

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1185  
Insurance Committee Substitute Adopted 7/20/93

Short Title: Workers' Comp/Uninsured Employers.

(Public)

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Sponsors:

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Referred to: Finance.

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May 18, 1993

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE UNINSURED EMPLOYERS' FUND TO PROVIDE  
COMPENSATION FOR CERTAIN INJURED EMPLOYEES WHOSE  
EMPLOYERS FAILED TO SECURE THE PAYMENT OF COMPENSATION  
AND TO REQUIRE CARRIERS TO CONTRIBUTE TO THIS FUND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 97 of the General Statutes is amended by adding the  
following new sections to read:

**"§ 97-94.1. Uninsured Employers' Fund.**

The Uninsured Employers' Fund is created. The Uninsured Employers' Fund shall be administered by the Commission for the purpose of providing compensation to certain employees who are entitled to compensation pursuant to this Article, which compensation is determined to be payable by an employer who failed to secure the payment of compensation pursuant to G.S. 97-93. The Uninsured Employers' Fund shall consist of contributions paid into the Fund by carriers pursuant to a tax imposed under G.S. 97-94.2 and any interest that accrues to the Fund. By January 1 of each year, the Commission shall report to the General Assembly as to the amount of moneys in the Fund and the number and amount of compensation awards paid from the Fund during the preceding calendar year.

**"§ 97-94.2. Tax imposed.**

(a) Tax. – A tax is imposed upon each carrier, as defined in G.S. 97-2. The tax shall be at a percentage rate of taxable premiums for the calendar year. For the purpose of this section, taxable premiums are those premiums that are reported to the

1 Commissioner of Insurance under G.S. 105-228.5 and that, for carriers that are not  
2 individual self-insureds, are the base for the tax under G.S. 105-228.5. For carriers that  
3 are individual self-insureds, taxable premiums are the equivalent of premiums set forth  
4 in G.S. 97-100(j). For the 1993 tax year, the rate shall be twenty-five hundredths  
5 percent (.25%). For each tax year thereafter, the rate shall be one-tenth percent (.1%).  
6 The tax imposed by this section is in addition to the tax on premiums imposed under  
7 G.S. 97-100 and G.S. 105-228.5. The tax imposed by this section is not a special  
8 purpose tax, an assessment, or an obligation within the meaning of G.S. 105-228.8(e).

9 (b) Tax Suspended. – If the Uninsured Employers' Fund, less all known liabilities  
10 of the Fund, exceeds five hundred thousand dollars (\$500,000) on December 31, the tax  
11 imposed by this section is suspended for the following tax year. If the Uninsured  
12 Employers' Fund is reduced to an amount less than five hundred thousand dollars  
13 (\$500,000) on December 31, less all known liabilities, the tax shall be resumed for the  
14 following tax year.

15 (c) Administration and Collection. – The Department of Insurance shall  
16 administer and collect the tax imposed by this section in the same manner as the  
17 premium tax imposed under G.S. 97-100 and G.S. 105-228.5. The Commissioner of  
18 Insurance shall credit the net proceeds of the tax imposed by this section to the  
19 Uninsured Employers' Fund. The Department of Insurance may adopt rules to  
20 implement this section.

21 **"§ 97-94.3. Returns; installments; penalty.**

22 (a) Returns. – Every carrier subject to the tax imposed by G.S. 97-94.2 shall  
23 make a return to be filed no later than March 15 following the end of the taxable year.  
24 The return shall be verified by the affidavit of its president and secretary, or other chief  
25 officers or agents, to the Commissioner of Insurance, stating the amount of all gross  
26 premiums collected during the period covered by the return.

27 (b) Installment Payments. – Carriers that are required to make installment  
28 payments under G.S. 105-228.5 shall remit three equal quarterly installments of the tax  
29 imposed by G.S. 97-94.2 with each installment equal to at least thirty-three and one-  
30 third percent (33 1/3%) of the liability incurred in the immediately preceding taxable  
31 year. The quarterly installment payments shall be made on or before April 15, June 15,  
32 and October 15 of each taxable year. The company shall remit the balance by the  
33 following March 15 in the same manner provided in this section for annual returns.

34 The Commissioner of Insurance may permit a carrier to pay less than the required  
35 installment payment when the carrier reasonably believes that the total installment  
36 payments made for the current year will exceed the total anticipated tax liability for the  
37 year. Any overpayment shall be credited to the carrier and applied against the taxes  
38 imposed upon the carrier under this Article.

39 (c) Penalty. – If a carrier does not meet the installment payment requirement of  
40 this section, the Commissioner of Insurance shall assess a penalty on underpayments  
41 that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-  
42 241.1(i).

43 **"§ 97-94.4. Defense of claims against Fund by Attorney General.**

1 (a) Upon being notified by the Commission that a claim is pending before it  
2 against an employer who has not complied with the provisions of G.S. 97-93, the  
3 Attorney General may appear before the Commission and defend any claim against the  
4 Uninsured Employers' Fund. The Attorney General shall consult with the Commission  
5 before deciding not to make an appearance. With the leave of the Commission, the  
6 Attorney General may enter an appearance in a claim at any stage of the proceedings.  
7 The Attorney General may file a **lis pendens** against an employer, without prior court  
8 order, in any county and may attach an employer's property under Article 35 of Chapter  
9 1 of the General Statutes.

10 (b) The Commission shall order payment of attorneys' fees to the Attorney  
11 General from the Uninsured Employers' Fund for any attorneys' fees due to the Attorney  
12 General under this section.

13 **"§ 97-94.5. Payment of awards from the Uninsured Employers' Fund.**

14 (a) Subject to subsections (b) and (c) of this section, when the Commission  
15 determines that:

- 16 (1) The employee suffered a compensable injury while employed by an  
17 employer subject to the compensation provisions of this Article,
- 18 (2) An employee is entitled to compensation pursuant to this Article,
- 19 (3) The employer failed to secure the payment of compensation pursuant  
20 to G.S. 97-93, and
- 21 (4) The employer is unable to pay the compensation that the employee is  
22 entitled to,

23 the Commission shall order payment of all compensation as may be awarded by the  
24 Commission from the Uninsured Employers' Fund.

25 (b) The Commission shall not order compensation under G.S. 97-38(3) to be paid  
26 from the Uninsured Employers' Fund.

27 (c) Any employee who had a duty to secure the payment of compensation  
28 pursuant to G.S. 97-93 on behalf of that employee's employer and failed to do so shall  
29 not receive any payments of compensation from the Fund.

30 (d) If the Fund has insufficient funds to pay any compensation under this section,  
31 that compensation shall be paid from the Fund as soon as sufficient tax revenues are  
32 credited to the Fund.

33 **"§ 97-94.6. Subrogation.**

34 Upon payment of a claim from the Uninsured Employers' Fund, the Uninsured  
35 Employers' Fund shall be subrogated to all rights to recover damages that the employee  
36 may have against the employer or any other party for the injury. The Attorney General  
37 may assert the rights of the Fund.

38 **"§ 97-94.7. Payments procured by fraud, mistake, or failure to report a change in**  
39 **conditions.**

40 Any payment to an employee from the Uninsured Employers' Fund that is later  
41 determined by the Commission to have been procured by fraud, mistake, or a failure to  
42 report a change in condition, may be recovered from the employee by the Attorney  
43 General and credited to the Fund."

44 Sec. 2. G.S. 97-100(i) reads as rewritten:

1       "(i) Any insurance carrier liable to pay a tax upon premiums under this ~~Article~~  
2 section and a tax under G.S. 97-94.2 shall not be liable to pay any other or further tax  
3 upon such premiums, under any other law of this State."

4       ◆       Sec. 3. The Department of Insurance shall modify the returns that carriers  
5 are required to file under G.S. 105-228.5 in order that the same return can be used for  
6 filing the tax imposed under G.S. 97-94.2, as enacted by Section 1 of this act.

7       Sec. 4. Except for G.S. 97-94.2(b) and the tax imposed under G.S. 97-94.2,  
8 as enacted by this act, this act is effective upon ratification and applies to claims in  
9 which the injury occurred on or after that date; provided, however, for any claim in  
10 which the injury occurred on or after October 1, 1992, and for which the hearing is held  
11 before September 1, 1993, the claimant may file a claim or amend a claim on or before  
12 November 1, 1993, for recovery from the Uninsured Employers' Fund created by this  
13 act. G.S. 97-94.2(b), as enacted by this act, becomes effective March 15, 1994. The tax  
14 imposed by G.S. 97-94.2, as enacted by this act, is effective for taxable years beginning  
15 on or after January 1, 1993.

16       Notwithstanding the provisions of G.S. 97-94.3, as enacted by this act, each  
17 carrier subject to the tax levied under G.S. 97-94.2, as enacted by this act, who is  
18 otherwise required to make installment payments of the tax under G.S. 97-94.3 shall  
19 make one installment payment of the tax for the 1993 taxable year on or before October  
20 15, 1993. This installment payment shall be equal to fifty percent (50%) of the 1993 tax  
21 rate applied to the carriers' taxable premiums, as defined in G.S. 97-94.2, for the 1992  
22 calendar year; the carriers shall remit the balance of the tax imposed for the 1993  
23 taxable year by March 15, 1994.