

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 115*

Short Title: St. Employee Liab. Trust Fund.

(Public)

Sponsors: Senators Winner; Gulley, Cooper, Carpenter, and Odom.

Referred to: Judiciary I/Constitution.

February 1, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF SELF-INSURANCE TRUST FUNDS
TO PROVIDE PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR
STATE EMPLOYEES AND TO APPROPRIATE FUNDS TO A RESERVE FUND
TO PROVIDE THE INITIAL FUNDING IF THE TRUST IS CREATED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-32-15 reads as rewritten:

"§ 58-32-15. **Professional liability insurance for State ~~officials.~~ officials and employees.**

(a) The Commission may ~~acquire~~ provide professional liability insurance covering the officers and employees, or any group thereof, of any State department, institution or agency or any community college or technical ~~college.~~ college, through the purchase of contracts of insurance or the creation of self-insurance trusts, or through a combination of insurance and self-insurance trusts, as coverage in excess of the protection provided for in Article 31 and Article 32 of Chapter 143 of the General Statutes. Subject to the other provisions of this Article, the coverage to be provided through insurance or self-insurance trusts, or both, may include provisions for the payment of litigation expenses, civil judgments, or settlement amounts for claims or actions to which this Article applies. Premiums for such insurance or amounts necessary to fund self-insurance trusts shall be paid by the ~~requesting covered~~ department, institution, agency, or community college or

1 technical college at rates established by the Commission, from funds made available to
2 ~~such that department, institution, agency, or community college or technical college for~~
3 ~~the purpose.~~ purpose, as provided in G.S. 58-32-17.

4 (b) ~~The Commission, pursuant to this section, may acquire professional liability~~
5 ~~insurance covering the officers and employees, or any group thereof, of a department,~~
6 ~~institution or agency of State government or a community college or technical college~~
7 ~~only if the coverage to be provided by the insurance policy is in excess of the protection~~
8 ~~provided by Articles 31 and 31A of Chapter 143 of the General Statutes, other than the~~
9 ~~protection provided by G.S. 143-300.9.~~

10 (c) ~~The purchase, by any State department, institution, agency, community college~~
11 ~~or technical college of professional liability insurance covering the law enforcement~~
12 ~~officers, officers or employees of such department, institution, agency, community~~
13 ~~college or technical college shall not be construed as a waiver of any defense of~~
14 ~~sovereign immunity by such department, institution, agency, community college or~~
15 ~~technical college. The purchase of such insurance shall not be deemed a waiver by any~~
16 ~~employee of the defense of sovereign immunity to the extent that such defense may be~~
17 ~~available to him.~~

18 (d) ~~The payment, by any State department, institution, agency, community college~~
19 ~~or technical college of funds as premiums for professional liability insurance through the~~
20 ~~plan provided herein, covering the law enforcement officers or officials or employees of~~
21 ~~such department, institution, agency, community college or technical college is hereby~~
22 ~~declared to be for a public purpose."~~

23 Sec. 2. Article 32 of Chapter 58 of the General Statutes is amended by adding
24 the following new sections to read:

25 "**§ 58-32-16. Establishment and administration of self-insurance trust funds;**
26 **defense of actions against covered persons.**

27 (a) In the event the Commission elects to act as self-insurer of a program of
28 liability insurance, it may establish one or more insurance trust accounts to be used only
29 for the purposes authorized by this Article. Such a program of liability insurance is not
30 subject to regulation by the Commissioner of Insurance. The Commission may receive
31 and appropriate or transfer funds made for the purposes of this section and deposit these
32 funds in the insurance trust accounts. All expenses incurred in collecting, receiving, and
33 maintaining these funds and in otherwise administering the self-insured program of
34 liability insurance shall be paid from the insurance trust accounts.

35 (b) Subject to this Article, the Commission may adopt rules for the establishment
36 and administration of the self-insured program of liability insurance, including, but not
37 limited to, rules concerning the eligibility for and terms and conditions of participation in
38 the program, the assessment of changes against participants, the management of the
39 insurance trust accounts, and the negotiation, settlement, litigation, and payment of
40 claims.

41 (c) The Commission may create a Liability Insurance Trust Fund Council
42 composed of not more than 11 members. One member each shall be appointed by the
43 Attorney General, State Auditor, Commissioner of Insurance, the State Treasurer, and the

1 State Budget Officer. Any remaining members shall be appointed by the Commission.
2 Subject to this Article and the rules adopted by the Commission pursuant to this section,
3 the Commission may delegate to this Council the responsibility and authority for the
4 administration of the self-insured liability insurance program and of the insurance trust
5 accounts established pursuant to this Article.

6 (d) Defenses of all suits or actions against an individual who is covered by a self-
7 insured program of liability insurance established by the Commission under this Article
8 shall be provided by the Attorney General in accordance with G.S. 143-300.3 or other
9 counsel in accordance with G.S. 143-300.4A. The cost of other counsel shall be paid
10 from the self-insured fund.

11 (e) The coverage provided State employees by any self-insured program of
12 liability insurance established by the Commission pursuant to the provisions of this
13 Article is not commercial liability insurance coverage within the meaning of G.S. 143-
14 300.6(c).

15 **"§ 58-32-17. Funding of self-insurance programs.**

16 (a) If the Commission establishes a self-insurance trust fund, the initial
17 contribution to the fund shall be determined by an independent actuary but shall be no
18 less than an amount necessary to fully fund current and unreported claims, to ensure
19 compliance with Governmental Accounting Board requirements. Annual contributions to
20 the fund shall be made in an amount to be determined each year by the Liability
21 Insurance Trust Fund Council upon the advice of an independent actuary and shall
22 include amounts necessary to pay all costs of administration of the self-insurance
23 program and claims adjustment including litigation in addition to amounts necessary to
24 pay claims. Contributions from State agencies shall be five dollars (\$5.00) per employee
25 until such time as the Liability Insurance Trust Fund Council, with the advice of an
26 independent actuary and the approval of the Commission, determines that an annual
27 contribution in a lesser amount will not impair the adequacy of the fund to satisfy
28 existing and potential claims for a period of three years. In the event that the Council
29 determines the amounts contributed to the fund are inadequate, the Council shall
30 recommend to the General Assembly whether the per employee cap should be raised or
31 whether a lump sum appropriation is needed to assure the adequacy of the fund.

32 (b) Claims certified to be paid from the fund shall be paid in the order of award or
33 settlement. In the event that the fund has at any time insufficient funds to assure that both
34 existing and future claims will be paid, the Commission may borrow necessary amounts
35 from the State Treasurer to replenish the fund.

36 (c) Funds borrowed by the Commission to replenish the trust fund account shall be
37 repaid from revenues collected from the members. Members are those entities, agencies,
38 departments, or divisions of the State that directly contribute funds to the self-insurance
39 trust. In no event shall individuals be members for the purposes of this section.

40 **"§ 58-32-18. Termination of fund.**

41 Any fund created under this Article may be terminated by the Commission upon
42 determination by the Commission that other satisfactory and adequate arrangements have
43 been made to assure that both existing and future claims or judgments against the

1 participants in the self-insurance program will be paid and satisfied. Upon the
2 termination of any fund pursuant to this section, the full amount remaining in the fund
3 upon termination less any outstanding indebtedness shall promptly be repaid and
4 allocated among the participating members according to their respective contributions as
5 determined by the Commission."

6 Sec. 3. Article 32 of Chapter 58 of the General Statutes is amended by adding
7 a new section to read:

8 **"§ 58-32-35. Sovereign immunity.**

9 Nothing in this Article waives the sovereign immunity of the State."

10 Sec. 4. Article 32 of Chapter 58 of the General Statutes is amended by adding
11 a new section to read:

12 **"§ 58-32-40. Confidentiality of records.**

13 Records, including all information, correspondence, investigations, and interviews,
14 concerning or pertaining to claims or potential claims against participants in any self-
15 insurance program created under this Article are not public records within the meaning of
16 Chapter 132 of the General Statutes."

17 Sec. 5. There is appropriated from the General Fund to a Self-Insurance Trust
18 Fund Reserve in the Office of Budget and Management the sum of three million dollars
19 (\$3,000,000) for the 1995-96 fiscal year and the sum of two million dollars (\$2,000,000)
20 for the 1996-97 fiscal year. Funds from the reserve shall be used to provide the initial
21 funding for a self-insurance trust fund if the Public Officers and Employees Liability
22 Insurance Commission elects to establish such a fund to provide State employee excess
23 liability coverage in accordance with Article 32 of Chapter 58 of the General Statutes.
24 Funds in the Reserve shall not revert.

25 Sec. 6. This act becomes effective July 1, 1995.