

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1663
Committee Substitute Favorable 6/17/94

Short Title: Standards for Funding Agreements.

(Public)

Sponsors:

Referred to:

May 26, 1994

A BILL TO BE ENTITLED

1 AN ACT TO EXEMPT ALL ANNUITIES AND FUNDING AGREEMENTS FROM
2 PREMIUM TAXATION; TO CLARIFY THE AUTHORIZATION FOR THE
3 ISSUANCE OF AND ESTABLISH STANDARDS FOR FUNDING
4 AGREEMENTS; AND TO MAKE CONFORMING CHANGES IN LAWS ON
5 PRIORITY OF DISTRIBUTION OF ASSETS OF INSOLVENT INSURERS AND
6 ON SECURITIES.
7

8 The General Assembly of North Carolina enacts:

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

11 **"§ 58-7-16. Funding agreements authorized.**

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

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

19 (c) Funding agreements may be issued to persons authorized by a state or foreign
20 country to engage in an insurance business or to their affiliates, including affiliates of
21 the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article
22 19 of this Chapter. Funding agreements may be issued to persons other than those

1 licensed to write life insurance and annuities or their affiliates in order to fund one or
2 more of the following:

3 (1) Benefits under any employee benefit plan as defined in the federal
4 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001
5 et seq., maintained in the United States or in a foreign country.

6 (2) The activities of an organization exempt from taxation under section
7 501(c) of the Internal Revenue Code or of any similar organization in a
8 foreign country.

9 (3) A program of the government of the United States, the government of
10 a state, foreign country, or political subdivision, agency, or
11 instrumentality thereof.

12 (4) An agreement providing for one or more payments in satisfaction of a
13 claim or liability.

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

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

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

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

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

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

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

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

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

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

34 "**§ 58-30-220. Priority of distribution.**

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

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

43 (2) Compensation actually owing to employees other than officers of the
44 insurer for services rendered within three months prior to the

1 commencement of a delinquency proceeding against the insurer under
 2 this Article, but not exceeding one thousand dollars (\$1,000) for each
 3 employee. In the discretion of the Commissioner, this compensation
 4 may be paid as soon as practicable after the proceeding has been
 5 commenced. This priority is in lieu of any other similar priority that
 6 may be authorized by law as to wages or compensation of those
 7 employees.

8 (3) Claims or portions of claims for benefits under policies and for losses
 9 incurred, including claims of third parties under liability ~~policies, up to~~
 10 ~~an amount of three hundred thousand dollars (\$300,000) per claim policies;~~
 11 claims for funds or consideration held under funding agreements, as
 12 defined in G.S. 58-7-16; claims under life insurance and annuity
 13 policies, whether for death proceeds, annuity proceeds, or investment
 14 values; and claims of domestic and foreign guaranty associations; but
 15 excluding claims of insurance pools, underwriting associations, or
 16 those arising out of reinsurance agreements, claims of other insurers
 17 for subrogation, and claims of insurers for payments and settlements
 18 under uninsured and underinsured motorist coverages.

19 (4) Claims for unearned premiums.

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

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

28 "(11) 'Security' means any note; stock; treasury stock; bond; debenture;
 29 evidence of indebtedness; certificate of interest or participation in any
 30 profit-sharing agreement; collateral-trust certificate; preorganization
 31 certificate or subscription; transferable share; investment contract
 32 including without limitation any investment contract taking the form of
 33 a whiskey warehouse receipt or other investment of money in whiskey
 34 or malt beverages; voting-trust certificate; certificate of deposit for a
 35 security; certificate of interest or participation in an oil, gas, or mining
 36 title or lease or in payments out of production under ~~such a~~ title or
 37 lease; or, in general, any interest or instrument commonly known as a
 38 'security,' or any certificate of interest or participation in, temporary or
 39 interim certificate for, receipt for guarantee of, or warrant or right to
 40 subscribe to or purchase, any of the foregoing. 'Security' does not
 41 include any insurance or endowment ~~policy policy, funding agreement,~~
 42 as defined in G.S. 58-7-16, or annuity contract under which an
 43 insurance company promises to pay (i) a fixed sum of money either in
 44 a lump sum or periodically for life or for some other specified period,

1 or (ii) benefits or payments or value ~~which~~ that vary so as to reflect
2 investment results of any segregated portfolio of investments or of a
3 designated separate account or accounts in which amounts received or
4 retained in connection with ~~any of such contracts~~ a contract have been
5 placed if the delivering or issuing insurance company has currently
6 satisfied the Commissioner of Insurance that it is in compliance with
7 G.S. 58-7-95."

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

9 **"§ 105-228.5. Taxes measured by gross premiums.**

10 (a) Tax Levied. – Every insurance company and every corporation subject to
11 Article 65 ~~Articles 65 and 66~~ of Chapter 58 ~~corporation~~ shall pay to the Commissioner of
12 ~~Insurance, at the time and rates provided in this section, of the General Statutes~~ is subject to
13 the tax imposed by this section. A person who is subject to the tax imposed by this
14 section is not subject to franchise or income taxes imposed by Articles 3 and 4,
15 respectively, of this Chapter.

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

27 (1) The premiums are properly reported and properly allocated as being
28 received from business done in some other nation, territory, state, or
29 states.

30 (2) The premiums are from policies written in federal areas for persons in
31 military service who pay premiums by assignment of service pay.

32 Gross premiums from business done in this State in the case of life insurance ~~and~~
33 ~~annuity~~ contracts, including ~~any~~ supplemental contracts ~~thereto~~ providing for disability
34 benefits, accidental death benefits, or other special ~~benefits,~~ benefits that are not
35 annuities, shall ~~for the purposes of the taxes levied in this section~~ mean ~~any and all~~
36 premiums collected in the calendar year ~~(other year, other than for contracts for~~
37 ~~reinsurance)~~ of reinsurance, for policies the premiums on which are paid by or credited
38 to persons, ~~firms~~ firms, or corporations resident in this State, or in the case of group
39 ~~policies~~ policies, for ~~any~~ contracts of insurance covering persons resident within this
40 State. State, with no deduction for considerations paid for annuity contracts which are
41 subsequently returned except as below specified, and with no other deduction whatsoever
42 except The only deductions allowed shall be for premiums returned under one or more of
43 the following conditions: premiums—refunded on policies rescinded for fraud or other
44 breach of contract; premiums which—contract and premiums that were paid in advance on

1 life insurance contracts and subsequently refunded to the insured, premium payer,
2 beneficiary or estate; and in the case of group annuity contracts the premiums returned by
3 reason of a change in the composition of the group covered. Said gross estate. Gross
4 premiums shall be deemed to have been collected for the amounts as provided in the
5 policy contracts for the time in force during the year, whether satisfied by cash payment,
6 notes, loans, automatic premium loans, applied ~~dividend~~ dividend, or ~~in~~ by any other
7 manner whatsoever, means except waiver of premiums by in the case of premiums waived
8 by any of said companies pursuant to under a contract for waiver of premium in case of
9 disability.

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

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

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

- 28 (1) all ~~All~~ premiums received on or after July 1, 1973, from policies or
29 ~~contracts, contracts~~ issued in connection with the funding of a pension,
30 ~~annuity annuity,~~ or profit-sharing plan, plan qualified or exempt under
31 sections 401, 403, 404, 408, 457 or 501 of the Code as defined in ~~G.S.~~
32 105-134.1(1) and the gross amount of all such premiums shall be exempt
33 from the tax levied by this section. ~~G.S. 105-228.90.~~
- 34 (2) Premiums or considerations received from annuities, as defined in G.S.
35 58-7-15.
- 36 (3) Funds or considerations received in connection with funding
37 agreements, as defined in G.S. 58-7-16.

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

40 Gross premiums from business done in this State in the case of contracts for fire
41 insurance, casualty insurance, and any other type of insurance except life and annuity
42 contracts as above specified, including contracts of insurance required to be carried by
43 the Workers' Compensation Act, shall for the purposes of the taxes levied in this section
44 mean any and all premiums written during the calendar year, or the equivalent thereof in

1 the case of self insurers under the Workers' Compensation Act, for contracts covering
2 property or risks in this State, other than for contracts of reinsurance, whether such
3 premiums are designated as premiums, deposits, premium deposits, policy fees,
4 membership fees, or assessments. Gross premiums shall be deemed to have been
5 written for the amounts as provided in the policy contracts, new and renewal, becoming
6 effective during the year irrespective of the time or method of making payment or
7 settlement for such premiums, and with no deduction for dividends whether returned in
8 cash or allowed in payment or reduction of premiums or for additional insurance, and
9 without any other deduction except for return of premiums, deposits, fees or
10 assessments for adjustment of policy rates or for cancellation or surrender of policies.

11 In determining the amount of gross premiums from business in this State all gross
12 premiums received in this State, or credited to policies written or procured in this State,
13 or derived from business written in this State shall be deemed to be for contracts
14 covering persons, property or risks resident or located in this State except for such
15 premiums as are properly reported and properly allocated as being received from
16 business done in some other nation, territory, state or states, and except for premiums
17 from policies written in federal areas for persons in military service who pay premiums
18 by assignment of service pay.

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

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

1 (e) Report and Payment. ~~For the tax above levied as measured by gross~~
2 ~~premiums and/or gross collections from membership dues exclusive of receipts from~~
3 ~~cost plus plans the president, secretary, or other executive officer of each~~ Each
4 insurance company and corporation subject to Article 65 ~~Articles 65 and 66~~ of Chapter
5 58 ~~corporation of the General Statutes~~ doing business in this State shall ~~shall~~, within the
6 first 15 days of ~~March~~ March, file with the Commissioner of Insurance a full and
7 accurate report of the total gross premiums as ~~above~~ defined in this section or the total
8 gross collections from membership dues exclusive of receipts from cost plus plans
9 collected in this State during the preceding calendar year. ~~The report shall be in such~~
10 ~~form and contain such information as the~~ The Commissioner of Insurance may specify,
11 shall specify the form of the report and the information to be contained in the report.
12 ~~and the~~ The report shall be verified by the oath of the company official transmitting the
13 ~~same~~ it or by some principal officer at the home or head office of the company or
14 association in this country. ~~At the time of making such report the taxes above levied~~
15 ~~with respect to the gross premiums or the gross collections from membership dues shall~~
16 ~~be paid to the Commissioner of Insurance.~~ The taxes imposed by this section shall be
17 remitted to the Commissioner of Insurance with the report. ~~The provisions above shall~~
18 ~~likewise apply as~~ This subsection applies to reports and taxes for ~~any firm, corporation,~~
19 ~~or association~~ firms, corporations, or associations exchanging reciprocal or
20 interinsurance contracts, and ~~said~~ those reports and taxes shall be transmitted by their
21 attorneys-in-fact.

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

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

36 If a company does not meet the installment payment requirement of this ~~section,~~
37 subsection, the Commissioner of Insurance shall assess a penalty on underpayments that
38 is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-
39 241.1(i). Any overpayment shall be credited to the company and applied against the
40 taxes imposed upon the company under this Article.

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

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

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