

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 802
SENATE BILL 726

AN ACT CONCERNING THE WORKERS' COMPENSATION SECURITY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-48-10 reads as rewritten:

"§ 58-48-10. Scope.

This Article shall apply to all kinds of direct insurance, but shall not be applicable to:

- (1) Life, annuity, accident and health or disability insurance;
- (2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance;
- ~~(8) Workers' compensation and employers' liability insurance;~~
- (9) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;
- (10) Insurance written on a retroactive basis to cover known or unknown losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound."

Sec. 2. G.S. 58-48-20 reads as rewritten:

"§ 58-48-20. Definitions.

As used in this Article:

- (1) 'Account' means any one of the ~~two~~ three accounts created by G.S. 58-48-25.
- (1a) 'Affiliate' means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

- (2) 'Association' means the North Carolina Insurance Guaranty Association created under G.S. 58-48-25.
- (2a) 'Claimant' means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (3) Repealed by Session Laws 1991, c. 720, s. 6.
- (3a) 'Control' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (4) 'Covered claim' means an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars (\$50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State. 'Covered claim' shall not include any amount awarded as punitive or exemplary damages; sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation or contribution recoveries or otherwise.
- (5) 'Insolvent insurer' means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a **writ of supersedeas** or other comparable order.
- (6) 'Member insurer' means any person who (i) writes any kind of insurance to which this Article applies under G.S. 58-48-10, including the exchange of reciprocal or interinsurance contracts, and (ii) is licensed and authorized to transact insurance in this State.

- (7) 'Net direct written premiums' means direct gross premiums written in this State on insurance policies to which this Article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. 'Net direct written premiums' does not include premiums on contracts between insurers or reinsurers.
- (8) 'Person' means any individual, corporation, partnership, association or voluntary organization.
- (9) 'Policyholder' means the person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer."

Sec. 3. G.S. 58-48-25 reads as rewritten:

"§ 58-48-25. Creation of the Association.

There is created a nonprofit, unincorporated legal entity to be known as the North Carolina Insurance Guaranty Association. All insurers defined as member insurers in G.S. 58-48-20(6) shall be and remain members of the Association as a condition of their authority to transact insurance in this State. The Association shall perform its functions under a plan of operation established and approved under G.S. 58-48-40 and shall exercise its powers through a board of directors established under G.S. 58-48-30. For purposes of administration and assessment, the Association shall be divided into ~~two~~ three separate accounts: (i) the automobile insurance account; and (ii) the workers' compensation account; and (iii) the account for all other insurance to which the Article applies. Each person becoming a member insurer after October 1, 1985, shall pay to the Association upon demand a nonrefundable initial membership fee of fifty dollars (\$50.00)."

Sec. 4. G.S. 58-48-35 reads as rewritten:

"§ 58-48-35. Powers and duties of the Association.

(a) The Association shall:

- (1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. This obligation includes only the amount of each covered claim that is in excess of fifty dollars (\$50.00) and is less than three hundred thousand dollars (\$300,000). However, the Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage, and shall pay an amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium. The Association has no obligation to pay a claimant's covered claim, except a claimant's workers' compensation claim, if:

- a. The insured had primary coverage at the time of the loss with a solvent insurer equal to or in excess of three hundred thousand dollars (\$300,000) and applicable to the claimant's loss; or

- b. The insured's coverage is written subject to a self-insured retention equal to or in excess of three hundred thousand dollars (\$300,000).

If the primary coverage or the self-insured retention is less than three hundred thousand dollars (\$300,000), the Association's obligation to the claimant is reduced by the coverage and the retention. The Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage to a claimant notwithstanding any self-insured retention, but the Association has the right to recover the amount of the self-insured retention from the employer.

In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provision of this Article, a covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

- (2) Be deemed the insurer to the extent of the Association's obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. However, the Association has the right but not the obligation to defend an insured who is not a resident of this State at the time of the insured event unless the property from which the claim arises is permanently located in this State in which instance the Association does have the obligation to defend the matter in accordance with policy.
- (3) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the Association under subsection (a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under G.S. 58-48-60 and other expenses authorized by this Article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account; provided, for purposes of assessment only, premiums otherwise reportable by a servicing insurer under any plan of operation approved by the Commissioner of Insurance under Articles 45 or 46 of this Chapter shall not be deemed to be the net direct written premiums of such servicing insurer or association, but shall be deemed to be the net direct written premiums of the individual insurers to the extent

provided for in any such plan of operation. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

- (4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.
 - (5) Notify such persons as the Commissioner directs under G.S. 58-48-45(b)(1).
 - (6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but such designation may be declined by a member insurer.
 - (7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association and shall pay the other expenses of the Association authorized by this Article.
- (b) The Association may:
- (1) Employ or retain such persons as are necessary to handle claims and perform other duties of the Association.
 - (2) Borrow funds necessary to effect the purposes of this Article in accord with the plan of operation.
 - (3) Sue or be sued.
 - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this Article.

- (5) Perform such other acts as are necessary or proper to effectuate the purpose of this Article.
- (6) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year."

Sec. 5. G.S. 58-48-55 reads as rewritten:

"§ 58-48-55. Nonduplication of recovery.

(a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under such insurance policy.

(a1) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim shall be required to exhaust first his right under such program. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under such program.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the policyholder except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the ~~property~~ property, and if it is a workers' compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this Article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

(c) No claim held by an insurer, reinsurer, insurance pool, or underwriting association, whether the claim is:

- (1) based on an assignment, or
- (2) based on rights of subrogation or contribution, or
- (3) based on any other grounds,

nor any claim of lien, may be asserted in any legal action against a person insured under a policy issued by an insolvent insurer except to the extent the amount of such claim exceeds the obligation of the Association under G.S. 58-48-35(a)(1).

(d) Any person that has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his rights under such policy issued by the solvent insurer before execution, levy, or any other proceedings are commenced to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. Any amount so recovered from a solvent insurer shall be credited against the amount of the judgment or settlement."

Sec. 6. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-105. Transfer of balance of security funds.

(a) All monies received and paid into the Stock Workers' Compensation Security Fund under former G.S. 97-107, together with all property and securities acquired by and through the use of monies belonging to this Fund, including interest earned upon monies in this Fund, shall be transferred and deposited into a new account with the Association created pursuant to G.S. 58-48-115. This account shall be separate and apart from any other accounts similarly created and from all other Association funds. The Association shall be the custodian of the account, and shall administer the account in accordance with the provisions of this Article.

(b) All monies received and paid into the Mutual Workers' Compensation Security Fund under former G.S. 97-114, together with all property and securities acquired by and through the use of monies belonging to this Fund, including interest earned upon monies in this Fund, shall be transferred and deposited into a new account with the Association created pursuant to G.S. 58-48-120. This account shall be separate and apart from any other accounts similarly created and from all other Association accounts. The Association shall be the custodian of the account, and shall administer the account in accordance with the provisions of this Article."

Sec. 7. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-110. Purpose of the accounts.

The purpose of the accounts created in the Association pursuant to G.S. 58-48-115 and G.S. 58-48-120 of this Article shall be solely to:

- (1) Receive the balance from the accounts created under former G.S. 97-107 and G.S. 97-114;
- (2) Receive assessment monies from member companies as provided in G.S. 58-48-115(a)(3), 58-48-120(b), and 58-48-120(c);
- (3) Receive interest on monies in the accounts;
- (4) Pay stock or mutual carrier claims made against the security funds established under G.S. 97-107 and G.S. 97-114, but only for claims existing before January 1, 1993; and
- (5) Refund to the contributing stock companies in accordance with G.S. 58-48-115 the excess monies in the stock fund account as set forth in G.S. 58-48-115(a)(2)."

Sec. 8. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-115. Creation of Stock Fund Account; maintenance of Stock Fund Account; and distribution of Stock Fund.

(a) The monies received by the Association pursuant to G.S. 58-48-105(a) shall be distributed as follows:

- (1) An amount equivalent to one and one-half times the contingent liabilities of the Stock Workers' Compensation Security Fund created pursuant to former G.S. 97-107 existing on December 31, 1992, shall

be deposited in a separate reserve account to be maintained by the Association which shall be designated as the 'Stock Reserve Account.'
The amount of the Fund's contingent liabilities and the amount to be deposited in this Stock Reserve Account shall be determined and approved by the Department.

- (2) The balance of the monies received from the Stock Workers' Compensation Security Fund created pursuant to former G.S. 97-107 shall be refunded by the Association to member insurers that were contributing stock carriers during calendar year 1989 in accordance with the determination of the Department under this subdivision. The amount to be refunded to each stock carrier shall be in proportion to the contributions paid in by each stock carrier. The Department shall, as nearly as practicable, determine this amount under generally accepted accounting principles and the determination of the Department shall be final and not subject to appeal.
- (3) Should the balance of the monies in the Stock Reserve Account be reduced to less than one and one-half times the contingent liabilities of the account, the Association shall assess all member insurers that are stock carriers writing workers' compensation in this State at the time of the assessment in an amount equivalent to one and one-half times the contingent liabilities of said account. The assessment under this subdivision shall be made in accordance with the provisions of G.S. 58-48-35(a)(3)."

Sec. 9. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-120. Creation of Mutual Fund Account; maintenance of Mutual Fund Account.

(a) The monies received by the Association pursuant to G.S. 58-48-105(b) shall be deposited in a separate reserve account to be maintained by the Association which shall be designated as the Mutual Reserve Account. The amount in this account shall be equivalent to one and one-half times the contingent liabilities of the Mutual Workers' Compensation Security Fund created pursuant to former G.S. 97-114 existing on December 31, 1992. The amount of this Fund's contingent liabilities and the amount to be deposited into this Mutual Reserve Account shall be determined and approved by the Department.

(b) If the amount received by the Association from the former Mutual Workers' Compensation Security Fund created pursuant to G.S. 97-114 and received by the Association pursuant to G.S. 58-48-105(b) is insufficient to equal one and one-half times the contingent liabilities of the Fund existing on December 31, 1992, the Association shall, over the five years following the effective date of this act, assess the member insurers that are mutual carriers writing workers' compensation insurance in this State at the time of the assessment in the amount it determines necessary to make up the difference between the money received by the Association pursuant to G.S. 58-48-105(b) and one and one-half times the contingent liabilities of the Fund as determined

by the Department of Insurance pursuant to G.S. 58-48-120(a). The assessment under this subsection shall be made in accordance with the provisions of G.S. 58-48-35(a)(3).

(c) After December 31, 1997, should the balance of the monies in the Mutual Reserve Account be reduced to less than one and one-half times the contingent liabilities of the account, the Association shall assess all member insurers that are mutual carriers writing workers' compensation insurance in this State at the time of the assessment in an amount necessary to raise the account to an amount equivalent to one and one-half times the contingent liabilities of said account. The assessment under this subsection shall be made in accordance with the provisions of G.S. 58-48-35(a)(3)."

Sec. 10. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-125. Payments by the Association.

The accounts created in G.S. 58-48-115 and G.S. 58-48-120 shall be used to pay the claims against insolvent stock workers' compensation insurers and insolvent mutual workers' compensation insurers, respectively, pursuant to G.S. 58-48-35, where the insolvency occurred prior to January 1, 1993. The expenses of administering these accounts, including loss adjustment expenses, shall be paid out of the respective accounts."

Sec. 11. Article 48 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-48-130. Termination.

The account created in G.S. 58-48-115 shall be dissolved when all liabilities of the Stock Workers' Compensation Security Fund, under former G.S. 97-107 have been satisfied. Any excess monies in the Stock Reserve Account shall be refunded to the member insurers that were stock workers' compensation carriers during the preceding calendar year. The amount to be refunded to each stock carrier shall be in proportion to the assessments paid by each stock carrier. The account created in G.S. 58-48-120 shall be dissolved when the liabilities of the Mutual Workers' Compensation Security Fund, under former G.S. 97-114, have been satisfied. Any excess monies in the mutual reserve account shall be refunded to the member insurers that were mutual workers' compensation carriers during the preceding calendar year. The amount to be refunded to each mutual carrier shall be in proportion to the assessments paid by each mutual carrier."

Sec. 12. Article 3 of Chapter 97 of the General Statutes, G.S. 97-106 to G.S. 97-122, is repealed.

Sec. 13. This act becomes effective January 1, 1993.

In the General Assembly read three times and ratified this the 30th day of June, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives