

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 502
Insurance Committee Substitute Adopted 4/20/89
House Committee Substitute Favorable 6/2/89

Short Title: Insurance Reciprocal.

(Public)

Sponsors:

Referred to:

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAW ON RECIPROCAL OR INTERINSURANCE
3 EXCHANGES.

4 The General Assembly of North Carolina enacts:

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

7 **“ARTICLE 51.**
8 **“RECIPROCAL INSURANCE.**
9 **“PART 1. GENERAL PROVISIONS.**

10 **“§ 58-780. Scope.**

11 This Article applies to all reciprocals and reciprocal insurance.

12 **“§ 58-781. Definitions.**

13 (a) As used in this Article:

14 (1) ‘Attorney’ means the person designated and authorized by subscribers
15 as the attorney-in-fact having authority to obligate them on reciprocal
16 and other insurance contracts.

17 (2) ‘License’ means a certificate of authority to transact the business of
18 insurance in this State, issued by the Commissioner.

19 (3) In addition to the meaning of the term as defined in G.S. 12-3(6) and
20 G.S. 58-2(7), ‘person’ means any county, city, school board, hospital
21 authority, or any other local governmental authority or local agency or
22 public service corporation owned, operated or controlled by a local

1 government or local government authority, that has the power to enter
2 into contractual undertakings within or without the State.

3 (4) 'Reciprocal' means an aggregation of subscribers under a
4 common name.

5 (5) 'Reciprocal insurance' means insurance resulting from the mutual
6 exchange of insurance contracts among persons in an unincorporated
7 association under a common name through an attorney-in-fact having
8 authority to obligate each person both as insured and insurer.

9 (6) 'Subscriber' means a person obligated under a reciprocal insurance
10 agreement.

11 **"§ 58-782. Kinds of insurance.**

12 A reciprocal licensed in this State may write the kinds of insurance enumerated
13 in G.S. 58-72, except life insurance, annuities, and title insurance.

14 **"§ 58-783. Risk limitations.**

15 (a) Except for Article 10 of this Chapter and as otherwise specifically
16 provided, all the provisions of this Chapter relating to insurers generally, and those
17 relating to insurers writing the same kinds of insurance that reciprocals are permitted to
18 write, are applicable to reciprocals.

19 (b) A reciprocal shall be deemed to comply with G.S. 58-39.1 if:

20 (1) It issues policies containing a contingent assessment liability, provided
21 for in G.S. 58-792; and

22 (2) It maintains reinsurance in an amount that the Commissioner considers
23 adequate to reasonably limit the reciprocal's aggregate losses to the
24 lesser of:

25 a. Ten percent (10%) of the surplus to policyholders of the
26 reciprocal multiplied by the number of subscribers;

27 b. The surplus to policyholders of the reciprocal multiplied by
28 three; or

29 c. Five million dollars (\$5,000,000).

30 **"§ 58-784. Eligible contracting persons.**

31 (a) Persons of this State may enter into reciprocal insurance contracts with each
32 other and with persons of other states and countries.

33 (b) For any corporation now existing or subsequently organized under the laws of
34 this State, the authority to enter into reciprocal insurance contracts is in addition to the
35 authority conferred upon it in its charter and is incidental to the purposes for which the
36 corporation is organized.

37 **"§ 58-785. Business name.**

38 Every reciprocal shall have and use an appropriate business name that includes
39 the word or words 'reciprocal,' 'interinsurer,' 'interinsurance,' or 'exchange'.

40 **"§ 58-786. License, surplus, and deposit requirements.**

41 (a) No reciprocal shall engage in any insurance transaction in this State until it
42 has obtained a license to do so in accordance with the applicable provisions of this
43 Chapter. Such license shall expire on the last day of June of each year.

1 (b) No domestic or foreign reciprocal shall be licensed in this State unless it has a
2 surplus to policyholders of at least eight hundred thousand dollars (\$800,000); and no
3 alien reciprocal shall be licensed unless it has a trusted surplus of at least eight hundred
4 thousand dollars (\$800,000).

5 (c) Each domestic, foreign, or alien reciprocal licensed in this State must
6 maintain a minimum deposit with the Commissioner of at least one hundred thousand
7 dollars (\$100,000) in cash or in value of securities of the kind specified in G.S. 58-
8 182.3, which shall be subject to the same conditions as contained in Article 20 of this
9 Chapter.

10 **"§ 58-787. Continuation of business under prior requirements.**

11 (a) Notwithstanding other provisions of this Chapter regarding minimum
12 required surplus, any reciprocal that was licensed to write and was writing any kind of
13 insurance in this State on the effective date of this Article may continue to write that
14 kind of insurance under the appropriate license from the Commissioner. Such
15 reciprocal shall maintain at all times the minimum surplus, and the minimum trusted
16 surplus if an alien reciprocal, that was required before the effective date of this Article.

17 (b) Before any reciprocal obtains a license to write in this State any kind of
18 insurance that it was not licensed to write and writing in this State on the effective date
19 of this Article, it shall comply with all the requirements of this Part regarding surplus.

20 **"§ 58-788. Certification of foreign and alien reciprocals.**

21 No foreign reciprocal shall be licensed in this State until it files with the
22 Commissioner a certificate of the insurance regulator of the state in which it is
23 organized. The certificate shall show that the foreign reciprocal is licensed to write and
24 is writing actively in that state the kind of insurance it proposes to write in this State.
25 No alien reciprocal shall be licensed in this State until it files with the Commissioner a
26 certificate of the insurance regulator of (i) the state through which it entered the United
27 States or (ii) the alien reciprocal's domiciliary country. The certificate shall show that
28 the alien reciprocal is licensed to write and is writing actively in that state or country the
29 kind of insurance it proposes to write in this State. Foreign and alien reciprocals must
30 also satisfy the appropriate provisions of Article 17 of this Chapter pertaining to
31 admission requirements.

32 **"§ 58-789. Attorney's domicile.**

33 Nothing in this Chapter regarding the admission and licensing of foreign and
34 alien insurers requires that the attorney of a foreign or alien reciprocal be resident or
35 domiciled in this State, or that the principal office of the attorney be maintained in this
36 State. The office or offices of the attorney shall be determined by the subscribers
37 through the power of attorney.

38 **"§ 58-790. Contracts and Property.**

39 A reciprocal may enter into contracts and acquire, hold title to, and convey property
40 in its business name. All contracts of a reciprocal, including its insurance contracts,
41 shall be executed on behalf of the reciprocal by the attorney of the reciprocal.

42 **"§ 58-791. Agent's license.**

43 No person shall act in this State as an agent of a reciprocal in the solicitation or
44 procurement of applications for insurance, subscriber's agreements, or powers of

1 attorney, or in the collection of premiums in connection with the reciprocal, without
2 first procuring an agent's license from the Commissioner pursuant to Article 45 of this
3 Chapter. An agent shall be appointed by each reciprocal the agent represents.

4 **"§ 58-792. Subscribers' contingent liability.**

5 (a) Each subscriber insured under an assessable policy has a contingent
6 assessment liability for payment of actual losses and expenses incurred by the reciprocal
7 while his policy was in force. This liability is in the amount provided for in the power
8 of attorney or subscriber's agreement.

9 (b) The contingent assessment liability on any one policy in any one calendar
10 year equals the premiums earned, as defined in G.S. 58-806, on the policy for that year
11 multiplied by not more than ten.

12 (c) The contingent assessment liability is several and not joint.

13 (d) Each assessable policy issued by the reciprocal shall plainly set forth a
14 statement of the contingent assessment liability on the front of the policy in capital
15 letters, in contrasting color, and in no less than ten-point type.

16 **"§ 58-793. Nonassessable policies.**

17 (a) The Commissioner may issue a certificate authorizing the reciprocal to
18 reduce or extinguish the contingent assessment liability of subscribers under its policies
19 then in force in this State and to omit provisions imposing contingent assessment
20 liability in all policies delivered or issued for delivery in this State for as long as all such
21 surplus to policyholders remains unimpaired. The certificate may be issued if (i) a
22 reciprocal has surplus to policyholders of at least two million dollars (\$2,000,000), and
23 (ii) an application of the attorney has been approved by the subscribers' advisory
24 committee.

25 (b) The Commissioner shall issue this certificate if the conditions of
26 subsection (a) of this section are met and if he determines that the reciprocal's surplus to
27 policyholders is reasonable in relation to the reciprocal's outstanding liabilities and is
28 adequate to meet its financial needs. In making that determination the following
29 factors, among others, shall be considered:

30 (1) The size of the reciprocal as measured by its assets, capital and
31 surplus, reserves, premium writings, insurance in force, and other
32 appropriate criteria;

33 (2) The extent to which the reciprocal's business is diversified among
34 different kinds of insurance;

35 (3) The number and size of risks insured in each kind of insurance;

36 (4) The extent of the geographic dispersion of the reciprocal's insured
37 risks;

38 (5) The nature and extent of the reciprocal's reinsurance program;

39 (6) The quality, diversification, and liquidity of the reciprocal's investment
40 portfolio;

41 (7) The recent past and trend in the size of the reciprocal's surplus to
42 policyholders;

43 (8) The surplus to policyholders maintained by other comparable insurers;
44 and

1 (9) The adequacy of the reciprocal's reserves.

2 (c) Upon impairment of the surplus to policyholders as described in
3 subsection (a) of this section, the Commissioner shall revoke the certificate. After
4 revocation, the reciprocal shall not issue or renew any policy without providing for the
5 contingent assessment liability of subscribers.

6 (d) The Commissioner shall not authorize a domestic reciprocal to extinguish
7 the contingent assessment liability of any of its subscribers or in any of its policies to be
8 issued, unless it has the required surplus to policyholders and extinguishes the
9 contingent assessment liability of all of its subscribers and in all policies to be issued for
10 all kinds of insurance it writes. However, if required by the laws of another state in
11 which the domestic reciprocal is transacting the business of insurance as a licensed
12 insurer, it may issue policies providing for the contingent assessment liability of its
13 subscribers that acquire policies in that state and need not extinguish the contingent
14 assessment liability applicable to policies already in force in that state.

15 **"§ 58-794. Distribution to subscribers.**

16 A reciprocal may return to its subscribers any savings or credits accruing to their
17 accounts. Any such distribution shall not unfairly discriminate between classes of risks
18 or policies or between subscribers. However, the distribution may vary for classes of
19 subscribers based upon the experience of those classes.

20 **"§ 58-795. Reserves.**

21 Each reciprocal shall maintain the same unearned premium and loss or claim
22 reserves required for stock and mutual companies writing the same kinds of insurance.

23 **"§ 58-796. Service of process.**

24 (a) Each attorney of a domestic reciprocal who files the declaration required
25 by G.S. 58-799, and each attorney of a foreign or alien reciprocal that applies for a
26 license, shall file with the Commissioner a written power of attorney executed in
27 duplicate by the attorney that appoints the Commissioner as agent of the reciprocal.
28 Upon the appointment, the Commissioner may be served all legal process against such
29 reciprocal pursuant to G.S. 58-153. A copy of the power of attorney, duly certified by
30 the Commissioner, is admissible as evidence in the courts of this State.

31 (b) Whenever any such process is served upon the Commissioner, G.S. 58-
32 154 is applicable, except that the process shall be directed to the attorney at the address
33 shown on the power of attorney. Nothing in this section limits the right to serve any
34 process upon any reciprocal in any other manner permitted by law.

35 **"§ 58-797. Legal proceedings.**

36 (a) Any reciprocal doing business in this State may sue or be sued in its
37 business name.

38 (b) Any action or suit against a reciprocal may be brought in any county (i)
39 where its principal office is located, or (ii) where the cause of action or any part of the
40 cause of action arose. If the action or suit is to recover a loss under a policy of property
41 insurance, it may also be brought in the county where the property insured was situated
42 at the date of the policy. Any action or suit against a foreign or alien reciprocal may
43 also be brought in any county of this State in which it has any debts owed to it.

1 (c) In an action against a reciprocal, process against the reciprocal may be
2 served upon the Commissioner. If the defendant in the action is a domestic reciprocal,
3 process against that domestic reciprocal shall be served upon the attorney for that
4 domestic reciprocal unless service upon that attorney is not feasible.

5 **"§ 58-798. Liability on judgments.**

6 Any judgment against a reciprocal based upon legal process duly served as
7 provided in this Article is binding upon the reciprocal and upon each of the reciprocal's
8 subscribers as their respective interests may appear, in an amount not exceeding their
9 respective contingent assessment liabilities. There is no derivative liability on the part
10 of the attorney, officers, employees, agents, or subscribers' advisory committee of the
11 reciprocal arising merely by reason of the status of such persons.

12 **"PART 2. DOMESTIC RECIPROCAL.**

13 **"§ 58-799. Declaration for license.**

14 (a) One hundred or more persons domiciled in this State and designated as
15 subscribers may organize a domestic reciprocal and apply to the Commissioner for a
16 license to transact the business of insurance. The Commissioner may authorize such a
17 reciprocal to form with a lesser number of subscribers upon being satisfied that the risks
18 are adequately spread and financial projections indicate that such a reciprocal will have
19 a reasonable potential to succeed in its business with such a lesser number of
20 subscribers. The original subscribers and the proposed attorney shall execute and file
21 with the Commissioner a declaration setting forth:

- 22 (1) The name of the attorney and the business name of the reciprocal;
- 23 (2) The location of the reciprocal's principal office, which shall be the
24 same as that of the attorney and shall be in this State;
- 25 (3) The kinds of insurance proposed to be written;
- 26 (4) The names and addresses of the original subscribers;
- 27 (5) The designation and appointment of the attorney, and a copy of the
28 power of attorney and subscriber's agreement;
- 29 (6) The names and addresses of the officers and directors of the attorney,
30 if a corporation, or of its members if not a corporation;
- 31 (7) The powers of the subscribers' advisory committee, and the names and
32 terms of office of its members;
- 33 (8) A statement that each of the original subscribers has in good faith
34 applied for insurance of the kind proposed to be written and that the
35 reciprocal has received from each original subscriber the anticipated
36 premium or premium deposit for a term of not less than six months for
37 the policy for which application is made;
- 38 (9) A statement of the financial condition of the reciprocal, including a
39 schedule of its assets;
- 40 (10) A statement that the reciprocal has the surplus to policyholders
41 required by G.S. 58-786;
- 42 (11) A copy of each policy, endorsement, and application form it proposes
43 to issue or use; and

1 (12) Financial projections of the anticipated operational results of the
2 reciprocal for a five-year period based upon the initial surplus of the
3 proposed reciprocal and its plan of operation.

4 (b) The declaration shall be acknowledged by each original subscriber and by
5 the attorney.

6 **"§ 58-800. Attorney's bond.**

7 (a) Concurrent with the filing of the declaration provided for in G.S. 58-799,
8 the attorney of a domestic reciprocal shall file with the Commissioner a fidelity bond
9 payable to this State. The bond shall be executed by the attorney and by a licensed
10 insurer and is subject to the approval of the Commissioner.

11 (b) The bond shall be in an amount established in the discretion of the
12 Commissioner, which amount shall be at least fifty thousand dollars (\$50,000). The
13 bond shall be on the condition that the attorney faithfully accounts for all moneys and
14 other property of the reciprocal coming into the attorney's control and that the attorney
15 does not withdraw or appropriate for his own use from the funds of the reciprocal any
16 moneys or property to which he is not entitled under the power of attorney.

17 (c) The bond is not subject to cancellation unless 30-days' written notice of
18 intent to cancel is given to the attorney and the Commissioner.

19 **"§ 58-801. Deposit in lieu of bond.**

20 Instead of filing the bond required by G.S. 58-800, the attorney may maintain on
21 deposit with the Commissioner an equal amount in cash or in value of securities of the
22 kind specified in G.S. 58-182.3 and subject to the same conditions as the bond.

23 **"§ 58-802. Advisory committee.**

24 The advisory committee exercising the subscribers' rights in a domestic
25 reciprocal shall be selected under rules adopted by the subscribers. At least three-
26 fourths of the committee shall comprise subscribers or their representatives other than
27 the attorney or any person employed by, representing, or having a financial interest in
28 the attorney. The committee shall supervise the finances of the reciprocal and the
29 reciprocal's operations to the extent required to assure their conformity with the
30 subscriber's agreement and power of attorney and shall exercise any other powers
31 conferred on it by the subscriber's agreement.

32 **"§ 58-803. Subscriber's agreement and power of attorney.**

33 (a) Every subscriber of a domestic reciprocal shall execute a subscriber's
34 agreement and power of attorney setting forth the rights, privileges, and obligations of
35 the subscriber as an underwriter and as a policyholder, and the powers and duties of the
36 attorney. The subscriber's agreement and power of attorney shall contain in substance
37 the following provisions:

38 (1) A designation and appointment of the attorney to act for and bind the
39 subscriber in all transactions relating to or arising out of the operations
40 of the reciprocal;

41 (2) A provision empowering the attorney (i) to accept service of legal
42 process on behalf of the reciprocal and (ii) to appoint the
43 Commissioner agent of the reciprocal upon whom may be served all
44 legal process against the reciprocal;

- 1 (3) Except for nonassessable policies, a provision for a contingent
2 assessment liability of each subscriber in a specified amount in
3 accordance with G.S. 58-792; and
4 (4) The maximum amount to be deducted from advance premiums or
5 deposits to be paid the attorney, and the items of expense, in addition
6 to losses, to be paid by the reciprocal.
7 (b) The subscriber's agreement may:
8 (1) Provide for the right of substitution of the attorney and revocation of
9 the power of attorney;
10 (2) Impose any restrictions upon the exercise of the power agreed upon by
11 the subscribers;
12 (3) Provide for the exercise of any right reserved to the subscribers
13 directly or through an advisory committee;
14 (4) Provide for indemnification of the attorney, officers, employees,
15 agents, and subscribers' advisory committee of the reciprocal against
16 liability and litigation expenses to the extent permitted in the case of
17 domestic business corporations; or
18 (5) Contain other lawful provisions considered advisable.

19 **"§ 58-804. Modification of subscriber's agreement and power of attorney.**

20 Modification of the terms of the subscriber's agreement and the power of attorney
21 of a domestic reciprocal shall be made jointly by the attorney and the subscriber's
22 advisory committee. No modification is retroactive nor does it affect any insurance
23 contract issued prior to the modification.

24 **"§ 58-805. Advance of funds.**

25 The attorney or other interested persons may advance to a domestic reciprocal
26 any funds required for its operations. The funds advanced shall not be treated as a
27 liability of the reciprocal and shall not be withdrawn or repaid except out of the
28 reciprocal's earned surplus in excess of its minimum required surplus. This section does
29 not apply to loans made by commercial lenders in the ordinary course of their
30 businesses.

31 **"§ 58-806. Assessments.**

32 (a) Assessments may be levied upon the subscribers of a domestic reciprocal by
33 the attorney in accordance with G.S. 58-792. The assessments shall be approved in
34 advance by the subscribers' advisory committee.

35 (b) Each domestic reciprocal subscriber's share of an assessment shall be
36 computed by multiplying the premiums earned on the subscriber's policies during the
37 period to be covered by the assessment by the ratio of the total assessment to the total
38 premiums earned during the period upon all policies subject to the assessment.
39 However, no assessment shall exceed the aggregate contingent assessment liability
40 computed in accordance with G.S. 58-792. For the purposes of this section, the
41 premiums earned on the subscriber's policies are the gross premiums charged by the
42 reciprocal for the policies minus any charges not recurring upon the renewal or
43 extension of the policies. No subscriber shall have an offset against any assessment for
44 which he is liable on account of any claim for unearned premium or losses payable.

1 **"§ 58-807. Duration of liability for assessment.**

2 Every subscriber of a domestic reciprocal having contingent assessment liability
3 shall be liable for and shall pay his share of any assessment computed in accordance
4 with this Part, if, while the policy is in force or within one year after its termination, the
5 subscriber is notified (i) by the attorney of his intention to levy the assessment or (ii)
6 that delinquency proceedings have been commenced against the reciprocal under the
7 provisions of Article 17A or 46 of this Chapter, and the Commissioner or receiver
8 intends to levy an assessment.

9 **"§ 58-808. Distribution of assets after liquidation.**

10 Upon the liquidation of a domestic reciprocal, the assets remaining after (i)
11 discharge of its indebtedness and policy obligations, (ii) the return of any contributions
12 of the attorney or other person made as provided in G.S. 58-805, and (iii) the return of
13 any unused deposits, savings, or credits, shall be distributed. The distribution shall be
14 according to a formula approved by the Commissioner or the Court to the persons who
15 were its subscribers within the 12 months prior to the final termination of its license.

16 **"§ 58-809. Financial impairment; assessment; liquidation.**

17 (a) If (i) the assets of a domestic reciprocal are at any time insufficient to settle
18 the sum of its liabilities, except those on account of funds contributed by the attorney or
19 other parties, and its required surplus to policyholders, and (ii) the deficiency is not
20 cured from other sources, its attorney shall levy an assessment upon subscribers made
21 subject to assessment by the terms of their policies for the amount needed to make up
22 the deficiency. However, the assessment shall be subject to G.S. 58-792.

23 (b) If the attorney fails to make the assessment within 30 days after the
24 Commissioner orders him to do so, or if the deficiency is not fully made up within 60
25 days after the date the assessment is made, delinquency proceedings may be instituted
26 and conducted against the insurer as provided in Article 17A or 46 of this Chapter.

27 (c) If liquidation of the reciprocal is ordered, an assessment shall be levied upon
28 the subscribers for the amount the Commissioner or the Court, as the case may be,
29 determines to be necessary to discharge all liabilities of the reciprocal. This assessment
30 shall exclude any funds contributed by the attorney or other persons, but shall include
31 the reasonable cost of the liquidation. However, the assessment is subject to G.S. 58-
32 792."

33 Sec. 2. Article 16 of Chapter 58 of the General Statutes is repealed.

34 Sec. 3. In the event any provision of this act is held to be invalid by any court
35 of competent jurisdiction, the court's holding as to that provision shall not affect the
36 validity or operation of other provisions of this act; and to that end the provisions of this
37 act are severable.

38 Sec. 4. This act shall become effective January 1, 1990.