

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1663

Short Title: Standards for Funding Agreements.

(Public)

Sponsors: Representative Black.

Referred to: Insurance.

May 26, 1994

A BILL TO BE ENTITLED

AN ACT TO EXEMPT ALL ANNUITIES AND FUNDING AGREEMENTS FROM PREMIUM TAXATION; TO CLARIFY THE AUTHORIZATION FOR THE ISSUANCE OF AND ESTABLISH STANDARDS FOR FUNDING AGREEMENTS; AND TO MAKE CONFORMING CHANGES IN LAWS ON PRIORITY OF DISTRIBUTION OF ASSETS OF INSOLVENT INSURERS AND ON SECURITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read:

§ 58-7-16. Funding agreements authorized.

(a) As used in this section, 'funding agreement' means an agreement that authorizes a licensed life insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A 'funding agreement' is not an 'annuity' as defined in G.S. 58-7-15; and is not a 'security' as defined in G.S. 78A-2.

(b) Any insurer that is licensed to write life insurance or annuities in this State may deliver, or issue for delivery, funding agreements in this State.

(c) Funding agreements may be issued to persons authorized by a state or foreign country to engage in an insurance business or to their affiliates, including affiliates of the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article 19 of this Chapter. Funding agreements may be issued to persons other than those licensed to write life insurance and annuities or their affiliates in order to fund one or more of the following:

- 1 (1) Benefits under any employee benefit plan as defined in the federal
2 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001
3 et seq., maintained in the United States or in a foreign country.
4 (2) The activities of an organization exempt from taxation under section
5 501(c) of the Internal Revenue Code or of any similar organization in a
6 foreign country.
7 (3) A program of the government of the United States, the government of
8 a state, foreign country, or political subdivision, agency, or
9 instrumentality thereof.
10 (4) An agreement providing for one or more payments in satisfaction of a
11 claim or liability.
12 (5) A program of an institution that has assets in excess of twenty-five
13 million dollars (\$25,000,000).
14 (d) Amounts shall not be guaranteed or credited under a funding agreement
15 except upon reasonable assumptions as to investment income and expenses and on a
16 basis equitable to all holders of funding agreements of a given class.
17 (e) Amounts paid to the insurer and proceeds applied under optional modes of
18 settlement under funding agreements may be allocated by the insurer to one or more
19 separate accounts pursuant to G.S. 58-7-95.
20 (f) The Commissioner has sole authority to regulate the issuance and sale of
21 funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40,
22 the Commissioner may adopt rules relating to:
23 (1) Standards to be followed in the approval of forms of funding
24 agreements.
25 (2) Reserves to be maintained by insurers issuing funding agreements.
26 (3) Accounting and reporting of funds credited under funding agreements.
27 (4) Disclosure of information to be given to holders and prospective
28 holders of funding agreements.
29 (5) Qualification and compensation of persons selling funding agreements
30 on behalf of insurers."

31 Sec. 2. G.S. 58-30-220 reads as rewritten:

32 **"§ 58-30-220. Priority of distribution.**

33 The priority of distribution of claims from the insurer's estate shall be in accordance
34 with the order in which each class of claims is set forth in this section. Every claim in
35 each class shall be paid in full or adequate funds shall be retained for ~~such~~ payment
36 before the members of the next class receive any payment. No subcategories shall be
37 established within the categories in ~~any~~ a class. The order of distribution of claims shall
38 be:

- 39 (1) Claims for cost of administration and conservation of assets of the
40 insurer.
41 (2) Compensation actually owing to employees other than officers of the
42 insurer for services rendered within three months prior to the
43 commencement of a delinquency proceeding against the insurer under
44 this Article, but not exceeding one thousand dollars (\$1,000) for each

1 employee. In the discretion of the Commissioner, this compensation
 2 may be paid as soon as practicable after the proceeding has been
 3 commenced. This priority is in lieu of any other similar priority that
 4 may be authorized by law as to wages or compensation of those
 5 employees.

6 (3) Claims or portions of claims for benefits under policies and for losses
 7 incurred, including claims of third parties under liability policies, ~~up to~~
 8 ~~an amount of three hundred thousand dollars (\$300,000) per claim policies;~~
 9 claims for funds or consideration held under funding agreements, as
 10 defined in G.S. 58-7-16; claims under life insurance and annuity
 11 policies, whether for death proceeds, annuity proceeds, or investment
 12 values; and claims of domestic and foreign guaranty associations; but
 13 excluding claims of insurance pools, underwriting associations, or
 14 those arising out of reinsurance agreements, claims of other insurers
 15 for subrogation, and claims of insurers for payments and settlements
 16 under uninsured and underinsured motorist coverages.

17 (4) Claims for unearned premiums.

18 (5) Claims of general creditors, including claims of insurance pools,
 19 underwriting associations, or those arising out of reinsurance
 20 agreements; claims of other insurers for subrogation; ~~those portions of~~
 21 ~~claims for benefits under policies and for losses incurred, including claims of~~
 22 ~~third parties under liability policies, in excess of three hundred thousand~~
 23 ~~dollars (\$300,000) per claim; and claims of insurers for payments and~~
 24 ~~settlements under uninsured and underinsured motorist coverages."~~

25 Sec. 3. G.S. 78A-2(11) reads as rewritten:

26 "(11) 'Security' means any note; stock; treasury stock; bond; debenture;
 27 evidence of indebtedness; certificate of interest or participation in
 28 any profit-sharing agreement; collateral-trust certificate;
 29 preorganization certificate or subscription; transferable share;
 30 investment contract including without limitation any investment
 31 contract taking the form of a whiskey warehouse receipt or other
 32 investment of money in whiskey or malt beverages; voting-trust
 33 certificate; certificate of deposit for a security; certificate of interest
 34 or participation in an oil, gas, or mining title or lease or in
 35 payments out of production under ~~such~~ a title or lease; or, in
 36 general, any interest or instrument commonly known as a 'security,'
 37 or any certificate of interest or participation in, temporary or
 38 interim certificate for, receipt for guarantee of, or warrant or right
 39 to subscribe to or purchase, any of the foregoing. 'Security' does
 40 not include any insurance or endowment ~~policy-policy, funding~~
 41 agreement, as defined in G.S. 58-7-16, or annuity contract under
 42 which an insurance company promises to pay (i) a fixed sum of
 43 money either in a lump sum or periodically for life or for some
 44 other specified period, or (ii) benefits or payments or value which

1 that vary so as to reflect investment results of any segregated
2 portfolio of investments or of a designated separate account or
3 accounts in which amounts received or retained in connection with
4 ~~any of such contracts~~ a contract have been placed if the delivering or
5 issuing insurance company has currently satisfied the
6 Commissioner of Insurance that it is in compliance with G.S. 58-7-
7 95."

8 Sec. 4. G.S. 105-228.5 reads as rewritten:

9 **"§ 105-228.5. Taxes measured by gross premiums.**

10 (a) Tax Levied. – Every insurance company and every corporation subject to
11 Article 65 ~~Articles 65 and 66~~ of Chapter 58 of the General Statutes ~~corporation~~ shall pay
12 the tax imposed by this section to the Commissioner of Insurance, ~~at the time and rates~~
13 ~~provided in this section~~, Insurance. This tax is in lieu of all taxes except the following:

- 14 (1) Fees, charges, and licenses payable under this Article or under
15 Chapter 58 of the General Statutes.
- 16 (2) Taxes imposed by Articles 84 through 88 of Chapter 58 of the
17 General Statutes.
- 18 (3) Taxes imposed by Article 5 of this Chapter.
- 19 (4) Property taxes.

20 (b) Tax Base. – The tax imposed by this section on an insurance company shall
21 be a tax measured by gross premiums from business done in this State during the
22 preceding calendar year, or, for Articles 65 and 66 of Chapter 58 corporations, a tax year and
23 the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes shall
24 be measured by gross collections from membership dues, exclusive of receipts from
25 cost plus plans, received by such corporations the corporation during the preceding
26 calendar year. In determining the amount of gross premiums from business in this
27 State, all gross premiums received in this State, credited to policies written or procured
28 in this State, or derived from business written in this State shall be deemed to be for
29 contracts covering persons, property, or risks resident or located in this State unless one
30 of the following applies:

- 31 (1) The premiums are properly reported and properly allocated as
32 being received from business done in some other nation, territory,
33 state, or states.
- 34 (2) The premiums are from policies written in federal areas for persons
35 in military service who pay premiums by assignment of service
36 pay.

37 Gross premiums from business done in this State in the case of life insurance ~~and~~
38 ~~annuity~~ contracts, including ~~any~~ supplemental contracts ~~thereto~~ providing for disability
39 benefits, accidental death benefits, or other special ~~benefits~~, benefits that are not
40 annuities, ~~shall for the purposes of the taxes levied in this section~~ mean any and all
41 premiums collected in the calendar year ~~(other year, other than for contracts for~~
42 ~~reinsurance)~~ of reinsurance, for policies the premiums on which are paid by or credited
43 to persons, ~~firms~~ firms, or corporations resident in this State, or in the case of group
44 ~~policies~~ policies, for any contracts of insurance covering persons resident within this

1 ~~State. State, with no deduction for considerations paid for annuity contracts which are~~
 2 ~~subsequently returned except as below specified, and with no other deduction whatsoever~~
 3 ~~except—The only deductions allowed shall be for premiums returned under one or more of~~
 4 ~~the following conditions: premiums—refunded on policies rescinded for fraud or other~~
 5 ~~breach of contract; premiums which contract and premiums that were paid in advance on~~
 6 ~~life insurance contracts and subsequently refunded to the insured, premium payer,~~
 7 ~~beneficiary or estate; and in the case of group annuity contracts the premiums returned by~~
 8 ~~reason of a change in the composition of the group covered. Said gross estate. Gross~~
 9 ~~premiums shall be deemed to have been collected for the amounts as provided in the~~
 10 ~~policy contracts for the time in force during the year, whether satisfied by cash payment,~~
 11 ~~notes, loans, automatic premium loans, applied dividend—dividend, or in by any other~~
 12 ~~manner whatsoever, means except waiver of premiums by in the case of premiums waived~~
 13 ~~by any of said companies pursuant to—under a contract for waiver of premium in case of~~
 14 ~~disability.~~

15 ~~An insurer, in computing its premium taxes, shall pay premium taxes on a premium~~
 16 ~~for the purchase of annuities at the time the contract holder elects to commence annuity~~
 17 ~~benefits, instead of at the time the premium is collected.~~

18 Gross premiums from business done in this State for all other contracts of insurance,
 19 including contracts of insurance required to be carried by the Workers' Compensation
 20 Act, shall mean all premiums written during the calendar year, or the equivalent thereof
 21 in the case of self-insurers under the Workers' Compensation Act, for contracts covering
 22 property or risks in this State, other than for contracts of reinsurance, whether the
 23 premiums are designated as premiums, deposits, premium deposits, policy fees,
 24 membership fees, or assessments. Gross premiums shall be deemed to have been
 25 written for the amounts as provided in the policy contracts, new and renewal, becoming
 26 effective during the year irrespective of the time or method of making payment or
 27 settlement for the premiums, and with no deduction for dividends whether returned in
 28 cash or allowed in payment or reduction of premiums or for additional insurance, and
 29 without any other deduction except for return of premiums, deposits, fees, or
 30 assessments for adjustment of policy rates or for cancellation or surrender of policies.

31 (c) Exclusions. — Every insurer, in computing the premium tax, shall exclude all
 32 of the following from the gross amount of premiums—premiums:

33 (1) All premiums received on or after July 1, 1973, from policies or
 34 contracts, contracts issued in connection with the funding of a
 35 pension, annuity—annuity, or profit-sharing plan,—plan qualified or
 36 exempt under sections 401, 403, 404, 408, 457 or 501 of the Code
 37 as defined in G.S. 105-134.1(1) and the gross amount of all such
 38 premiums shall be exempt from the tax levied by this section. G.S. 105-
 39 134.1(1).

40 (2) All premiums or considerations received on or after January 1,
 41 1995, from annuities, as defined in G.S. 58-7-15.

42 (3) All funds or considerations received on or after January 1, 1994, in
 43 connection with funding agreements, as defined in G.S. 58-7-16.

1 The gross amount of the excluded premiums, funds, and considerations shall be exempt
2 from the tax imposed by this section.

3 ~~Gross premiums from business done in this State in the case of contracts for fire~~
4 ~~insurance, casualty insurance, and any other type of insurance except life and annuity~~
5 ~~contracts as above specified, including contracts of insurance required to be carried by~~
6 ~~the Workers' Compensation Act, shall for the purposes of the taxes levied in this section~~
7 ~~mean any and all premiums written during the calendar year, or the equivalent thereof in~~
8 ~~the case of self-insurers under the Workers' Compensation Act, for contracts covering~~
9 ~~property or risks in this State, other than for contracts of reinsurance, whether such~~
10 ~~premiums are designated as premiums, deposits, premium deposits, policy fees,~~
11 ~~membership fees, or assessments. Gross premiums shall be deemed to have been~~
12 ~~written for the amounts as provided in the policy contracts, new and renewal, becoming~~
13 ~~effective during the year irrespective of the time or method of making payment or~~
14 ~~settlement for such premiums, and with no deduction for dividends whether returned in~~
15 ~~cash or allowed in payment or reduction of premiums or for additional insurance, and~~
16 ~~without any other deduction except for return of premiums, deposits, fees or~~
17 ~~assessments for adjustment of policy rates or for cancellation or surrender of policies.~~

18 ~~In determining the amount of gross premiums from business in this State all gross~~
19 ~~premiums received in this State, or credited to policies written or procured in this State,~~
20 ~~or derived from business written in this State shall be deemed to be for contracts~~
21 ~~covering persons, property or risks resident or located in this State except for such~~
22 ~~premiums as are properly reported and properly allocated as being received from~~
23 ~~business done in some other nation, territory, state or states, and except for premiums~~
24 ~~from policies written in federal areas for persons in military service who pay premiums~~
25 ~~by assignment of service pay.~~

26 (d) Tax Rates. — The tax rate to be applied to gross premiums collected on
27 contracts applicable to liabilities under the Workers' Compensation Act shall be two and
28 five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on
29 ~~annuities and all other insurance contracts issued by insurers shall be one and eight~~
30 ~~hundred seventy five thousandths percent (1.875%) for taxable years beginning on or after~~
31 ~~January 1, 1991, and before January 1, 1992, and one and nine-tenths percent (1.9%) for~~
32 ~~taxable years beginning on or after January 1, 1992. (1.9%).~~ The tax rate to An additional
33 tax shall be applied to amounts collected on contracts of insurance applicable to fire and
34 lightning coverage (except coverage, except in the case of marine and automobile
35 policies) policies, shall be at the rate of one and thirty-three hundredths percent (1.33%) in
36 addition to the above tax. (1.33%). Twenty-five percent (25%) of the net proceeds of the
37 one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts
38 of insurance applicable to fire and lightning coverage shall be deposited in the Rural
39 Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of
40 the General Statutes. ~~Effective July 1, 1988, the~~ The tax rate to be applied to gross
41 premiums and/or gross collections from membership dues, exclusive of receipts from
42 cost plus plans, received by Article 65 and 66 of Chapter 58 corporations corporations
43 subject to Article 65 of Chapter 58 of the General Statutes shall be one-half of one
44 percent (1/2 of 1%).

1 The taxes levied herein measured by premiums and/or membership dues shall be in
2 lieu of all other taxes upon insurance companies except: fees, charges, and licenses
3 under this Article, or as specified in Articles 1 through 64 of Chapter 58 of the General
4 Statutes of North Carolina as amended; taxes imposed by Articles 84 through 88 of
5 Chapter 58 of the General Statutes of North Carolina; taxes imposed by Article 5 of
6 Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem
7 taxes upon real property and personal property owned in this State.

8 (e) Report and Payment. ~~For the tax above levied as measured by gross~~
9 ~~premiums and/or gross collections from membership dues exclusive of receipts from~~
10 ~~cost plus plans the president, secretary, or other executive officer of each~~ Each
11 insurance company and corporation subject to Article 65 ~~Articles 65 and 66~~ of Chapter
12 ~~58~~ corporation of the General Statutes doing business in this State shall ~~shall~~, within the
13 first 15 days of ~~March~~ March, file with the Commissioner of Insurance a full and
14 accurate report of the total gross premiums as ~~above~~ defined in this section or the total
15 gross collections from membership dues exclusive of receipts from cost plus plans
16 collected in this State during the preceding calendar year. ~~The report shall be in such~~
17 ~~form and contain such information as the~~ The Commissioner of Insurance may specify,
18 shall specify the form of the report and the information to be contained in the report.
19 ~~and the~~ The report shall be verified by the oath of the company official transmitting the
20 ~~same~~ it or by some principal officer at the home or head office of the company or
21 association in this country. ~~At the time of making such report the taxes above levied~~
22 ~~with respect to the gross premiums or the gross collections from membership dues shall~~
23 ~~be paid to the Commissioner of Insurance.~~ The taxes imposed by this section shall be
24 remitted to the Commissioner of Insurance with the report. ~~The provisions above shall~~
25 ~~likewise apply as~~ This subsection applies to reports and taxes for any firm, corporation,
26 ~~or association~~ firms, corporations, or associations exchanging reciprocal or
27 interinsurance contracts, and ~~said~~ those reports and taxes shall be transmitted by their
28 attorneys-in-fact.

29 (f) Installment Payments Required. ~~Insurance companies and Articles 65 and 66~~
30 corporations subject to Article 65 of Chapter 58 ~~corporations of the General Statutes that~~
31 are subject to the tax imposed by this section ~~with and have~~ a premium tax liability of
32 ten thousand dollars (\$10,000) or more for business done in North Carolina during the
33 immediately preceding year shall remit three equal quarterly installments with each
34 installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium
35 tax liability incurred in the immediately preceding taxable year. The quarterly
36 installment payments shall be made on or before April 15, June 15, and October 15 of
37 each taxable year. The company shall remit the balance by the following March 15 in
38 the same manner provided in this section for annual returns.

39 The Commissioner of Insurance ~~may, by regulation,~~ may permit an insurance company
40 to pay less than the required estimated payment when the insurer reasonably believes
41 that the total estimated payments made for the current year will exceed the total
42 anticipated tax liability for the year.

43 If a company does not meet the installment payment requirement of this ~~section,~~
44 subsection, the Commissioner of Insurance shall assess a penalty on underpayments that

1 is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-
2 241.1(i). Any overpayment shall be credited to the company and applied against the
3 taxes imposed upon the company under this Article.

4 (g) Exemptions. ~~The provisions as to reports and taxes as measured by gross~~
5 ~~premiums shall.~~ This section does not apply to farmers' mutual assessment fire insurance
6 companies or to fraternal orders or societies that do not operate for a profit and do not
7 issue policies on any person except members.

8 ~~With respect to the taxes levied in this section on the equivalent of premiums of self-~~
9 ~~insurers under the provisions of the Workers' Compensation Act, the reports required~~
10 ~~herein shall be transmitted to and the taxes collected by the Insurance Commissioner as~~
11 ~~provided in G.S. 97-100(j)."~~

12 Sec. 5. This act is effective upon ratification.