

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 1385*

Short Title: Safety and Health Fund.

(Public)

Sponsors: Representatives Fitch, Barnes, Cunningham, Howard, Sam Hunt, McLaughlin, Payne, H. Hunter; Blue, Albertson, Barnhill, Beard, Black, Bowen, Bowman, Brown, Buchanan, Chapin, Colton, N. J. Crawford, Dawkins, DeVane, Dial, Diamont, Easterling, Ethridge, Fletcher, Fussell, Gamble, Gist, Gottovi, Green, Greenwood, Hackney, Hardaway, Hensley, Jeffus, Justus, Kennedy, Lilley, Lineberry, Luebke, McAllister, McLawhorn, Mercer, Michaux, Miller, Nesbitt, Oldham, Redwine, Stamey, Stewart, Wainwright, Warner, Wicker, and Withrow.

Referred to: Appropriations.

May 28, 1992

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SAFETY AND HEALTH FUND TO FUND THE
OPERATIONS OF CERTAIN STATE SAFETY-RELATED PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-100 reads as rewritten:

"§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; returned or canceled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll.

(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this Article, shall be fair, reasonable, and adequate.

(b) Each such insurance carrier shall report to the Commissioner of Insurance, in accordance with such reasonable rules as the Commissioner of Insurance may at any time prescribe, for the purpose of determining the solvency of the carrier and the adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the

1 books and records of such insurance carrier, and examine its agents, officers, and
2 directors under oath.

3 (c) Every person, partnership, association, corporation, whether organized under
4 the laws of this or any other state or country, every mutual company or association and
5 every other insurance carrier insuring employers in this State against liability for
6 personal injuries to their employees, or death caused thereby, under the provisions of
7 this Article, shall, as hereinafter provided, pay a tax upon the premium received,
8 whether in cash or notes, in this State, or on account of business done in this State, for
9 such insurance in this State, at the rate provided in the Revenue Act then in force, which
10 tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and
11 collected as hereinafter provided; provided, however, that such insurance carriers shall
12 be credited with all canceled or returned premiums actually refunded during the year on
13 such insurance.

14 (d) Every such insurance carrier shall, for the six months ending December 31,
15 1929, and annually thereafter, make a return, verified by the affidavit of its president
16 and secretary, or other chief officers or agents, to the Commissioner of Insurance,
17 stating the amount of all such premiums and credits during the period covered by such
18 return. Every insurance carrier required to make such return shall file the same with the
19 Commissioner of Insurance on or before the first day of April after the close of the
20 period covered thereby, and shall at the same time pay to the State Insurance
21 Commissioner the tax provided in the Revenue Act then in force on such premium
22 ascertained, as provided in subsection (c) hereof, less returned premium on canceled
23 policies.

24 (e) If any such insurance carrier shall fail or refuse to make the return required by
25 this Article, the said Commissioner of Insurance shall assess the tax against such
26 insurance carrier at the rate herein provided for, on such amount of premium as he may
27 deem just, and the proceedings thereon shall be the same as if the return had been made.

28 (f) If any such insurance carrier shall withdraw from business in this State before
29 the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the
30 Commissioner of Insurance shall at once proceed to collect the same; and he is hereby
31 empowered and authorized to employ such legal process as may be necessary for that
32 purpose, and when so collected he shall pay the same into the State treasury. The suit
33 may be brought by the Commissioner of Insurance, in his official capacity, in any court
34 of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs
35 therein, and process may issue to any county of the State, and may be served as in civil
36 actions, or in case of unincorporated associations, partnerships, interindemnity
37 contracts, upon any agent of the parties thereto upon whom process may be served
38 under the laws of this State.

39 (g) Any person or persons who shall in this State act or assume to act as agent for
40 any such insurance carrier whose authority to do business in this State has been
41 suspended, while such suspension remains in force, or shall neglect or refuse to comply
42 with any of the provisions of this section obligatory upon such person or party or who
43 shall willfully make a false or fraudulent statement of the business or condition of any
44 such insurance carrier, or false or fraudulent return as herein provided, shall be deemed

1 guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less
2 than one hundred (\$100.00) nor more than one thousand dollars (\$1,000), or by
3 imprisonment for not less than 10 nor more than 90 days, or both such fine and
4 imprisonment in the discretion of the court.

5 (h) Whenever by this Article, or the terms of any policy contract, any officer is
6 required to give any notice to an insurance carrier, the same may be given by delivery,
7 or by mailing by registered letter properly addressed and stamped, to the principal office
8 or general agent of such insurance carrier within this State, or to its home office, or to
9 the secretary, general agent, or chief officer thereof in the United States, or the State
10 Insurance Commissioner.

11 (i) Any insurance carrier liable to pay a tax upon premiums under this Article
12 shall not be liable to pay any other or further tax upon such premiums, under any other
13 law of this State.

14 (j) Every employer carrying his own risk under the provisions of G.S. 97-93
15 shall, under oath, report to the Commissioner of Insurance his payroll, subject to the
16 provisions of this Article. Such report shall be made in form prescribed by the
17 Commissioner of Insurance, and at the times herein provided for premium reports by
18 insurer. The Commissioner of Insurance shall assess against such payroll a maintenance
19 fund tax computed by taking such percent of the basic premiums charged against the
20 same or most similar industry or business taken from the manual insurance rate then in
21 force in this State as is assessed in the Revenue Act against the insurance carriers for
22 premiums collected on compensation insurance policies. The Commissioner shall use
23 the approved experience modifier of an employer in calculating the employer's
24 maintenance fund tax liability under this subsection. ~~Receipts collected under this~~
25 ~~subsection shall be deposited to the credit of the State Treasurer as general fund revenue.~~

26 (k) Every group of two or more employers who have pooled their liabilities
27 pursuant to G.S. 97-93 shall pay a tax upon premiums received in this State in the same
28 manner as the tax is calculated and paid by insurance carriers insuring employers in this
29 State and set forth in subsections (c), (d), (e), and (f) above.

30 (l) A special Safety and Health Fund is created in the Office of the State
31 Treasurer for the purpose of collecting revenue to be distributed for use by State
32 agencies in the enforcement of their safety and health responsibilities.

33 The funds generated by the tax on premiums collected by the Commissioner of
34 Insurance pursuant to subsections (d), (j), and (k) of this section shall be remitted to the
35 Safety and Health Fund to provide funding, at levels established by the General
36 Assembly, for the following agencies or programs:

37 (1) The Industrial Commission.

38 (2) The Department of Labor for the operation of the Occupational Safety
39 and Health program at federally-approved benchmark levels and the
40 Mine Safety and Health program.

41 (3) The Department of Environment, Health, and Natural Resources for
42 the operation of the Occupational Health program.

43 Interest derived from the Fund shall be credited to the Fund. Fees, assessments,
44 penalties, and other sources of revenue collected by these agencies on behalf of the

1 programs specified herein shall also be deposited in the Fund unless required by law to
2 be remitted elsewhere.

3 The special Safety and Health Fund shall be subject to the provisions of the
4 Executive Budget Act. The General Assembly shall appropriate from the monies
5 available in the Fund sufficient amounts to fund the programs specified herein and may
6 use the balance for any lawful purpose.

7 The premium tax monies credited to the Fund shall not be considered a special
8 purpose obligation or assessment based on premium tax, or a dedicated special purpose
9 tax based on premium tax, within the meaning of G.S. 105-228.8(e)."

10 Sec. 2. Appropriations and receipts from the General Fund to the Industrial
11 Commission, the Department of Labor and the Department of Environment, Health, and
12 Natural Resources for the programs listed herein for the fiscal year 1992-93 shall be
13 reimbursed to the General Fund from the special Safety and Health Fund.

14 Sec. 3. This act becomes effective July 1, 1992.