

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 502

Short Title: Insurance Reciprocals.

(Public)

Sponsors: Senator Johnson of Wake.

Referred to: Insurance.

March 20, 1989

A BILL TO BE ENTITLED
AN ACT TO REWRITE THE LAW ON RECIPROCAL OR INTERINSURANCE
EXCHANGES.

The General Assembly of North Carolina enacts:

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

“ARTICLE 51.
“RECIPROCAL INSURANCE.
“PART 1. GENERAL PROVISIONS.

“§ 58-780. Scope.

This Article applies to all reciprocals and reciprocal insurance as defined in G.S. 58-782.

“§ 58-781. Definitions.

(a) As used in this Article:

(1) ‘Attorney’ means the person designated and authorized by subscribers as the attorney-in-fact having authority to obligate them on reciprocal insurance contracts.

(2) ‘Reciprocal insurance’ means the aggregation of subscribers under a common name.

(3) ‘Reciprocal insurance’ means insurance resulting from the mutual exchange of insurance contracts among persons in an unincorporated association under a common name through an attorney-in-fact having authority to obligate each person both as insured and insurer.

1 (4) 'Subscriber' means a person obligated under a reciprocal insurance
2 agreement.

3 **"§ 58-782. Kinds of insurance.**

4 A reciprocal licensed to transact the business of insurance in this State may write
5 the kinds of insurance enumerated in G.S. 58-72, except life insurance, annuities, and
6 title insurance.

7 **"§ 58-783. Risk limitations.**

8 (a) Except as otherwise provided, all the provisions of this Chapter relating to
9 insurers generally, and those relating to insurers writing the same kinds of insurance that
10 reciprocals are permitted to write, are applicable to reciprocals.

11 (b) A reciprocal shall be deemed to have complied with G.S. 58-788 if:

12 (1) It issues policies containing a contingent assessment liability as
13 provided for in G.S. 58-792 and;

14 (2) It has and maintains reinsurance in an amount that the Commissioner
15 considers adequate to reasonably limit the reciprocal's aggregate losses
16 to the lesser of:

17 a. Ten percent (10%) of the surplus to policyholders of the
18 reciprocal multiplied by the number of subscribers;

19 b. The surplus to policyholders of the reciprocal multiplied by
20 three; or

21 c. Five million dollars (\$5,000,000).

22 **"§ 58-784. Eligible contracting persons.**

23 (a) Persons of this State may enter into reciprocal insurance contracts with each
24 other and with persons of other states and countries. For the purposes of this Article,
25 the definition of 'person' shall also include any county, city, school board, or any other
26 local governmental authority or local agency or public service corporation owned,
27 operated or controlled by a locality or local government authority, with power to enter
28 into contractual undertakings within or without the State.

29 (b) For any corporation now existing or hereafter organized under the laws of
30 this State, the power and authority to enter into reciprocal insurance contracts shall be in
31 addition to the powers conferred upon it in its certificate of incorporation, and shall be
32 incidental to the purposes for which the corporation is organized.

33 **"§ 58-785. Business name.**

34 Every reciprocal shall have and use a business name that includes the word
35 'reciprocal,' 'interinsurer,' 'interinsurance,' 'exchange,' 'underwriters,' or 'underwriting.'

36 **"§ 58-786. License and surplus requirements.**

37 (a) No reciprocal shall engage in any insurance transaction in this State until it
38 has obtained a license to do so in accordance with the applicable provisions of this
39 Chapter.

40 (b) No domestic or foreign reciprocal shall be licensed to transact the business of
41 insurance in this State unless it has a surplus to policyholders of at least eight hundred
42 thousand dollars (\$800,000), and no alien reciprocal shall be so licensed unless it has a
43 trusteed surplus of at least eight hundred thousand dollars (\$800,000).

44 **"§ 58-787. Continuation of business under prior requirements.**

1 (a) Notwithstanding other provisions of this Chapter regarding minimum
2 required surplus, any reciprocal that was licensed to write and was writing any class of
3 insurance in this State on the effective date of this Article, may continue to write that
4 class of insurance under the appropriate license from the Commissioner. The reciprocal
5 shall maintain at all times the minimum surplus, and the minimum trusted surplus if an
6 alien reciprocal, required before the effective date of this Article.

7 (b) Before any reciprocal obtains a license to write in this State any class of
8 insurance that it was not writing and licensed to write in this State on the effective date
9 of this Article, it shall comply with all the requirements of this Part regarding surplus.

10 **"§ 58-788. Certification of foreign and alien reciprocals.**

11 No foreign reciprocal shall be licensed to transact the business of insurance in
12 this State unless it has filed with the Commissioner a certificate of the insurance
13 regulator of the state in which it is organized. The certificate shall show that the foreign
14 reciprocal is licensed to write and is writing actively in that state the class of insurance it
15 proposes to write in this State. No alien reciprocal shall be licensed to transact the
16 business of insurance until it has filed with the Commissioner a certificate of the
17 insurance regulator of (i) the state through which it entered the United States or (ii) the
18 alien reciprocal's domiciliary country. The certificate shall show that the alien
19 reciprocal is licensed to write and is writing actively in that state or country the class of
20 insurance it proposes to write in this State.

21 **"§ 58-789. Attorney's domicile.**

22 Nothing in this Chapter regarding the admission and licensing of foreign and
23 alien insurers requires that the attorney of a foreign or alien reciprocal be resident or
24 domiciled in this State, or that the principal office of the attorney be maintained in this
25 State. The office or offices of the attorney shall be determined by the subscribers
26 through the power of attorney.

27 **"§ 58-790. Contract execution by attorney.**

28 Reciprocal insurance contracts shall be executed by the attorney of the
29 reciprocal.

30 **"§ 58-791. Agent's license.**

31 No person shall act in this State as an agent of a reciprocal in the solicitation or
32 procurement of applications for insurance, subscriber's agreements, or powers of
33 attorney, or in the collection of premiums in connection with the reciprocal insurer,
34 without first procuring a license from the Commissioner pursuant to the requirements in
35 Article 45 of this Chapter. An agent shall be appointed by each reciprocal the agent
36 represents.

37 **"§ 58-792. Subscribers' contingent liability.**

38 (a) Each subscriber insured under an assessable policy shall have a contingent
39 assessment liability for payment of actual losses and expenses incurred while his policy
40 was in force. This shall be in the amount provided for in the power of attorney or
41 subscriber's agreement.

42 (b) The contingent assessment liability on any one policy in any one calendar
43 year shall equal the premiums earned, as defined in G.S. 58-796, on the policy for that
44 year multiplied by not less than one nor more than 10.

1 (c) The contingent assessment liability shall not be joint, but shall be
2 individual and several.

3 (d) Each assessable policy issued by the insurer shall plainly set forth a
4 statement of the contingent assessment liability on the front of the policy in capital
5 letters, in contrasting color, and in no less than 10-point type.

6 **"§ 58-793. Nonassessable policies.**

7 (a) The Commissioner may issue a certificate authorizing the reciprocal to
8 reduce or extinguish the contingent assessment liability of subscribers under its policies
9 then in force in this State; and to omit provisions imposing contingent assessment
10 liability in all policies delivered or issued for delivery in this State for as long as all such
11 surplus to policyholders remains unimpaired. The certificate may be issued if (i) a
12 reciprocal has surplus to policyholders of at least two million dollars (\$2,000,000), and
13 (ii) an application of the attorney has been approved by the subscribers' advisory
14 committee.

15 (b) The Commissioner shall issue this certificate if he determines that the
16 reciprocal's surplus to policyholders is reasonable in relation to the reciprocal's
17 outstanding liabilities and adequate to meet its financial needs. In making that
18 determination the following factors, among others, shall be considered:

- 19 (1) The size of the reciprocal as measured by its assets, capital and
20 surplus, reserves, premium writings, insurance in force, and other
21 appropriate criteria;
- 22 (2) The extent to which the reciprocal's business is diversified among
23 different kinds of insurance;
- 24 (3) The number and size of risks insured in each kind of insurance;
- 25 (4) The extent of the geographic dispersion of the reciprocal's insured
26 risks;
- 27 (5) The nature and extent of the reciprocal's reinsurance program;
- 28 (6) The quality, diversification, and liquidity of the reciprocal's investment
29 portfolio;
- 30 (7) The recent past and trend in the size of the reciprocal's surplus to
31 policyholders;
- 32 (8) The surplus to policyholders maintained by other comparable insurers;
33 and
- 34 (9) The adequacy of the reciprocal's reserves.

35 (c) Upon impairment of the surplus to policyholders, the Commissioner shall
36 revoke the certificate. After revocation, the reciprocal shall not issue or renew any
37 policy without providing for the contingent assessment liability of subscribers.

38 (d) The Commissioner shall not authorize a domestic reciprocal to extinguish
39 the contingent assessment liability of any of its subscribers or in any of its policies to be
40 issued, unless it has the required surplus to policyholders and extinguishes the
41 contingent assessment liability of all of its subscribers and in all policies to be issued for
42 all classes of insurance written by it. However, if required by the laws of another state
43 in which the domestic reciprocal is transacting the business of insurance as a licensed
44 insurer, it may issue policies providing for the contingent assessment liability of its

1 subscribers acquiring policies in that state and need not extinguish the contingent
2 assessment liability applicable to policies already in force in that state.

3 **"§ 58-794. Distribution to subscribers.**

4 A reciprocal may return to its subscribers any savings or credits accruing to their
5 accounts. Any such distribution shall not unfairly discriminate between classes of risks
6 or policies or between subscribers. However, the distribution may vary for classes of
7 subscribers based upon the experience of those classes.

8 **"§ 58-795. Reserves.**

9 Each reciprocal shall maintain the same unearned premium and loss or claim
10 reserves required for stock and mutual companies writing the same kinds of insurance.

11 **"§ 58-796. Service of process.**

12 (a) Each attorney of a domestic reciprocal who files the declaration required
13 by G.S. 58-799, and each attorney of a foreign or alien reciprocal who applies for a
14 license to transact the business of insurance in this State, shall file with the
15 Commissioner a written power of attorney executed in duplicate by the attorney
16 appointing the Commissioner as agent of the reciprocal. Upon the appointment, the
17 Commissioner may be served with all lawful process against or notices to such
18 reciprocal. A copy of the power of attorney, duly certified by the Commissioner, shall
19 be received in evidence in all courts of this State. Any domestic, foreign, or alien
20 reciprocal that, on the effective date of this Article has appointed the Secretary of State
21 as its agent for service of process shall comply with the requirements of this section
22 within six months of the effective date of this Article.

23 (b) Whenever any process or notice is served upon the Commissioner, a copy
24 of the process or notice shall be mailed to the attorney at the address shown on the
25 power of attorney. Nothing in this section limits the right to serve any process or notice
26 upon any reciprocal in any other manner permitted by law.

27 **"§ 58-797. Legal proceedings.**

28 (a) Any reciprocal doing business in this State may sue or be sued in the
29 name or designation under which its insurance contracts are effected.

30 (b) Any action or suit against a reciprocal may be brought in any county (i)
31 where its principal office is located, or (ii) where the cause of action or any part of the
32 cause of action arose. If the action or suit is to recover a loss under a policy of
33 insurance, it may also be brought in the county where the property insured was situated
34 at the date of the policy. Any action or suit against a foreign or alien reciprocal may
35 also be brought in any county of this State in which it has any debts owed to it.

36 (c) In an action or suit against a reciprocal, process against or notice to the
37 reciprocal may be served upon the Commissioner. If the defendant in the action or suit
38 is a domestic reciprocal, process against or notice to that domestic reciprocal shall be
39 served upon the attorney for that domestic reciprocal unless service upon that attorney is
40 not feasible.

41 **"§ 58-798. Liability on judgments.**

42 Any judgment against a reciprocal based upon legal process duly served as
43 provided in this Article shall be binding upon the reciprocal and upon each of the

1 reciprocal's subscribers as their respective interests may appear, in an amount not
2 exceeding their respective contingent assessment liabilities.

3 **"PART 2. DOMESTIC RECIPROCALs.**

4 **"§ 58-799. Declaration for license.**

5 (a) Twenty-five or more persons domiciled in this State and designated as
6 subscribers may organize a domestic reciprocal and apply to the Commissioner for a
7 license to transact the business of insurance. The original subscribers and the proposed
8 attorney shall execute and file with the Commissioner a declaration setting forth:

- 9 (1) The name of the attorney and the name of the reciprocal;
- 10 (2) The location of the reciprocal's principal office, which shall be the
11 same as that of the attorney and shall be in this State;
- 12 (3) The kinds of insurance proposed to be written;
- 13 (4) The names and addresses of the original subscribers;
- 14 (5) The designation and appointment of the attorney, and a copy of the
15 power of attorney and subscriber's agreement;
- 16 (6) The names and addresses of the officers and directors of the
17 corporation, or of its members if not a corporation;
- 18 (7) The powers of the subscribers' advisory committee, and the names and
19 terms of office of its members;
- 20 (8) A statement that each of the original subscribers has in good faith
21 applied for insurance of the class proposed to be written and that the
22 reciprocal has received from each original subscriber the anticipated
23 premium or premium deposit for a term of not less than six months for
24 the policy for which application is made;
- 25 (9) A statement of the financial condition of the reciprocal, including a
26 schedule of its assets;
- 27 (10) A statement that the reciprocal has the surplus to policyholders
28 required by G.S. 58-786, and
- 29 (11) A copy of each policy, endorsement, and application form it proposes
30 to issue or use.

31 (b) The declaration shall be acknowledged by each original subscriber and by
32 the attorney in the manner required for the acknowledgment of deeds.

33 **"§ 58-800. Attorney's bond.**

34 (a) Concurrent with the filing of the declaration provided for in G.S. 58-789,
35 the attorney of a domestic reciprocal shall file with the Commissioner a bond payable to
36 this State. The bond shall be executed by the attorney and by a fidelity insurer licensed
37 in this State and shall be subject to the approval of the Commissioner.

38 (b) The bond shall be in an amount established by the Commissioner, and
39 shall be at least fifty thousand dollars (\$50,000). The bond shall be on the condition
40 that the attorney will faithfully account for all moneys and other property of the
41 reciprocal coming into the attorney's control and that the attorney will not withdraw or
42 appropriate, for his own use from the funds of the reciprocal, any moneys or property to
43 which he is not entitled under the power of attorney.

1 (c) The bond shall provide that it is not subject to cancellation unless 30-days'
2 written notice of intent to cancel is given to both the attorney and the Commissioner.

3 **"§ 58-801. Deposit in lieu of bond.**

4 Instead of filing the bond required by G.S. 58-800, the attorney may maintain on
5 deposit with the Commissioner an amount equal to the required bond in cash or in value
6 of securities of the kind specified in G.S. 58-182.3, and subject to the same conditions
7 as the bond.

8 **"§ 58-802. Advisory committee.**

9 The advisory committee exercising the subscribers' rights in a domestic
10 reciprocal shall be selected under rules adopted by the subscribers. At least three-
11 fourths of the committee shall be comprised of subscribers other than the attorney or
12 any person employed by, representing, or having a financial interest in the attorney.
13 The committee shall supervise the finances of the reciprocal and the reciprocal's
14 operations to the extent required to assure their conformity with the subscriber's
15 agreement and power of attorney and shall exercise any other powers conferred on it by
16 the subscriber's agreement.

17 **"§ 58-803. Subscriber's agreement and power of attorney.**

18 (a) Every subscriber of a domestic reciprocal shall execute a subscriber's
19 agreement and power of attorney setting forth the rights, privileges, and obligations of
20 the subscriber as an underwriter and as a policyholder, and the powers and duties of the
21 attorney. The subscriber's agreement and power of attorney shall contain in substance
22 the following provisions:

23 (1) A designation and appointment of the attorney to act for and bind the
24 subscriber in all transactions relating to or arising out of the operations
25 of the reciprocal;

26 (2) A provision empowering the attorney (i) to accept service of process
27 on behalf of the reciprocal and (ii) to appoint the Commissioner as
28 agent of the reciprocal upon whom may be served all lawful process
29 against or notices to the reciprocal;

30 (3) Except for nonassessable policies, a provision for a contingent
31 assessment liability of each subscriber in a specified amount in
32 accordance with G.S. 58-792; and

33 (4) The maximum amount to be deducted from advance premiums or
34 deposits to be paid the attorney, and the items of expense, in addition
35 to losses, to be paid by the reciprocal.

36 (b) The subscriber's agreement may:

37 (1) Provide for the right of substitution of the attorney and revocation of
38 the power of attorney;

39 (2) Impose any restrictions upon the exercise of the power agreed upon by
40 the subscribers;

41 (3) Provide for the exercise of any right reserved to the subscribers
42 directly or through an advisory committee; or

43 (4) Contain other lawful provisions considered advisable.

44 **"§ 58-804. Modification of agreement and power of attorney.**

1 Modification of the terms of the power of attorney and subscriber's agreement of
2 a domestic reciprocal shall be made jointly by the attorney and the subscriber's advisory
3 committee. No modification shall be effective retroactively, nor shall it affect any
4 insurance contract issued prior to the modification.

5 **"§ 58-805. Advance of funds.**

6 The attorney or other interested persons may advance to a domestic reciprocal
7 any funds required for its operations. The funds advanced shall not be treated as a
8 liability of the reciprocal and shall not be withdrawn or repaid except out of the
9 reciprocal's earned surplus in excess of its minimum required surplus.

10 **"§ 58-806. Assessments for deficiency.**

11 (a) Assessments may be levied upon the subscribers of a domestic reciprocal by
12 the attorney in accordance with G.S. 58-792. The assessments shall be approved in
13 advance by the subscribers' advisory committee and the Commissioner.

14 (b) Each domestic reciprocal subscriber's share of a deficiency for which an
15 assessment is made shall be computed by multiplying the premiums earned on the
16 subscriber's policies during the period to be covered by the assessment by the ratio of
17 the total deficiency to the total premiums earned during period upon all policies subject
18 to assessment. However, no assessment shall exceed the aggregate contingent
19 assessment liability computed in accordance with G.S. 58-792. For the purposes of this
20 section, the premiums earned on the subscriber's policies are the gross premiums
21 charged by the reciprocal for the policies minus any charges not recurring upon the
22 renewal or extension of the policies. No subscriber shall have an offset against any
23 assessment for which he is liable on account of any claim for unearned premium or
24 losses payable.

25 **"§ 58-807. Duration of liability for assessment.**

26 Every subscriber of a domestic reciprocal having contingent assessment liability
27 shall be liable for and shall pay his share of any assessment computed in accordance
28 with this Part, if, while the policy is in force or within one year after its termination, the
29 subscriber is notified (i) by the attorney of his intention to levy the assessment or (ii)
30 that delinquency proceedings have been commenced against the reciprocal under the
31 provisions of Article 46 of this Chapter, and the Commissioner or receiver intends to
32 levy an assessment.

33 **"§ 58-808. Distribution of assets after liquidation.**

34 Upon the liquidation of a domestic reciprocal, the assets remaining after
35 discharge of its (i) indebtedness and policy obligations, (ii) the return of any
36 contributions of the attorney or other person made as provided in G.S. 58-805, and (iii)
37 the return of any unused deposits, savings, or credits, shall be distributed. The
38 distribution shall be according to a formula approved by the Commissioner or the court
39 to the persons who were its subscribers within the 12 months prior to the final
40 termination of its license.

41 **"§ 58-809. Financial impairment; assessment; liquidation.**

42 (a) If (i) the assets of a domestic reciprocal are at any time insufficient to settle
43 the sum of its liabilities, except those on account of funds contributed by the attorney or
44 other parties, and its required surplus to policyholders, and (ii) the deficiency is not

1 cured from other sources, its attorney shall levy an assessment upon subscribers made
2 subject to assessment by the terms of their policies for the amount needed to make up
3 the deficiency. However, the assessment shall be subject to G.S. 58-792.

4 (b) If the attorney fails to make the assessment within 30 days after the
5 Commissioner orders him to do so, or if the deficiency is not fully made up within 60
6 days after the date the assessment was made, delinquency proceedings may be instituted
7 and conducted against the insurer as provided in Article 46 of this Chapter.

8 (c) If liquidation of the reciprocal is ordered, an assessment shall be levied upon
9 the subscribers for the amount the Commissioner or the court, as the case may be,
10 determines to be necessary to discharge all liabilities of the reciprocal. This assessment
11 shall exclude any funds contributed by the attorney or other persons, but shall include
12 the reasonable cost of the liquidation. However, the assessment shall be subject to G.S.
13 58-792."

14 Sec. 2. Article 16 of Chapter 58 of the General Statutes is repealed.

15 Sec. 3. This act shall become effective January 1, 1990.