

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 330
SENATE BILL 459

AN ACT TO ALLOW NORTH CAROLINA COMMERCIAL FISHERMEN TO
FORM HULL INSURANCE, AND PROTECTION AND INDEMNITY CLUBS.

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 31A.

"Hull Insurance, and Protection and Indemnity Clubs.

"§ 58-340.1. **Short title.**—This Article may be cited as the 'Commercial Fishermen's Hull Insurance, and Protection and Indemnity Club Act'.

" § 58-340.2. **Definition.**—For purposes of this Article:

(1) 'Association' means a trade or professional association that has been in existence for at least five years, and has adopted a written constitution, and a written set of bylaws, and was created for purposes other than for participating in a club.

(2) 'Club' means a commercial fishermen's hull insurance and protection and indemnity club created under this Article.

(3) 'Commercial fisherman' means any individual, corporation, or other business entity whose earned income is at least fifty percent (50%) derived from taking and selling food resources living in any ocean, bay, river, gulf, estuary, tidal wetlands, spoil area, estuation exit or entrance, or any other body of water or tidal wetlands from which a commercial harvest of fish may be taken.

(4) 'Hull Insurance and Protection and Indemnity' means:

- a. insurance against loss or damage to a vessel's hull, lifeboats, rafts, and other operating equipment of the vessel other than its electrical machinery; and
- b. insurance against loss of life, personal injury, or illness to the master, the crew, and other third parties, and against damage to any other vessel or property, such as cargo, for which the insured is legally liable.

"§ 58-340.3. **Commercial Fishermen Hull Insurance, and Protection and Indemnity Clubs authorized.**—In addition to other authority granted under this Chapter, 10 or more commercial fishermen who are members of an association may enter into contracts or agreements under this Article for the joint protection and retention of their risk for Hull Insurance, and Protection and Indemnity, and for the payment of losses or claims made against any member. Any group of commercial fishermen intending to organize and operate a Club under this Article shall give the

Commissioner 30 days' advance written notification of its intention in a form prescribed by the Commissioner.

"§ 58-340.4. Board of trustees.—(a) A Club shall be operated by a board of trustees. Each trustee shall also be a member of an association. The trustees shall be selected by the Club members under the rules of organization of the Club. The board of trustees shall:

- (1) establish the terms and conditions of hull insurance and protection and indemnity coverage within the Club, including underwriting and exclusions of coverage;
 - (2) ensure that all valid claims are paid promptly;
 - (3) take all necessary precautions to safeguard the assets of the Club;
 - (4) maintain minutes of its meeting and make those minutes available to the Commissioner;
 - (5) designate an administrator to carry out the policies established by the trustees; and
 - (6) establish guidelines for membership in the Club.
- (b) The board of trustees shall not:
- (1) extend credit to an individual member for payment of a premium, except under a payment plan approved by the Commissioner; or
 - (2) borrow money from the Club, or in the name of the Club, except in the ordinary course of business.

Whenever the board of trustees borrow money from the Club as authorized by this subdivision it shall first advise the Commissioner of the nature and purpose of the loan, and shall obtain his prior approval of such loan.

"§ 58-340.5. Mutual agreement for indemnification.—(a) An agreement made under this Article shall contain provisions for:

- (1) a system or program of loss control;
 - (2) the termination of membership;
 - (3) the payment by the Club of all claims for which a member incurred liability during the period of his membership;
 - (4) the non-payment of claims where a member has individually retained the risk, or where the risk is not specifically covered, or where the amount of the claim exceeds the coverage provided by the Club;
 - (5) the assessment of members;
 - (6) the payment of contributions from members to satisfy deficiencies;
 - (7) the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses; and
 - (8) final accounting and settlement of the obligations or refunds to a terminating member when all incurred claims are settled.
- (b) The agreement required by this section may also include provisions authorizing the Club to:
- (1) to establish offices where necessary in this State, and employ necessary staff to carry out its purposes;

- (2) retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deem to be necessary;
- (3) amend or repeal its bylaws;
- (4) purchase, lease, or rent real and personal property as it deems necessary; and
- (5) enter into agreements with financial institutions that permit it to issue checks or other negotiable instruments in its own name.

"§ 58-340.6. Termination of Club membership; notice.—If a member fails to pay his contributions calls, or assessment, or other property required by the board of trustees as authorized by this Article, he shall not be entitled to any hull insurance and protection and indemnity coverage under this Article, and the Club may terminate his membership upon giving the member at least 10 days' notice. The Club may terminate a membership for any other reason upon giving the member at least 90 days' written notice of the termination. A member may terminate his membership with the Club upon giving at least 90 days' written notice of the termination.

"§ 58-340.7. Financial monitoring and evaluation of clubs.—Each club shall be audited annually, at the Club's expense, by a certified public accounting firm. A copy of the audit report shall be furnished to each member, and to the Commissioner. The trustees shall obtain an appropriate actuarial evaluation of the loss and loss adjustment expenses reserves of the Club, including estimate of losses and loss adjustment expenses incurred but not reported. The provisions of G.S. 58-16 (examination of companies by the Commissioner before authority to transact business granted), G.S. 58-17 (affidavit of compliance with law required), G.S. 58-18.1 (immunity from liability for reporting insurance fraud), G.S. 58-21 (annual, semiannual, or quarterly statements filed with the Commissioner), G.S. 58-22 (punishment for false statement), G.S. 58-25 (making and keeping business records for the Commissioner's inspection), G.S. 58-25.1 (Commissioner's authority to require special reports), G.S. 58-27 (exhibition of books, accounts and other papers to the Commissioner), and G.S. 58-63 (Commissioner authorized to collect and pay fees and charges for examination to State Treasury) shall apply to each Club and to persons that administer the Clubs.

"§ 58-340.8. Insolvency or impairment of Club.—(a) If an annual audit or an examination by the Commissioner reveals that the assets of a Club are insufficient to discharge its legal liabilities and other obligations, the Commissioner shall notify the administrator and board of trustees of the Club's deficiency; and he shall recommend the measures to be taken in order to abate the deficiency. He may recommend that the Club refrain from adding new members until the deficiency is abated. If the Club fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the Club to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the Club.

(b) If a Club is determined to be insolvent, financially impaired, or is otherwise unable to discharge its legal liabilities and other obligations, each member shall be assessed on a pro rata basis as provided under G.S. 58-340.4.

"§ 58-340.9. Immunity of administrators and boards of trustees.—There is no liability on the part of and no cause of action arises against any board of trustees established under this Article, or against any administrator appointed as their representative, or any Club, its members or its employees, agents, contractors, or subcontractors for any good faith action taken by them in the performance of their powers and duties in creating or administering any Club under this Article."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1987.