

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 727
HOUSE BILL 670

AN ACT TO AMEND THE PREMIUM TAX STATUTE FOR RISK RETENTION GROUPS; TO PROVIDE AN ORDERLY PROCEDURE FOR THE PAYMENT OF PREMIUM TAXES ON INSURANCE PROVIDED TO PURCHASING GROUPS; TO PROVIDE FOR MORE ADEQUATE INFORMATION ABOUT REGULATION OF RISK RETENTION AND PURCHASING GROUPS TO BE GIVEN TO THEIR MEMBERS; TO REWRITE THE SURPLUS LINES PREMIUM TAX EXEMPTION; AND TO REINSTATE THE PROCEDURES FOR AND PREMIUM TAX ON INDEPENDENTLY PROCURED INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-508 is amended by adding the following subdivision:

"(c) Taxation.

- (1) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 36 of this Chapter.
- (2) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in this State.
- (3) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State."

Sec. 2. G.S. 58-437(c) is rewritten to read:

"(c) This section does not apply to risks of State government agencies nor to risks of local government risk pools created and operating under Article 39 of this Chapter."

Sec. 3. G.S. 58-437 is amended by adding a new subsection to read:

"(d) The surplus lines licensee placing the insurance and claiming the exemption in subsection (c) of this section shall affirmatively show in writing to the Commissioner that the risk qualifies for the exemption."

Sec. 4. G.S. 58-54.21(6) is rewritten to read:

- "(6) The procuring of contracts of insurance issued to a nuclear insured;
- (7) Insurance independently procured, as specified in subsection (b) of this section."

Sec. 5. G.S. 58-54.21 is amended by designating the first paragraph as subsection (a), by deleting the second paragraph, which begins with "For the purposes", and by adding a new subsection (b) to read:

"(b) Any person in this State may directly procure or directly renew insurance with an unlicensed insurer without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State, other than insurance procured or renewed pursuant to subsections (a)(1) through (a)(6) of this section. Any such person shall, within 30 days after the date the insurance is procured or renewed, file a written report with the Commissioner on forms prescribed by the Commissioner. The report must contain the name and address of the insured; name and address of the insurer; the subject of insurance; a general description of the coverage; the amount of premium currently charged; and such additional information as requested by the Commissioner. The report must also contain an affidavit of the insured that states that the full amount or kind of insurance cannot be obtained from insurers that are admitted to do business in this State; and that the insured has made a diligent search among the insurers that are admitted to transact and are actually writing the particular kind and class of insurance in this State. Gross premiums charged for such insurance, less any return premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-438 with respect to the tax levied by this subsection."

Sec. 6. G.S. 58-422(8) is amended by inserting "pursuant to G.S. 58-54.21" immediately after "procured".

Sec. 7. G.S. 58-40.5 is amended by inserting the following at the end immediately before the period: "or purchased according to G.S. 58-54.21 or Article 36 of this Chapter".

Sec. 8. G.S. 58-44.8 is amended by inserting "G.S. 58-54.21 or in" between "provided in" and "Article 36".

Sec. 9. G.S. 58-511 is amended by designating the present section as subsection (a) and by adding a subsection (b) to read:

"(b) Taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes on similar coverage from a similar insurance source by other insureds; and
- (2) Paid first by such insurance source, and if not by such source then by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such group then by each of its members."

Sec. 10. G.S. 58-512(a) is amended by deleting "and" following subdivision (4), by substituting "; and" for the period following subdivision (5), and by adding a new subdivision (6) to read:

"(6) specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State;

and furnish such information as may be required by the Commissioner to determine the appropriate premium tax treatment."

Sec. 11. G.S. 58-513 is amended by designating the present text as subsection (a) and by adding the following subsections to read:

"(b) A purchasing group that obtains liability insurance from a nonadmitted insurer or from a risk retention group shall provide each member of the purchasing group that has a risk resident or located in this State with the notice specified in G.S. 58-429(f) or G.S. 58-508(7), whichever is applicable.

(c) No purchasing group may purchase insurance that provides for a deductible or for a self-insured retention applicable to the group as a whole; provided, however, that coverage may provide for a deductible or for self-insured retention applicable to members of the group."

Sec. 12. G.S. 58-508(7) is amended by rewriting the text of the notice provision to read:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group is not subject to all of the insurance laws and regulations of your state. In the event of the insolvency of your risk retention group, losses under this policy will not be paid by any insurance insolvency or guaranty fund in this State."

Sec. 13. G.S. 58-507 is amended in the first sentence by substituting "under Article 6 of" for "authorized by".

Sec. 14. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of August, 1987.