

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1031

Short Title: Insurance Rates and Liability.

(Public)

Sponsors: Senator Parnell.

Referred to: Pensions and Retirement/Insurance/State Personnel

May 4, 1995

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE LAW GOVERNING THE COMPUTATION OF
3 INSURANCE RATES, TO REQUIRE THE MOTOR VEHICLE REINSURANCE
4 FACILITY TO PROVIDE FOR THE DISTRIBUTION OF GAINS AND THE
5 RECOUPMENT OF LOSSES IN THE FACILITY PLAN OF OPERATION, TO
6 DEFINE MEMBERS OF LIMITED LIABILITY COMPANIES AS EMPLOYEES
7 FOR PURPOSES OF WORKERS' COMPENSATION, TO PROVIDE THAT
8 CONTRACTORS ARE NOT LIABLE FOR THE DEATH OF OR INJURY TO
9 SUBCONTRACTORS UNDER THE WORKERS' COMPENSATION ACT, TO
10 PROVIDE FOR THE IMMUNITY OF THE RATE BUREAU FOR THE RELEASE
11 OF ERRONEOUS INFORMATION OR THE FAILURE TO RELEASE CERTAIN
12 INFORMATION RELATED TO SAFETY CONSULTATION SERVICES AND
13 WORKERS' COMPENSATION COVERAGE, AND TO MAKE OTHER
14 CHANGES TO THE WORKERS' COMPENSATION AND INSURANCE LAWS.

15 The General Assembly of North Carolina enacts:

16 Section 1. G.S. 58-36-25(b) reads as rewritten:

17 "(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and
18 no longer effective by order of the Commissioner issued under G.S. 58-36-20, the
19 members of the Bureau, in accordance with rules and regulations established and adopted
20 by the governing committee, shall have the option to continue to use such rate for the

1 interim period pending judicial review of such order, provided each such member shall
2 place in escrow account the purportedly unfairly discriminatory or excessive portion of
3 the premium collected during such interim period. ~~Upon a final determination by the Court,~~
4 ~~the Commissioner shall order the escrowed funds to be distributed appropriately, except that~~
5 ~~individual refunds that are five dollars (\$5.00) or less shall not be required.~~ Upon a final
6 determination by the court, the Commissioner shall order the escrowed funds to be
7 distributed appropriately. If it is appropriate to order refunds to policyholders, the
8 Commissioner shall order that the members of the Bureau refund the difference between
9 the total premium per policy using the premium levels finally determined and the total
10 premium per policy collected during the interim period pending judicial review, except
11 that refund amounts that are five dollars (\$5.00) or less per policy shall not be required.
12 The court may also require that purportedly excess premiums resulting from an
13 adjustment of premiums ordered pursuant to G.S. 58-36-20(b) be placed in such escrow
14 account pending judicial review. If refunds made to policyholders are ordered under this
15 subsection, the amounts refunded shall bear interest at the rate determined under this
16 subsection. ~~That rate shall be the average of the prime rates of the four largest banking~~
17 ~~institutions domiciled in this State, plus three percent (3%), as of the effective date of the filing,~~
18 ~~to be computed by the Commissioner.~~ That rate, to be computed by the Bureau, shall be the
19 average of the prime rates on the effective date of the filing and each anniversary of that
20 date occurring prior to the date of the Commissioner's order requiring refunds, with the
21 prime rate on each of the dates being the average of the prime rates of the four largest
22 banking institutions domiciled in this State as of that date, plus three percent (3%)."

23 Sec. 2. G.S. 58-37-40(e) reads as rewritten:

24 "(e) Upon approval of the Commissioner of the plan so submitted or promulgation
25 of a plan deemed approved by the Commissioner, all insurance companies licensed to
26 write motor vehicle insurance in this State or any component thereof as a prerequisite to
27 further engaging in writing ~~such~~ the insurance shall formally subscribe to and participate
28 in the plan so approved.

29 The plan of operation shall provide for, among other matters, (i) the establishment of
30 necessary ~~facilities,~~ facilities; (ii) the management of the ~~Facility,~~ Facility; (iii) the
31 preliminary assessment of all members for initial expenses necessary to commence
32 operations, operations; (iv) the assessment of members if necessary to defray losses and
33 expenses, expenses; (v) the distribution of gains to defray losses incurred since the
34 effective date hereof and then to persons reinsured by the Facility, the recoupment of losses
35 sustained by the Facility, September 1, 1977; (vi) the distribution of gains by credit or
36 reduction of recoupment or allocation surcharges to policies subject to recoupment or
37 allocation surcharges pursuant to this Article (the Facility may apportion the distribution
38 of gains among the coverages eligible for cession pursuant to this Article); (vii) the
39 recoupment or allocation of losses sustained by the Facility since September 1, 1977,
40 pursuant to this Article, which losses may be recouped by equitable pro rata assessment
41 of member ~~companies,~~ companies; (viii) the standard amount (one hundred percent
42 (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a
43 member company may cede to the ~~Facility,~~ Facility; and (ix) the procedure by which

1 reinsurance shall be accepted by the Facility; and Facility. The plan shall further provide
2 that:

- 3 (1) Members of the Board of Governors shall receive reimbursement from
4 the Facility for their actual and necessary expenses incurred on Facility
5 business, en route to perform Facility business, and while returning
6 from Facility business plus a per diem allowance of twenty-five dollars
7 (\$25.00) a day which may be waived.
- 8 (2) In order to obtain a transfer of business to the Facility effective when
9 the binder or policy or renewal thereof first becomes effective, the
10 company must within 30 days of the binding or policy effective date
11 notify the Facility of the identification of the insured, the coverage and
12 limits afforded, classification data, and premium. The Facility shall
13 accept risks at other times on receipt of necessary information, but such
14 acceptance shall not be retroactive. The Facility shall accept renewal
15 business after the member on underwriting review elects to again cede
16 the business.

17 Any gains realized by the Facility that must be distributed under this subsection shall
18 bear interest from the date the Board adopted the amount of recoupment or allocation that
19 caused the gains. That interest rate shall be the average of the prime rates of the four
20 largest banking institutions domiciled in this State on the date the Board adopted the
21 amount of recoupment or allocation."

22 Sec. 3. G.S. 58-36-1(5) reads as rewritten:

- 23 "(5) a. It is the duty of every insurer that writes workers' compensation
24 insurance in this State and is a member of the Bureau, as defined in this
25 section and G.S. 58-36-5 to insure and accept any workers'
26 compensation insurance risk that has been certified to be 'difficult to
27 place' by any fire and casualty insurance agent who is licensed in this
28 State. When any such risk is called to the attention of the Bureau by
29 receipt of an application with an estimated or deposit premium payment
30 and it appears that the risk is in good faith entitled to such coverage, the
31 Bureau will bind coverage for 30 days and will designate a member who
32 must issue a standard workers' compensation policy of insurance that
33 contains the usual and customary provisions found in those policies.
34 Multiple coordinated policy, as defined by the Bureau and approved by
35 the Commissioner, may be used for the issuance of coverage under this
36 subdivision for risks involved in employee leasing agreements.
37 Coverage will be bound at 12:01 A.M. on the first day following the
38 postmark time and date on the envelope in which the application is
39 mailed including the estimated annual or deposit premium, or the
40 expiration of existing coverage, whichever is later. If there should be no
41 postmark, coverage will be effective 12:01 A.M. on the date of receipt
42 by the Bureau unless a later date is requested. Those applications hand
43 delivered to the Bureau will be effective as of 12:01 A.M. of the date

1 following receipt by the Bureau unless a later date is requested. The
2 ~~designated carrier may request of the Bureau certification of the State~~
3 ~~Department of Labor that the insured is complying with the laws, rules, and~~
4 ~~regulations of that Department. The certification must be finished within 30~~
5 ~~days by the State Department of Labor unless extension of time is granted by~~
6 ~~agreement between the Bureau and the State Department of Labor. The~~
7 Bureau will make and adopt such rules as are necessary to carry this
8 section into effect, subject to final approval of the Commissioner. As a
9 prerequisite to the transaction of workers' compensation insurance in
10 this State, every member of the Bureau that writes such insurance must
11 file with the Bureau written authority permitting the Bureau to act in its
12 behalf, as provided in this section, and an agreement to accept risks that
13 are assigned to the member by the Bureau, as provided in this section.

14 b. ~~Upon notice of cancellation or the decision to decline to write or~~
15 ~~renew a policy of workers' compensation insurance for an~~
16 ~~employer, the carrier or its agents shall supply the employer with~~
17 ~~a form, supplied by the Bureau, by which the employer may~~
18 ~~request the Bureau to list the employer and pertinent information~~
19 ~~about it among a compendium of such information on The~~
20 ~~Bureau shall maintain a compendium of employers refused~~
21 ~~voluntary coverage, which shall be made available by the Bureau~~
22 ~~to all insurers—insurers, licensed agents and self-insureds'~~
23 ~~administrators doing business in this State. It shall be stored and~~
24 ~~indexed to allow access to information by industry, primary~~
25 ~~classifications of employees, geography, experience~~
26 ~~modification, and in any other manner the Bureau determines is~~
27 ~~commercially useful to facilitate voluntary coverage of listed~~
28 ~~employers. The Bureau shall be immune from civil liability for~~
29 ~~erroneous information released by the Bureau pursuant to this~~
30 ~~section, provided that the Bureau acted in good faith and without~~
31 ~~malicious or willful intent to harm in releasing the erroneous~~
32 ~~information.~~"

33 Sec. 4. G.S. 58-36-30(c) reads as rewritten:

34 "(c) Any deviation with respect to workers' compensation and employers' liability
35 insurance written in connection therewith as filed under subsection (a) of this section
36 shall apply uniformly to all classifications. Any approved rate under subsection (b) of
37 this section with respect to workers' compensation and employers' liability insurance
38 written in connection therewith shall be furnished to the Bureau."

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

40 "(2) Employee. – The term 'employee' means every person engaged in an
41 employment under any appointment or contract of hire or
42 apprenticeship, express or implied, oral or written, including aliens, and
43 also minors, whether lawfully or unlawfully employed, but excluding

1 persons whose employment is both casual and not in the course of the
2 trade, business, profession or occupation of his employer, and as
3 relating to those so employed by the State, the term 'employee' shall
4 include all officers and employees of the State, including such as are
5 elected by the people, or by the General Assembly, or appointed by the
6 Governor to serve on a per diem, part-time or fee basis, either with or
7 without the confirmation of the Senate; as relating to municipal
8 corporations and political subdivisions of the State, the term 'employee'
9 shall include all officers and employees thereof, including such as are
10 elected by the people. The term 'employee' shall include members of the
11 North Carolina national guard, except when called into the service of
12 the United States, and members of the North Carolina State guard, and
13 members of these organizations shall be entitled to compensation for
14 injuries arising out of and in the course of the performance of their
15 duties at drill, in camp, or on special duty under orders of the Governor.
16 The term 'employee' shall include deputy sheriffs and all persons acting
17 in the capacity of deputy sheriffs, whether appointed by the sheriff or by
18 the governing body of the county and whether serving on a fee basis or
19 on a salary basis, or whether deputy sheriffs serving upon a full-time
20 basis or a part-time basis, and including deputy sheriffs appointed to
21 serve in an emergency, but as to those so appointed, only during the
22 continuation of the emergency. The sheriff shall furnish to the board of
23 county commissioners a complete list of all deputy sheriffs named or
24 appointed by him immediately after their appointment, and notify the
25 board of commissioners of any changes made therein promptly after
26 such changes are made. Any reference to an employee who has been
27 injured shall, when the employee is dead, include also his legal
28 representative, dependents, and other persons to whom compensation
29 may be payable: Provided, further, that any employee as herein defined
30 of a municipality, county, or of the State of North Carolina while
31 engaged in the discharge of his official duty outside the jurisdictional or
32 territorial limits of the municipality, county, or the State of North
33 Carolina and while acting pursuant to authorization or instruction from
34 any superior officer, shall have the same rights under this Article as if
35 such duty or activity were performed within the territorial boundary
36 limits of his employer.

37 Every executive officer elected or appointed and empowered in
38 accordance with the charter and bylaws of a corporation shall be
39 considered as an employee of such corporation under this Article.

40 Any such executive officer of a corporation may, notwithstanding
41 any other provision of this Article, be exempt from the coverage of the
42 corporation's insurance contract by such corporation specifically
43 excluding such executive officer in such contract of insurance and the

1 exclusion to remove such executive officer from the coverage shall
2 continue for the period such contract of insurance is in effect, and
3 during such period such executive officers thus exempted from the
4 coverage of the insurance contract shall not be employees of such
5 corporation under this Article.

6 All county agricultural extension service employees who do not
7 receive official federal appointments as employees of the United States
8 Department of Agriculture and who are field faculty members with
9 professional rank as designated in the memorandum of understanding
10 between the North Carolina Agricultural Extension Service, North
11 Carolina State University, A & T State University and the boards of
12 county commissioners shall be deemed to be employees of the State of
13 North Carolina. All other county agricultural extension service
14 employees paid from State or county funds shall be deemed to be
15 employees of the county board of commissioners in the county in which
16 the employee is employed for purposes of workers' compensation.

17 The term employee shall also include members of the Civil Air
18 Patrol currently certified pursuant to G.S. 143B-491(a) when
19 performing duties in the course and scope of a State approved mission
20 pursuant to Article 11 of Chapter 143B.

21 Employee shall not include any person performing voluntary service
22 as a ski patrolman who receives no compensation for such services other
23 than meals or lodging or the use of ski tow or ski lift facilities or any
24 combination thereof.

25 Any sole proprietor or partner of a business or any member of a
26 limited liability company ~~whose employees are eligible for benefits under~~
27 ~~this Article~~ may elect to be included as an employee under the workers'
28 compensation coverage of such business if he is actively engaged in the
29 operation of the business and if the insurer is notified of his election to
30 be so included. Any such sole proprietor or partner or member of a
31 limited liability company shall, upon such election, be entitled to
32 employee benefits and be subject to employee responsibilities
33 prescribed in this Article."

34 Sec. 6. G.S. 97-19 reads as rewritten:

35 "**§ 97-19. Liability of principal contractors; certificate that subcontractor has**
36 **complied with law; right to recover compensation of those who would**
37 **have been liable; order of liability.**

38 Any principal contractor, intermediate contractor, or subcontractor who shall sublet
39 any contract for the performance of any work without requiring from such subcontractor
40 or obtaining from the Industrial Commission a certificate, issued by a workers'
41 compensation insurance carrier, or a certificate of compliance issued by the Department
42 of Insurance to a self-insured subcontractor, stating that such subcontractor has complied
43 with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has

1 regularly in service fewer than three employees in the same business within this State, to
2 the same extent as such subcontractor would be if he were subject to the provisions of
3 this Article for the payment of compensation and other benefits under this Article on
4 account of the injury or death of any ~~such subcontractor, any principal or partner of such~~
5 ~~subcontractor or any employee of such subcontractor~~ due to an accident arising out of and
6 in the course of the performance of the work covered by such subcontract. If the principal
7 contractor, intermediate contractor or subcontractor shall obtain such certificate at the
8 time of subletting such contract to subcontractor, he shall not thereafter be held liable to
9 any ~~such subcontractor, any principal or partner of such subcontractor, or any employee of~~
10 such subcontractor for compensation or other benefits under this Article. ~~If the~~
11 ~~subcontractor has no employees and waives in writing his right to coverage under this section,~~
12 ~~the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not~~
13 ~~thereafter be held liable for compensation or other benefits under this Article to said~~
14 ~~subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-~~
15 ~~93.~~

16 Any principal contractor, intermediate contractor, or subcontractor paying
17 compensation or other benefits under this Article, under the foregoing provisions of this
18 section, may recover the amount so paid from any person, persons, or corporation who
19 independently of such provision, would have been liable for the payment thereof.

20 Every claim filed with the Industrial Commission under this section shall be instituted
21 against all parties liable for payment, and said Commission, in its award, shall fix the
22 order in which said parties shall be exhausted, beginning with the immediate employer.

23 The principal or owner may insure any or all of his contractors and their employees in
24 a blanket policy, and when so insured such contractor's employees will be entitled to
25 compensation benefits regardless of whether the relationship of employer and employee
26 exists between the principal and the contractor."

27 Sec. 7. Article 36 of Chapter 58 of the General Statutes is amended by adding
28 a new section to read:

29 "**§ 58-36-17. Safety consultation immunity.**

30 (a) Each member of the Bureau may provide loss control or safety consultation
31 services which include any survey, consultation, inspection, advisory or related services
32 performed by an insurer, its agent, employees, or service contractors, inspection, incident
33 to an application for insurance, a new policy of insurance, or an existing policy of
34 insurance for the purpose of reducing the likelihood of injury, death, or loss. The
35 furnishing of or failure to furnish loss control or safety consultation services related to, in
36 connection with or incidental to a policy of workers' compensation insurance shall not
37 subject the Bureau, the insurers, its agents, employees, or service contractors to liability
38 for damages from injury, death, or loss, whether direct or consequential, occurring as a
39 result of any act or omission by any person in the course of the services.

40 (b) This section does not apply:

41 (1) If the injury, loss, or death occurred during the actual performance of
42 consultation services and was directly and proximately caused by the
43 negligence of the insurer, its agent, employees, or service contractors.

- 1 (2) To any consultation services required to be performed under the
2 provisions of a written service contract for which a specific charge is
3 made and not incidental to a policy of insurance.
- 4 (3) As any action against the Bureau, any insurer, its agents, employees, or
5 service contractors for damages caused by the act or omission of the
6 insurer, its agents, employees, or service contractors in which it is
7 judicially determined that the act or omission constituted a crime or
8 involved actual malice.
- 9 (c) Nothing in this section shall be deemed or construed to apply to the immunities
10 and protections provided by Chapter 97 of the General Statutes, the Workers'
11 Compensation Act."
- 12 Sec. 8. This act is effective upon ratification.