

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 360
HOUSE BILL 994

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE
ON APPROPRIATIONS BY CHANGING VARIOUS REVENUE STATUTES.

The General Assembly of North Carolina enacts:

REVENUE DEPARTMENT COLLECT SOME PREMIUMS TAX

Section 1. (a) G.S. 105-228.9 reads as rewritten:

"§ 105-228.9. Commissioner of Insurance to administer portions of Article.

~~This Notwithstanding any other provision of this Article, the taxes levied in this Article on self-insurers and the additional tax levied in this Article at the rate of one and thirty-three hundredths percent (1.33%) on contracts of insurance applicable to fire and lightning coverage shall be administered solely by the Commissioner of Insurance, who has the same authority and responsibility in administering those portions of this Article as the Secretary of Revenue has in administering the other Articles of this Chapter. All provisions of this Chapter that are not inconsistent with this Article apply to this Article.~~
portions of this Article."

(b) G.S. 105-228.3 reads as rewritten:

"§ 105-228.3. ~~To whom this Article shall apply.~~ Definitions.

The following definitions apply in this Article:

- (1) Article 65 corporation. – A corporation subject to Article 65 of Chapter 58 of the General Statutes, regulating hospital, medical, and dental service corporations.
- (2) Insurer. – An insurer as defined in G.S. 58-1-5 or a group of employers who have pooled their liabilities pursuant to G.S. 97-93 of the Workers' Compensation Act.
- (3) Self-insurer. – An employer that carries its own risk pursuant to G.S. 97-93 of the Workers' Compensation Act.

~~provisions of this Article shall apply to every person, firm, corporation, association, society, or order operating in this State, hereinafter to be referred to as insurance company, which contracts or offers on his, their, or its account to issue any policy or contract for annuities or insurance as defined in G.S. 58-1-10, or to exchange or issue reciprocal or interinsurance contracts, or to function as a rate-making bureau or association, advisory organization, joint underwriting or joint reinsurance organization, or to serve as an underwriters agency. Said provisions shall likewise apply to any person, firm or corporation who or which shall be a broker, organizer, manager, or agent, whether local, special or general, of any insurance company, and to self-insurers under the provisions of the Workers' Compensation Act."~~

(c) G.S. 105-228.4 is recodified as G.S. 58-6-7.

(d) G.S. 105-228.5 reads as rewritten:

"§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. —~~Every insurance company and every corporation subject to Article 65 of Chapter 58 of the General Statutes is subject to the tax imposed by this section. A tax is levied in this section on insurers, Article 65 corporations, and self-insurers. A person who~~ An insurer or Article 65 corporation that is subject to the tax imposed ~~levied~~ by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. — The tax imposed by this section on an ~~insurance company insurer~~ shall be measured by gross premiums from business done in this State during the preceding calendar year ~~and the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes year.~~ The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year. The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer's payroll for the previous calendar year as determined under Article 2 of Chapter 97 of the General Statutes modified by the self-insurer's approved experience modifier.

In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, ~~shall mean means~~ all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, ~~shall mean~~ means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. – Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

- (1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under ~~sections~~ section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) Tax Rates. – The tax rate to be applied to gross ~~premiums~~ premiums, or the equivalent thereof in the case of self-insurers, collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent ~~(1.33%). Twenty-five (1.33%); twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage~~ this additional tax shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations ~~subject to Article 65 of Chapter 58 of the General Statutes~~ shall be one-half of one percent (1/2 of 1%).

(e) Report and Payment. – Each ~~insurance company and corporation subject to Article 65 of Chapter 58 of the General Statutes~~ insurer, Article 65 corporation, and self-insurer doing business in this State shall, within the first 15 days of March, file with

~~the Commissioner of Insurance~~ Secretary of Revenue a full and accurate report of the total gross premiums as defined in this ~~section~~ section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. ~~The Commissioner of Insurance shall specify the form of the report and the information to be contained in the report.~~ The report shall be verified by the oath of the ~~company official~~ or other representative responsible for transmitting it or by some principal officer at the home or head office of the company or association in this country. ~~The~~ it, the taxes imposed by this section shall be remitted to the ~~Commissioner of Insurance~~ Secretary with the report. ~~This subsection applies to reports and taxes for firms, corporations, or associations exchanging reciprocal or interinsurance contracts, and those reports and taxes shall be transmitted by their attorneys in fact.~~

(f) Installment Payments Required. — ~~Insurance companies and corporations subject to Article 65 of Chapter 58 of the General Statutes~~ Insurers, Article 65 corporations, and self-insurers that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

~~The Commissioner of Insurance~~ Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

~~If a company does not meet the installment payment requirement of this subsection, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue. An underpayment of an installment payment required by this subsection shall bear interest, as a penalty, at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article.~~

(g) Exemptions. — This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members."

(e) G.S. 105-228.5A reads as rewritten:

"§ 105-228.5A. Credit against gross premium tax for assessments paid to the Insurance Guaranty Association and the Life and Health Insurance Guaranty Association.

(a) The following definitions apply in this section:

(1) Assessment. — An assessment as described in G.S. 58-48-35 or an assessment as described in G.S. 58-62-41.

- (2) Association. – The North Carolina Insurance Guaranty Association created under G.S. 58-48-25 or the North Carolina Life and Health Insurance Guaranty Association created under G.S. 58-62-26.
- ~~(3) Commissioner. — Commissioner of Insurance.~~
- (4) Member insurer. – A member insurer as defined in G.S. 58-48-20 or a member insurer as defined in G.S. 58-62-16.

(b) A member insurer who pays an assessment is allowed as a credit against the tax imposed under G.S. 105-228.5 an amount equal to twenty percent (20%) of the amount of the assessment in each of the five taxable years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all assessments for which it has not taken a credit under this section may be credited against its premium tax liability for the year in which it ceases doing business. The amount of the credit allowed by this section may not exceed the member insurer's premium tax liability for the taxable year.

(c) Any sums that are acquired by refund, under either G.S. 58-48-35 or G.S. 58-62-41, from the Association by member insurers, and that have previously been offset against premium taxes as provided in subsection (b) of this section, shall be paid by the member insurers to this State in the manner required by the ~~Commissioner.~~ Secretary of Revenue. The Association shall notify the ~~Commissioner.~~ Secretary that the refunds have been made."

(f) G.S. 105-228.8 reads as rewritten:

"§ 105-228.8. Retaliatory premium taxes.

(a) When the laws of any other state impose, or would impose, any premium taxes, upon North Carolina ~~insurers-companies~~ doing business in the other state that are, on an aggregate basis, in excess of the premium taxes directly imposed upon similar ~~insurers-companies~~ by the statutes of this State, the ~~Commissioner of Insurance~~ Secretary of Revenue shall impose the same premium taxes, on an aggregate basis, upon the ~~insurers-companies~~ chartered in the other state doing business or seeking to do business in North Carolina. Any ~~insurer-company~~ subject to the retaliatory tax imposed by this section shall report and pay ~~such-the~~ tax with the annual premium tax return required by G.S. 105-228.5. The retaliatory tax imposed by this section shall be included in the quarterly prepayment rules for premium taxes.

(b) For purposes of this section, the following definitions shall be applied:

- (1) 'State' includes the District of Columbia and other states, territories, and possessions of the United States, the provinces of Canada, and other nations.
- (2) ~~'Insurers'~~ 'Companies' includes all entities subject to tax under G.S. 105-228.5.

(c) For purposes of this section, any premium taxes that are, or would be, imposed upon North Carolina ~~insurers-companies~~ by any city, county, or other political subdivision or agency of another state shall be deemed to be imposed directly by that state.

(d) In computing the premium taxes that another state imposes, or would impose, upon a North Carolina ~~insurer-company~~ doing business in the state, it shall be assumed

that North Carolina ~~insurers-companies~~ pay the highest rates of premium tax that are generally imposed by the other state on similar ~~insurers-companies~~ chartered outside of the state.

(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection.

(f) If the laws of another state retaliate against North Carolina ~~insurers companies~~ on other than an aggregate basis, the ~~Commissioner of Insurance-Secretary of Revenue~~ shall retaliate against ~~insurers-companies~~ chartered in ~~such-that~~ state on the same basis."

(g) G.S. 105-266(b) reads as rewritten:

"(b) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

- (1) The date the final return was filed.
- (2) The date the final return was due to be filed.
- (3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

(h) G.S. 97-100 reads as rewritten:

"§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; ~~returned or canceled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll. notices.~~

(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this Article, shall be fair, reasonable, and adequate.

(b) Each ~~such~~ insurance carrier shall report to the Commissioner of Insurance, in accordance with ~~such reasonable rules as rules adopted by the Commissioner of Insurance may at any time prescribe, Insurance,~~ for the purpose of determining the solvency of the carrier and the adequacy of its rates; for ~~such-this~~ purpose the

Commissioner of Insurance may inspect the books and records of ~~such any~~ insurance carrier, and examine its agents, officers, and directors under oath.

(c) ~~Every insurer under this Article, every employer carrying its own risk under G.S. 97-93, and every group of employers that has pooled the employers' liabilities under G.S. 97-93 is subject to the premiums tax levied in Article 8B of Chapter 105 of the General Statutes. person, partnership, association, corporation, whether organized under the laws of this or any other state or country, every mutual company or association and every other insurance carrier insuring employers in this State against liability for personal injuries to their employees, or death caused thereby, under the provisions of this Article, shall, as hereinafter provided, pay a tax upon the premium received, whether in cash or notes, in this State, or on account of business done in this State, for such insurance in this State, at the rate provided in the Revenue Act then in force, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided; provided, however, that such insurance carriers shall be credited with all canceled or returned premiums actually refunded during the year on such insurance.~~

(d) ~~Every such insurance carrier shall, for the six months ending December 31, 1929, and annually thereafter, make a return, verified by the affidavit of its president and secretary, or other chief officers or agents, to the Commissioner of Insurance, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the Commissioner of Insurance on or before the first day of April after the close of the period covered thereby, and shall at the same time pay to the State Insurance Commissioner the tax provided in the Revenue Act then in force on such premium ascertained, as provided in subsection (c) hereof, less returned premium on canceled policies.~~

(e) ~~If any such insurance carrier shall fail or refuse to make the return required by this Article, the said Commissioner of Insurance shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premium as he may deem just, and the proceedings thereon shall be the same as if the return had been made.~~

(f) ~~If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Commissioner of Insurance shall at once proceed to collect the same; and he is hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State treasury. The suit may be brought by the Commissioner of Insurance, in his official capacity, in any court of this State having jurisdiction. Reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the State, and may be served as in civil actions, or in case of unincorporated associations, partnerships, interindemnity contracts, upon any agent of the parties thereto upon whom process may be served under the laws of this State.~~

(g) ~~Any person or persons who shall in this State act or assume who acts or assumes to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such the suspension remains in force, or shall~~

~~neglect or refuse who neglects or refuses to comply with any of the provisions of this section obligatory upon such person or party section, or who shall willfully make willfully makes a false or fraudulent statement of the business or condition of any such insurance carrier, or false or fraudulent return as herein provided, shall be deemed is~~ guilty of a Class 2 misdemeanor.

(h) Whenever by this Article, or the terms of any policy contract, any officer is required to give any notice to an insurance carrier, the ~~same notice~~ may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or general agent of ~~such the~~ insurance carrier within this State, or to its home office, or to the secretary, general agent, or chief officer ~~thereof of the carrier in the United States, or to the State Insurance Commissioner. Commissioner of Insurance.~~

(i) ~~Any insurance carrier liable to pay a tax upon premiums under this Article shall not be liable to pay any other or further tax upon such premiums, under any other law of this State.~~

(j) ~~Every employer carrying his own risk under the provisions of G.S. 97-93 shall, under oath, report to the Commissioner of Insurance his payroll, subject to the provisions of this Article. Such report shall be made in form prescribed by the Commissioner of Insurance, and at the times herein provided for premium reports by insurer. The Commissioner of Insurance shall assess against such payroll a maintenance fund tax computed by taking such percent of the basic premiums charged against the same or most similar industry or business taken from the manual insurance rate then in force in this State as is assessed in the Revenue Act against the insurance carriers for premiums collected on compensation insurance policies. The Commissioner shall use the approved experience modifier of an employer in calculating the employer's maintenance fund tax liability under this subsection. Receipts collected under this subsection shall be deposited to the credit of the State Treasurer as general fund revenue.~~

(k) ~~Every group of two or more employers who have pooled their liabilities pursuant to G.S. 97-93 shall pay a tax upon premiums received in this State in the same manner as the tax is calculated and paid by insurance carriers insuring employers in this State and set forth in subsections (c), (d), (e), and (f) above."~~

(i) G.S. 58-6-25(c) reads as rewritten:

"(c) Returns; When Payable. The charge levied on each insurance company is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the ~~Commissioner. Secretary of Revenue.~~ The ~~report return~~ shall state the company's total North Carolina premiums for

the taxable year and shall be accompanied by any supporting documentation that the ~~Commissioner~~ Secretary of Revenue may by rule require."

(j) This section becomes effective January 1, 1996.

DISCONTINUE INSURANCE AUDIT AND EXAMINATION FEE CHARGES

Sec. 2. (a) G.S. 58-30-22(c) is repealed.

(b) G.S. 58-40-90 reads as rewritten:

"§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance organizations.

The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55. ~~He~~ The Commissioner may, as often as ~~he may deem it deemed~~ expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. ~~Such~~ This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. ~~The reasonable cost of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost.~~ The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, account, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of ~~such~~ that state."

(c) G.S. 58-2-131(k) reads as rewritten:

"(k) When making an examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as ~~examiners, the cost of which shall be borne by the insurer that is the subject of the examination.~~ examiners."

(d) G.S. 58-2-133(c) reads as rewritten:

"(c) ~~Any insurer examined shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner. The charges and expenses shall be reasonable as determined by the Commissioner and in accordance with guidelines established by the NAIC set forth in the NAIC Examiners' Handbook. The refusal of any insurer to submit to examination, or the refusal or failure of any insurer to pay the expenses of examination upon presentation by the Commissioner of a bill for those expenses, examination is grounds for the revocation, suspension, or refusal of a license. The Commissioner may make public any such revocation, suspension, or refusal of license and may give reasons for that action. The Commissioner shall promptly begin a civil action to recover the expenses of examination against any insurer that refuses or fails to pay.~~"

(e) G.S. 58-2-195(e) reads as rewritten:

"(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-2-25 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle

damage appraiser, or producer of record, which shall pay the proper charges incurred in the examination, including the expenses and compensation of the Commissioner or his authorized employee. ~~Such expenses shall not exceed the per diem and allowances specified in G.S. 138-5; provided, the collection of such expense and allowance may, in the discretion of the Commissioner, be waived.~~ record. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination or to pay the expenses of examination upon presentation of a bill therefor by the Commissioner or his authorized employee, examination is grounds for the revocation or refusal of a license. The Commissioner may institute a civil action to recover the expenses of examination against any person that refuses or fails to pay the expenses."

(f) G.S. 58-6-5(3) reads as rewritten:

"(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy sheet and ten dollars (\$10.00) for certifying same, or any fact or data from the records of his office; ~~for examination of any foreign company, not less than forty dollars (\$40.00) per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred;~~ office and for the examination and approval of charters of companies, twenty-five dollars (\$25.00). ~~Notwithstanding the provisions of G.S. 138-6, the Commissioner is authorized to pay examiners an amount in lieu of traveling expenses equal to the rate charged to and collected from the companies, associations or orders. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.~~"

(g) G.S. 58-7-21(b)(4)b. reads as rewritten:

"b. In the case of a group of incorporated insurers under common administration which (i) complies with the filing requirements contained in the previous paragraph, (ii) has continuously transacted an insurance business outside the United States for at least three years immediately before making application for accreditation, (iii) submits to this State's authority to examine its books and ~~records and bears the expense of the examination, records,~~ and (iv) has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group. In addition, the group shall maintain a joint trusted surplus

of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant."

(h) G.S. 58-19-35(c) is repealed.

(i) G.S. 58-24-135 reads as rewritten:

"§ 58-24-135. Examination of societies; no adverse publications.

(a) The Commissioner, or any person he or she may appoint, may examine any domestic, foreign or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

~~(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner."~~

(j) G.S. 58-48-60(b) reads as rewritten:

"(b) To aid in the detection and prevention of insurer insolvencies, the board of directors may, upon majority vote, request that the Commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the Commissioner shall begin such examination. The examination may be conducted as an NAIC examination or may be conducted by such persons as the Commissioner designates. ~~The cost of such examination shall be paid by the Association and the~~ The examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the Commissioner from complying with subsection (c) below. The Commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public."

(k) G.S. 58-62-56(e) reads as rewritten:

"(e) The Board may, upon majority vote, request that the Commissioner order an examination of any member insurer that the Board in good faith believes may be delinquent. Within 30 days of the receipt of the request, the Commissioner shall begin the examination. The examination may be conducted as an NAIC examination or may be conducted by persons the Commissioner designates. ~~The cost of the examination shall be paid by the Association; and the~~ The examination report shall be treated as are other examination reports. In no event shall the examination report be released to the Board before its release to the public; but this does not preclude the Commissioner from complying with subsection (a) of this section. The Commissioner shall notify the Board when the examination is completed. The request for an examination shall be kept on

file by the Commissioner, but shall not be open to public inspection before the release of the examination report to the public."

(l) G.S. 58-65-105 reads as rewritten:

"§ 58-65-105. Visitations and examinations.

The Commissioner of Insurance or any deputy or examiner or other person whom he may appoint shall have the power of visitations and examination into the affairs of any such corporation and free access to all the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions and conditions of the corporation, ~~the actual expense of which shall be paid by the association so examined corporation.~~"

(m) G.S. 58-67-100(c) is repealed.

(n) This section becomes effective July 1, 1995.

INSURANCE REGULATORY CHARGE ADMINISTRATIVE CHANGE

Sec. 3. (a) G.S. 58-6-25 reads as rewritten:

"§ 58-6-25. Insurance regulatory charge.

(a) Charge Levied. – There is levied on each insurance company an annual charge to defray the cost ~~to the Department of regulating the insurance industry and other industries and the general administrative expenses of the State incident thereto.~~ industry. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 shall be disregarded.

(b) Rates. – The rate of the charge for the 1991 taxable year shall be six and five-tenths percent (6.5%). For subsequent taxable years, the rate shall be the percentage rate established by the General Assembly. When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. The General Assembly shall set by law the percentage rate of the charge levied in this section. The percentage rate may not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.

(c) Returns; When Payable. – The charge levied on each insurance company is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Commissioner. The report shall state the company's total North Carolina premiums for the taxable year and shall be accompanied by any supporting documentation that the Commissioner may by rule require.

(d) Use of Proceeds. – ~~The Department of Insurance~~ Regulatory Fund is created in the State ~~treasury.~~ treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used only to pay to reimburse the General Fund for money appropriated to State agencies to pay the expenses of the Commissioner and the Department that are incurred in regulating the insurance industry and other industries in this State and the general administrative expenses of the State incident thereto. industry."

(b) This section becomes effective July 1, 1995.

CHILD SUPPORT FOR CHILDREN

Sec. 4. (a) G.S. 105A-13 reads as rewritten:

"§ 105A-13. Disposition of proceeds collected; collection assistance fees.

(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.

(b) Each year the Department shall ~~calculate~~ determine its actual cost of collection ~~as a percentage of the immediately preceding year's collections under the Setoff Debt Collection Act and under the Setoff Debt Collection Act for the immediately preceding year and shall calculate the percentage that cost represents of the preceding year's collections, excluding collections of child support arrearages under G.S. 105A-2(1)d.~~ The Department shall retain that percentage from the gross proceeds collected by the Department through setoff for the current fiscal year, other than the gross proceeds collected of child support arrearages under G.S. 105A-2(1)d."

(b) This section becomes effective January 1, 1996.

CONFORMING CHANGE

Sec. 4.1. Section 28.2(c) of Chapter 324 of the 1995 Session Laws (House Bill 229) is repealed.

Sec. 5. This act becomes effective as provided therein.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives