

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1096

Short Title: Premiums Tax Collection.

(Public)

Sponsors: Representatives Cansler, Blue, Capps, Church, Neely, G. Robinson, Shaw, and Shubert.

Referred to: Finance.

May 14, 1996

A BILL TO BE ENTITLED

1 AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTING THE
2 REMAINDER OF THE GROSS PREMIUMS TAX FROM THE DEPARTMENT
3 OF INSURANCE TO THE DEPARTMENT OF REVENUE AND TO CLARIFY
4 RELATED STATUTES.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-228.9 reads as rewritten:

8 "**§ 105-228.9. ~~Commissioner of Insurance to administer portions of Article. Cross-~~**
9 **reference to other taxes relating to insurance.**

10 ~~Notwithstanding any other provision of this Article, the taxes levied in this Article on~~
11 ~~self-insurers and the additional tax levied in this Article at the rate of one and thirty three~~
12 ~~hundredths percent (1.33%) on contracts of insurance applicable to fire and lightning~~
13 ~~coverage shall be administered solely by the Commissioner of Insurance, who The~~
14 ~~following taxes relating to insurance are collected by the Commissioner of Insurance:~~

15 (1) Surplus lines tax, G.S. 58-21-85.

16 (2) Tax on risk retention groups not chartered in this State, G.S. 58-22-
17 20(3).

18 (3) Tax on person procuring insurance directly with an unlicensed insurer,
19 G.S. 58-28-5(b).

1 The Commissioner of Insurance has the same authority and responsibility in
2 administering those portions of this Article—taxes as the Secretary of Revenue has in
3 administering the other portions of this Article."

4 Sec. 2. G.S. 105-228.5 reads as rewritten:

5 **"§ 105-228.5. Taxes measured by gross premiums.**

6 (a) Tax Levied. – A tax is levied in this section on insurers, Article 65
7 corporations, and self-insurers. An insurer or Article 65 corporation that is subject to the
8 tax levied by this section is not subject to franchise or income taxes imposed by Articles
9 3 and 4, respectively, of this Chapter.

10 (b) Tax Base. –

11 (1) Insurers. – The tax imposed by this section on an insurer shall be
12 measured by gross premiums from business done in this State during the
13 preceding calendar year.

14 (2) Additional Local Fire and Lightning Rate. – The additional tax imposed
15 by subdivision (d)(4) of this section shall be measured by gross
16 premiums from business done in fire districts in this State during the
17 preceding calendar year. For the purpose of this section, the term 'fire
18 district' has the meaning provided in G.S. 58-84-5.

19 (3) Article 65 Corporations. – The tax imposed by this section on an Article
20 65 corporation shall be measured by gross collections from membership
21 dues, exclusive of receipts from cost plus plans, received by the
22 corporation during the preceding calendar year.

23 (4) Self-insurers. – The tax imposed by this section on a self-insurer shall
24 be measured by the gross premiums that would be charged against the
25 same or most similar industry or business, taken from the manual
26 insurance rate then in force in this State, applied to the self-insurer's
27 payroll for the previous calendar year as determined under Article 2 of
28 Chapter 97 of the General Statutes modified by the self-insurer's
29 approved experience modifier.

30 (b1) Calculation of Tax Base. – In determining the amount of gross premiums from
31 business in this State, all gross premiums received in this State, credited to policies
32 written or procured in this State, or derived from business written in this State shall be
33 deemed to be for contracts covering persons, property, or risks resident or located in this
34 State unless one of the following applies:

35 (1) The premiums are properly reported and properly allocated as being
36 received from business done in some other nation, territory, state, or
37 states.

38 (2) The premiums are from policies written in federal areas for persons in
39 military service who pay premiums by assignment of service pay.

40 Gross premiums from business done in this State in the case of life insurance
41 contracts, including supplemental contracts providing for disability benefits, accidental
42 death benefits, or other special benefits that are not annuities, means all premiums
43 collected in the calendar year, other than for contracts of reinsurance, for policies the

1 premiums on which are paid by or credited to persons, firms, or corporations resident in
2 this State, or in the case of group policies, for contracts of insurance covering persons
3 resident within this State. The only deductions allowed shall be for premiums refunded
4 on policies rescinded for fraud or other breach of contract and premiums that were paid in
5 advance on life insurance contracts and subsequently refunded to the insured, premium
6 payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for
7 the amounts as provided in the policy contracts for the time in force during the year,
8 whether satisfied by cash payment, notes, loans, automatic premium loans, applied
9 dividend, or by any other means except waiver of premiums by companies under a
10 contract for waiver of premium in case of disability.

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

24 (c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of
25 the following from the gross amount of premiums:

- 26 (1) All premiums received on or after July 1, 1973, from policies or
27 contracts issued in connection with the funding of a pension, annuity, or
28 profit-sharing plan qualified or exempt under section 401, 403, 404,
29 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
30 (2) Premiums or considerations received from annuities, as defined in G.S.
31 58-7-15.
32 (3) Funds or considerations received in connection with funding
33 agreements, as defined in G.S. 58-7-16.

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

36 (d) ~~Tax Rates.~~ Rates; Disposition. –

- 37 (1) Workers Compensation. – The tax rate to be applied to gross premiums,
38 or the equivalent thereof in the case of self-insurers, collected on
39 contracts applicable to liabilities under the Workers' Compensation Act
40 shall be two and five-tenths percent (2.5%). The net proceeds shall be
41 credited to the General Fund.
42 (2) Other Insurance Contracts. – The tax rate to be applied to gross
43 premiums collected on all other insurance contracts issued by insurers

1 shall be one and nine-tenths percent (1.9%). The net proceeds shall be
2 credited to the General Fund.

3 (3) Additional Statewide Fire and Lightning Rate. – An additional tax shall
4 be applied to amounts collected on contracts of insurance applicable to
5 fire and lightning coverage, except in the case of marine and automobile
6 policies, at the rate of one and thirty-three hundredths percent (~~1.33%~~);
7 ~~twenty five (1.33%)~~. Twenty-five percent (25%) of the net proceeds of
8 this additional tax shall be deposited in the Rural-Volunteer Fire
9 Department Fund established in ~~Articles 84 through 88~~ Article 87 of
10 Chapter 58 of the General Statutes. The remaining net proceeds shall be
11 credited to the General Fund.

12 (4) Additional Local Fire and Lightning Rate. – An additional tax shall be
13 applied to amounts collected on contracts of insurance applicable to fire
14 and lightning coverage within fire districts at the rate of one-half of one
15 percent (1/2 of 1%). The net proceeds shall be credited to the
16 Department of Insurance for disbursement pursuant to G.S. 58-84-25.

17 (5) Article 65 Corporations. – The tax rate to be applied to gross premiums
18 and/or gross collections from membership dues, exclusive of receipts
19 from cost plus plans, received by Article 65 corporations shall be one-
20 half of one percent (1/2 of 1%). The net proceeds shall be credited to
21 the General Fund.

22 (e) Report and Payment. – Each insurer, Article 65 corporation, and self-insurer
23 doing business in this State shall, within the first 15 days of March, file with the
24 Secretary of Revenue a full and accurate report of the total gross premiums as defined in
25 this section, the payroll and other information required by the Secretary in the case of a
26 self-insurer, or the total gross collections from membership dues exclusive of receipts
27 from cost plus plans collected in this State during the preceding calendar year. The report
28 shall be verified by the oath of the official or other representative responsible for
29 transmitting it; the taxes imposed by this section shall be remitted to the Secretary with
30 the report.

31 In the case of an insurer liable for the additional local fire and lightning tax, the report
32 shall include the information required under G.S. 58-84-1.

33 (f) Installment Payments Required. – Insurers, Article 65 corporations, and self-
34 insurers that are subject to the tax imposed by this section and have a premium tax
35 ~~liability~~ liability, not including the additional local fire and lightning tax, of ten thousand
36 dollars (\$10,000) or more for business done in North Carolina during the immediately
37 preceding year shall remit three equal quarterly installments with each installment equal
38 to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability
39 incurred in the immediately preceding taxable year. The quarterly installment payments
40 shall be made on or before April 15, June 15, and October 15 of each taxable year. The
41 company shall remit the balance by the following March 15 in the same manner provided
42 in this section for annual returns.

1 The Secretary of Revenue may permit an insurance company to pay less than the
2 required estimated payment when the insurer reasonably believes that the total estimated
3 payments made for the current year will exceed the total anticipated tax liability for the
4 year.

5 An underpayment of an installment payment required by this subsection shall bear
6 ~~interest, as a penalty,~~ interest at the rate established under G.S. 105-241.1(i). Any
7 overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the
8 interest, shall be credited to the company and applied against the taxes imposed upon the
9 company under this Article.

10 (g) Exemptions. – This section does not apply to farmers' mutual assessment fire
11 insurance companies or to fraternal orders or societies that do not operate for a profit and
12 do not issue policies on any person except members."

13 Sec. 3. G.S. 58-6-25(a) reads as rewritten:

14 "(a) Charge Levied. – There is levied on each insurance company an annual charge
15 for the purposes stated in subsection (d) of this section. As used in this section, the term
16 "insurance company" means a company that pays the gross premiums tax levied in G.S.
17 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical,
18 or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term
19 "insurance company" does not include a company regulated under Article 67 of this
20 Chapter. The charge levied in this section is in addition to all other fees and taxes. The
21 charge shall be at a percentage rate of the company's premium tax liability for the taxable
22 year. In determining an insurance company's premium tax liability for a taxable year,
23 additional taxes imposed by G.S. 105-228.8 and the additional local fire and lightning tax
24 imposed by G.S. 105-228.5(d)(4) shall be disregarded."

25 Sec. 4. G.S. 58-84-1 reads as rewritten:

26 "~~§ 58-84-1. Insurance companies to report premiums collected.~~ Fire and lightning
27 insurance report.

28 ~~Every insurance company, corporation, or association doing business in any town or~~
29 ~~city in North Carolina that has, or may hereafter have, a regularly organized fire~~
30 ~~department under the control of the mayor and city council or other governing body of~~
31 ~~said town or city, and which has in serviceable condition for fire duty apparatus and~~
32 ~~equipment amounting in value to one thousand dollars (\$1,000) or more, and which~~
33 ~~enforces the fire laws to the satisfaction of the Insurance Commissioner, shall return to~~
34 ~~the Insurance Commissioner of the State of North Carolina~~ Every insurance company
35 doing business in a fire district in this State shall report to the Secretary of Revenue by
36 March 15 of each year a just and true account of all premiums collected and received
37 from all fire and lightning insurance business done within the limits of such towns and
38 cities during the year ending December 31, or such portion thereof as it may have
39 transacted such business in such towns and cities. Such companies, corporations, or
40 associations shall make said returns within 60 days from and after the thirty first day of
41 December of each year, each fire district during the preceding calendar year and shall pay
42 the tax levied in G.S. 105-228.5(d)(4). The Secretary of Revenue shall provide the

1 Commissioner the reports filed pursuant to this section and shall credit the net proceeds
2 of the tax to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."

3 Sec. 5. G.S. 58-84-5 reads as rewritten:

4 **"§ 58-84-5. Definitions.**

5 ~~As used in Articles 84 through 88 of this Chapter, the words "city," "cities," "town" or~~
6 ~~"towns" shall also include and mean sanitary districts, school districts, rural fire districts~~
7 ~~and any other political subdivisions of the State having an organized fire department.~~

8 ~~Whenever the clerk of any city or town is required to perform any act pursuant to~~
9 ~~Articles 84 through 88 of this Chapter, clerk shall mean the person so designated by the~~
10 ~~governing body or committee where there is no clerk.~~

11 The following definitions apply in Articles 84 through 88 of this Chapter:

12 (1) City. – A fire district.

13 (2) Clerk. – The clerk of a fire district or, if there is no clerk, the person so
14 designated by the governing body of the fire district.

15 (3) Fire district. – Any political subdivision of the State that meets all of the
16 following conditions:

17 a. It has an organized fire department under the control of its
18 governing body.

19 b. Its fire department has apparatus and equipment that is in
20 serviceable condition for fire duty and is valued at one thousand
21 dollars (\$1,000) or more.

22 c. It enforces the fire laws to the satisfaction of the Commissioner.

23 (4) Town. – A fire district."

24 Sec. 6. G.S. 58-84-10, 58-84-15, and 58-84-20 are repealed.

25 Sec. 7. G.S. 58-84-25 reads as rewritten:

26 **"§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

27 The Insurance Commissioner shall deduct the sum of three percent (3%) from the
28 money so collected from the insurance companies, corporations, or association, as aforesaid, tax
29 proceeds credited to the Department pursuant to G.S. 105-228.5(d)(4) and pay the same
30 over to the treasurer of the State Firemen's Association for general purposes. The
31 Insurance Commissioner shall deduct the sum of two percent (2%) from the money so
32 collected from the insurance companies, corporations, or associations, as aforesaid, tax
33 proceeds and retain the same in the budget of the Department of Insurance for the
34 purpose of administering the disbursement of funds by the board of trustees in
35 accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall,
36 pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the
37 North Carolina State Firemen's Association. The remainder of the money so collected from
38 the insurance companies, corporations, or associations, as aforesaid, doing business in the towns
39 and cities in the State having or that may hereafter have organized fire departments as provided
40 in this Article, said Insurance Commissioner shall pay the remaining tax proceeds to the
41 treasurer of each town or city to be held by him fire district in proportion to the amount of
42 business done in the fire district. These funds shall be held by the treasurer as a separate
43 and distinct fund, and he fund. The fire district shall immediately pay the same funds to

1 the treasurer of the local board of trustees upon ~~his~~ the treasurer's election and
2 qualification, for the use of the board of trustees of the firemen's local relief fund in each
3 ~~town or city, fire district,~~ which board shall be composed of five members, residents of
4 ~~said city or town~~ the fire district as hereinafter provided for, to be used by it for the
5 purposes ~~as named~~ provided in G.S. 58-84-35."

6 Sec. 8. G.S. 58-22-15(a) reads as rewritten:

7 "(a) A risk retention group seeking to be chartered in this State must be chartered
8 and licensed as a liability insurance company under Article 7 of this Chapter and, except
9 as provided elsewhere in this Article, must comply with all of the laws and rules
10 applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to
11 the extent such requirements are not a limitation on laws, administrative rules, or
12 requirements of this State. As a chartered and licensed liability insurance company, the
13 group is subject to the taxes imposed in Article 8B of Chapter 105 of the General
14 Statutes."

15 Sec. 9. G.S. 58-22-20(3) reads as rewritten:

16 "(3) Taxation.

- 17 a. All premiums paid for coverages within this State to risk
18 retention groups shall be subject to taxation at the same rate and
19 subject to the same payment procedures and to the same interest,
20 fines, and penalties for nonpayment as those applicable to surplus
21 lines insurance under Article 21 of this Chapter. Premiums paid
22 by purchasing groups are, however, taxed as provided in G.S. 58-
23 22-35(b).
- 24 b. To the extent licensed agents or brokers are utilized pursuant to
25 G.S. 58-22-60, they shall report and pay the taxes for the
26 premiums for risks that they have placed with or on behalf of a
27 risk retention group not chartered in this State. Such agent or
28 broker shall keep a complete and separate record of all policies
29 procured from each such risk retention group, which record shall
30 be open to examination by the Commissioner, as provided in
31 G.S. 58-2-185. These records shall, for each policy and each
32 kind of insurance provided thereunder, include the following:
- 33 1. The limit of liability;
 - 34 2. The time period covered;
 - 35 3. The effective date;
 - 36 4. The name of the risk retention group that issued the
37 policy;
 - 38 5. The gross premium charged; and
 - 39 6. The amount of return premiums, if any.
- 40 c. To the extent that insurance agents or brokers are not utilized or
41 fail to pay the tax, each risk retention group shall pay the tax for
42 risks insured within the State. Each risk retention group shall

1 report to the Commissioner all premiums paid to it for risks
2 insured within the State. "

3 Sec. 10. G.S. 58-22-35(b) reads as rewritten:

4 "(b) Taxes on premiums paid for coverage of risks resident or located in this State
5 by a purchasing group or any members of the purchasing group shall be:

6 (1) Imposed at the same rate and subject to the same interest, fines, and
7 penalties as those applicable to premium taxes on similar coverage from
8 a similar insurance source by other ~~insureds; and insureds~~. For example,
9 coverage provided by a surplus lines licensee is taxed under Article 21
10 of this Chapter, coverage provided by an insurance company is taxed
11 under Article 8B of Chapter 105 of the General Statutes, and coverage
12 provided by an unlicensed insurer is taxed under G.S. 58-28-5(b).

13 (2) Paid first by such insurance source, and if not by such source then by
14 the agent or broker for the purchasing group, and if not by such agent or
15 broker then by the purchasing group, and if not by such group then by
16 each of its members."

17 Sec. 11. G.S. 58-6-20 reads as rewritten:

18 "**§ 58-6-20. Policyholders to furnish information.**

19 ~~To enable the Commissioner the better to enforce the payment of the taxes imposed~~
20 ~~by Articles 1 through 64 of this Chapter and by G.S. 105-228.5 every~~ Every corporation,
21 firm, or individual doing business in the State shall, upon ~~demand~~ request of the
22 Commissioner, furnish to him, ~~upon blanks to be provided by him, a statement of the~~
23 ~~amount of all insurance held by them, giving the name of the company, number, and~~
24 ~~amount of policies and the premiums paid on each, and such other information as the~~
25 ~~Commissioner calls for, or shall file an affidavit with the Commissioner that all their~~
26 ~~insurance is placed in companies licensed to do business in this State.~~ the Commissioner
27 any information the Commissioner considers necessary to enable the Commissioner to
28 enforce the payment of a tax levied in this Chapter."

29 Sec. 12. G.S. 58-45-80 reads as rewritten:

30 "**§ 58-45-80. Premium taxes to be paid through Association to Commissioner.**
31 **Association.**

32 All premium taxes due on insurance written under this Article shall be remitted by
33 each insurer to the Association; and the Association, as collecting agent for its member
34 companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as
35 provided in Article 8B of Chapter 105 of the General Statutes."

36 Sec. 13. G.S. 58-46-45 reads as rewritten:

37 "**§ 58-46-45. Premium taxes to be paid through Association to Commissioner.**
38 **Association.**

39 All premium taxes due on insurance written under this Article shall be remitted by
40 each insurer to the Association; and the Association, as collecting agent for its member
41 companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as
42 provided in Article 8B of Chapter 105 of the General Statutes."

43 Sec. 14. G.S. 58-47-30(d) reads as rewritten:

1 "(d) ~~The fund shall be subject to the premium tax law as stated in North Carolina G.S.~~
2 ~~105-228.5. is an insurer for the purposes of Article 8B of Chapter 105 of the General~~
3 ~~Statutes and assessments paid to the fund are subject to the tax levied in that Article."~~

4 Sec. 15. This act becomes effective January 1, 1997, but it is effective only if
5 the sum of one hundred thirty-four thousand twenty-one dollars (\$134,021) for the 1996-
6 97 fiscal year is appropriated to the Department of Revenue for two processing positions
7 and one auditing position needed to carry out the tax collection responsibilities
8 transferred to the Department of Revenue pursuant to this act. This act does not obligate
9 the General Assembly to appropriate funds.