

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1588

Short Title: Revise Insurer Assessments.

(Public)

Sponsors: Representatives Dockham; and Hardaway.

Referred to: Insurance, if favorable, Appropriations.

May 28, 1998

A BILL TO BE ENTITLED

1 AN ACT TO APPROPRIATE FUNDS TO AMEND THE WORKERS'
2 COMPENSATION ACT AND THE INSURANCE LAWS TO REVISE THE
3 METHOD BY WHICH INSURANCE COMPANIES ARE ASSESSED.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 58-47-65(f)(3) reads as rewritten:

7 "(3) An individual application, under G.S. 58-47-125, of each member
8 applying for coverage in the proposed group on the inception date of the
9 proposed group, with a current GAAP financial statement of ~~the~~each
10 member. The financial statements are confidential, but the
11 Commissioner may use them in any judicial or administrative
12 proceeding."

13 Section 2. G.S. 58-47-85(2)(c)2. reads as rewritten:

14 "2. Once every year files with the group the member's most
15 recent year-end balance sheet, which, at a minimum, is
16 compiled by an independent certified public accountant.
17 The balance sheet shall demonstrate that the member's
18 financial position does not show a deficit equity and is
19 appropriate for membership in the group. At the request
20 of the Commissioner, the group shall make these filings

1 available for review. These filings shall be kept
2 confidential; provided that the Commissioner may use that
3 information in any judicial or administrative proceeding."

4 Section 3. G.S. 58-47-120(f)(11) reads as rewritten:

5 "(11) Qualifications for group membership, including underwriting guidelines
6 and procedures to identify ~~members~~ any member that ~~are~~ is in a
7 hazardous financial ~~conditions~~ condition."

8 Section 4. G.S. 97-133 reads as rewritten:

9 **"§ 97-133. Powers and duties of the Association.**

10 (a) The Association shall:

11 ~~(1) Obtain from each member self-insurer and file with the Commissioner~~
12 ~~individual reports specifying the aggregate benefits each member paid~~
13 ~~during the previous calendar year, and the annual standard premium that~~
14 ~~would have been paid by the individual member self-insurer during the~~
15 ~~previous calendar year, pursuant to manual rates established by the~~
16 ~~North Carolina Rate Bureau and using the experience rating procedure~~
17 ~~approved by the Commissioner for that member self-insurer or the~~
18 ~~annual premium collected by each group member self-insurer during the~~
19 ~~prior calendar year. These reports shall be due on or before July 15~~
20 ~~following the close of that calendar year, except that this deadline may~~
21 ~~be extended by the Commissioner for up to three additional months for~~
22 ~~good cause shown.~~

23 (2) Assess each member of the Association as follows:

24 a. Each individual member self-insurer shall be annually assessed
25 an amount equal to one-quarter of one percent (0.25%) of the
26 annual ~~standard premium~~ gross premiums, as determined under
27 G.S. 105-228.5(b), (b1), and (c), that would have been paid by
28 that member self-insurer for workers' compensation insurance
29 during the prior calendar year; and payment to the Association
30 shall be made no later than ~~September~~ June 15 following the close
31 of that calendar year. Where any such assessment is paid based in
32 whole or in part upon estimates of annual ~~standard premium~~ gross
33 premiums for the prior calendar year, there shall be made in the
34 next year's assessment an adjustment of the assessment of such
35 prior year based on actual audited annual ~~standard premium~~ gross
36 premium. Each group member self-insurer shall be annually
37 assessed an amount equal to one-quarter of one percent (0.25%)
38 of the ~~annual premium collected by~~ gross premiums, as determined
39 under G.S. 105-228.5(b), (b1), and (c), of the group member self-
40 insurer during the prior calendar year; and payment to the
41 Association shall be made no later than ~~September~~ June 15
42 following the close of that calendar year. Regardless of the size
43 of the Fund, during its first 12 months of membership, no

1 member self-insurer may discount or reduce this one-quarter of
2 one percent (0.25%) assessment. Assessments paid by members
3 pursuant to this subdivision shall be credited toward the tax paid
4 by self-insurers under Article 8B of Chapter 105 of the General
5 Statutes. For the purpose of making the assessments authorized
6 by this subsection and subsections (c) and (d) of this section, the
7 Secretary of Revenue shall provide to the Association the self-
8 insurer premium and payroll information received by the
9 Secretary under G.S. 105-228.5(e) and the Commissioner shall
10 provide to the Association the group self-insurer premium
11 information reported to the Commissioner under G.S. 58-47-75
12 and G.S. 58-2-165.

- 13 b. Each member self-insurer shall be notified of the assessment no
14 later than 30 days before it is due.
- 15 c. If a self-insurer is a member of the Association for less than a full
16 calendar year, the annual ~~standard premium gross premiums~~ shall
17 be adjusted by that portion of the year the self-insurer is not a
18 member of the Association.
- 19 d. If application of the contribution rates referenced in ~~sub-~~
20 ~~subdivisions a. and b.~~ sub-subdivision a. of this subdivision would
21 produce an amount in excess of the five million dollar
22 (\$5,000,000) limits of the fund, an equitable proration may be
23 made; provided that every self-insurer that becomes a member of
24 the Association shall pay an initial assessment, in an amount
25 established by the Board, regardless of the size of the fund at the
26 time the member joins the Association.
- 27 (3) Administer a fund, to be known as the North Carolina Self-Insurance
28 Guaranty Fund, which shall receive the assessments required in
29 subdivision (2) of this subsection. Once the Fund reaches five million
30 dollars (\$5,000,000), no further assessments shall be made except initial
31 assessments of new member self-insurers that are required to be made in
32 subdivision (2)d. of this subsection. Assessments may be subsequently
33 made only to maintain the Fund at a level of five million dollars
34 (\$5,000,000). In its discretion, the Board may determine that the assets
35 of the Fund should be segregated, or, that a separate accounting shall be
36 made, in order to identify that portion of the Fund which represents
37 assessments paid by individual self-insurers and that portion of the Fund
38 which represents assessments paid by group self-insurers. If the Board
39 determines to segregate the Fund in this manner, the Association shall
40 thereafter pay covered claims against individual member self-insurers
41 from that portion of the Fund which represents assessments against
42 individual self-insurers and shall thereafter pay covered claims against
43 group member self-insurers from that portion of the Fund which

1 represents assessments against group self-insurers. The cost of
2 administration incurred by the Association shall be borne by the Fund
3 and the Association is authorized to secure reinsurance and bonds and to
4 otherwise invest the assets of the Fund to effectuate the purpose of the
5 Association, subject to the approval of the Commissioner. All earnings
6 from investment of Fund assets shall be placed in or credited to the
7 Fund.

8 The Association may purchase primary excess insurance from an
9 insurer licensed by the Commissioner for the appropriate lines of
10 authority to defray its exposure to loss occasioned by the default of one
11 of its members. The terms of any excess insurance so purchased shall be
12 limited to providing coverage of liabilities which exceed the Fund's
13 assets after the payment by member self-insurers of the maximum post-
14 insolvency assessment provided in subdivision (c)(1) of this section
15 herein and the Association shall fund any such purchase by levying a
16 special assessment on its members for this purpose or by application of
17 any unencumbered earnings of the Fund or any other available funds.
18 The Association may obtain from each member any information the
19 Association may reasonably require in order to facilitate the securing of
20 this primary excess insurance. The Association shall establish
21 reasonable safeguards designed to insure that information so received is
22 used only for this purpose and is not otherwise disclosed;

- 23 (4) Be obligated to the extent of covered claims occurring prior to the
24 determination of the member self-insurer's insolvency, or occurring
25 after such determination but prior to the obtaining by the self-insurer of
26 workers' compensation insurance as otherwise required under this
27 Chapter. The Association shall pay claims against a self-insurer that are
28 not or have not been paid as a result of a determination of insolvency or
29 the institution of bankruptcy or receivership proceedings that occurred
30 prior to the effective date of this Article.
- 31 (5) After paying any claim resulting from a self-insurer's insolvency, be
32 subrogated to the rights of the injured employee and dependents and be
33 entitled to enforce liability against the self-insurer by any appropriate
34 action brought in its own name or in the name of the injured employee
35 and dependents;
- 36 (6) Assess the Fund in an amount necessary to pay only:
- 37 a. The obligations for the Association under this Article subsequent
38 to an insolvency;
 - 39 b. The expenses of handling covered claims subsequent to an
40 insolvency;
 - 41 c. The cost of examinations under G.S. 97-137; and
 - 42 d. Other expenses authorized by this Article;

- 1 (7) Investigate claims brought against the Association and adjust,
2 compromise, settle, and pay covered claims to the extent of the
3 Association's obligation; and deny all other claims. The Association
4 may review settlements to which the insolvent self-insurer was a party
5 to determine the extent to which such settlements may be properly
6 contested;
- 7 (8) Notify such persons as the Commissioner directs under G.S. 97-136;
- 8 (9) Handle claims through its employees or through one or more self-
9 insurers or other persons designated as servicing facilities. Designation
10 of a servicing facility is subject to the approval of the Commissioner,
11 but designation of a member self-insurer as a servicing facility may be
12 declined by such self-insurer;
- 13 (10) Reimburse each servicing facility for obligations of the Association paid
14 by the facility and for expenses incurred by the facility while handling
15 claims on behalf of the Association;
- 16 (11) Pay the other expenses of the Association authorized by this section;
17 and
- 18 (12) Establish in the Plan a mechanism to calculate the assessments required
19 by subdivisions ~~(1), (2), (2)~~ and (3) of this subsection by a simple and
20 equitable means to convert from policy or fund years that are different
21 from a calendar year.
- 22 (b) The Association may:
- 23 (1) Employ or retain such persons as are necessary to handle claims and
24 perform other duties of the Association;
- 25 (2) Borrow funds necessary to effect the purposes of this Article in accord
26 with the Plan;
- 27 (3) Sue or be sued;
- 28 (4) Negotiate and become a party to such contracts as are necessary to carry
29 out the purpose of this section; and
- 30 (5) Perform such other acts as are necessary or proper to effectuate the
31 purpose of this section.
- 32 (c) In the event that the assets of the Fund are not sufficient to pay the obligations
33 of the Association, then the Association shall impose an additional assessment upon its
34 members, which shall be known as a post-insolvency assessment which shall be imposed
35 as follows:
- 36 (1) Each individual member self-insurer shall be assessed in an amount not
37 to exceed two percent (2%) each year of the annual ~~standard premium~~
38 gross premiums, as determined under G.S. 105-228.5(b), (b1), and (c),
39 that would have been paid by that member self-insurer during the prior
40 calendar year. The assessments of each individual member self-insurer
41 shall be in the proportion that the annual ~~standard premium~~ gross
42 premiums of the individual member self-insurer for the premium
43 calendar year bears to the annual ~~standard premium~~ gross premiums of all

1 individual member self-insurers for the preceding calendar year. For
2 group member self-insurers, the assessment shall not exceed two
3 percent (2%) each year the annual premium collected by that group
4 member self-insurer during the prior calendar year. The assessments of
5 each group member self-insurer shall be in the proportion that the
6 annual ~~collected premium~~ gross premiums of the group member self-
7 insurer for the premium calendar year bears to the annual ~~collected~~
8 ~~premium~~ gross premiums of all group member self-insurers for the
9 preceding calendar year.

10 (2) Each member self-insurer shall be notified of the assessment no later
11 than 30 days before it is due.

12 (3) The Association may exempt or defer, in whole or in part, the
13 assessment of any member self-insurer, if the assessment would cause
14 that member's financial statement to reflect liabilities in excess of assets.

15 (4) Delinquent assessments, except as provided in subdivision (3) of this
16 subsection, shall bear interest at the rate to be established by the Board,
17 but not to exceed the discount rate of the Federal Reserve Bank,
18 Richmond, Virginia, on the due date of the assessment, plus four
19 percent (4%) annually, computed from the due date of the assessment.

20 (5) The Association shall establish in the Plan a mechanism to calculate the
21 assessments required by subdivision (1) of this subsection by a simple
22 and equitable means to convert from policy or fund years that are
23 different from a calendar year.

24 (d) No individual member self-insurer may be assessed in any calendar year an
25 amount greater than two and one-half percent (2.5%) of the annual ~~standard premium~~ gross
26 premium, as determined under G.S. 105-228.5(b), (b1), and (c), that would have been
27 paid by that individual member self-insurer during the prior calendar year. No group
28 member self-insurer may be assessed in any calendar year an amount greater than two
29 and one-half percent (2.5%) of the annual ~~premium collected~~ gross premiums of by that
30 group member self-insurer during the prior calendar year. If the maximum assessment
31 does not provide in any one year an amount sufficient to make all necessary payments,
32 the funds available shall be prorated and the unpaid portion shall be paid as soon
33 thereafter as funds become available. There shall be established in the Plan a mechanism
34 to calculate the assessments required by this section by a simple and equitable means to
35 convert from policy or fund years that are different from a calendar year."

36 Section 5. G.S. 97-165(2) reads as rewritten:

37 "(2) 'Certified audit' means an audit on which a certified public accountant
38 expresses his or her professional opinion that the accompanying
39 statements fairly present the financial position of the self-insurer, in
40 conformity with generally accepted accounting ~~principles as considered~~
41 ~~necessary by the auditor under the circumstances.~~ principles."

42 Section 6. G.S. 97-170(c) reads as rewritten:

1 "(c) Only an applicant ~~whose employee base is actuarially sufficient in numbers and~~
2 ~~provides an actuarially appropriate spreading of risk and~~ whose total fixed assets amount to
3 five hundred thousand dollars (\$500,000) or more may apply for a license. In judging the
4 applicant's financial strength and liquidity relative to its ability to comply with the Act,
5 the Commissioner shall consider the applicant's:

- 6 (1) Organizational structure and management;
- 7 (2) Financial strength;
- 8 (3) Source and reliability of financial information;
- 9 (4) Risks to be retained;
- 10 (5) Workers' compensation loss history;
- 11 (6) Number of employees;
- 12 (7) Claims administration;
- 13 (8) Excess insurance; and
- 14 (9) Access to excess insurance or reinsurance. ~~insurance.~~"

15 Section 7. G.S. 97-170(d)(4) is repealed.

16 Section 8. G.S. 97-180(b) reads as rewritten:

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

26 Section 9. G.S. 97-180(d) reads as rewritten:

27 "(d) ~~Every~~ Upon the request of the Commissioner, every self-insurer shall submit
28 ~~within 120 days after the end of its fiscal year a report of its~~ annual payroll information. The
29 report shall summarize payroll, by annual amount paid, and the number of employees, by
30 classification, using the rules, classifications, and rates in the most recently approved
31 Workers' Compensation and Employers' Liability Insurance Manual governing the audits
32 of payrolls and the adjustments of premiums. Every self-insurer shall maintain true and
33 accurate payroll records. These payroll records shall be maintained to allow for
34 verification of the completeness and accuracy of the annual payroll report."

35 Section 10. There is allocated from the Department of Insurance Fund
36 established in G.S. 58-6-25 to the Department of Insurance the sum of three hundred
37 three thousand eight hundred fifty-three dollars (\$303,853) for fiscal year 1998-99 for the
38 expenses of administering this act and Part 2 of Article 47 of Chapter 58 of the General
39 Statutes.

40 Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

41 "(16a) To provide the North Carolina Self-Insurance Guaranty Association
42 information on self-insurers' premiums and payroll when the

1 Association needs the information to collect the assessments authorized
2 in G.S. 97-133(a)."

3 Section 12. This act becomes effective July 1, 1998, and Section 4 of this act
4 applies to assessments made for calendar year 1998 and subsequent calendar years.