

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 471
SENATE BILL 931

AN ACT TO PROVIDE SAFEGUARDS TO REDUCE THE CHANCES AND
LESSEN THE EFFECTS OF WORKERS' COMPENSATION SELF-INSURANCE
INSOLVENCIES AND APPROPRIATE FUNDS TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-93 reads as rewritten:

"§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits; employers required to post notice; self-insured employers regulated by Commissioner of Insurance.

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

(1) Insure and keep insured his liability under this Article in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized; or

(2) Furnish to the Commissioner of Insurance satisfactory proof of the employer's financial ability, either alone or through membership in a group ~~comprising~~ of two or more employers who are members of the same trade or professional association and who agree to pool their liabilities under this Article, to directly pay the compensation in the amount and manner and when due as provided for in this Article. The trade or professional association must have been incorporated in North Carolina and in existence at least five years prior to the date of application to the Commissioner of Insurance to form a self-insurer's fund and shall submit a written determination from the Internal Revenue Service that it is exempt from taxation under 26 U.S.C. § 501(c).

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

(b) In the case of subdivision (a)(2) of this section, the Commissioner of Insurance may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. Any individual employer or group of employers who furnish proof of financial ability under subdivision

(a)(2) of this section shall be governed in all respects by this Article and by rules adopted by the Commissioner of Insurance.

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

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

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

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

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

(a) The provisions of G.S. 58-2-131 through G.S. 58-2-133, 58-2-131, 58-2-132, 58-2-133(a), (b), and (d), 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, and 58-6-5 and 58-6-25 apply to employers and employer groups that furnish proof of financial responsibility to the Commissioner under G.S. 97-93(a)(2) and to persons that administer workers' compensation self-insurance for those employers-employers and employer groups.

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

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

The Commissioner shall approve a request filed for a deviation to reduce premiums or contributions or provide discounts if the filed request is accompanied by competent, independent financial and actuarial information. Despite the provisions of G.S. 58-36-30(c), a deviation shall not be required to apply uniformly to all classifications. The Commissioner may deny a filed request for a deviation only if he finds, after notice and a public hearing, that the deviation would result in a hazardous financial condition to the

group, based on financial, actuarial or other information. The public hearing shall be held within 45 days after the requested deviation is filed in its entirety, and the Commissioner shall give at least 14 days' notice of the hearing to the person filing the request and to other persons designated by the Commissioner. The Commissioner shall make a determination as expeditiously as reasonably practicable after the conclusion of the hearing, provided that the request shall be deemed approved unless denied within 60 days after it was filed in its entirety.

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

- (1) To meet obligations with respect to known claims and reasonably anticipated claims; or
- (2) To pay other obligations in the normal course of business.

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

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

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

"§ 58-30-5. Persons covered.

The proceedings authorized by this Article may be applied to:

- (1) All insurers who are doing, or have done, an insurance business in this State, and against whom claims arising from that business may exist now or in the future.
- (2) All insurers who purport to do an insurance business in this State.
- (3) All insurers who have insureds resident in this State.
- (4) All persons organized or in the process of organizing with the intent to do an insurance business in this State.
- (5) All persons subject to Articles 65 through 67 of this Chapter; except to the extent there is a conflict between the provisions of this Article and the provisions of those Articles, in which case those Articles will govern.
- (6) Self-insured group workers' compensation funds organized under G.S. 97-93(a)(2)."

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

"(7) 'Domestic guaranty association' means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; the ~~Workers' Compensation Security Funds in Article 3 of Chapter 97 of the General Statutes, as amended;~~ the North Carolina Self-Insurance Guaranty Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other

similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers."

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

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

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

Sec. 7. Section 6 of this act and this section are effective July 1, 1995. G.S. 58-2-145(c), as enacted in Section 2 of this act, becomes effective January 1, 1996, and applies to policy years beginning on or after that date. The remainder of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives