

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 726  
Second Edition Engrossed 5/13/91

Short Title: Workers' Comp. Security Fund.

(Public)

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Sponsors: Senator Sands.

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Referred to: Manufacturing and Labor.

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April 22, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT CONCERNING THE WORKERS' COMPENSATION SECURITY FUND.  
3 The General Assembly of North Carolina enacts:

4 Section 1. Article 3 of Chapter 97 of the General Statutes reads as rewritten:

5 "ARTICLE 3.

6 "~~SECURITY FUNDS.~~ FUND.

7 "**§ 97-106. Definitions.**

8 As hereafter used in this Article, unless the context or subject matter otherwise  
9 requires:

10 'Carrier' means either a stock carrier or a mutual carrier, as the context may require.

11 'Commissioner' means the Insurance Commissioner of this State.

12 'Fund' means ~~either the stock fund or the mutual fund as the context may require.~~ the  
13 Workers' Compensation Security Fund created by this Article.

14 ~~'Funds' mean the stock fund and the mutual fund.~~

15 'Fund year' means the calendar year.

16 'Insolvent ~~stock carrier~~ or ~~insolvent mutual carrier~~' means a stock carrier or a mutual  
17 carrier, as the case may be, which has been determined to be insolvent, or for which or  
18 for the assets of which a receiver has been appointed by a court or public officer of  
19 competent jurisdiction and authority.

20 'Mutual carrier' means any mutual corporation or association and any reciprocal or  
21 interinsurance exchange authorized to transact the business of workmen's compensation  
22 insurance in this State, except an insolvent mutual carrier.

1 ~~'Mutual fund' means the Mutual Workmen's Compensation Security Fund created by~~  
2 ~~this Article.~~

3 'Stock carrier' means any stock corporation authorized to transact the business of  
4 workmen's compensation insurance in this State, except an insolvent stock carrier.

5 ~~'Stock fund' means the Stock Workmen's Compensation Security Fund created by~~  
6 ~~this Article.~~

7 'Workmen's—Workers' Compensation Act' means the Workmen's—Workers'  
8 Compensation Act of the State of North Carolina, being G.S. 97-1 to 97-101 as  
9 amended and supplemented or, with respect to claimants or insureds that are residents of  
10 this State at the time of the insured event, the Federal Longshoremen's and Harbor  
11 Worker's Compensation Act.

12 **"§ 97-107. ~~Stock~~ Workers' Compensation Security Fund created.**

13 There is hereby created a fund to be known as 'The ~~Stock~~ Workers' Compensation  
14 Security Fund,' for the purpose of assuring to persons entitled thereto the compensation  
15 provided by the Workers' Compensation Act for employments insured in insolvent ~~stock~~  
16 carriers and for valid claims for the return of unearned premiums. Such fund shall be  
17 applicable to the payment of valid claims for the return of unearned premiums not  
18 exceeding ten thousand dollars (\$10,000) per policy and for compensation or death  
19 benefits heretofore or hereafter made pursuant to the Workers' Compensation Act, and  
20 remaining unpaid, in whole or in part, by reason of the default, after the effective date of  
21 this Article, of an insolvent ~~stock~~ carrier. Expenses of administration also shall be paid  
22 from the fund as herein provided. Such fund shall consist of all contributions received  
23 and paid into the fund by ~~stock~~ carriers, as herein defined, all property and securities  
24 acquired by and through the use of moneys belonging to the fund, and of interest earned  
25 upon moneys deposited or invested as herein provided. The fund shall be administered  
26 by the Commissioner of this State in accordance with the provisions of this Article.

27 **"§ 97-108. Verified report of premiums to be filed by ~~stock~~ every carrier.**

28 Every ~~stock~~ carrier shall, on or before the first day of September, 1935, file with the  
29 Treasurer of the State and with the Commissioner identical returns, under oath, on a  
30 form to be prescribed and furnished by the Commissioner, stating the amount of net  
31 written premiums for the six months' period ending June 30, 1935 on policies issued,  
32 renewed or extended by such carrier, to insure payment of compensation pursuant to the  
33 Workers' Compensation Act. For the purposes of this Article 'net written premiums'  
34 shall mean gross written premiums less return premiums on policies returned not taken,  
35 and on policies canceled. Thereafter, on or before the first day of March and September  
36 of each year, each such carrier shall file similar identical returns, stating the amount of  
37 such net written premiums for the six months' period ending, respectively, on the  
38 preceding December 31 and June 30, on policies issued, renewed or extended by such  
39 carrier.

40 **"§ 97-109. Contributions by ~~stock~~ carriers of 2% of net written premiums.**

41 (a) For the privilege of carrying on the business of workers' compensation  
42 insurance in this State, every ~~stock~~ carrier upon filing each semiannual return as  
43 prescribed in G.S. 97-108, shall pay into the ~~stock fund~~ Workers' Compensation Security  
44 Fund a sum equal to two percent (2%) of its net written premiums for the period

1 covered by the return. However, for each of the semiannual reporting periods beginning  
2 the first day after the first reporting period in 1991 and ending the last day of the first  
3 reporting period in 1996, every mutual carrier as defined in G.S. 97-106 shall pay into  
4 the fund an additional surcharge equal to one percent (1%) of its net written premiums  
5 for the period of such return.

6 **"§ 97-110. Contributions to stop when ~~stock~~-fund equals 4% of loss reserves;**  
7 **resumption of contributions.**

8 When the aggregate amount of all such payments into the ~~stock~~-fund, together with  
9 accumulated interest thereon, less all its expenditures and known liabilities, becomes  
10 equal to four per centum (4%) of the loss reserves of all ~~stock~~-carriers for the payment of  
11 benefits under the Workers' Compensation Act as of December 31, next preceding, no  
12 further contributions to said fund shall be required to be made; provided, however, that  
13 whenever, thereafter, the amount of said fund shall be reduced below four per centum  
14 (4%) of such loss reserves as of said date by reason of payments from and known  
15 liabilities of said ~~stock~~-fund, then such contribution to said fund shall be resumed  
16 forthwith, and shall continue until said fund, over and above its known liabilities, shall  
17 be equal to four per centum (4%) of such reserves.

18 **"§ 97-111. Rules and regulations for administration of ~~stock~~-fund; examination of**  
19 **books and records; penalty for failure to file report or pay assessment;**  
20 **revocation of license.**

21 The Commissioner may adopt, amend and enforce rules and regulations necessary  
22 for the proper administration of said ~~stock~~-fund. In the event any ~~stock~~-carrier shall fail  
23 to file any return or make any payment required by this Article, or in case the  
24 Commissioner shall have cause to believe that any return or other statement filed is false  
25 or inaccurate in any particular, or that any payment made is incorrect, he shall have full  
26 authority to examine all the books and records of the carrier for the purpose of  
27 ascertaining the facts and shall determine the correct amount to be paid and may  
28 proceed in any court of competent jurisdiction to recover for the benefit of the fund any  
29 sums shown to be due upon such examination and determination. Any ~~stock~~-carrier  
30 which fails to make any statement as required by this Article, or to pay any contribution  
31 to the ~~stock~~-fund when due, shall thereby forfeit to said fund a penalty of five per  
32 centum (5%) of the amount of unpaid contribution determined to be due as provided by  
33 this Article plus one per centum (1%) of such amount for each month of delay, or  
34 fraction thereof, after the expiration of the first month of such delay, but the  
35 Commissioner may upon good cause shown extend the time for filing of such return or  
36 payment. The Commissioner shall revoke the certificate of authority to do business in  
37 this State of any carrier which shall fail to comply with the provisions of this Article or  
38 to pay any penalty imposed in accordance with this Article.

39 **"§ 97-112. Separation of ~~stock~~-fund; Workers' Compensation Security Fund;**  
40 **disbursements; investments.**

41 The ~~stock~~-fund created by this Article shall be separate and apart from any other  
42 funds so created and from all other State moneys. The State Treasurer shall be the  
43 custodian of said fund; and all disbursements from said fund shall be made by the State  
44 Treasurer upon vouchers signed by the Commissioner as hereinafter provided. The State

1 Treasurer shall invest the assets of the fund in accordance with the provisions of G.S.  
2 147-69.2 and 147-69.3.

3 **"§ 97-113. Payment of claim from ~~støek-fund~~ Workers' Compensation Security**  
4 **Fund when carrier insolvent; subrogation of employer paying claim;**  
5 **recovery against employer or receiver of insolvent carrier.**

6 (a) A valid claim for benefits, or installments thereof, heretofore or hereafter  
7 made pursuant to the Workers' Compensation Act, and for valid claims for the return of  
8 unearned premiums not exceeding ten thousand dollars (\$10,000) per policy, which has  
9 remained or shall remain due and unpaid for 60 days, by reason of default by an  
10 insolvent ~~støek~~-carrier, shall be paid from the ~~støek~~-fund in the manner provided in this  
11 section. Any person in interest may file with the Commissioner an application for  
12 payment of benefits from the ~~støek~~-fund on a form prescribed and furnished by the  
13 Commissioner. If there has been an award, final or otherwise, a certified copy thereof  
14 shall accompany the application. The Commissioner shall thereupon certify to the State  
15 Treasurer such award for payment according to the terms of the same, whereupon  
16 payment shall be made by the State Treasurer.

17 (b) Payment of benefits from the ~~støek~~-fund shall give the fund no right of  
18 recovery against the employer.

19 (c) An employer may pay such award or part thereof in advance of payment from  
20 the ~~støek~~-fund and shall thereupon be subrogated to the rights of the employee or other  
21 party in interest against such fund to the extent of the amount so paid.

22 (d) The State Treasurer as custodian of the ~~støek~~-fund shall be entitled to recover  
23 the sum of all liabilities of such insolvent carrier assumed by such fund from such  
24 carrier, its receiver, liquidator, rehabilitator or trustee in bankruptcy and may prosecute  
25 an action or other proceedings therefor. All moneys recovered in any such action or  
26 proceedings shall forthwith be placed to the credit of the ~~støek~~-fund by the State  
27 Treasurer to reimburse the ~~støek~~-fund to the extent of the moneys so recovered and paid.

28 ~~"§ 97\* There is hereby created a fund to be known as 'The Mutual Workers'~~  
29 ~~Compensation Security Fund,' for the purpose of assuring to persons~~  
30 ~~entitled thereto the benefits provided by the Workers' Compensation Act~~  
31 ~~for employments insured in insolvent mutual carriers and the valid~~  
32 ~~claims for the return of unearned premiums. Such fund shall be~~  
33 ~~applicable to the payment of valid claims for the return of unearned~~  
34 ~~premiums not exceeding ten thousand dollars (\$10,000) per policy and~~  
35 ~~for benefits heretofore or hereafter made pursuant to the Workers'~~  
36 ~~Compensation Act, and remaining unpaid, in whole or in part, by reason~~  
37 ~~of the default, after the effective date of this Article, of an insolvent~~  
38 ~~mutual carrier. Expenses of administration also shall be paid from the~~  
39 ~~fund as herein provided. Such fund shall consist of all contributions~~  
40 ~~received and paid into the fund by mutual carriers, as herein defined, of~~  
41 ~~property and securities acquired by and through the use of moneys~~  
42 ~~belonging to the fund and of interest earned upon moneys deposited or~~  
43 ~~invested as herein provided. The fund shall be administered by the~~  
44 ~~Commissioner in accordance with the provisions of this Article. The~~

~~State Treasurer shall be the custodian of the fund, and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.~~

~~"§ 97-115. Verified report of premiums to be filed by mutual carrier; equalization~~  
~~**Equalization of payments by reciprocal or interinsurance exchanges.**~~

~~Every mutual carrier shall, on or before the first day of September, 1935, file with the Treasurer of the State and with the Commissioner identical returns, under oath, on a form to be prescribed and furnished by the Commissioner of Insurance, stating the amount of net written premiums for the six months' period ending June 30, 1935, on policies issued, renewed or extended by such carrier, to insure payment of compensation pursuant to the Workers' Compensation Act during said period. For the purpose of this Article 'net written premiums' shall mean gross written premiums less return premiums on policies returned not taken and on policies canceled. Thereafter, on or before the first day of March and September, of each year, each such carrier shall file similar identical returns, stating the amount of such net written premiums for the six months' periods ending, respectively, on the preceding December 31 and June 30, on such policies issued, renewed or extended by such carrier.~~

~~Any reciprocal or interinsurance exchange writing workers' compensation insurance in North Carolina on September 1, 1935, and continuing to underwrite this class of insurance shall, upon the fund reaching its maximum contribution and the discontinuance of any collection thereof, continue to pay into said mutual fund as provided in this section for a period of six years after the other members of the mutual fund have discontinued said payments in order to equalize the contribution of all members of the mutual fund, and thereafter such reciprocal or interinsurance exchanges shall be subject to the provisions of this section.~~

~~"§ 97-116. Contributions by mutual carriers of 2% of net written premiums.~~

~~For the privilege of carrying on the business of workers' compensation insurance in this State, every mutual carrier, upon filing each semiannual return as prescribed in G.S. 97-115, shall pay into the mutual fund a sum equal to two percent (2%) of its net written premiums for the period covered by the return.~~

~~"§ 97-116.1. Supplemental assessment for The Mutual Workers' Compensation Security Fund.~~

~~For the privilege of carrying on the business of workers' compensation insurance in this State, every mutual carrier shall pay into the mutual fund a sum equal to two percent (2%) of its net written workers' compensation premiums for calendar year 1989 only. This assessment is in addition to the contribution required in G.S. 97-116.~~

~~"§ 97.loss reserves.~~

~~Whenever the mutual fund less all known liabilities, shall exceed four per centum (4%) of the loss reserves of all mutual carriers for the payments of losses under the Workers' Compensation Act, as of December 31, next preceding, no further contributions shall be required to be made to the fund; Provided, however, that whenever, thereafter, the amount of the fund shall be reduced below four per centum (4%) of the loss reserves as of that date by reason of payments from and known liabilities of the mutual fund, then the contributions to the fund shall be resumed~~

1 immediately, and shall continue until the fund, over and above its known liabilities,  
2 shall be equal to four per centum (4%) of the reserves.

3 "~~§ 97â The provisions of G.S. 97-111, 97-112, and 97-113 shall apply to the~~  
4 ~~administration, custody and investment of and payments from the~~  
5 ~~mutual fund and to this end those sections shall be read with the~~  
6 ~~necessary changes in detail to adopt their provisions to mutual funds.~~

7 "**§ 97-119. Notice of insolvency; report of claims and unpaid awards.**

8 Forthwith upon any carrier becoming an insolvent stock carrier, or an insolvent mutual  
9 carrier, as the case may be, insolvent, the Commissioner shall so notify the North Carolina  
10 Industrial Commission, and the North Carolina Industrial Commission shall  
11 immediately advise the Commissioner

- 12 (1) Of all claims for compensation pending or thereafter made against an  
13 employer insured by such insolvent carrier, or against such insolvent  
14 carrier;
- 15 (2) Of all unpaid or continuing agreements, awards or decisions made  
16 upon claims prior to or after the date of such notice from the  
17 Commissioner; and
- 18 (3) Of all appeals from or applications for modifications or rescission or  
19 review of such agreements, awards or decisions.
- 20 (4) Of all claims for return of unearned premiums not exceeding ten  
21 thousand dollars (\$10,000) per policy.

22 "**§ 97-120. Right of Commissioner to defend claims against insolvent carriers;**  
23 **arrangement with other carriers to pay claims.**

24 The Commissioner or his duly authorized representative may investigate and may  
25 defend before the North Carolina Industrial Commission or any court any or all claims  
26 for compensation against an employer insured by an insolvent carrier or against such  
27 insolvent carrier and may prosecute any pending appeal or may appeal from or make  
28 application for modification or rescission or review of an agreement, award or decision  
29 against such employer or insolvent carrier. Until all such claims for compensation are  
30 closed and all such awards thereon are paid, the Commissioner, the administrator of the  
31 funds, shall be a party in interest in respect to all such claims, agreements and awards.  
32 For the purposes of this Article the Commissioner shall have exclusive power to select  
33 and employ such counsel, clerks and assistants as may be deemed necessary and to fix  
34 and determine their powers and duties, and he may also, in his discretion, arrange with  
35 any carrier or carriers to investigate and defend any or all such claims and to liquidate  
36 and pay such as are valid and the Commissioner may from time to time reimburse, from  
37 the ~~appropriate~~ fund, such carrier or carriers for compensation payments so made,  
38 together with reasonable allowance for the services so rendered.

39 "**§ 97-121. Expenses of administering funds.**

40 The expense of administering the ~~stock~~ fund shall be paid out of the ~~stock fund and the~~  
41 ~~expense of administering the mutual fund shall be paid out of the mutual fund.~~ fund. The  
42 Commissioner shall serve as administrator of ~~each~~ the fund without additional  
43 compensation, but may be allowed and paid from ~~either~~ the fund expenses incurred in  
44 the performance of his duties in connection with ~~that~~ the fund. The compensation of

1 those persons employed by the Commissioner shall be deemed administration expenses  
2 payable from the fund in the manner provided in G.S. 97-112. The Commissioner shall  
3 include in his regular report to the legislature a statement of the expense of  
4 administering ~~each of such funds~~ the fund for the preceding year.

5 **"§ 97-122. Contributions relieving carrier of posting bond or making special**  
6 **deposit.**

7 Contributions made by any ~~stock or mutual~~ carrier to the ~~funds~~ fund created by this  
8 Article shall relieve such carriers from filing any surety bond or making any deposit of  
9 securities required under the provisions of any law of this State for the purpose of  
10 securing the payment of workers' compensation benefits only."

11 Sec. 2. This act is effective upon ratification.