

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 931  
Appropriations Committee Substitute Adopted 6/28/95  
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Short Title: Workers' Comp Self-Insureds Safeguards.

(Public)

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Sponsors:

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Referred to:

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May 1, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE SAFEGUARDS TO REDUCE THE CHANCES AND LESSEN  
3 THE EFFECTS OF WORKERS' COMPENSATION SELF-INSURANCE  
4 INSOLVENCIES AND APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 97-93 reads as rewritten:  
7 **"§ 97-93. Employers required to carry insurance or prove financial ability to pay**  
8 **for benefits; employers required to post notice; self-insured employers**  
9 **regulated by Commissioner of Insurance.**

10 (a) Every employer subject to the provisions of this Article relative to the payment  
11 of compensation shall either:

- 12 (1) Insure and keep insured his liability under this Article in any authorized  
13 corporation, association, organization, or in any mutual insurance  
14 association formed by a group of employers so authorized; or  
15 (2) Furnish to the Commissioner of Insurance satisfactory proof of the  
16 employer's financial ability, either alone or through membership in a  
17 group ~~comprising of~~ two or more employers who are members of the  
18 same trade or professional association and who agree to pool their

1 liabilities under this Article, to directly pay the compensation in the  
2 amount and manner and when due as provided for in this Article. The  
3 trade or professional association must have been incorporated in North  
4 Carolina and in existence at least five years prior to the date of  
5 application to the Commissioner of Insurance to form a self-insurer's  
6 fund and shall submit a written determination from the Internal Revenue  
7 Service that it is exempt from taxation under 26 U.S.C. § 501(c).

8 A group organized and approved under this subdivision prior to July  
9 1, 1995, is not required to consist of employers of the same trade or  
10 professional association, have existed for five years, have been  
11 incorporated in North Carolina, or furnish the determination of tax-  
12 exempt status under 26 U.S.C. § 501(c).

13 (b) In the case of subdivision (a)(2) of this section, the Commissioner of Insurance  
14 may require the deposit of an acceptable security, indemnity, or bond to secure the  
15 payment of compensation liabilities as they are incurred. Any individual employer or  
16 group of employers who furnish proof of financial ability under subdivision (a)(2) of this  
17 section shall be governed in all respects by this Article and by rules adopted by the  
18 Commissioner of Insurance.

19 (c) Payment of dividends to the members of any group of employers who agree to  
20 pool their liabilities under subdivision (a)(2) of this section shall not be contingent upon  
21 the maintenance or continuance of membership in such pools.

22 (d) ~~Groups comprising of two or more employers who agree to pool their liabilities~~  
23 ~~under subdivision (a)(2) of this section are subject-subject, in addition to the provisions~~  
24 ~~cited in G.S. 58-2-145(a), to G.S. 58-2-165, 58-3-80, 58-6-25, 58-7-50, 58-7-55, 58-7-~~  
25 ~~140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172,~~  
26 ~~58-7-173, 58-7-177, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-~~  
27 ~~190, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, 30, and 34~~  
28 ~~of Chapter 58 of the General Statutes.~~

29 (e) Every employer who is in compliance with the provisions of subsection (a) of  
30 this section shall post in a conspicuous place in places of employment a notice stating  
31 that employment by this employer is subject to the North Carolina Workers'  
32 Compensation Act and stating whether the employer has a policy of insurance against  
33 liability or qualifies as a self-insured employer. In the event the employer allows its  
34 insurance to lapse or ceases to qualify as a self-insured employer, the employer shall,  
35 within five working days of this occurrence, remove any notices indicating otherwise."

36 Sec. 2. G.S. 58-2-145 reads as rewritten:

37 "**§ 58-2-145. Examination, ~~financial statement, and records~~ licensing of claims**  
38 **adjusters, calculation of rates, and deviation from rates of employers self-**  
39 **insuring for workers' compensation.**

40 (a) The provisions of G.S. ~~58-2-131 through G.S. 58-2-133, 58-2-131, 58-2-132, 58-~~  
41 ~~2-133(a), (b), and (d), 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-~~  
42 ~~200, and 58-6-5 and 58-6-25~~ apply to employers and employer groups that furnish proof  
43 of financial responsibility to the Commissioner under G.S. 97-93(a)(2) and to persons

1 that administer workers' compensation self-insurance for those ~~employers.~~ employers and  
2 employer groups.

3 (b) A person adjusting workers' compensation claims for a self-insured employer  
4 or self-insured employer group must have an adjuster's license under Article 33 of this  
5 Chapter.

6 (c) Each self-insured employer group must determine its individual member  
7 employers' premiums or contributions using the current rates and classifications filed by  
8 the North Carolina Rate Bureau and approved by the Commissioner under Article 36 of  
9 this Chapter. Deviations from these rates or classifications after December 31, 1995, are  
10 permitted only in accordance with Article 36 of this Chapter, except that no deviation is  
11 required to be filed with the Rate Bureau.

12 The Commissioner shall approve a request filed for a deviation to reduce premiums or  
13 contributions or provide discounts if the filed request is accompanied by competent,  
14 independent financial and actuarial information. Despite the provisions of G.S. 58-36-  
15 30(c), a deviation shall not be required to apply uniformly to all classifications. The  
16 Commissioner may deny a filed request for a deviation only if he finds, after notice and a  
17 public hearing, that the deviation would result in a hazardous financial condition to the  
18 group, based on financial, actuarial or other information. The public hearing shall be  
19 held within 45 days after the requested deviation is filed in its entirety, and the  
20 Commissioner shall give at least 14 days' notice of the hearing to the person filing the  
21 request and to other persons designated by the Commissioner. The Commissioner shall  
22 make a determination as expeditiously as reasonably practicable after the conclusion of  
23 the hearing, provided that the request shall be deemed approved unless denied within 60  
24 days after it was filed in its entirety.

25 'Hazardous financial condition', for purposes of this subsection, means that, based on  
26 its present or reasonably anticipated financial condition, a group, although not yet  
27 financially impaired or insolvent, is unlikely to be able:

28 (1) To meet obligations with respect to known claims and reasonably  
29 anticipated claims; or

30 (2) To pay other obligations in the normal course of business.

31 (d) The Commissioner shall adopt rules to ensure adequate disclosure by employer  
32 groups and their agents or administrators of (i) the possibility of assessments against  
33 members of the employer groups to satisfy their joint and several liability for claims and  
34 (ii) information about specific and aggregate insurance carried by the employer group.

35 (e) For purposes of this section, 'self-insured employer group' means a group that  
36 meets the requirements of G.S. 97-93(a)(2)."

37 Sec. 3. G.S. 58-30-5 reads as rewritten:

38 "**§ 58-30-5. Persons covered.**

39 The proceedings authorized by this Article may be applied to:

40 (1) All insurers who are doing, or have done, an insurance business in this  
41 State, and against whom claims arising from that business may exist  
42 now or in the future.

43 (2) All insurers who purport to do an insurance business in this State.

1 (3) All insurers who have insureds resident in this State.

2 (4) All persons organized or in the process of organizing with the intent to  
3 do an insurance business in this State.

4 (5) All persons subject to Articles 65 through 67 of this Chapter; except to  
5 the extent there is a conflict between the provisions of this Article and  
6 the provisions of those Articles, in which case those Articles will  
7 govern.

8 (6) Self-insured group workers' compensation funds organized under G.S.  
9 97-93(a)(2)."

10 Sec. 4. G.S. 58-30-10(7) reads as rewritten:

11 "(7) 'Domestic guaranty association' means the Postassessment Insurance  
12 Guaranty Association in Article 48 of this Chapter, as amended; the  
13 ~~Workers' Compensation Security Funds in Article 3 of Chapter 97 of the~~  
14 ~~General Statutes, as amended;~~ the North Carolina Self-Insurance Guaranty  
15 Association in Article 4 of Chapter 97 of the General Statutes; the Life  
16 and Accident and Health Insurance Guaranty Association in Article 62  
17 of this Chapter, as amended; or any other similar entity hereafter created  
18 by the General Assembly for the payment of claims of insolvent  
19 insurers."

20 Sec. 5. G.S. 58-30-10(14) reads as rewritten:

21 "(14) 'Insurer' means any entity licensed under Articles 7, 16, ~~or 26 of this~~  
22 ~~Chapter and under Articles 65 through 67-26, 65, or 67 of this Chapter and~~  
23 any employer that has furnished to the Commissioner satisfactory proof  
24 of its financial responsibility under G.S. 97-93(a)(2)."

25 Sec. 6. There is appropriated from the Department of Insurance Fund  
26 established in G.S. 58-6-25 the sum of eight hundred ninety-one thousand thirty dollars  
27 (\$891,030) for fiscal year 1995-96 and the sum of eight hundred one thousand thirty  
28 dollars (\$801,030) for fiscal year 1996-97 for the expenses of administering the  
29 Department's self-insured workers' compensation program.

30 Sec. 7. Section 6 of this act and this section become effective July 1, 1995.  
31 The remainder of this act becomes effective October 1, 1995.