

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 425
SENATE BILL 502

AN ACT TO REWRITE THE LAW ON RECIPROCAL OR INTERINSURANCE
EXCHANGES.

The General Assembly of North Carolina enacts:

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

"ARTICLE 51.
"Reciprocal Insurance.
"Part 1. General Provisions.

"§ 58-780. Scope.

This Article applies to all reciprocals and reciprocal insurance.

"§ 58-781. Definitions.

(a) As used in this Article:

- (1) 'Attorney' means the person designated and authorized by subscribers as the attorney-in-fact having authority to obligate them on reciprocal and other insurance contracts.
- (2) 'License' means a certificate of authority to transact the business of insurance in this State, issued by the Commissioner.
- (3) In addition to the meaning of the term as defined in G.S. 12-3(6) and G.S. 58-2(7), 'person' means any county, city, school board, hospital authority, or any other local governmental authority or local agency or public service corporation owned, operated or controlled by a local government or local government authority, that has the power to enter into contractual undertakings within or without the State.
- (4) 'Reciprocal' means an aggregation of subscribers under a common name.
- (5) 'Reciprocal insurance' means insurance resulting from the mutual exchange of insurance contracts among persons in an unincorporated association under a common name through an attorney-in-fact having authority to obligate each person both as insured and insurer.
- (6) 'Subscriber' means a person obligated under a reciprocal insurance agreement.

"§ 58-782. Kinds of insurance.

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

"§ 58-783. Risk limitations.

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

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

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

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

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

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

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

"§ 58-784. Eligible contracting persons.

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

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

"§ 58-785. Business name.

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

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

(a) o reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of this Chapter. Such license shall expire on the last day of June of each year.

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

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

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

(a) Notwithstanding other provisions of this Chapter regarding minimum required surplus, any reciprocal that was licensed to write and was writing any kind of insurance in this State on the effective date of this Article may continue to write that kind of insurance under the appropriate license from the Commissioner. Such

reciprocal shall maintain at all times the minimum surplus, and the minimum trustee surplus if an alien reciprocal, that was required before the effective date of this Article.

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

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

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

"§ 58-789. Attorney's domicile.

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

"§ 58-790. Contracts and property.

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

"§ 58-791. Agent's license.

No person shall act in this State as an agent of a reciprocal in the solicitation or procurement of applications for insurance, subscriber's agreements, or powers of attorney, or in the collection of premiums in connection with the reciprocal, without first procuring an agent's license from the Commissioner pursuant to Article 45 of this Chapter. An agent shall be appointed by each reciprocal the agent represents.

"§ 58-792. Subscribers' contingent liability.

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

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

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

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

"§ 58-793. Nonassessable policies.

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

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

- (1) The size of the reciprocal as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (2) The extent to which the reciprocal's business is diversified among different kinds of insurance;
- (3) The number and size of risks insured in each kind of insurance;
- (4) The extent of the geographic dispersion of the reciprocal's insured risks;
- (5) The nature and extent of the reciprocal's reinsurance program;
- (6) The quality, diversification, and liquidity of the reciprocal's investment portfolio;
- (7) The recent past and trend in the size of the reciprocal's surplus to policyholders;
- (8) The surplus to policyholders maintained by other comparable insurers; and
- (9) The adequacy of the reciprocal's reserves.

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

(d) The Commissioner shall not authorize a domestic reciprocal to extinguish the contingent assessment liability of any of its subscribers or in any of its policies to be issued, unless it has the required surplus to policyholders and extinguishes the contingent assessment liability of all of its subscribers and in all policies to be issued for all kinds of insurance it writes. However, if required by the laws of another state in which the domestic reciprocal is transacting the business of insurance as a licensed insurer, it may issue policies providing for the contingent assessment liability of its

subscribers that acquire policies in that state and need not extinguish the contingent assessment liability applicable to policies already in force in that state.

"§ 58-794. Distribution to subscribers.

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

"§ 58-795. Reserves.

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

"§ 58-796. Service of process.

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

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

"§ 58-797. Legal proceedings.

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

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

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

"§ 58-798. Liability on judgments.

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

"Part 2. Domestic Reciprocals.

"§ 58-799. Declaration for license.

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

- (1) The name of the attorney and the business name of the reciprocal;
- (2) The location of the reciprocal's principal office, which shall be the same as that of the attorney and shall be in this State;
- (3) The kinds of insurance proposed to be written;
- (4) The names and addresses of the original subscribers;
- (5) The designation and appointment of the attorney, and a copy of the power of attorney and subscriber's agreement;
- (6) The names and addresses of the officers and directors of the attorney, if a corporation, or of its members if not a corporation;
- (7) The powers of the subscribers' advisory committee, and the names and terms of office of its members;
- (8) A statement that each of the original subscribers has in good faith applied for insurance of the kind proposed to be written and that the reciprocal has received from each original subscriber the anticipated premium or premium deposit for a term of not less than six months for the policy for which application is made;
- (9) A statement of the financial condition of the reciprocal, including a schedule of its assets;
- (10) A statement that the reciprocal has the surplus to policyholders required by G.S. 58-786;
- (11) A copy of each policy, endorsement, and application form it proposes to issue or use; and
- (12) Financial projections of the anticipated operational results of the reciprocal for a five-year period based upon the initial surplus of the proposed reciprocal and its plan of operation.

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

"§ 58-800. Attorney's bond.

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

(b) The bond shall be in an amount established in the discretion of the Commissioner, which amount shall be at least fifty thousand dollars (\$50,000). The bond shall be on the condition that the attorney faithfully accounts for all moneys and other property of the reciprocal coming into the attorney's control and that the attorney

does not withdraw or appropriate for his own use from the funds of the reciprocal any moneys or property to which he is not entitled under the power of attorney.

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

"§ 58-801. Deposit in lieu of bond.

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

"§ 58-802. Advisory committee.

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

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

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

- (1) A designation and appointment of the attorney to act for and bind the subscriber in all transactions relating to or arising out of the operations of the reciprocal;
- (2) A provision empowering the attorney (i) to accept service of legal process on behalf of the reciprocal and (ii) to appoint the Commissioner agent of the reciprocal upon whom may be served all legal process against the reciprocal;
- (3) Except for nonassessable policies, a provision for a contingent assessment liability of each subscriber in a specified amount in accordance with G.S. 58-792; and
- (4) The maximum amount to be deducted from advance premiums or deposits to be paid the attorney, and the items of expense, in addition to losses, to be paid by the reciprocal.

(b) The subscriber's agreement may:

- (1) Provide for the right of substitution of the attorney and revocation of the power of attorney;
- (2) Impose any restrictions upon the exercise of the power agreed upon by the subscribers;
- (3) Provide for the exercise of any right reserved to the subscribers directly or through an advisory committee;

- (4) Provide for indemnification of the attorney, officers, employees, agents, and subscribers' advisory committee of the reciprocal against liability and litigation expenses to the extent permitted in the case of domestic business corporations; or
- (5) Contain other lawful provisions considered advisable.

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

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

"§ 58-805. Advance of funds.

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

"§ 58-806. Assessments.

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

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

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

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

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

Upon the liquidation of a domestic reciprocal, the assets remaining after (i) discharge of its indebtedness and policy obligations, (ii) the return of any contributions of the attorney or other person made as provided in G.S. 58-805, and (iii) the return of any unused deposits, savings, or credits, shall be distributed. The distribution shall be

according to a formula approved by the Commissioner or the Court to the persons who were its subscribers within the 12 months prior to the final termination of its license.

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 23rd day of June, 1989.