

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 1185

Insurance Committee Substitute Adopted 7/20/93
Finance Committee Substitute No. 2 Adopted 6/8/94
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Short Title: Workers' Comp/Uninsured Employers.

(Public)

Sponsors:

Referred to: Finance.

May 18, 1993

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH THE UNINSURED EMPLOYERS' FUND TO PROVIDE
2 COMPENSATION FOR CERTAIN INJURED EMPLOYEES WHOSE
3 EMPLOYERS FAILED TO SECURE THE PAYMENT OF COMPENSATION,
4 TO REQUIRE CARRIERS TO CONTRIBUTE TO THIS FUND, TO CLARIFY
5 THAT THE COMMISSIONER OF INSURANCE HAS THE AUTHORITY TO
6 CONDUCT INVESTIGATIONS TO DETERMINE IF EMPLOYERS ARE
7 COMPLYING WITH THE WORKERS' COMPENSATION INSURANCE
8 COVERAGE REQUIREMENTS, AND TO REQUIRE EMPLOYERS TO POST
9 NOTICE OF WORKERS' COMPENSATION INSURANCE COVERAGE OR
10 SELF-INSURANCE.
11

12 The General Assembly of North Carolina enacts:

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

15 **§ 97-94.1. Uninsured Employers' Fund.**

16 The Uninsured Employers' Fund is created. The Uninsured Employers' Fund shall
17 be administered by the Commission for the purpose of providing compensation to
18 certain employees who are entitled to compensation pursuant to this Article, which
19 compensation is determined to be payable by an employer who failed to secure the
20 payment of compensation pursuant to G.S. 97-93. The Uninsured Employers' Fund
21 shall consist of contributions paid into the Fund by carriers pursuant to a tax imposed

1 under G.S. 97-94.2 and any interest that accrues to the Fund. By January 1 of each year,
2 the Commission shall report to the General Assembly as to the amount of moneys in the
3 Fund and the number and amount of compensation awards paid from the Fund during
4 the preceding calendar year.

5 **"§ 97-94.2. Tax imposed.**

6 (a) Tax. – A tax is imposed upon each carrier, as defined in G.S. 97-2. The tax
7 shall be at a percentage rate of taxable premiums for the calendar year. For the purpose
8 of this section, taxable premiums are those premiums that are reported to the
9 Commissioner of Insurance under G.S. 105-228.5 and that, for carriers that are not self-
10 insureds, are the base for the tax under G.S. 105-228.5. For carriers that are self-
11 insureds, taxable premiums are the equivalent of premiums set forth in G.S. 97-100.
12 For the 1994 tax year, the rate shall be fifteen hundredths percent (.15%). For each tax
13 year thereafter, the rate shall be one-tenth percent (.1%). The tax imposed by this
14 section is in addition to the tax on premiums imposed under G.S. 97-100 and G.S. 105-
15 228.5. The tax imposed by this section is not a special purpose tax, an assessment, or an
16 obligation within the meaning of G.S. 105-228.8(e).

17 (b) Tax Suspended. – If the Uninsured Employers' Fund, less all known liabilities
18 of the Fund, exceeds five hundred thousand dollars (\$500,000) on December 31, the tax
19 imposed by this section is suspended for the following tax year. If the Uninsured
20 Employers' Fund is reduced to an amount less than five hundred thousand dollars
21 (\$500,000) on December 31, less all known liabilities, the tax shall be resumed for the
22 following tax year.

23 (c) Administration and Collection. – The Department of Insurance shall
24 administer and collect the tax imposed by this section in the same manner as the
25 premium tax imposed under G.S. 97-100 and G.S. 105-228.5. The Commissioner of
26 Insurance shall credit the net proceeds of the tax imposed by this section to the
27 Uninsured Employers' Fund. The Department of Insurance may adopt rules to
28 implement this section.

29 **"§ 97-94.3. Returns; installments; penalty.**

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

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

42 The Commissioner of Insurance may permit a carrier to pay less than the required
43 installment payment when the carrier reasonably believes that the total installment
44 payments made for the current year will exceed the total anticipated tax liability for the

1 year. Any overpayment shall be credited to the carrier and applied against the taxes imposed upon the carrier under this Article.

3 (c) Penalty. – If a carrier does not meet the installment payment requirement of this section, 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).

7 **"§ 97-94.4. Defense of claims against Fund by Attorney General.**

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

17 **"§ 97-94.5. Payment of awards from the Uninsured Employers' Fund.**

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

- 21 (1) The employee suffered a compensable injury while employed by an employer subject to the compensation provisions of this Article.
- 23 (2) The employee is entitled to compensation pursuant to this Article.
- 24 (3) The employer failed to secure the payment of compensation pursuant to G.S. 97-93.
- 26 (4) The employer is unable to pay the compensation that the employee is entitled to.

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

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

36 **"§ 97-94.6. Subrogation.**

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

42 **"§ 97-94.7. Payments procured by fraud, mistake, or failure to report a change in conditions.**

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

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

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

9 Sec. 2.1. G.S. 97-93 reads as rewritten:

10 **"§ 97-93. Employers required to carry insurance or prove financial ability to pay**
11 **for benefits; employers required to post notice; self-insured employers**
12 **regulated by Commissioner of Insurance.**

13 (a) Every employer subject to the provisions of this Article relative to the
14 payment of compensation shall either:

15 (1) Insure and keep insured his liability under this Article in any
16 authorized corporation, association, organization, or in any mutual
17 insurance association formed by a group of employers so authorized;
18 or

19 (2) Furnish to the Commissioner of Insurance satisfactory proof of the
20 employer's financial ability, either alone or through membership in a
21 group comprising two or more employers who agree to pool their
22 liabilities under this Article, to directly pay the compensation in the
23 amount and manner and when due as provided for in this Article.

24 (b) In the case of subdivision (a)(2) of this section, the Commissioner of
25 Insurance may require the deposit of an acceptable security, indemnity, or bond to
26 secure the payment of compensation liabilities as they are incurred. Any individual
27 employer or group of employers who furnish proof of financial ability under subdivision
28 (a)(2) of this section shall be governed in all respects by this Article and by such rules
29 as may be promulgated by the Commissioner of Insurance.

30 (c) Payment of dividends to the members of any group of employers who agree
31 to pool their liabilities under subdivision (a)(2) of this section shall not be contingent
32 upon the maintenance or continuance of membership in such pools.

33 (d) Every employer who is in compliance with the provisions of subsection (a) of
34 this section shall post in a conspicuous place in places of employment a notice stating
35 that employment by this employer is subject to the North Carolina Workers'
36 Compensation Act and stating whether the employer has a policy of insurance against
37 liability or qualifies as a self-insured employer. In the event the employer allows its
38 insurance to lapse or ceases to qualify as a self-insured employer, the employer shall,
39 within five working days of this occurrence, remove any notices indicating otherwise."

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

43 Sec. 4. G.S. 58-2-40 is amended by adding a new section to read:

1 "(9) Conduct investigations to determine if employers are complying with
2 G.S. 97-93 and otherwise monitor compliance with that statute."

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

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