

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 600  
HOUSE BILL 1663

AN ACT TO EXEMPT ALL ANNUITIES AND FUNDING AGREEMENTS FROM PREMIUM TAXATION; TO CLARIFY THE AUTHORIZATION FOR THE ISSUANCE OF AND ESTABLISH STANDARDS FOR FUNDING AGREEMENTS; AND TO MAKE CONFORMING CHANGES IN LAWS ON PRIORITY OF DISTRIBUTION OF ASSETS OF INSOLVENT INSURERS AND ON SECURITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-7-16. Funding agreements authorized.**

(a) As used in this section, 'funding agreement' means an agreement that authorizes a licensed life insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A 'funding agreement' is not an 'annuity' as defined in G.S. 58-7-15; and is not a 'security' as defined in G.S. 78A-2.

(b) Any insurer that is licensed to write life insurance or annuities in this State may deliver, or issue for delivery, funding agreements in this State.

(c) Funding agreements may be issued to persons authorized by a state or foreign country to engage in an insurance business or to their affiliates, including affiliates of the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article 19 of this Chapter. Funding agreements may be issued to persons other than those licensed to write life insurance and annuities or their affiliates in order to fund one or more of the following:

- (1) Benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.
- (2) The activities of an organization exempt from taxation under section 501(c) of the Internal Revenue Code or of any similar organization in a foreign country.
- (3) A program of the government of the United States, the government of a state, foreign country, or political subdivision, agency, or instrumentality thereof.
- (4) An agreement providing for one or more payments in satisfaction of a claim or liability.

(5) A program of an institution that has assets in excess of twenty-five million dollars (\$25,000,000).

(d) Amounts shall not be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under funding agreements may be allocated by the insurer to one or more separate accounts pursuant to G.S. 58-7-95.

(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

(1) Standards to be followed in the approval of forms of funding agreements.

(2) Reserves to be maintained by insurers issuing funding agreements.

(3) Accounting and reporting of funds credited under funding agreements.

(4) Disclosure of information to be given to holders and prospective holders of funding agreements.

(5) Qualification and compensation of persons selling funding agreements on behalf of insurers."

Sec. 2. G.S. 58-30-220 reads as rewritten:

**"§ 58-30-220. Priority of distribution.**

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class receive any payment. No subcategories shall be established within the categories in ~~any~~ a class. The order of distribution of claims shall be:

(1) Claims for cost of administration and conservation of assets of the insurer.

(2) Compensation actually owing to employees other than officers of the insurer for services rendered within three months prior to the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.

(3) Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability ~~policies, up to an amount of three hundred thousand dollars (\$300,000) per claim~~ policies; claims for funds or consideration held under funding agreements, as defined in G.S. 58-7-16; claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or

investment values; and claims of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.

- (4) Claims for unearned premiums.
- (5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; ~~those portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies, in excess of three hundred thousand dollars (\$300,000) per claim;~~ and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages."

Sec. 3. G.S. 78A-2(11) reads as rewritten:

- "(11) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract including without limitation any investment contract taking the form of a whiskey warehouse receipt or other investment of money in whiskey or malt beverages; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under ~~such a~~ title or lease; or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or endowment ~~policy~~ policy, funding agreement, as defined in G.S. 58-7-16, or annuity contract under which an insurance company promises to pay (i) a fixed sum of money either in a lump sum or periodically for life or for some other specified period, or (ii) benefits or payments or value ~~which that~~ vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with ~~any of such contracts~~ a contract have been placed if the delivering or issuing insurance company has currently satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-7-95."

Sec. 4. G.S. 105-228.5 reads as rewritten:

**"§ 105-228.5. Taxes measured by gross premiums.**

(a) Tax Levied. – Every insurance company and every corporation subject to ~~Article 65 Articles 65 and 66 of Chapter 58 corporation shall pay to the Commissioner of Insurance, at the time and rates provided in this section,~~ of the General Statutes is

subject to the tax imposed by this section. A person who is subject to the tax imposed by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. – The tax imposed by this section on an insurance company shall be a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for Articles 65 and 66 of Chapter 58 corporations, a tax year and the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations—the corporation during the preceding calendar year. In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, benefits that are not annuities, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other year, other than for contracts for reinsurance) of reinsurance, for policies the premiums on which are paid by or credited to persons, firms—firms, or corporations resident in this State, or in the case of group policies—policies, for any contracts of insurance covering persons resident within this State. State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except—The only deductions allowed shall be for premiums returned under one or more of the following conditions: premiums refunded on policies rescinded for fraud or other breach of contract; premiums which contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend—dividend, or in by any other manner whatsoever, means except waiver of premiums by in the case of premiums waived by any of said companies pursuant to—under a contract for waiver of premium in case of disability.

An insurer, in computing its premium taxes, shall pay premium taxes on a premium for the purchase of annuities at the time the contract holder elects to commence annuity benefits, instead of at the time the premium is collected.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, shall mean all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of ~~premiums~~ premiums:

- (1) ~~all~~ All premiums received on or after July 1, 1973, from policies or ~~contracts, contracts~~ issued in connection with the funding of a pension, annuity ~~annuity~~, or profit-sharing ~~plan, plan~~ qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in ~~G.S. 105-134.1(1)~~ and the gross amount of all such premiums shall be exempt from the tax levied by this section. ~~G.S. 105-228.90.~~
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

~~Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workers' Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.~~

~~In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State,~~

~~or derived from business written in this State shall be deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.~~

~~(d) Tax Rates. – The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on annuities and all other insurance contracts issued by insurers shall be one and eight hundred seventy-five thousandths percent (1.875%) for taxable years beginning on or after January 1, 1991, and before January 1, 1992, and one and nine-tenths percent (1.9%) for taxable years beginning on or after January 1, 1992. (1.9%).~~ An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage (except coverage, except in the case of marine and automobile policies) policies, shall be at the rate of one and thirty-three hundredths percent (1.33%) in addition to the above tax. (1.33%). Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. Effective July 1, 1988, the The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Articles 65 and 66 of Chapter 58 corporations subject to Article 65 of Chapter 58 of the General Statutes shall be one-half of one percent (1/2 of 1%).

~~The taxes levied herein measured by premiums and/or membership dues shall be in lieu of all other taxes upon insurance companies except: fees, charges, and licenses under this Article, or as specified in Articles 1 through 64 of Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Articles 84 through 88 of Chapter 58 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.~~

~~(e) Report and Payment. – For the tax above levied as measured by gross premiums and/or gross collections from membership dues exclusive of receipts from cost plus plans the president, secretary, or other executive officer of each~~ Each insurance company and corporation subject to Article 65 Articles 65 and 66 of Chapter 58 corporation of the General Statutes doing business in this State shall shall, within the first 15 days of March March, file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined in this section or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the The Commissioner of Insurance may specify, shall specify the form of the report and the information to be contained in the report. and the The report shall be verified by the oath of the company official transmitting the

~~same it~~ or by some principal officer at the home or head office of the company or association in this country. ~~At the time of making such report the taxes above levied with respect to the gross premiums or the gross collections from membership dues shall be paid to the Commissioner of Insurance. The taxes imposed by this section shall be remitted to the Commissioner of Insurance with the report. The provisions above shall likewise apply as~~ This subsection applies to reports and taxes for ~~any firm, corporation, or association~~ firms, corporations, or associations exchanging reciprocal or interinsurance contracts, and ~~said those~~ reports and taxes shall be transmitted by their attorneys-in-fact.

(f) Installment Payments Required. – Insurance companies and ~~Articles 65 and 66 corporations subject to Article 65 of Chapter 58 corporations of the General Statutes that are~~ subject to the tax imposed by this section ~~with and have~~ a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Commissioner of Insurance ~~may, by regulation, may~~ permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this ~~section, subsection,~~ the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. ~~The provisions as to reports and taxes as measured by gross premiums shall~~ This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

~~With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workers' Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the Insurance Commissioner as provided in G.S. 97-100(j)."~~

Sec. 5. Section 4 of this act becomes effective January 1, 1995, and applies, with respect to annuities and funding agreements, to premiums or other considerations paid for annuities or funding agreements on or after that date as well as to annuity or funding agreement benefits commenced on or after that date pursuant to an annuity or funding agreement purchased before that date. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1994.

---

Dennis A. Wicker  
President of the Senate

---

Daniel Blue, Jr.  
Speaker of the House of Representatives