private schools) could not.

4. In May 2023, the NCHSAA sought to remedy this inconsistency, and revised its regulations to permit NIL activities for its members. Recognizing that

"everybody owns their name, their image, and their likeness," the NCHSAA's 2023 revisions allowed students to engage in NIL activities while simultaneously preserving their amateur status, subject to certain requirements and limitations, as well as mandatory NIL education. In doing so, the NCHSAA sought to bring North Carolina in line with the large number of other states that had already permitted NIL for high school athletes, most under similar parameters.

5. Effective October 3, 2023, the General Assembly passed Senate Bill 452, 2023 Session Laws 133, authorizing the State Board of Education (the "Board") to regulate public high school students' use of their NIL for commercial purposes and to codify NIL policy for public schools. *See* 2023 N.C. Sess. L. 133 ("Senate Bill 452"). Specifically, Senate Bill 452 authorized the Board to "adopt rules governing high school interscholastic athletic activities conducted by public school units . . . ***including rules related to use of a student's name, image and likeness.***" 2023 N.C. Sess. L. 133 § 17. (a) (N.C. Gen. Stat. § 115C-407.55(1)(h)) (emphasis added). Senate Bill 452 further provides that the Board's NIL regulations shall be pursuant to a temporary rule for the 2024-25 school year and a permanent rule for 2025-26. *See* 2023 N.C. Sess. L. 133 §§ 19. (a), (b). A true and correct copy of Senate Bill 452 is attached hereto as **Exhibit A**.

6. On June 6, 2024, the Board approved a temporary NIL rule, designated policy number ATHL-008 (the "NIL Prohibition"). A true and correct copy of ATHL-008 is attached hereto as **Exhibit B**.

7. However, instead of regulating the use of students' NIL, the Board prohibited public high school athletes in North Carolina from earning compensation from the use of their NIL on a wholesale basis. This plainly exceeded the Board's authority under Senate Bill 452, which explicitly charges the Board to develop regulations under which athletes' will "use" their NIL for commercial purposes.

8. The Board's NIL Prohibition went into effect on July 1, 2024, banning NIL activities for public high school athletes—exactly three years to the day that NIL activities became available for athletes at the NCAA level. The NIL Prohibition is currently codified at 16 NCAC 06E. 0208.

9. At the time the prohibition went into effect, over 30 jurisdictions had implemented laws or policies explicitly allowing their high school athletes to utilize their NIL for commercial purposes. That number has now grown to 38 states, plus the District of Columbia.

10. Specifically, ATHL-008 defines NIL as "the use of a student's name, image, or likeness for commercial purposes and in exchange for compensation to the student." The NIL Prohibition defines "compensation" as including "cash, in-kind gifts, or other tangible benefits to the student." ATHL-008, § (a) (Exhibit B).

11. The NIL Prohibition expressly mandates that

> No student participating in interscholastic athletics shall enter into any agreement to use the student's name, image, or likeness in any of the following ways:
>
> (1) Public appearances or commercials.
> (2) Autograph signings.
> (3) Athletic camps and clinics.
> (4) Sale of non-fungible tokens ("NFTs").

(5) Product or service endorsements.
(6) Promotional activities, indulging in-person events and social media advertisements.

ATHL-008, § (b). In other words, the NIL Prohibition bans endorsement deals, thereby wholly precluding any NIL activities for public high school athletes.

12. North Carolina public school students own their NIL. However, the Board's NIL Prohibition forbids public school athletes in North Carolina from using their NIL for their own personal benefit. As proven by the introduction of NIL at the NCAA level, the concept of "amateurism" is not dependent upon whether a high school athlete signs endorsement deals in exchange for licensing their NIL.

13. The Board's NIL Prohibition is not just inconsistent with the overwhelming majority of states nationally, but is inconsistent with NIL policy in North Carolina, itself. Indeed, the NCISAA explicitly permits the licensing of NIL by students of its members, *i.e.* nearly all North Carolina private schools (as well as Westminster Catawba Christian School and Legion Collegiate Academy in South Carolina, and Rabun Gap-Nacoochee School in Georgia). The NCISAA adopted bylaw revisions to expressly allow NIL activities for athletes attending its member private schools on or about February 1, 2024.

14. The General Assembly passed Senate Bill 452 and directed the Board to regulate athletes' "use" of their NIL. The Board, however, took this limited grant of authority as a license to decide whether to allow public high school athletes to license their NIL at all. The underlying legislation, however, did not grant the Board sweeping and unfettered authority to make such a policy determination. As a direct

result of the Board's overreach and improper prohibition of NIL activities, public school students across North Carolina, including F.B., are altogether foreclosed from utilizing their own NIL to better themselves and their families, or else they risk having their eligibility and seasons stripped from them for engaging in the same market and activities as their private school counterparts. For some, the financial burden of receiving a public education under the Board's NIL prohibition is substantial. For F.B., the cost is potentially millions of dollars that F.B., or F.B.'s family, has no guarantee of ever recouping.

## PARTIES AND JURISDICTION

15. Plaintiff Rolanda Brandon and F.B., a minor, are citizens and residents of Guilford County, North Carolina. Rolanda Brandon is F.B.'s parent and guardian.

16. The North Carolina State Board of Education is constitutionally empowered to "supervise and administer the free public school system" and to "make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly." N.C. CONST. art. IX, sec. 5; *see also* N.C. Gen. Stat. § 115C-12. Its principal place of business is in Wake County, North Carolina.

17. The North Carolina Department of Public Instruction is the department through which the Board administers North Carolina's public education system and similarly maintains its principal place of business in Wake County, North Carolina.

18. Venue is proper pursuant to N.C. Gen. Stat. § 1-82 as both Defendants' principal place of business is in Wake County. The Court has personal jurisdiction over Defendants pursuant to N.C. Gen. Stat. § 1-75.4 and jurisdiction over the subject matter of this lawsuit pursuant to N.C. Gen. Stat. §§ 7A-240 and 7A-245.

## FACTS

19. All people, including public school athletes, own their names, images, and likenesses. Inherent in that ownership is a right to publicity, and individuals to control the use of their names, images, and likenesses. An individual's right to control that use is enforceable under North Carolina law. *See, e.g.*, *Renwick v. News and Observer Publishing Co.*, 310 N.C. 312, 322, 312 S.E.2d 405, 411 (1984) (North Carolina recognizes a claim for invasion of privacy by means of "appropriation, for the defendant's advantage, of the plaintiff's name or likeness[.]").

20. This also includes citizens' right to license their name, image, and likeness for their own personal benefit. "The right to contract is a property right protected by our State Constitution and the Fourteenth Amendment to the United States Constitution." *In re Declaratory Ruling by N. Carolina Com'r of Ins. Regarding 11 N.C.A.C. 12.0319*, 134 N.C. App. 22, 34, 517 S.E.2d 134, 143 (1999) (collecting cases). "However, this right is qualified by the power of ***the legislature*** to supervise economic relations, providing restrictive safeguards and reasonable regulations." *Id.* (emphasis added).

21. With respect to NIL in North Carolina, the Legislature directed the Board to do just that—*regulate*. The Board instead chose not to regulate NIL use, but prohibit it, and in doing so exceeded the Board's statutory authority.

### A. The Genesis of Name, Image, and Likeness as a Feature of Amateurism.

22. In June 2021, the United States Supreme Court issued its opinion in *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 141 S. Ct. 2141 (2021), an

antitrust challenge to the NCAA's restrictions on education-related benefits. In *Alston*, the Court decided unanimously against the NCAA. It also yielded the now-infamous concurrence by Associate Justice Kavanaugh through which he blistered the artificial suppression of athlete value to zero in the name of "amateurism" and provided a potential blueprint for NIL monetization and beyond at the college level.

23. Shortly following the *Alston* decision, the NCAA permitted NIL activities for all NCAA-member athletes, subject to evolving interim guidelines. The NCAA's interim guidance allowed athletes to enter into endorsement agreements whereby they could monetize the use of their NIL and still retain their amateur status and eligibility to compete in NCAA-governed athletics. The first day NIL activities were allowed at the NCAA level was July 1, 2021. Exactly three years later, the Board banned NIL for public high school students in North Carolina.

24. Soon after, opportunities for student-athletes to license their NIL extended to the high school level across the country. In response, state legislatures or local athletics governing bodies began proposing and passing guidelines not dissimilar to the NCAA's interim guidance. One of the first to do this was the Oklahoma Secondary School Activities Association ("OSSAA"). The OSSAA passed NIL guidelines for its athletes in October 2022. While the OSSAA permitted NIL activities for its high school athletes, it implemented certain rational limitations to regulate such activities. These included restrictions on:

- Compensation being (i) contingent upon enrollment at a specific school, athletic performance or achievement, or (ii) provided directly by the school or an agent for the school;
- Use school marks, logos, or facilities in NIL activities;
- Endorsement of products that would bring the school or district into disrepute (*i.e.* tobacco, pornography, alcohol, or firearms); and
- Conducting NIL activities during school hours or which otherwise conflict with scholastic or extracurricular obligations.

The OSSAA guidelines also provided for NIL education services using a third-party NIL support and consulting company. The OSSAA guidelines became a model for many states and athletics regulatory bodies. The NIL policy approved by the NCHSAA in May 2023 was also similar to the OSSAA guidelines.

25. Currently, approximately 38 states and the District of Columbia, either legislatively or through their respective athletics governing bodies, permit high school athletes to engage in NIL activities and provide that engagement in NIL activities does not invalidate athletes' amateur status. These include, in addition to the District of Columbia: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Washington.

### B. Senate Bill 452 Authorizes the Board to Regulate Public High School Athletes' Use of their Names, Images, and Likenesses.

26. On September 22, 2023, the North Carolina House of Representatives passed Senate Bill 452. That same day, the bill passed the Senate unanimously, and on October 3, 2023, became law without the Governor's signature.

27. In Senate Bill 452, the General Assembly directed the Board to adopt "temporary rules" under the Administrative Procedure Act ("APA") for the 2024-25 school year and a permanent rule for 2025-26. *See* 2023 N.C. Sess. L. 133 §§ 19. (a), (b). With respect to NIL, Senate Bill 452 directed the Board to "adopt rules governing high school interscholastic athletic activities conducted by public school units" including "[s]tudent amateur status requirements, including rules *related to use* of a student's name, image and likeness." 2023 N.C. Sess. L. 133 § 17. (a) (N.C. Gen. Stat. § 115C-407.55(1)(h)) (emphasis added).

28. Senate Bill 452 does not give the Board unfettered discretion to promulgate any NIL rule it wishes or to decide whether public high school athletes should be allowed to license the use of their NIL at all. Rather, Senate Bill 452 directs the Board to *regulate* students' *use* of their names, images, and likenesses. It did not direct the Board to altogether prohibit that use.

29. For NCHSAA-member athletes, the Board's NIL prohibition also imposes a substantive change on their freedom to exercise their economic rights and rights to publicity. Senate Bill 452 is explicit that the Board's regulatory authority over NIL "shall not be delegated to an administering organization," *i.e.* the NCHSAA. *See* 2023 N.C. Sess. L. 133, § 17. (a) (N.C. Gen. Stat. § 115C-407.55(1)). Thus,

beginning October 3, 2023, the Board was the only body legislatively authorized to regulate NIL activities for public high school athletes in North Carolina, and because no rules regulating NIL use had been adopted by the Board, there necessarily was no enforceable prohibition against public high school athletes' use of their NIL from at least October 3, 2023 until July 1, 2024.

30. Therefore, the Board's NIL Prohibition creates a new *status quo* for public school athletes' economic rights with respect to their use of their names, images, and likenesses for commercial purposes, and constitutes an attempt by the Board to legislate on an issue affecting public education. This is improper.

### C. F.B. is Presented with a Life-Changing NIL Opportunity He Cannot Sign.

31. For his class, F.B. is widely regarded as the top-rated football recruit in the country. After receiving scholarship offers from nearly every major college football program, F.B. recently verbally committed to the University of Tennessee. F.B. is likely to graduate in December 2025, after which he will enroll at the University of Tennessee in January 2026. Unlike North Carolina, Tennessee permits its high school athletes—both public and private—to engage in NIL activities.

32. On or about April 30, 2024, F.B. was approached by a prominent national trading card company ("NIL Sponsor 1") and presented with an opportunity to license F.B.'s NIL to NIL Sponsor 1. Under the agreement, F.B. would provide a certain volume of signed memorabilia prior to his high school graduation. In exchange, NIL Sponsor 1 would pay F.B. a substantial sum of money, with payments structured over time. The agreement with NIL Sponsor 1 would provide F.B. and

F.B.'s family with financial security for years to come. A redacted copy of the Official Offer Deal Memo is attached hereto as **Exhibit C**.

33. The agreement proposed by NIL Sponsor 1 begins May 31, 2024, and runs through F.B.'s high school graduation date, which is projected to be December 2025.

34. The proposed agreement with NIL Sponsor 1, however, is expressly conditioned on the execution of a full agreement by F.B.—which the Board's NIL Prohibition forbids. Consequently, NIL Sponsor 1's proposal is subject to diminish, or be wholly rescinded, should the parties be prohibited by the Board from entering into a full agreement.

35. NIL Sponsor 1 already indicated once the likelihood of F.B.'s offer being rescinded due to the parties' inability to execute an agreement. On or about June 24, 2024, F.B., with the help of an attorney, notified Board Chair Eric Davis of this issue.

36. The Board, however, waited until two days after the NIL Prohibition went into effect—July 3—to respond to F.B.'s concerns.

37. In her response to F.B., DPI General Counsel, Allison Schafer, confirmed that DPI will not make any changes to the Board's NIL Prohibition any time soon:

> The SBE now must go through permanent rulemaking on the NIL question. ***This is a cumbersome and lengthy legislatively required process that takes approximately one year***. In the coming year, the SBE will focus on beginning the process to adopt a permanent rule for the 2025-2026 school year and beyond. There will once again be an opportunity for public comment, including at least one public hearing. The SBE can vote to change the NIL policy during the permanent rulemaking phase.

> However, due to these legislative constraints, ***any possible changes cannot occur quickly***, and certainly not by July 15, which is a few days from now. You can find more information about the rulemaking process, including how to request email updates, here: https://www.dpi.nc.gov/about-dpi/state-board-education/rulemaking-information. The State Board will welcome your input and that of your client at the appropriate time during the public comment period.
>
> You requested a meeting with the SBE Chair within the next few days. ***Given the mandatory process described above, there is nothing that can be done to change the current rule in the timeframe you outline***. Such a meeting cannot yield the results you seek for the reasons described above and therefore would be futile. Consequently, your request for a meeting with the Board Chair is respectfully declined. You have expressed your concerns clearly in your letter and they are noted. The SBE will consider them as they look to develop a permanent rule. We wish only the best for your talented client.

(July 3, 2024 Letter Response from DPI to F.B.) (emphasis added). A true and correct copy of this correspondence is attached hereto as **Exhibit D**.

38. Even if the Board were to rescind or amend its prohibition in a manner that would permit F.B. to enter into the deal by July 2025, as is the shortest timeline indicated by DPI's General Counsel, F.B. would have lost the intervening twelve months of what, at its inception, would have been a 20-month agreement, with only five months (July through December) to realize any benefit from NIL Sponsor 1's offer, should it even still exist. This is time F.B. can never recover.

39. The opportunity to F.B. presented by NIL Sponsor 1 is not unique to F.B. Indeed, other highly-ranked national recruits at F.B.'s same position have been offered or entered into similar agreements by NIL Sponsor 1, with some agreements valued at, upon information and belief, over one million dollars.

40. Nevertheless, F.B. continued to take repeated steps to avoid litigation. Through counsel, F.B. responded on July 9, 2024 and requested information regarding the process that led to the Board's NIL Prohibition, as well as adoption of an emergency rule pursuant to N.C. Gen. Stat. § 150B-21.1A that would allow F.B. to sign an agreement with NIL Sponsor 1, particularly since "[t]he Board has already determined that adherence to the notice and hearing requirements of the [Administrative Procedure] Act would be contrary to the public interest for the temporary NIL rule, so there should be no difference here." F.B. also requested copies of any public comments received regarding the Board's NIL Prohibition prior to its adoption.

41. Ms. Schafer replied via email on July 11, 2024. She denied F.B.'s renewed request for a meeting with the Board, stating "there is no credible argument that the inability of high school students to enter NIL agreements" required an emergency rule and thus, "there is no need for a discussion" about one. She also stated that despite "the NIL question [having] been a matter of public debate for some time now," the Board received no comments during the public comment period. A true and correct copy of this correspondence is attached hereto as **Exhibit E**.

42. That the Board did not receive any public comments would be unsurprising given the Board made no legitimate effort to announce its proposal of a temporary rule banning NIL activities for North Carolina public school students despite its substantial impact. To be sure, the Board did post a notice to DPI's website that it intended to consider a temporary rule regarding NIL, though the general

public was highly unlikely to know that the notice was ever posted. In fact, even the local media appeared not to be aware of the Board's proposed prohibition from January—as of at least February 12, 2024, *The Charlotte Observer* reported:

> Monday [February 12, 2024], N.C. State Sen. Vickie Sawyer, a Republican who represents Iredell and Mecklenburg County, told The Observer that the N.C. Board of Education plans to propose NIL rules for public school athletes to the state's Rules Review Commission. If adopted, Sawyer said students within the NCHSAA should have similar access to NIL rights as their private school counterparts will have.

Langston Wertz, *Here's why NCHSAA public school athletes could get NIL rights by the fall*, THE CHARLOTTE OBSERVER (Feb. 12, 2024). Senator Sawyer voted to pass Senate Bill 452 and authorize the Board to regulate NIL for public school athletes.

43. Thus, because the Board buried its proposed prohibition, the media—and even legislators who voted to authorize the Board to regulate NIL—were under the impression that the Board's proposed rules would permit NIL activities for public school students. They were wrong.

44. Nevertheless, F.B. continued to contact the Board and DPI to resolve the issue, eventually reaching out directly to the Superintendent's office. However, this, too, was unsuccessful.

45. F.B. has also been approached by other businesses wishing to license F.B.'s NIL for commercial purposes and have expressed terms to F.B. that would yield him sums similar to or in excess of his proposed agreement with NIL Sponsor 1. However, expressly because of the Board's improper NIL prohibition, those businesses will not engage in any meaningful discussions with F.B.

46. The Board's prohibition prevents F.B. from entering into any of these proposed or potential agreements and, consequently, earning any income from them.

47. The cumulative financial impact to F.B. and his family from the Board's NIL prohibition is over one million dollars.

48. By the start of the 2025-26 school year, which is DPI's estimated timeline for any rule change (should one come), F.B. is reasonably likely to lose his existing NIL opportunity.

**D. <u>The NIL Prohibition is Unjustified</u>.**

49. The Board's NIL Prohibition is inconsistent with not just the overwhelming majority of states that permit NIL activities for their high school athletes, but also with North Carolina, itself.

50. The NCISAA adopted Bylaw revisions to expressly allow NIL activities for athletes attending its member private schools on or about February 1, 2024.

51. On or about March 7, 2024, approximately one month after the NCISAA adopted its policy expressly permitting its member athletes to be compensated for licensing the use of their NIL, the Board submitted its Temporary Rulemaking Findings of Need ("Findings") and requested authority to bypass the Administrative Procedure Act's public notice procedures to fast-track its NIL Prohibition. A true and correct copy of the Board's Findings are attached hereto as **<u>Exhibit F</u>**.

52. In the Board's Findings, Board Chair Eric Davis claimed the NIL prohibition was necessary to "satisfy legislative requirements" under Senate Bill 452.

It was not. Senate Bill 452 required that the Board regulate the "***use***" of athletes' NIL—not entirely prohibit it.

53. As of today, approximately only twelve states or state athletics governing bodies wholly prohibit NIL activities for high school athletes. Upon information and belief, North Carolina is the *only* public-private hybrid NIL jurisdiction in the country.

54. There is no rational justification for a complete ban. Rather, while policies differ in some respects, the supermajority of states that permit NIL activities typically do so pursuant to a common set of guidelines. These often include parameters such as compensation (i) not being contingent upon enrollment at a specific school, (ii) contingent upon athletic performance or achievement, or (iii) provided directly by the school or an agent for the school. Also common are restrictions against the use of school marks, logos, or facilities in NIL activities, endorsement of products that would bring the school or district into disrepute (*e.g.,* tobacco, pornography, alcohol, or firearms), or engaging in NIL activities during school hours or which otherwise conflict with scholastic or extracurricular obligations. Many of these guardrails were adopted in October of 2022 by the OSSAA and have served as a model for many of the states currently permitting NIL activities. The NCHSAA NIL policy revision in May 2023 was also similar to the OSSAA policy.

55. Despite NIL activities being economic in nature, the Board, upon information and belief, neither undertook nor considered any fiscal analysis of the impact of its ban. Nor, upon information and belief, did it consult with athletics

directors, parents, or administrators, including from neighboring states that allow NIL activities, or analyze the impact on in-state universities, including the University of North Carolina system, of top athletes leaving North Carolina to another state that allows NIL activities.

56. The Board has articulated no rational, reasoned justification for a complete ban on NIL activities for only one class of citizens in North Carolina—public high school students—particularly where private high school athletes are expressly permitted to engage in NIL activities in the same state.

57. Both public and private high school athletes face the same general issues, circumstances, considerations with respect to NIL activities, and there is no legitimate argument that public school students should be treated differently. This is especially true where nearly 80% of the country has adopted policies contrary to the Board's despite facing facts, circumstances, and considerations regarding NIL use similar to, if not indistinguishable from, those facing this State.

**FIRST CAUSE OF ACTION**
**(Declaration that ATHL-0008 is Invalid)**
**(N.C. Gen. Stat. § 1A-1, Rule 57 and N.C. Gen. Stat. §§ 1-253, *et seq.*)**

58. All preceding paragraphs are incorporated as if fully restated herein.

59. The Board arbitrarily and capriciously prohibited NIL activities for public school athletes in North Carolina.

60. Senate Bill 452 directs the Board to regulate athletes' use of their NIL. Senate Bill 452 does not direct the Board to prohibit NIL in its temporary rule for

the 2024-25 school year, nor does it give the Board broad discretion to promulgate any rule it wishes.

61. Private school athletes at NCISAA member schools may freely engage in NIL activities, thereby exercising their right to publicity and using their NIL, which the athletes own and are personal and unique to them, for commercial purposes.

62. In passing its NIL Prohibition, the Board failed to examine the relevant considerations regarding NIL for public school athletes in North Carolina.

63. The Board has also failed to articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. This is especially true given that private school students in the same state, and in many cases the same city or town, may engage in NIL activities while neighboring public school students may not simply because they attend a public school.

64. As evidenced by the supermajority of states and local athletics governing bodies permitting NIL activities for their athletes, the Board's NIL prohibition is manifestly unsupported by reason.

65. Because the NIL Prohibition is contrary to the clear dictate of Senate Bill 452, the Board acted outside and in excess of its statutory authority in proposing, passing, and adopting the NIL Prohibition, and the prohibition thus was not made by the Board in good faith.

66. Because the Board acted beyond the authority provided to it by the General Assembly pursuant to Part XVII of Senate Bill 452, and because the Board's

NIL Prohibition is otherwise arbitrary and capricious, Plaintiff, on behalf of F.B., pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.* and North Carolina Rule of Civil Procedure 57, is entitled to a declaration that the Board's NIL Prohibition, policy ATHL-008, is invalid.

**MOTION FOR PRELIMINARY INJUNCTION**
**(N.C. Gen. Stat. § 1A-1, Rule 65)**

67. All preceding paragraphs are incorporated as if fully restated herein.

68. Senate Bill 452 expressly contemplates that public high school athletes will use their NIL for their own commercial benefit.

69. Accordingly, Senate Bill 452 directs the State Board of Education to regulate athletes' "use of name, image and likeness." 2023 N.C. Sess. L. 133, § 17. (a) (N.C. Gen. Stat. 115C-407.55(1)(h)).

70. Senate Bill 452 does not, however, permit the State Board of Education to make any rule it wishes, and certainly not to altogether prohibit NIL activities for public high school athletes. Consequently, the NIL Prohibition is an abuse of the State Board of Education's legislatively-granted authority under Senate Bill 452.

71. The harm to F.B. from the NIL Prohibition is also irreparable. Amongst other issues, F.B. is entirely precluded from entering into a formal licensing and endorsement agreement with NIL Sponsor 1 under the terms offered by NIL Sponsor 1, F.B. can never recover the time lost from entering his agreement with NIL Sponsor 1, and F.B. is foreclosed from accepting opportunities with other businesses interested in licensing F.B.'s NIL for commercial use.

72. F.B.'s harm cannot be remedied by monetary compensation. For one, the NIL Prohibition has irreparably constrained the time within which he could have entered an agreement with NIL Sponsor 1 or any other business related to the licensing and use of F.B.'s NIL for commercial purposes. Additionally, the term of F.B.'s proposed agreement with NIL Sponsor 1 ends upon his high school graduation, which is expected to be in December of 2025, and thus his current NIL licensing opportunity with NIL Sponsor 1 exists only while he is in high school. Third, the State Board of Education and Department of Public Instruction are immune from monetary damages, and thus financial or monetary relief is unavailable.

73. Once Senate Bill 452 became effective on October 3, 2023, the State Board of Education had a non-delegable authority to adopt rules regulating public high school athletes' use of their names, images, and likenesses. Because the State Board of Education had not adopted any such regulations prior to July 1, 2024, there was no prohibition against F.B. utilizing his name, image, and likeness for commercial purposes, particularly at the time he was presented with NIL Sponsor 1's proposed endorsement agreement. Therefore, the NIL Prohibition should be preliminarily enjoined to preserve the *status quo* pending final resolution of this litigation.

74. In adopting the NIL Prohibition, the State Board of Education acted beyond the authority provided to it by the General Assembly pursuant to Part XVII of Senate Bill 452. The State Board of Education's decision to altogether prohibit NIL activities for public high school students is not based on reasoned judgment or a

consideration of all pertinent facts, issues, and information, nor has the State Board of Education articulated a legitimate, reasoned justification for its prohibition, and thus the NIL Prohibition is arbitrary and capricious. Consequently, the NIL Prohibition is invalid. F.B. has been and continues to be irreparably harmed by the NIL Prohibition so long as it remains in place. The balance of equities and public interest favor enjoining enforcement of ATHL-008 until a trial can be had on the merits.

75. Accordingly, Plaintiff, on behalf of F.B., is entitled to a preliminary injunction, pursuant to North Carolina Rule of Civil Procedure 65, enjoining the enactment, effectiveness, and enforcement of State Board of Education policy ATHL-008, 16 NCAC 06E. 0208.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rolanda Brandon, on behalf of F.B., a minor, prays that the Court:

1. Enter a declaratory judgment, pursuant to N.C. Gen. Stat. § 1-253, *et seq.* and North Carolina Rule of Civil Procedure 57, declaring that the State Board of Education's adoption of policy ATHL-008 prohibiting public high school athletes in North Carolina from using their names, images, and likenesses for commercial purposes exceeded the authority granted to it by the General Assembly under Senate Bill 452, is arbitrary and capricious, and ATHL-008, 16 NCAC 06E. 0208, is therefore invalid, unenforceable, void and of no effect;

2. Enter an Order granting Plaintiff, on behalf of F.B., a minor, a preliminary injunction, pursuant to North Carolina Rule of Civil Procedure 65, enjoining the enactment, effectiveness, and enforcement of State Board of Education policy ATHL-008, 16 NCAC 06E. 0208;

3. Enter an Order granting Plaintiff, on behalf of F.B., a minor, a permanent injunction, pursuant to North Carolina Rule of Civil Procedure 65, enjoining the enactment, effectiveness, and enforcement of State Board of Education policy ATHL-008, 16 NCAC 06E. 0208; and

4. Provide such other and further relief as the Court may deem just and proper.

This the 23rd day of August, 2024.

**WOMBLE BOND DICKINSON (US) LLP**

*/s/Michael A. Ingersoll*
Matthew F. Tilley (N.C. Bar No. 40125)
Michael A. Ingersoll (N.C. Bar. No. 52217)
301 South College Street, Suite 3500
Charlotte, North Carolina 28202-6037
Telephone: (704) 331-4900
E-Mail: Matthew.Tilley@wbd-us.com
Mike.Ingersoll@wbd-us.com

*Counsel for Plaintiff Rolanda Brandon, on behalf of F.B., a minor.*

# EXHIBIT A

**GENERAL ASSEMBLY OF NORTH CAROLINA**
**SESSION 2023**

**SESSION LAW 2023-133**
**SENATE BILL 452**

AN ACT TO MAKE VARIOUS CHANGES TO THE INSURANCE LAWS OF NORTH CAROLINA, TO AMEND THE INSURANCE RATE-MAKING LAWS, AND TO REVISE HIGH SCHOOL INTERSCHOLASTIC ATHLETICS.

The General Assembly of North Carolina enacts:

## PART I. SURPLUS LINES ACT CLARIFYING CHANGES

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

"**§ 58-21-10. Definitions.**

As used in this Article:

(1) ~~"Admitted insurer" means an~~ Admitted insurer. – An insurer licensed to engage in the business of insurance in this State.

(1a) ~~"Affiliate" means, with~~ Affiliate. – With respect to an insured, includes any entity that controls, is controlled by, or is under common control with the insured.

(1b) ~~"Affiliated group" means any~~ Affiliated group. – Any group of entities that are all affiliated.

(2) ~~"Capital", as~~ Capital. – As used in the financial requirements of G.S. 58-21-20, ~~means~~ includes funds paid in for stock or other evidence of ownership.

(2a) ~~"Control" means an~~ Control. – An entity ~~that~~ has ~~'control'~~ control over another entity if either of the following occurs:

a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the other entity.

b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(3) ~~"Eligible surplus lines insurer" means an~~ Eligible surplus lines insurer. – An alien insurer as defined in G.S. 58-21-17, a nonadmitted domestic surplus lines insurer, or a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20.

(4) ~~"Export" means to~~ Export. – To place surplus lines insurance with a nonadmitted domestic surplus lines insurer or a nonadmitted insurer.

(4a) ~~"Nonadmitted domestic surplus lines insurer" means an~~ Nonadmitted domestic surplus lines insurer. – An insurer that is domiciled in and authorized pursuant to G.S. 58-21-21 to transact surplus lines insurance in this State.

(5) ~~"Nonadmitted insurer" means an~~ Nonadmitted insurer. – An insurer not licensed to do an insurance business in this State. "Nonadmitted insurer" includes insurance exchanges authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group, as defined in G.S. 58-22-10(10).

(6) ~~"Producing broker" means an~~ Producing broker. – An insurance producer licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.

(6a) ~~"Salary protection insurance" means insurance~~ Salary protection insurance. – Insurance against financial loss caused by the cessation of earned income because of disability from sickness, ailment, or bodily injury.

(7) ~~"Surplus", as~~ Surplus. – As used in the financial requirements of G.S. 58-21-20, ~~means~~ includes funds over and above liabilities and capital of the company for the protection of policyholders.

(8) ~~"Surplus lines insurance" means any~~ Surplus lines insurance. – Any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted domestic surplus lines insurer or a nonadmitted insurer eligible to accept ~~such~~ that insurance, including salary protection insurance. The term does not include ~~reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.~~any of the following:

a. Reinsurance.
b. Commercial aircraft insurance.
c. Insurance of property and operations of railroads engaged in interstate or foreign commerce.
d. Wet marine and transportation insurance.
e. Insurance independently procured pursuant to G.S. 58-28-5.
f. Life and accident or health insurance, and annuities.
g. Personal and commercial automobile liability insurance required to be written by licensed insurers pursuant to G.S. 58-37-5, excluding excess automobile liability insurance.

(9) ~~"Surplus lines licensee" means a~~ Surplus lines licensee. – A person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with a nonadmitted domestic surplus lines insurer or with nonadmitted insurers eligible to accept ~~such~~ that insurance.

(10) ~~"Wet marine and transportation insurance" means any~~ Wet marine and transportation insurance. – Includes any of the following:

…

e. Ocean marine insurance, as defined in G.S. 58-48-20."

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

"(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:

…

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

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

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

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

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

**PART II. TECHNICAL CORRECTION TO REFLECT COMPENDIUM NAME CHANGE**

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

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

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

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

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

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

**PART III. CHANGES RELATED TO THE INSURANCE GUARANTY ACT**

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

"**§ 58-48-20. Definitions.**

As used in this Article:

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

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

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

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

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

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

(4) ~~"Covered claim" means an~~ Covered claim. – An unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if ~~such~~ that insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State. "Covered claim" shall not include any amount awarded (i) as punitive or exemplary damages; (ii) sought as a return of premium under any retrospective rating plan; or (iii) due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation or contribution recoveries or otherwise. "Covered claim" also shall not include fines or penalties, including ~~attorneys~~ attorneys' fees, imposed against an insolvent insurer or its insured or claims of any claimant whose net worth

exceeds fifty million dollars ($50,000,000) on December 31 of the year preceding the date the insurer becomes insolvent.

(5) ~~"Insolvent insurer" means~~ Insolvent insurer. – An insurer: (i) ~~an insurer~~ licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

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

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

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

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

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

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

…."

**SECTION 3.(b)** G.S. 58-48-35(a)(1) reads as rewritten:

"(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. This obligation includes only the amount of each covered claim that is in excess of fifty dollars ($50.00) and is less than ~~three hundred thousand dollars ($300,000).~~ five hundred thousand dollars ($500,000). However, the Association shall pay the

full amount of a covered claim for benefits under a workers' compensation insurance coverage, and shall pay an amount not exceeding ten thousand 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 information within the possession, custody, or control of the affiliate. An affiliate holding the records and data of an insurer shall do all of the following:

a. Ensure, at no additional cost to the insurer, that the records and data controlled by the insurer are identifiable and segregated, or readily capable of segregation, from all other persons' records and data.

b. Provide to any receiver of the insurer, upon request: (i) a complete set of all records and data of any type that pertain to the insurer's business, (ii) access to the operating systems on which the records and data are maintained, and (iii) the software that runs those systems either through assumption of licensing agreements or otherwise. The receiver may restrict the use of the records and data by the affiliate if the affiliate is not operating the insurer's business.

c. In the event of the affiliate's default under a lease or other agreement, secure a waiver of any landlord lien or other encumbrance to provide the insurer access to all records and data.

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

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

…

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

…

f. Define ~~books and~~ records and data of the insurer to include all ~~books and records~~ information developed or maintained under or related to the ~~agreement.~~contract or agreement that are otherwise the property of the insurer. The definition of records and data shall include claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar information within the possession, custody, or control of the affiliate.

g. Specify that all ~~books and~~ records and data of the ~~insurer are and~~ insurer: (i) remain the property of the ~~insurer and are subject to the control of the insurer.~~insurer, (ii) are subject to the control of the insurer, and (iii) must, at no additional cost to the insurer, be held in a manner that ensures that the records and data controlled by the insurer

are identifiable and segregated, or readily capable of segregation, from all other persons' records and data.

…

i. Include standards for termination of the contract or agreement with and without cause.

j. Include provisions for indemnification of the ~~insurer~~ insurer: (i) in the event of gross negligence or willful misconduct on the part of the affiliate providing the ~~services.~~services or (ii) if the affiliate violates the terms required by sub-subdivisions k. through o. of this subdivision.

k. Specify that, if the insurer is placed in supervision, conservatorship, or receivership or seized by the Commissioner under Article 30 of this Chapter:

1. All of the rights of the insurer under the contract or agreement extend to the ~~receiver~~ receiver, conservator, or Commissioner.

2. All ~~books and~~ records ~~will immediately be made available to the receiver or the Commissioner and shall be turned over to the receiver or Commissioner immediately upon the receiver's or the Commissioner's request.~~and data of the insurer shall, at no additional cost to the receiver or Commissioner, be identifiable and segregated, or readily capable of segregation, from all other persons' records and data.

3. All records and data of the insurer shall be turned over to the receiver or Commissioner immediately upon the receiver's or the Commissioner's request. The records and data shall be turned over in a usable format, and the cost to transfer the records and data to the receiver or the Commissioner shall be fair and reasonable.

4. At the direction of the receiver or Commissioner, the affiliate shall make available all employees required to maintain the continued performance of operations or services of the insurer deemed essential by the receiver or Commissioner.

*l.* Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in ~~receivership pursuant to~~ supervision, conservatorship, or receivership, or seized by the Commissioner under Article 30 of this Chapter.

m. Specify ~~that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Commissioner under Article 30 of this Chapter, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.~~all of the following with respect to the performance of services after termination of the contract or agreement if the insurer is placed in supervision, conservatorship, receivership, or seized by the Commissioner under Article 30 of this Chapter.

1. That the affiliate shall, at the direction of the conservator or Commissioner, provide services deemed essential after termination of the contract or agreement.

2. That the contract or agreement shall specify the minimum period of time essential services shall be performed after the termination of the contract or agreement.

3. That, until the insured is released by the receiver, Commissioner, or a court order, performance of essential services after the termination of the contract or agreement shall be provided without regard to pre-receivership unpaid fees, if the affiliate continues to receive timely payment for post-receivership services rendered.

n. Specify that, if the insurer is placed in supervision, conservatorship, receivership, or seized by the Commissioner under Article 30 of this Chapter, the affiliate will do all of the following:

1. Maintain any systems, programs, or other infrastructure necessary to the performance of the contract or agreement.

2. Until the insured is released by the receiver, Commissioner, or a court order, make any systems, programs, or other infrastructure necessary to the performance of the contract or agreement available to the receiver or Commissioner, if the affiliate continues to receive timely payment for post-receivership services rendered.

o. Specify that, if the insurer is placed into receivership pursuant to Article 30 of this Chapter and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, then, subject to the receiver's authority over the insurer, the affiliate's commitments under sub-subdivisions k. through n. of this subdivision will extend to the affected guaranty associations.

...

Nothing in this section authorizes or permits any transactions that, in the case of an insurer, not a member of the same insurance holding company system, would be otherwise contrary to law. A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the Commissioner determines that such separate transactions were entered into over any 12-month period for that purpose, the Commissioner may exercise the Commissioner's authority under G.S. 58-19-50. The Commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders. The Commissioner shall be notified within 30 days after any investment of a domestic insurer in any one corporation if, as a result of the investment, the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

...

(d) For the purposes of this Article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the factors set forth in subdivisions (1) through (11) of this subsection, among others, shall be considered. In determining the adequacy of an insurer's surplus, no single factor is controlling. The Commissioner will consider the net effect of all of the factors in subdivisions (1) through (11) of this subsection, plus other factors bearing on the financial condition of the insurer. The factors are:

...

(f) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to subdivision (b)(4) of this section shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of the Commissioner or any supervisor, conservator, rehabilitator, or liquidator for the insurer

appointed pursuant to Article 30 of this Chapter for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that meet any of the following requirements:

(1) The services are an integral part of the insurer's operations, including management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions.

(2) The services are essential to the insurer's ability to fulfill its obligations under insurance policies.

The Commissioner may require that an agreement or contract pursuant to subdivision (b)(4) of this section for the provision of services described in subdivisions (1) and (2) of this subsection specify that the affiliate consents to the jurisdiction as set forth in this subsection."

**SECTION 4.(b)** This section becomes effective October 1, 2023, and applies to contracts issued, renewed, or amended on or after that date.

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

**SECTION 5.** G.S. 58-30-1(a) reads as rewritten:

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

## PART VI. CHANGES RELATED TO THE ADMINISTRATION OF WORKERS' COMPENSATION LARGE DEDUCTIBLE POLICIES AND INSURED COLLATERAL IN LIQUIDATION PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To the extent the Association or a foreign guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, the Association or foreign guaranty association shall be entitled to the full amount of the reimbursement and available collateral as provided for under this section to the extent necessary

to reimburse the Association or the foreign guaranty association. Reimbursements paid to the Association or to a foreign guaranty association pursuant to this subdivision shall not be included in any proposal submitted to the court to disburse assets under G.S. 58-30-180 in any report submitted to the court under G.S. 58-30-225, or as any distribution of assets by the liquidator in the domiciliary state.

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

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

(f) Collections. –

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

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

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

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

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

(g) Collateral. –

(1) Subject to the provisions of this subsection and the rights of the Association or a foreign guaranty association, the liquidator of the insurer in this State or

the domiciliary state shall utilize collateral, when available, to secure the obligation of the insured to fund or reimburse deductible claims or other secured obligations. The Association or a foreign guaranty association shall be entitled to all collateral as provided for in this subsection to the extent needed to reimburse the Association or a foreign guaranty association for the payment of deductible claims. Any distributions made to the Association or to a foreign guaranty association pursuant to this subsection shall not be included in any proposal submitted by the liquidator to the court to disburse assets under G.S. 58-30-180, or in any report submitted to the court under G.S. 58-30-225, or as any distribution of assets in the domiciliary state.

(2) All claims against the collateral shall be paid in the order received, and no claim of the liquidator of the insurer in this State or the domiciliary state, including those described in or arising under this subsection, shall supersede or take priority over any other claim against the collateral made by the Association or a foreign guaranty association. However, to the extent that the collateral is subject to other known secured obligations, or if more than one creditor has a valid claim against the same collateral and the available collateral, including future billing and collection efforts, are together insufficient to pay each creditor in full, the liquidator of the insurer in this State or in the domiciliary state may prorate payments from the proceeds of the collateral based on the ratio of the amount of claims each creditor has to the sum or all claims of all creditors with claims against the involved collateral.

(3) The liquidator of the insurer in this State or the domiciliary state shall draw down collateral to the extent necessary in the event that the insured fails to do any of the following:

a. Perform its funding or payment obligations under any large deductible policy.

b. Pay deductible claim reimbursements within the time specified in the large deductible policy or within 60 days after the date of the billing if no time is specified.

c. Pay amounts due the estate for pre-liquidation obligations.

d. Timely fund any other secured obligation.

e. Timely pay expenses.

(4) Excess collateral may be returned to the insured as determined by the liquidator of the insurer in this State or the domiciliary state after a periodic review of claims paid, outstanding case reserves and a factor for incurred but not reported claims.

(5) This section shall not limit or adversely affect any rights or powers the Association or a foreign guaranty association may have pursuant to other applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the Association or a foreign guaranty association arising under policies of the insolvent insurer, or for related expenses the Association or a foreign guaranty association incurs.

(6) Notwithstanding any other provision of this section, if the liquidator of the insurer in this State or the domiciliary state and the Association or a foreign guaranty association agree that the liquidator will collect reimbursements owed for deductible claims, the liquidator is entitled to deduct from the large deductible claim collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the large deductible claim collateral and deductible reimbursements."

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

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

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

"**§ 58-33-5. License required.**

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

## PART VIII. AMEND ON-SITE AUDIT REQUIREMENTS FOR THIRD-PARTY ADMINISTRATORS

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

"(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.

In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant. The court may award the prevailing party compensatory damages, attorneys' fees, costs, and

reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages.

(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."

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

## PART X. ADDITIONAL CERTIFICATE OF INSURANCE PROHIBITIONS

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

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

...

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

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

## PART XI. AUTHORIZE INSURANCE PREMIUM CONVENIENCE FEES

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

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

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

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

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

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

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

## PART XII. INCREASE MINIMUM LIABILITY LIMITS FOR INSURANCE REQUIRED BY THE STATE AND CHANGE THE MANNER OF CALCULATING THE TOTAL APPLICABLE AMOUNT OF UNDERINSURANCE COVERAGE

**SECTION 12.(a)** G.S. 20-279.1(11) reads as rewritten:

"(11) "Proof of financial responsibility": Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ~~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, in the amount of ~~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 in the amount of ~~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. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties, providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance."

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

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

...

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than ~~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, to a limit of not less than ~~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, if the accident has resulted in injury to or destruction of property, to a limit of not less than ~~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."

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

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

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

(1) When ~~thirty thousand dollars ($30,000)~~ fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of ~~thirty thousand dollars ($30,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person, the sum of ~~sixty thousand dollars ($60,000)~~ one hundred thousand dollars ($100,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

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

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

"(b) Except as provided in G.S. 20-309(a2), such owner's policy of liability insurance:

...

(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

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. The provisions shall include coverage for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured. The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the

policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by ~~law; provided however, that the~~ law. The insurer may also be issued a summons, complaint, or other process as an unnamed party and served by registered or certified mail, return receipt requested, or in any manner provided by law. Service outside of the statute of limitations shall be valid so long as the summons has been properly issued, preserved, and served pursuant to North Carolina Rule of Civil Procedure 4. The determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy

of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

...

(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this subsection. The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than ~~the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy.~~ the total damages sustained by an individual seeking payment of benefits under this subdivision. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if all bodily injury liability bonds and insurance policies applicable to such highway vehicle at the time of the accident are exhausted and the total amount actually paid to that person ~~under~~ from the exhaustion of all bodily injury liability bonds and insurance policies applicable to such highway vehicle at the time of the accident is less than ~~the applicable limits of underinsured~~

~~motorist coverage for the vehicle involved in the accident and insured under the owner's policy.~~ the total damages sustained by such person seeking payment of benefits under this subdivision. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability ~~limits.~~ limits, in which event the available underinsured motorist coverage is that amount of underinsured motorist coverage under the owner's policy insuring that vehicle which exceeds the policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single ~~liability~~ claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid or tendered upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been ~~paid.~~ paid or tendered. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability ~~policy.~~policy or policies applicable to the underinsured highway vehicle at the time of the accident. The amount of underinsured motorist coverage applicable to any claim for benefits under this subdivision shall not be reduced by a setoff or credit against any coverage, including liability insurance, except for workers' compensation coverage to the extent provided for in subsection (e) of this section. If a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the total amount of underinsured motorist coverage applicable to the claimant is the sum of the limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy, and shall not be reduced by a setoff against any coverage, including liability insurance, except for workers' compensation coverage to the extent provided for in subsection (e) of this section.

~~In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private~~

~~passenger motor vehicles as described in G.S. 58-40-15(9) and (10).~~ The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge,

in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase greater or lesser underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection."

**SECTION 12.(e)** G.S. 20-279.21(m) reads as rewritten:

"(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall, when issuing and renewing a policy, give reasonable notice to the named insured of all of the following:

(1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, ~~and, if applicable,~~ and underinsured motorist bodily injury coverage.

...

(4) The named insured's underinsured motorist bodily injury coverage ~~limits, if applicable,~~ limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.

...

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 12 point type:

NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

**SECTION 12.(f)** G.S. 20-279.25(a) reads as rewritten:

"(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him ~~eighty-five thousand dollars ($85,000)~~ one hundred fifty thousand dollars ($150,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of ~~eighty-five thousand dollars ($85,000).~~ one hundred fifty thousand dollars ($150,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such

certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides."

**SECTION 12.(g)** 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.(h)** G.S. 58-37-35(b)(1) reads as rewritten:

"(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;

d. Uninsured motorist: ~~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 for bodily injury; ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission."

**SECTION 12.(i)** This section becomes effective January 1, 2025, and applies to policies issued or renewed on or after that date.

## PART XIII. CLARIFY TIME LINE FOR COMPLIANCE WITH MEDICAL RECORDS SUBPOENA

**SECTION 13.** G.S. 44-49(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, no lien provided for under subsection (a) of this section is valid with respect to any claims whatsoever unless the physician, dentist, nurse, hospital, corporation, or other person entitled to the lien furnishes, without charge to the attorney as a condition precedent to the creation of the lien, upon request to the attorney representing the person in whose behalf the claim for personal injury is made, within 60 days of receipt of the request, an itemized statement, hospital record, or medical report for the use of the attorney in the negotiation, settlement, or trial of the claim arising by reason of the personal injury, and a written notice to the attorney of the lien claimed."

## PART XIV. INCREASING SMALL EMPLOYER ACCESS TO STOP LOSS, CATASTROPHIC, AND REINSURANCE COVERAGE

**SECTION 14.(a)** G.S. 58-50-130(a)(5) reads as rewritten:

"(5) No small employer carrier, insurer, subsidiary of an insurer, or controlled individual of an insurance holding company shall provide stop loss, catastrophic, or reinsurance coverage to small employers who employ fewer than ~~20~~ 12 eligible employees that does not comply with the underwriting, rating, and other applicable standards in this Act. An insurer shall not issue a stop loss health insurance policy to any person, firm, corporation, partnership, or association defined as a small employer that does any of the following:

a. Provides direct coverage of health expenses payable to an individual.

b. Has an annual attachment point for claims incurred per individual that is lower than twenty thousand dollars ($20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.

c. Has an annual aggregate attachment point lower than the greater of one of the following:

1. One hundred twenty percent (120%) of expected claims.

2. Twenty thousand dollars ($20,000) for plan years beginning in 2013. For subsequent policy years, the amount shall be indexed using the Consumer Price Index for Medical Services for All Urban Consumers for the South Region and shall be rounded to the nearest whole thousand dollars. The index factor shall be the index as of July of the year preceding the change divided by the index as of July 2012.

Nothing in this subsection prohibits an insurer from providing additional incentives to small employers with benefits promoting a medical home or benefits that provide health care screenings, are focused on outcomes and key performance indicators, or are reimbursed on an outcomes basis rather than a fee-for-service basis."

**SECTION 14.(b)** This section becomes effective October 1, 2024, and applies to contracts issued, renewed, or amended on or after that date.

## PART XV. RAISING BEACH PLAN POLICY LIMITS

**SECTION 15.(a)** G.S. 58-45-41(a) reads as rewritten:

"(a) The Association shall cause to be issued insurance up to the reasonable value of the insurable property, subject to a maximum of ~~seven hundred fifty thousand dollars ($750,000)~~ one

million dollars ($1,000,000) on habitational property. The above limits on habitational property shall apply to the value of the building only. Insurance issued by the Association for commercial property shall not exceed ~~three~~ four million dollars ~~($3,000,000)~~ ($4,000,000) on any freestanding structure or any building unit within multiple firewall divisions, provided the aggregate insurance on structures with multiple firewall divisions shall not exceed ~~six~~ ten million dollars ~~($6,000,000)~~ ($10,000,000) on all interest at one risk."

**SECTION 15.(b)** This section is effective 30 days after it becomes law and applies to contracts issued, amended, or renewed on or after that date.

## PART XVI. AMEND INSURANCE RATE-MAKING LAWS

**SECTION 16.(a)** G.S. 58-36-10(2) reads as rewritten:

"(2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to investment income from capital and surplus; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available."

**SECTION 16.(b)** G.S. 58-36-43(a) reads as rewritten:

"(a) Member companies writing private passenger automobile or homeowners' insurance under this Article may incorporate optional enhancements to their automobile and homeowners' programs as an endorsement to an automobile or homeowners' policy issued under this Article if the insurer has filed the proposed enhancement with the Commissioner and if the proposed enhancement is approved by the Commissioner. Any approved optional enhancements shall be considered outside the authority of the Rate Bureau. If the proposed enhancement will include an additional premium charge, the proposed premium charge shall be included with the proposed program enhancements filed with the Commissioner. The Commissioner shall review the proposed premium charges and approve them if the Commissioner finds that they are based on sound actuarial principles. Amendments to private passenger automobile or homeowners' program enhancements are subject to the same requirements as initial filings. ~~Neither the acceptance, renewal of a policy, nor any underwriting rating criteria shall be conditioned by a company upon the acceptance by the policyholder of any optional automobile or homeowners' enhancements.~~

A company shall not condition (i) the acceptance or renewal of a policy, (ii) any underwriting criteria, or (iii) any rating criteria upon the acceptance by the policyholder of any optional automobile or homeowners' enhancements authorized by this section. A rate amendment authorized by this section is not a rate deviation and is not subject to the requirements for rate deviations set forth in G.S. 58-36-30(a)."

**SECTION 16.(c)** G.S. 58-36-43(b) is repealed.

**SECTION 16.(d)** G.S. 58-36-65(i) reads as rewritten:

"(i) As used in this section, "conviction" means a ~~conviction as defined in G.S. 20-279.1~~ plea of guilty, a plea of no contest, or the determination of guilt by a jury or by a court, even if no sentence has been imposed or, if imposed, has been suspended, and it includes a forfeiture of

bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated, and means an infraction as defined in G.S. 14-3.1."

**SECTION 16.(e)** G.S. 58-36-65(j) reads as rewritten:

"(j) Subclassification plan surcharges shall be applied to a policy for a period of not less nor more than three policy years. However, for convictions for which four or more points under the Plan are assigned, other than convictions for speeding in excess of the posted speed limit, subclassification plan surcharges shall be applied to a policy for a period of not less nor more than five policy years."

**SECTION 16.(f)** G.S. 58-36-65(k) reads as rewritten:

"(k) ~~The~~ For insureds receiving a drivers license for the first time on or before January 1, 2025, the subclassification plan may provide for premium surcharges for insureds having less than three years' driving experience as licensed drivers. Notwithstanding subsection (j) of this section, for insureds receiving a drivers license for the first time on or after January 1, 2025, the subclassification plan may provide for premium surcharges for insureds having less than eight years' driving experience as licensed drivers."

**SECTION 16.(g)** G.S. 58-36-65 is amended by adding a new subsection to read:

"(k1) Licensed drivers subject to premium surcharges pursuant to subsection (k) of this section for a period of up to eight years may be eligible for an inexperienced safe driver discount after three full years of driving experience. To be eligible for the premium discount, an inexperienced licensed driver cannot have any at-fault accidents or convictions on their driving record, whether or not such at-fault accidents or convictions result in the assignment of points under the Plan. Any at-fault accidents or convictions shall preclude the inexperienced licensed driver from being eligible for the premium discount for a period of five years. Eligibility for the premium discount terminates once the inexperienced driver has been licensed for eight years or when the inexperienced driver has any at-fault accidents or convictions. For purposes of this subsection, convictions on a driving record shall include convictions for which a prayer for judgment continued was granted. Any inexperienced safe driver discount shall be filed by the Bureau for approval with the Commissioner."

**SECTION 16.(h)** G.S. 58-36-75(f) reads as rewritten:

"(f) The subclassification plan shall provide that with respect to a conviction for a "violation of speeding 10 miles per hour or less over the speed limit" there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations, except for a prayer for judgment continued for any moving traffic violation, during the ~~three~~ five years immediately preceding the date of application or the preparation of the renewal. The subclassification plan shall also provide that with respect to a prayer for judgment continued for any moving traffic violation, there shall be no premium surcharge nor any assessment of points unless the vehicle owner, principal operator, or any licensed operator in the owner's household has a driving record consisting of a prayer or prayers for judgment continued for any moving traffic violation or violations during the ~~three~~ five years immediately preceding the date of application or the preparation of the renewal. For the purpose of this subsection, a "prayer for judgment continued" means a determination of guilt by a jury or a court though no sentence has been imposed. For the purpose of this subsection, a "violation of speeding 10 miles per hour or less over the speed limit" does not include the offense of speeding in a school zone in excess of the posted school zone speed limit."

**SECTION 16.(i)** The Department of Insurance shall conduct public outreach regarding how the provisions of this act may impact insurance premiums for policyholders and both experienced and inexperienced drivers. This public outreach shall include information published on the Department's website and may be coordinated with members of the insurance industry and the North Carolina Rate Bureau.

**SECTION 16.(j)** This section becomes effective January 1, 2025.

**PART XVII. REVISE OVERSIGHT OF HIGH SCHOOL INTERSCHOLASTIC ATHLETICS**

**SECTION 17.(a)** Article 29E of Chapter 115C of the General Statutes reads as rewritten:

"Article 29E.

"High School Interscholastic Athletic Activities.

"Part 1. Definitions.

**"§ 115C-407.50. Definitions.**

The following definitions apply in this Article:

(1) Administering organization. – A nonprofit organization that has entered into and is in compliance with a memorandum of understanding with the ~~State Board of Education~~ Superintendent of Public Instruction to administer and enforce the adopted rules and requirements of this Article for interscholastic athletic activities at the high school level.

(1a) Associated entity. – A foundation, association, corporation, limited liability company, partnership, or other nonprofit entity that meets any of the following criteria:

a. Was established by the administering organization or officers of the administering organization.

b. Is controlled by the administering organization.

c. Raises funds in the name of the administering organization.

d. Has a primary purpose of providing services or conducting activities in furtherance of the administering organization's mission pursuant to an agreement with the administering organization.

e. Has a tax-exempt status that is based on being a support organization for the administering organization.

...

(6) Parent. – The parent or legal guardian of a student participating or seeking to participate in interscholastic athletic activities.

(7) Participating school. – A high school that elects to offer interscholastic athletic activities.

"Part 2. Oversight of Interscholastic Athletic Activities.

**"§ 115C-407.55. Rules for high school interscholastic athletic activities.**

The State Board of Education shall adopt rules governing high school interscholastic athletic activities conducted by public school units that include the following:

(1) Student participation rules. – These rules shall govern student eligibility to participate in interscholastic athletic ~~activities and~~ activities. The adoption of these rules shall not be delegated to an administering organization, and student participation rules shall not be altered or expanded by an administering organization. The rules shall include, at a minimum, ~~academic standards, enrollment~~ the following:

a. Academic standards.

b. Enrollment and transfer ~~requirements, attendance requirements, medical~~ requirements, including the following:

1. A student who is not domiciled in a local school administrative unit but enrolls in that unit pursuant to G.S. 115C-366(d) shall not be eligible to participate in interscholastic athletic activities in that unit if the student's enrollment in that unit is solely for athletic participation purposes. A student determined to be ineligible under this sub-sub-subdivision shall be ineligible to

participate in postseason play for one year following discovery of the violation.

2. A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school if the Office of Charter Schools determines that the parent's employment was a fraudulent basis for the student's priority enrollment. A student determined to be ineligible under this sub-sub-subdivision shall be ineligible to participate in postseason play for one year following discovery of the violation.

c. Attendance requirements.

d. Medical eligibility ~~requirements, recruiting limitations, and hardship exceptions.~~requirements.

e. Biological participation requirements as required by G.S. 115C-407.59.

f. Recruiting limitations.

g. Hardship exceptions that may be granted by the independent appeals board established by subdivision (4) of this section.

h. Student amateur status requirements, including rules related to use of a student's name, image and likeness.

(2) Student health and safety rules. – These rules shall govern requirements to ensure student health and safety during participation in interscholastic athletic activities, including rules related to concussions and emergency action plans as required by ~~G.S. 115C-12(23).~~G.S. 115C-407.57 and G.S. 115C-407.58. The adoption of these rules shall not be delegated to an administering organization and student health and safety rules shall not be altered or expanded by an administering organization.

(3) Penalty rules. – These rules shall establish a system of demerits for infractions of student participation rules and gameplay rules which may result in reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and ~~disqualifications.~~ disqualifications but shall not result in monetary penalties of any kind. The State Board may by rule delegate the authority to establish all or a portion of the penalty rules to an administering organization.

(4) Appeals rules. – These rules shall establish an appeals process that provides due process to students, parents, and participating schools for enforcement of ~~rules that provides for~~ rules through hearings held before an independent appeals board. The adoption of these rules may not be delegated to an administering organization and appeals rules shall not be altered or expanded by an administering organization. The rules shall require the following:

a. The Superintendent of Public Instruction shall appoint an independent appeals ~~board, notice~~ board.

b. Notice of the infraction and the appeals process shall be provided to the party that receives the ~~penalty, and an~~ penalty.

c. An opportunity to be heard before the independent appeals ~~board.~~board shall be given to the entity that receives the penalty.

d. A student and that student's parent shall be allowed to appeal a penalty resulting from the application of any rule that restricts an individual student from participating in a season, game, or series of games, and

shall be provided a written copy of the rule that is the basis for the penalty.

e. The independent appeals board shall have authority to grant hardship exceptions in accordance with rules established under subdivision (1) of this section.

(5) Administrative rules. – These rules shall govern classifications of schools into divisions and conferences, administration of games, and requirements for coaching, officiating, sportsmanship, and scheduling of seasons. The State Board may by rule delegate the authority to establish all or a portion of the administrative rules to an administering organization.

(6) Gameplay rules. – These rules shall be adopted in accordance with the requirements of the governing organization for each sport, including the requirements of the National Federation of State High School Associations. The State Board may by rule delegate the authority to establish all or a portion of the gameplay rules to an administering organization.

(7) Fees. – These rules shall establish the fees and other amounts that may be charged to a participating school for participation in interscholastic athletic activities. ~~The State Board may by rule delegate the authority to establish all or a portion of the fees to an administering organization.~~The adoption of these rules shall not be delegated to an administering organization and fees shall not be altered or expanded by an administering organization.

(8) Administering organization rules. – These rules shall require that to be designated as an administering organization, a nonprofit must enter into and remain compliant with a memorandum of understanding with the ~~State Board.~~ Superintendent of Public Instruction consistent with the requirements of G.S. 115C-407.61. The adoption of these rules shall not be delegated to an administering organization and administering organization rules shall not be altered or expanded by an administering organization. The rules shall also require the following:

a. The State Board may, by majority vote, invalidate any rule or regulation adopted by the administering organization.

b. The administering organization be audited annually by a reputable independent auditing firm, engage in open ~~meetings as set out in the memorandum of understanding,~~ meetings, and provide the State Board access to records of the administering organization, including financial information, annual audit reports, and any matters related to or impacting participating ~~schools.~~schools, and to any audits of associated entities. An independent auditing firm is a firm which performs no other tasks or functions for the administering organization besides the annual audit.

c. The administrating organization shall enter into written agreements with each participating school.

d. The memorandum of understanding shall incorporate by reference any subsequent changes to rules or statutes made after the parties enter into the memorandum.

(9) Reporting rules. – These rules shall establish a process for reporting issues or concerns related to the administration of interscholastic athletic ~~activities.~~activities, including intimidation or harassment of the participating school or its employees or students by an administering organization. The adoption of these rules may not be delegated to an administering organization

and reporting rules shall not be altered or expanded by an administering organization.

"Part 3. Memorandum of Understanding.

**"§ 115C-407.60. Administration and enforcement of high school interscholastic athletic activity rules.**

(a) The ~~State Board of Education~~ Superintendent of Public Instruction may enter into a memorandum of understanding for a term of four years with one or more nonprofit organizations to administer and enforce the requirements of this Article and the rules adopted by the State Board for interscholastic athletic activities at the high school level. A memorandum of understanding shall include the requirements of G.S. 115C-407.61 and shall comply with the requirements of this Article. If the State Board by rule delegates the authority to establish certain rules to an administering organization, as provided in G.S. 115C-407.55, the administering organization shall not be required to comply with the requirements of Chapter 150B of the General Statutes in establishing those rules.

(a1) The State Auditor is authorized to conduct audits of any administering organization in the same manner as for State agencies in accordance with Article 5A of Chapter 147 of the General Statutes, if the State Auditor deems an audit necessary.

(b) If the ~~State Board~~ Superintendent is unable to enter into a memorandum of understanding, the State Board shall assign the administration of high school interscholastic athletic activities to the ~~Department~~ Superintendent of Public Instruction and establish fees sufficient to support the administration of the program.

(c) An administering organization is a public body for the purposes of Article 33C of Chapter 143 of the General Statutes.

**"§ 115C-407.61. Memorandum of understanding requirements.**

(a) If the Superintendent of Public Instruction enters into a memorandum of understanding with a nonprofit organization as provided in G.S. 115C-407.60, the memorandum shall require that organization to do the following in accordance with the requirements of this Article to maintain the authority to administer and enforce the requirements for high school interscholastic athletic activities:

(1) Apply, enforce, and administer all rules adopted by the State Board without alteration or expansion.

(2) If delegated by the State Board, adopt, apply, enforce, and administer administrative rules, gameplay rules, and penalty rules. A rule shall not be adopted by an administering organization until the organization has provided for publication of the proposed rule on the organization's website and provided the opportunity to the public for notice and comment on the rule. All adopted rules shall be provided within 15 days to the Superintendent for review. If the Superintendent determines that the rule adopted by an administering organization is unenforceable, the Superintendent shall notify the State Board and the administering organization shall not enforce the rule. Upon notice from the Superintendent, the State Board may either require the administering organization to revise the rule and resubmit it to the Superintendent or may rescind the delegation of authority and adopt a rule by emergency rule.

(3) Make publicly available at no cost on the administering organization's website the following:

a. The organization's handbook for participating schools.

b. All student participation rules.

c. All gameplay rules.

d. Information on the appeals process, including specific information on how to make an appeal.

e. Fees charged to participating schools for participation in interscholastic activities, including membership in the administering organization and post-season game participation.

(4) Agree to adopt requirements for membership of the nonprofit board that require equal representation on the board from each educational district established as provided in G.S. 115C-65, and a member appointed by the Superintendent of Public Instruction.

(5) Adopt an ethics policy that requires board members to avoid conflicts of interest and the appearance of impropriety.

(6) Agree to adopt procedures for its operations that are comparable to those of Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Superintendent. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.

(7) Apply the standards established by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, to all student records containing personally identifiable information in the possession of the administering organization. The administering organization shall be authorized to display and share student information designated by a participating school as directory information unless the participating school indicates that a parent has opted out of disclosure of that information. Other than directory information, all student records containing personally identifiable information held by the administering organization are not public records and should not be released under procedures adopted in accordance with subdivision (6) of this subsection.

(8) Enter into contracts with participating schools as to the monetary requirements for participation, including the payment of reasonable annual fees by participating schools as needed to support the duties of the administering association. Annual fees may vary based on the division to which the school is assigned. All fees shall be in compliance with the State Board's fee rules.

(9) Agree to reduce annual fees to participating schools by a minimum of twenty percent (20%) when the total fund balance for the administering organization and any associated entity is two hundred fifty percent (250%) of the administering organization's total expenses from the prior fiscal year. The administering organization may increase annual fees to participating schools, consistent with the State Board's rules on fees, when the total fund balance for the administering organization and any associated entity is one hundred fifty percent (150%) of the organization's total expenses from the prior fiscal year.

(10) Agree to retain no more than thirty-three percent (33%) of the net proceeds of any State tournament game.

(11) Agree to be audited annually by a reputable independent auditing firm that meets, at a minimum, the standards required by the Local Government Commission for certification to audit local government accounts as provided in G.S. 159-34, and to be audited by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes, if the State Auditor deems an audit necessary. An independent auditing firm is a firm which performs no other tasks or functions for the administering organization besides the annual audit.

(12) Agree to not establish, control, or receive funds from an associated entity unless the associated entity agrees to all of the following:

a. An annual audit as provided in subdivision (11) of this subsection that will be made available to the Superintendent of Public Instruction.

b. A prohibition on engagement in any of the activities prohibited under subdivision (13) of this subsection.

c. A prohibition on receipt of any of the administering organization's funds or proceeds of State tournament games.

(13) Agree to not engage in any of the following activities:

a. Solicit grant funding and sponsorships from third-party organizations, other than for State tournament games.

b. Provide grants to schools regulated by the administering organization.

c. Provide scholarships to players, except when funded by donor-directed funds.

d. Designate the use of specific or preferred vendors or require the use of any single-source or vendor specific contracts.

e. Retain a percentage of gate receipts for games other than State tournament games.

f. Regulate or control the intellectual property of schools, including team logos, mascots, and audio or video of any game other than the State tournament games.

g. Restrict the recording of audio or video at a State tournament game by any parent of a student participating in the game or any employee of the school participating in the game.

h. Retain any portion of receipts collected from ticket sales, concessions, or sale of merchandise by a participating school.

i. Retaliate against participating schools, or the employees or students of those schools, for reporting to the administering organization, the State Board, or any other government entity on any of the following topics. For the purposes of this sub-subdivision, "retaliate" does not include the application of a penalty rule that is appealable to an independent appeals board.

1. Violations of laws or rules.
2. Fraud.
3. Misappropriation of resources.
4. Substantial and specific danger to student or employee health and safety.
5. Gross mismanagement or abuse of authority.

j. Prohibit or restrict a participating school from scheduling a nonconference game during the regular season or take any portion of ticket seasons from those games.

(15) Report annually by December 1 to the Superintendent of Public Instruction and the State Board of Education on the following:

a. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics.

b. A copy of both the most recent annual audit conducted by the independent auditing firm and any audit conducted by the State Auditor.

c. A schedule of current fees charged to participating schools.

d. The amount of fees and gate receipts collected.

e. The current fund balance for the administering organization.

(b) The Superintendent may terminate any memorandum of understanding for noncompliance with this Article or the terms of the memorandum of understanding. In the event of termination of a memorandum of understanding, the nonprofit organization shall return to each

participating school a pro rata share of the funds paid by that school for the year as provided in the participating school's contract with the organization.

(c) The Superintendent may renew a memorandum of understanding with an administering organization for an additional term of four years. If the Superintendent or administering organization do not intend to renew a memorandum of understanding, that entity shall provide written notice to the other party a minimum of six months prior to the expiration of the memorandum of understanding.

"Part 4. Public School Unit Conduct of Interscholastic Athletic Activities.

**"§ 115C-407.65. Conduct of high school interscholastic athletic activities by public school units.**

(a) All public school units with participating schools shall conduct high school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education and as administered and enforced by either an administering organization that is in compliance with the memorandum of understanding or the ~~Department~~ Superintendent of Public Instruction. Public school units shall not be regulated by any other entities for regular and postseason high school interscholastic athletics.

(b) Participating schools shall purchase catastrophic insurance for high school interscholastic athletic activities as provided in Part 2 of Article 31A of Chapter 58 of the General Statutes.

**"§ 115C-407.70. Middle school interscholastic athletic activities.**

(a) The State Board of Education shall adopt rules governing middle school interscholastic athletic activities conducted by public school units consistent with the requirements of G.S.115C-407.55 for student participation rules, student health and safety rules, penalty rules, appeals rules, administrative rules, gameplay rules, fee rules, and reporting rules.

(b) The rules adopted by the State Board of Education for interscholastic athletic activities at the middle school level shall be administered by the Superintendent of Public Instruction.

(c) All public school units with schools that participate in middle school interscholastic athletics shall conduct middle school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education and as administered and enforced by the Superintendent of Public Instruction.

"Part 5. Public School Unit Reports.

**"§ 115C-407.75. Public school units annual interscholastic athletic reports.**

(a) Each public school unit with one or more participating schools shall annually report by June 15 the following information to the Superintendent of Public Instruction and the State Board of Education:

(1) The total dollar amount spent on interscholastic athletic activities, by the following categories:
- a. Administering association fees.
- b. Salaries or stipends for coaches and faculties for duties associated solely with interscholastic athletics.
- c. Capital costs, including new construction, repair and renovation, and maintenance costs for existing athletic facilities.
- d. Uniform and equipment costs.
- e. Travel and transportation costs.
- f. Officiating costs.
- g. Other identified costs.

(2) The total dollar amount received from interscholastic athletic activities, including funds held in special funds of individual schools, by the following categories:
- a. Gate receipts.

b. Concession sales.
c. Merchandise sales or sales of items directly related to interscholastic athletics, including apparel and audiovisual materials.
d. Student fees.
e. Monetary and in-kind contributions from third-party organizations.
f. State or local funding expended on capital costs for athletic facilities.
g. Other identified sources of funds.

(b) The Superintendent of Public Instruction shall provide a summary of the reports by public school units and a copy of each public school unit report to the Joint Legislative Education Oversight Committee no later than October 15 annually."

**SECTION 17.(b)** G.S. 143-318.10(b) reads as rewritten:

"(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" ~~means the~~ means the following:

(1) The governing board of a "public hospital" as defined in ~~G.S. 159-39 and the~~ G.S. 159-39.
(2) The governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.
(3) An administering organization as defined in G.S. 115C-407.50(1)."

**SECTION 17.(c)** In accordance with the requirement that the memorandum of understanding incorporate by reference subsequent changes to statutes made after the parties enter into the memorandum of understanding, the Superintendent of Public Instruction shall be substituted for the State Board of Education in any memorandum of understanding existing as of the date this act becomes law.

**SECTION 17.(d)** This section applies beginning with the 2024-2025 school year and thereafter.

## PART XVIII. RECODIFICATION AND REORGANIZATION OF CURRENT INTERSCHOLASTIC ATHLETICS STATUTES

**SECTION 18.(a)** G.S. 115C-12(23), as amended by S.L. 2023-109, reads as rewritten:

"(23) Power to Adopt Rules for Interscholastic Athletic Activities. – The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by ~~local boards of education,~~ public school units, including eligibility for student participation, in accordance with ~~this subdivision and~~ Article 29E of this Chapter. ~~With regard to middle schools and high schools, the rules shall provide for the following:~~

~~a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach~~

~~before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.~~

~~For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.~~

~~b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.~~

~~c. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.~~

~~d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.~~

~~e. All teams participating in interscholastic or intramural athletic activities shall comply with the following:~~

~~1. Each team shall be expressly designated by the biological sex of the team participants as one of the following:~~

~~I. Males, men, or boys.~~

~~II. Females, women, or girls.~~

~~III. Coed or mixed.~~

~~2. Athletic teams designated for females, women, or girls shall not be open to students of the male sex.~~

~~3. For purposes of this sub-subdivision, a student's sex shall be recognized based solely on the student's reproductive biology and genetics at birth.~~

~~f. A student who is deprived of an athletic opportunity or suffers or is likely to suffer from any direct or indirect harm as a result of a~~

~~violation of sub-subdivision e. of this subdivision may assert that violation as a cause of action for remedies provided for in sub-subdivision i. of this subdivision.~~

~~g. A student who is subjected to retaliation or other adverse action by a public school unit, administering organization as defined in G.S. 115C-407.50, or other organization as a result of reporting a violation of sub-subdivision e. of this subdivision to an employee or representative of the public school unit, administering organization, or to any local, State, or federal agency with oversight of the public school unit shall have a cause of action for remedies provided for in sub-subdivision i. of this subdivision.~~

~~h. Any public school unit or its representatives or employees who suffer any direct or indirect harm for complying with sub-subdivision e. of this subdivision shall have a cause of action for remedies provided for in sub-subdivision i. of this subdivision.~~

~~i. Any person who brings a cause of action pursuant to sub-subdivisions f. through h. of this subdivision, within two years of the date the harm occurred, may obtain appropriate relief, including the following:~~

~~1. Injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief to prevent any violation of sub-subdivision e. of this subdivision.~~

~~2. Actual damages, including for psychological, emotional, or physical harm, reasonable attorney fees, and costs.~~

~~j. The State Board of Education shall monitor middle and high schools for compliance with sub-subdivision e. of this subdivision. If the Board finds a school in violation, it shall report the identity of the school to the Joint Legislative Education Oversight Committee.~~"

**SECTION 18.(b)** Part 2 of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, is amended by adding a new section to read:

"**§ 115C-407.57. Rules on concussions and head injuries.**

(a) For the purpose of this section, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function which may or may not result in loss of consciousness.

(b) With regard to middle schools and high schools, the State Board of Education shall adopt rules that provide for the following:

(1) All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with subsection (c) of this section.

(2) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with a concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from one of the following:

a. A physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management.
b. A neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes.
c. An athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes.
d. A physician assistant, consistent with the limitations of G.S. 90-18.1.
e. A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

(c) Each middle and high school shall maintain complete and accurate records of its compliance with the requirements of this section."

**SECTION 18.(c)** Part 2 of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, is amended by adding a new section to read:

"**§ 115C-407.58. Emergency action plans.**

(a) With regard to middle schools and high schools, the State Board of Education shall adopt a rule that requires each school to develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport.

(b) The rule required by subsection (a) of this section shall require the plan to be at least the following:

(1) In writing.
(2) Reviewed by an athletic trainer licensed in North Carolina.
(3) Approved by the principal of the school.
(4) Distributed to all appropriate personnel.
(5) Posted conspicuously at all venues.
(6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities."

**SECTION 18.(d)** Part 2 of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, is amended by adding a new section to read:

"**§ 115C-407.59. Athletic eligibility.**

(a) All teams participating in interscholastic or intramural athletic activities shall comply with the following:

(1) Each team shall be expressly designated by the biological sex of the team participants as one of the following:
a. Males, men, or boys.
b. Females, women, or girls.
c. Coed or mixed.
(2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex.
(3) For purposes of this sub-subdivision, a student's sex shall be recognized based solely on the student's reproductive biology and genetics at birth.

(b) A student who is deprived of an athletic opportunity or suffers or is likely to suffer from any direct or indirect harm as a result of a violation of subsection (a) of this section may assert that violation as a cause of action for remedies provided for in subsection (e) of this section.

(c) A student who is subjected to retaliation or other adverse action by a public school unit, administering organization, or other organization as a result of reporting a violation of subsection (a) of this section to an employee or representative of the public school unit,

administering organization, or to any local, State, or federal agency with oversight of the public school unit shall have a cause of action for remedies provided for in subsection (e) of this section.

(d) Any public school unit or its representatives or employees who suffer any direct or indirect harm for complying with subsection (a) of this section shall have a cause of action for remedies provided for in subsection (e) of this section.

(e) Any person who brings a cause of action pursuant to subsection (b), (c), or (d) of this section within two years of the date the harm occurred, may obtain appropriate relief, including the following:

(1) Injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief to prevent any violation of subsection (a) of this section.

(2) Actual damages, including for psychological, emotional, or physical harm, reasonable attorney fees, and costs.

(f) The State Board of Education shall monitor middle and high schools for compliance with subsection (a) of this section. If the Board finds a school in violation, it shall report the identity of the school to the Joint Legislative Education Oversight Committee."

**SECTION 18.(e)** G.S. 115C-548.1, as enacted by S.L. 2023-109, reads as rewritten:

"**§ 115C-548.1. Athletic teams.**

(a) Any private church school or school of religious charter that is a member of an organization that administers interscholastic athletic activities pursuant to Article 29E of this Chapter shall comply with ~~G.S. 115C-12(23).~~G.S. 115C-407.59.

(b) Any athletic team organized by a private church school or school of religious charter at the middle or high school level that is not covered by subsection (a) of this section shall comply with ~~G.S. 115C-12(23)~~ G.S. 115C-407.59 if the team is playing a team from any school required to follow ~~G.S. 115C-12(23).~~Article 29E of this Chapter."

**SECTION 18.(f)** G.S. 115C-556.1, as enacted by S.L. 2023-109, reads as rewritten:

"**§ 115C-556.1. Athletic teams.**

(a) Any qualified nonpublic school that is a member of an organization that administers interscholastic athletic activities pursuant to Article 29E of this Chapter shall comply with ~~G.S. 115C-12(23).~~G.S. 115C-407.59.

(b) Any athletic team organized by a qualified nonpublic school at the middle or high school level that is not covered by subsection (a) of this section shall comply with ~~G.S. 115C-12(23)~~ G.S. 115C-407.59 if the team is playing a team from any school required to follow ~~G.S. 115C-12(23).~~Article 29E of this Chapter."

## PART XIX. IMPLEMENTATION OF INTERSCHOLASTIC ATHLETICS RULES

**SECTION 19.(a)** The State Board of Education shall review and adopt new or revised temporary rules on interscholastic athletics for use in the 2024-2025 school year in accordance with the requirements of Article 29E of Chapter 115C of the General Statutes, as enacted by this act. Prior to final adoption of the temporary rules and no later than January 15, 2024, the State Board of Education shall consult with the Joint Legislative Commission on Governmental Operations. The request for consultation shall consist of a copy of the text of the rules being considered for adoption to the Commission. If the Commission does not hold a meeting to hear the consultation required by this subsection within 30 days after the submission of the text of the rules being considered for adoption, the consultation requirement is satisfied.

**SECTION 19.(b)** The State Board of Education shall adopt new or revised permanent rules for use beginning with the 2025-2026 school year and thereafter.

**SECTION 19.(c)** The Superintendent of Public Instruction shall assume the role of the State Board of Education in any current memorandum of understanding, effective the date this act becomes law.

**SECTION 19.(d)** The Superintendent of Public Instruction, in consultation with any administering organization, shall study and make findings and recommendations on the

following issues and report on its findings and recommendations to the Joint Legislative Education Oversight Committee by April 1, 2024:

(1) Whether an administering organization should be responsible for overseeing the conduct of middle school interscholastic athletics for public school units. The Superintendent shall include in the deliberations an examination of the potential costs to public school units for oversight of middle school interscholastic athletics by an administering organization. The Superintendent shall establish workgroups of athletic directors, principals, and coaches employed by schools serving students in grades six through eight and parents of students in grades six through eight to provide input on this recommendation.

(2) Factors that should be considered in (i) home school students' participation in interscholastic athletics, including how to address insurance and liability issues for those students while participating in interscholastic athletics, (ii) cooperative innovative high school students' participation in interscholastic athletics, and (iii) nonpublic schools. The Superintendent shall establish workgroups of athletic directors, principals, and parents of students in home schools, cooperative innovative high schools, and nonpublic schools to provide input on this recommendation.

**SECTION 19.(e)** Notwithstanding the requirements of G.S. 115C-407.75, as enacted by this act, all public school units shall submit the first annual interscholastic athletic report to the Superintendent of Public Instruction and the State Board of Education no later than July 15, 2025, and shall include data from the 2020-2021, 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years.

## PART XX. CONFORMING CHANGE TO INTERSCHOLASTIC ATHLETICS STATUTES

**SECTION 20.(a)** G.S. 143-318.10(b) reads as rewritten:

"(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" ~~means the~~ means the following:

(1) The governing board of a "public hospital" as defined in ~~G.S. 159-39 and the~~ G.S. 159-39.

(2) The governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(3) An administering organization as defined in G.S. 115C-407.50(1)."

**SECTION 20.(b)** This section is effective July 1, 2024.

**PART XXI. EFFECTIVE DATE**

**SECTION 21.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of September, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 22nd day of September, 2023 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This 3rd day of October, 2023,

s/ Greg Johnson
Enrolling Clerk

# EXHIBIT B

**NORTH CAROLINA STATE BOARD OF EDUCATION**
**Policy Manual**

| Item | Description |
|---|---|
| **Policy Title** | Amateur Rules for Interscholastic Athletics |
| **Policy Category** | Athletics (ATHL) |
| **Policy ID** | ATHL-008 |
| **Policy Date** | 07/01/04 |
| **Previous Policy Dates** | |
| **Statutory Reference** | G.S. 115C-12(12); G.S. 115C-407.50; G.S. 115C-407.55; G.S. 115C-407.65 |
| **Administrative Procedures Act (APA)** | 16 NCAC 06E. 0208 |

## AMATEUR RULES

This policy sets forth limitations on activities by student-athletes designed to maintain the amateur nature of interscholastic athletics.

(a) As used in this Policy, the phrase "name, image, or likeness" or "NIL" shall refer to the use of a student's name, image, or likeness for commercial purposes and in exchange for compensation to the student. Compensation may include cash, in-kind gifts, or other tangible benefits to the student.

(b) No student participating in interscholastic athletics shall enter into any agreement to use the student's name, image, or likeness in any of the following ways:

(1) Public appearances or commercials.
(2) Autograph signings.
(3) Athletic camps and clinics.
(4) Sale of non-fungible tokens ("NFTs").
(5) Product or service endorsements.
(6) Promotional activities, including in-person events and social media advertisements.

(c) A student shall not participate in interscholastic athletics after any of the following:

(1) Graduation from high school, except that the student may continue to participate in playoff and state championship contests in spring sports after graduation;
(2) Signing a professional athletic contract, except that the student may continue to participate in any sport for which the student has not signed a professional contract.
(3) Receiving remuneration as a participant in an athletic contest, except that the student may accept a gift, merchandise, or other thing of value, provided that:
(A) The value does not exceed two hundred-fifty dollars ($250.00) per student per season;

(B) The item is totally consumable and nontransferable, or labeled in a permanent manner (e.g., an engraved or monogrammed item); and

(C) The item is approved by the principal of the student's school and the local superintendent.

(4) Participating on an all-star team or in all-star game or bowl game that is not sanctioned by the administering organization of which the student's school is a member, provided that the student shall be ineligible only for that sport.

(d) A student shall not be deemed ineligible under this Policy for payment by an administering organization, PSU, or athletic booster club affiliated with the student's school or PSU for essential expenses arising from a specific interscholastic athletic contest in which the student participates. Essential expenses shall include the reasonable cost of meals, lodging, and transportation.

(e) A student shall not be deemed ineligible under this Policy for receipt of a nominal, standard fee or salary for instructing, supervising, or officiating an organized youth sports program, recreational activities, playground, or camp, whether or not affiliated with a PSU.

# EXHIBIT C

# Redacted

## Official Offer Deal Memo

- DATE: April 30th, 2024
- TALENT: RedactedBrandon
- TERM: May 31st, 2024 thru Athlete's High School Graduation Date
- DELIVERABLES: Signing of Redacted autographs at Redacted per autograph
- COMPENSATION: $Redacted (Redacted)

Redacted

SIGNATURE: Redacted

NAME: Redacted

TITLE: President

CONFIDENTIAL

**This offer is confidential and subject to execution of a full agreement by both parties – all terms non-binding until then.**

# EXHIBIT D

DocuSign Envelope ID: 90EA0EBC-B8EF-415C-8C39-538629EBE705

PUBLIC SCHOOLS OF NORTH CAROLINA
STATE BOARD OF EDUCATION | Eric C. Davis, Chairman
HTTPS://STATEBOARD.NCPUBLICSCHOOLS.GOV

July 3, 2024

**Via Email**
Mit Winter
Kennyhertz Perry, LLC
2000 Shawnee Mission Parkway, Suite 210
Mission Woods, KS 66205
[Redacted]

**Re:** NIL Officer for [Redacted] Brandon

Dear Mr. Winter:

On behalf of and at the request of the State Board of Education Chairman, Eric Davis, I am responding to your emailed letter of June 24, 2024, and your follow-up email of July 2, 2024. In your correspondence you requested a meeting with to discuss a Name Image and Likeness ("NIL") contract offered to your client, Mr. [Redacted] Brandon. I apologize for the delay in my response to your letter from last week and yesterday. We have been consumed by year-end obligations.

As you note in your letter, the State Board of Education ("SBE") has adopted a rule prohibiting students participating in interscholastic athletics in North Carolina public schools from accepting compensation in exchange for the use of their name, image, and likeness. In October 2023, the General Assembly enacted S.L. 2023-133, which required the SBE to adopt an administrative rule addressing NIL in time for the 2024-2025 school year. The SBE first proposed this rule during its regular meeting on January 4, 2024. In accordance with the North Carolina Administrative Procedure Act (Chapter 150B), the SBE accepted public comments on the proposed rule from January 12 to February 23, which included a virtual public hearing on February 23. The SBE then voted to adopt the rule at its regular meeting on March 7. The SBE proposed conforming changes to its policies at its regular meeting on May 2 and adopted them on June 6. Contrary to some public reporting on the matter, the June 6 meeting was not the first time the SBE considered the NIL policy; it has been on the SBE's public agenda four times since January 4 and the SBE has provided significant opportunity for input from the public. During that time, the SBE received no public comments requesting that the proposed rule be changed to allow middle and high school students to receive compensation for their NIL.

With that said, the rule the SBE has adopted for the 2024-2025 school year is a temporary rule. The SBE now must go through permanent rulemaking on the NIL question. This is a cumbersome and lengthy legislatively required process that takes approximately one year. In the coming year, the SBE will focus on beginning the process to adopt a permanent rule for the 2025-2026 school year and beyond. There will once again be an opportunity for public comment, including at least one public hearing. The SBE can vote to change the NIL policy during the permanent rulemaking phase.

DocuSign Envelope ID: 90EA0EBC-B8EF-415C-8C39-538629EBE705



However, due to these legislative constraints, any possible changes cannot occur quickly, and certainly not by July 15, which is a few days from now. You can find more information about the rulemaking process, including how to request email updates, here: https://www.dpi.nc.gov/about-dpi/state-board-education/rulemaking-information. The State Board will welcome your input and that of your client at the appropriate time during the public comment period.

You requested a meeting with the SBE Chair within the next few days. Given the mandatory process described above, there is nothing that can be done to change the current rule in the timeframe you outline. Such a meeting cannot yield the results you seek for the reasons described above and therefore would be futile. Consequently, your request for a meeting with the Board Chair is respectfully declined. You have expressed your concerns clearly in your letter and they are noted. The SBE will consider them as they look to develop a permanent rule. We wish only the best for your talented client. Sincerely,

DocuSigned by:
Allison Schafer
FE7A9044C415402...

**Allison Schafer**
General Counsel
State Board of Education
Department of Public Instruction

cc. Eric Davis

# EXHIBIT E

**From:** Allison Schafer [redacted]
**Sent:** Thursday, July 11, 2024 11:44 AM
**To:** Mit Winter
**Cc:** Eric Davis; Ryan Collins
**Subject:** FW: Letter Regarding NIL Offer for [redacted] Brandon
**Attachments:** Form 0500 - 16 NCAC 06E .0208 (Amateur Rules).pdf

Dear Mr. Winter,

This email is in response, on behalf of the State Board Chairman, to your July 9 email below. Attached you will find a copy of the State Board of Education's written statement of findings of need for a rule regarding NIL issues pursuant to G.S. 150B-21.1(a4). Please note that the statement was submitted via a standardized form as required by the North Carolina Office of Administrative Hearings. I cannot provide you with copies of written comments because, as I have previously shared with you, the Board did not receive *any* comments on the NIL rule during the public comment period.

Further, the State Board of Education has no authority to adopt an emergency rule under these circumstances. G.S. 150B-21.1A permits the adoption of an emergency rule only when, among other requirements, the Board finds that "the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety." With all due respect to your client, there is no credible argument that the inability of high school students to enter NIL agreements constitutes a threat to public health or safety, or that it was unforeseen, given that the NIL question has been a matter of public debate for some time now. Adopting an emergency rule without any plausible justification would likely subject the Board to a legal challenge. *See, e.g.*, G.S. 115C-21.1A(c).

Regarding your renewed request for a meeting, this request is again, respectfully, denied. As noted above, there is no need for a discussion of emergency rulemaking because the Board has no authority to adopt such a rule under these circumstances. Furthermore, while I am sympathetic to Mr. Brandon's circumstances, the proper venue to share your concerns regarding the temporary rule will be during the public notice and comment period of the permanent rulemaking process that will commence later this fall. Please note that the NIL rule affects all students participating in athletics at a North Carolina public high school or NCHSAA member high school, and the notice and comment period is designed to provide everyone affected by the rule with an equal opportunity to provide input.

Regarding Mrs. Brandon's outreach with Senator Sawyer and the Guilford County Athletic Director, neither I nor the Board can comment on their communication or lack thereof.

Sincerely,

Allison Schafer
***General Counsel***
State Board of Education
Department of Public Instruction
[redacted]
*Follow us:* Facebook, Twitter, Instagram *and* YouTube




**From:** Mit Winter [redacted]
**Sent:** Tuesday, July 9, 2024 2:49 PM
**To:** Allison Schafer [redacted]
**Cc:** Eric Davis [redacted]; Rolanda Brandon [redacted]>; [redacted]
**Subject:** RE: Letter Regarding NIL Offer for [redacted] Brandon

**CAUTION:** External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam.

Allison,

Thanks for the letter and for taking the time to respond. I'd like to follow up by making a few requests and to reiterate the request for a meeting with Mr. Davis and the Board.

First, please send me a copy of the Board's written statement of its findings of need for the temporary NIL rule (which the Board was required to prepare under the North Carolina Administrative Procedure Act section 150B-21.1(a4)). Also please send me any written comments the Board received on the proposed temporary NIL rule in the 15 business days prior to adoption of the temporary NIL rule.

Second, pursuant to North Carolina Administrative Procedure Act section 150B-21.1A, Mr. Brandon and his family are requesting the Board adopt an emergency rule that allows public school athletes in North Carolina to enter into NIL deals with trading card companies and/or to enter into NIL agreements where payment is deferred until after their high school athletics eligibility has ended. The Board has already determined that adherence to the notice and hearing

requirements of the Act would be contrary to the public interest for the temporary NIL rule, so there should be no difference here. And immediate adoption of the proposed emergency rule is required by a serious and unforeseen threat to high school athletes like Mr. Brandon, who are arbitrarily and unlawfully being denied their economic rights.

Third, despite your suggestion to the contrary, there are still good reasons for Mr. Davis and the Board to meet with Mr. Brandon and his family. They would like to discuss why the proposed emergency rule is necessary, why the temporary rule was passed (as informed by the written statement of the Board's findings), and to explain and discuss how the temporary rule has aggrieved and is negatively affecting Mr. Brandon and his family. In short, Mr. Brandon does not want to leave his friends and make his parents (and Redacted sister) leave their home in order to attend a private high school or a high school in another state that will allow him to receive NIL compensation and play high school football. But he is leaning heavily towards doing so, as moving would guarantee him life-time financial security that he has earned by his hard work combined with his God given talent. If he stays in North Carolina, he risks that this financial opportunity instantly disappears forever if he suffers a serious injury.

Finally, Mr. Brandon and his family would like to point out that Mr. Brandon's mother, Rolanda Brandon, emailed her concerns about the proposed temporary NIL rule to the Guilford County Athletic Director on April 17, 2024 and to Senator Vickie Sawyer on three occasions over the course of several weeks, beginning on 5/4/24. She never received a response from either party.

Please let me know a few days and times when the requested meeting with Mr. Davis and/or the Board can take place prior to July 19.

Thank you

**Mit Winter**

**KENNYHERTZ PERRY LLC**

Redacted

Redacted

Redacted

KENNYHERTZ PERRY
ATTORNEYS AT LAW

**From:** Allison Schafer [redacted]
**Sent:** Wednesday, July 3, 2024 10:26 AM
**To:** Mit Winter [redacted]
**Cc:** Eric Davis [redacted]
**Subject:** Letter Regarding NIL Offer for [redacted] Brandon

Mr. Winter,

Attached please find a letter from me responding to both your June 24, 2024, letter and your July 2 email to State Board of Education Chair Eric Davis. Mr. Davis requested I respond on his behalf.

My best,

Allison Schafer
***General Counsel***
State Board of Education
Department of Public Instruction
[redacted]
*Follow us:* Facebook, Twitter, Instagram *and* YouTube

NORTH CAROLINA
State Board of Education
Department of Public Instruction

Visit us on the web at https://dpi.nc.gov . All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

Visit us on the web at https://dpi.nc.gov . All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

Visit us on the web at https://dpi.nc.gov . All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

Visit us on the web at https://dpi.nc.gov . All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

# EXHIBIT F

# TEMPORARY RULE-MAKING FINDINGS OF NEED

**[Authority G.S. 150B-21.1]**

| OAH USE ONLY |
|---|
| VOLUME: |
| ISSUE: |

**1. Rule-Making Agency:** State Board of Education

**2. Rule citation & name:** 16 NCAC 06E .0208 (Amateur Rules for Interscholastic Athletics)

**3. Action:** ☒ **Adoption** ☐ **Amendment** ☐ **Repeal**

**4. Was this an Emergency Rule:** ☐ **Yes** ☒ **No** **Effective date:**

**5. Provide dates for the following actions as applicable:**

a. **Proposed Temporary Rule submitted to OAH:** 1/5/24

b. **Proposed Temporary Rule published on the OAH website:** 1/12/24

c. **Public Hearing date:** 2/23/24

d. **Comment Period:** 1/12/24 – 2/23/24

e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** 1/12/24

f. **Adoption by agency on:** 3/7/24

g. **Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:** 7/1/24

h. **Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:**

**6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☐ **A serious and unforeseen threat to the public health, safety or welfare.**
- ☒ **The effective date of a recent act of the General Assembly or of the U.S. Congress.**
  **Cite:** S.L. 2023-133, Parts XVII & XVIII
  **Effective date:** 9/22/23
- ☐ **A recent change in federal or state budgetary policy.**
  **Effective date of change:**
- ☐ **A recent federal regulation.**
  **Cite:**
  **Effective date:**
- ☐ **A recent court order.**
  **Cite order:**
- ☐ **State Medical Facilities Plan.**
- ☐ **Other:**

**Explain:** On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

In accordance with S.L. 2023-133, Section 19.(a), the SBE submitted a request for consultation to the Joint Legislative Commission on Governmental Operations on January 5, 2024, and received feedback from Senior Majority Counsel Andrew Hatch on February 16, 2024. Much of the feedback from the consultation has been incorporated into the final rules adopted by the SBE.

The rules include amendments to two existing rules and the adoption of seven new rules. I have submitted a request to waive RRC Rule 26 NCAC 02C .0102 for the purpose of reusing two rule numbers for rules that have expired, 16 NCAC 06E .0201 and 06E .0205, though I have not received any information as to the status of that waiver request. I believe the waiver is justified because the new rules are on the same subject matter as the expired rules.

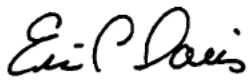
**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

Immediate adoption of the rule is required because S.L. 2023-133 mandates that the SBE adopt new temporary rules in time for the 2024-2025 school year. As a practical matter, that means the new rules need to be in place by July 1, 2024, to enable administering organizations and public-school units to prepare for fall sports. In addition, the SBE believes it is necessary to give those affected by the rules (including students) as much advanced awareness of the new rules as possible.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ **Yes**
**Agency submitted request for consultation on:**
**Consultation not required. Cite authority:**

☒ **No**

| | |
|---|---|
| **9. Rule-making Coordinator:** Ryan Collins<br>**Phone:** Redacted<br>**E-Mail:** Redacted | **10. Signature of Agency Head*:**<br><br>*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**<br>**Typed Name:** Eric C. Davis<br>**Title:** Chair, State Board of Education<br>**E-Mail:** Redacted |
| **Agency contact, if any:** Denyse Brewington<br>**Phone:** Redacted<br>**E-Mail:** Redacted | |

| RULES REVIEW COMMISSION USE ONLY | |
|---|---|
| Action taken:<br><br>☐ Date returned to agency: | Submitted for RRC Review: |