

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1185
Insurance Committee Substitute Adopted 7/20/93
Finance Committee Substitute No. 2 Adopted 6/8/94

Short Title: Workers' Comp/Uninsured Employers.

(Public)

Sponsors:

Referred to: Finance.

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

1 of this section, taxable premiums are those premiums that are reported to the
2 Commissioner of Insurance under G.S. 105-228.5 and that, for carriers that are not self-
3 insureds, are the base for the tax under G.S. 105-228.5. For carriers that are self-
4 insureds, taxable premiums are the equivalent of premiums set forth in G.S. 97-100.
5 For the 1994 tax year, the rate shall be fifteen hundredths percent (.15%). For each tax
6 year thereafter, the rate shall be one-tenth percent (.1%). The tax imposed by this
7 section is in addition to the tax on premiums imposed under G.S. 97-100 and G.S. 105-
8 228.5. The tax imposed by this section is not a special purpose tax, an assessment, or an
9 obligation within the meaning of G.S. 105-228.8(e).

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

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

22 **"§ 97-94.3. Returns; installments; penalty.**

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

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

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

40 (c) Penalty. – If a carrier does not meet the installment payment requirement of
41 this section, the Commissioner of Insurance shall assess a penalty on underpayments
42 that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-
43 241.1(i).

44 **"§ 97-94.4. Defense of claims against Fund by Attorney General.**

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

10 **"§ 97-94.5. Payment of awards from the Uninsured Employers' Fund.**

11 (a) Payment from Fund. – The Commission shall order payment of an award to
12 an employee from the Uninsured Employers' Fund when the Commission determines
13 that all of the following apply:

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

21 If there is insufficient money in the Fund to pay an employee awarded compensation
22 from the Fund, then the compensation shall be paid from the Fund as soon as sufficient
23 tax revenues are credited to it.

24 (b) Nonpayment from Fund. – The Commission shall not order compensation
25 payable under G.S. 97-38(3) to be paid from the Uninsured Employers' Fund. The
26 Commission shall not order compensation to be paid from the Fund when an employee
27 who had a duty to secure the payment of compensation pursuant to G.S. 97-93 on behalf
28 of the employee's employer failed to do so.

29 **"§ 97-94.6. Subrogation.**

30 Upon payment of a claim from the Uninsured Employers' Fund, the Uninsured
31 Employers' Fund shall be subrogated to all rights to recover damages that the employee
32 may have against the employer or any other party for the injury. The Attorney General
33 may assert the rights of the Fund. This section does not affect the rights of an employee
34 under G.S. 97-10.2.

35 **"§ 97-94.7. Payments procured by fraud, mistake, or failure to report a change in**
36 **conditions.**

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

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

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

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

4 Sec. 4. Except for G.S. 97-94.2(b) and the tax imposed under G.S. 97-94.2,
5 as enacted by this act, this act is effective upon ratification and applies to claims in
6 which the injury occurred on or after that date; provided, however, for any claim in
7 which the injury occurred on or after October 1, 1992, and for which the hearing is held
8 before September 1, 1993, the claimant may file a claim or amend a claim on or before
9 November 1, 1994, for recovery from the Uninsured Employers' Fund created by this
10 act. G.S. 97-94.2(b), as enacted by this act, becomes effective March 15, 1995. The tax
11 imposed by G.S. 97-94.2, as enacted by this act, is effective for taxable years beginning
12 on or after January 1, 1994.

13 Notwithstanding the provisions of G.S. 97-94.3, as enacted by this act, each
14 carrier subject to the tax levied under G.S. 97-94.2, as enacted by this act, who is
15 otherwise required to make installment payments of the tax under G.S. 97-94.3 shall
16 make one installment payment of the tax for the 1994 taxable year on or before October
17 15, 1994. This installment payment shall be equal to fifty percent (50%) of the 1994 tax
18 rate applied to the carriers' taxable premiums, as defined in G.S. 97-94.2, for the 1993
19 calendar year; the carriers shall remit the balance of the tax imposed for the 1994
20 taxable year by March 15, 1995.