

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  
Fourth Edition Engrossed 6/22/94  
House Committee Substitute Favorable 7/16/94

Short Title: Workers' Comp/Uninsured Employers.

(Public)

Sponsors:

Referred to:

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 CLARIFY THAT THE COMMISSIONER OF INSURANCE HAS THE  
AUTHORITY TO CONDUCT INVESTIGATIONS TO DETERMINE IF  
EMPLOYERS ARE COMPLYING WITH THE WORKERS' COMPENSATION  
INSURANCE COVERAGE REQUIREMENTS.

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.**

(a) Fund. – The Uninsured Employers' Fund is created as an expendable trust fund within the Department of Commerce. Revenue in the Fund does not revert and interest and other investment income earned by the Fund accrues to it.

The Commission shall administer the Fund. Revenue in the Fund shall be used to award to certain employees compensation and medical compensation that is payable by an employer who failed to secure the payment of compensation pursuant to G.S. 97-93.

(b) Report. – By January 1 of each year, the Commission shall submit a report on the Fund to the Joint Legislative Commission on Governmental Operations and the

1 Fiscal Research Division of the General Assembly. The report must state the beginning  
2 and ending balances of the Fund for the previous fiscal year and list the number and  
3 amount of compensation awards paid from the Fund during the preceding fiscal year.

4 **"§ 97-94.2. Defense of claims against Fund by Attorney General.**

5 Upon being notified by the Commission that a claim is pending before it against an  
6 employer who has not complied with the provisions of G.S. 97-93, the Attorney General  
7 may appear before the Commission and defend any claim against the Uninsured  
8 Employers' Fund. The Attorney General must consult with the Commission before  
9 deciding not to make an appearance. With the leave of the Commission, the Attorney  
10 General may enter an appearance in a claim at any stage of the proceedings. If the  
11 Attorney General files a suit against an employer to recover the amount of a  
12 compensation award that is paid from the Fund but should have been paid by the  
13 employer, the Attorney General may file a **lis pendens** against the employer in any  
14 county and may attach an employer's property under Article 35 of Chapter 1 of the  
15 General Statutes.

16 **"§ 97-94.3. Payment of awards from the Uninsured Employers' Fund.**

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

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

28 If there is insufficient money in the Fund to pay an employee awarded compensation  
29 or medical compensation from the Fund, then the compensation or medical  
30 compensation shall be paid from the Fund as soon as sufficient funds are appropriated to  
31 it. Nothing in this section obligates the General Assembly to appropriate revenue to the  
32 Fund.

33 (b) Nonpayment From Fund. – The Commission shall not order compensation  
34 payable under G.S. 97-38(3) to be paid from the Uninsured Employers' Fund. The  
35 Commission shall not order compensation or medical compensation to be paid from the  
36 Fund when the employee claiming benefits from the Fund had the ability and authority  
37 to secure the payment of compensation pursuant to G.S. 97-93 on behalf of the  
38 employee's employer and failed to do so.

39 **"§ 97-94.4. Subrogation.**

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

1 **"§ 97-94.5. Payments procured by fraud, mistake, or failure to report a change in**  
2 **conditions.**

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

7 Sec. 2. G.S. 58-2-40 is amended by adding a new subdivision to read:

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

10 Sec. 3. This act does not obligate the General Assembly to appropriate funds  
11 to the Uninsured Employers' Fund in addition to the funds appropriated by the 1993  
12 General Assembly.

13 Sec. 4. This act is effective upon ratification and applies to claims in which  
14 the injury occurred on or after that date. Section 1 of this act expires July 1, 1996; the  
15 expiration does not affect claims filed before the date the act expires.