

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 115*

Judiciary I/Constitution Committee Substitute Adopted 3/14/95

Short Title: St. Employee Liab. Trust Fund.

(Public)

Sponsors:

Referred to: Appropriations

February 1, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CREATION OF SELF-INSURANCE TRUST FUNDS
2 TO PROVIDE PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR
3 STATE EMPLOYEES AND TO APPROPRIATE FUNDS TO A RESERVE FUND
4 TO PROVIDE THE INITIAL FUNDING IF THE TRUST IS CREATED.
5

6 The General Assembly of North Carolina enacts:

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

8 "§ 58-32-15. Professional liability insurance for State ~~officials.~~ officials and
9 employees.

10 (a) The Commission may ~~acquire~~ provide professional liability insurance covering
11 the officers and employees, or any group thereof, of any State department, institution or
12 agency or any community college or technical ~~college.~~ college, through the purchase of
13 contracts of insurance or the creation of self-insurance trusts, or through a combination of
14 insurance and self-insurance trusts, as coverage in excess of the protection provided for in
15 Article 31 and Article 31A of Chapter 143 of the General Statutes. Subject to the other
16 provisions of this Article, the coverage to be provided through insurance or self-insurance
17 trusts, or both, may include provisions for the payment of litigation expenses, attorneys'
18 fees, civil judgments, or settlement amounts for claims or actions to which this Article
19 applies. Premiums for ~~such~~ insurance or amounts necessary to fund self-insurance trusts

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

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

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

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

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

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

28 (a) In the event the Commission elects to act as self-insurer of a program of
29 liability insurance, it may establish one or more insurance trust accounts to be used only
30 for the purposes authorized by this Article. Any insurance trust account established by
31 the Commission shall be interest bearing, with interest accrued returned to the account.
32 Such a program of liability insurance is not subject to regulation by the Commissioner of
33 Insurance, but shall be subject to audit as provided in Article 5A of Chapter 147 of the
34 General Statutes. The Commissioner may receive and appropriate or transfer funds made
35 for the purposes of this section and deposit these funds in the insurance trust accounts.
36 All expenses incurred in collecting, receiving, and maintaining these funds and in
37 otherwise administering the self-insured program of liability insurance shall be paid from
38 the insurance trust accounts.

39 (b) Subject to this Article, the Commission may adopt rules for the establishment
40 and administration of the self-insured program of liability insurance, including, but not
41 limited to, rules concerning the eligibility for and terms and conditions of participation in
42 the program, the assessment of changes against participants, the management of the
43 insurance trust accounts, and the payment of claims. The Attorney General shall

1 negotiate, settle, and litigate claims under this section as provided in Article 31A of
2 Chapter 143 of the General Statutes.

3 (c) The Commission may create a Liability Insurance Trust Fund Council
4 composed of not more than 11 members. One member each shall be appointed by the
5 Attorney General, State Auditor, Commissioner of Insurance, the State Treasurer, and the
6 State Budget Officer. Any remaining members shall be appointed by the Commission.
7 Subject to this Article and the rules adopted by the Commission pursuant to this section,
8 the Commission may delegate to this Council the responsibility and authority for the
9 administration of the self-insured liability insurance program and of the insurance trust
10 accounts established pursuant to this Article. The members shall receive no
11 compensation for attendance at meetings, except a per diem expense reimbursement.
12 Members of the Council who are not officers or employees of the State shall receive
13 reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from
14 funds made available to the Commission. Members of the Council who are officers or
15 employees of the State shall be reimbursed for travel and subsistence at the rates set out
16 in G.S. 138-6 from funds made available to the Commission.

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

22 (e) The coverage provided State employees by any self-insured program of
23 liability insurance established by the Commission pursuant to the provisions of this
24 Article is not commercial liability insurance coverage within the meaning of G.S. 143-
25 300.6(c).

26 **"§ 58-32-17. Funding of self-insurance programs.**

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

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

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

9 **"§ 58-32-18. Termination of fund.**

10 Any fund created under this Article may be terminated by the Commission upon
11 determination by the Commission that other satisfactory and adequate arrangements have
12 been made to assure that both existing and future claims or judgments against the
13 participants in the self-insurance program will be paid and satisfied. Upon the
14 termination of any fund pursuant to this section, the full amount remaining in the fund
15 upon termination less any outstanding indebtedness shall be credited to the General
16 Fund."

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

19 **"§ 58-32-35. Sovereign immunity.**

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

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

23 **"§ 58-32-40. Confidentiality of records.**

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

28 Sec. 5. There is appropriated from the General Fund to a Self-Insurance Trust
29 Fund Reserve in the Office of Budget and Management the sum of three million dollars
30 (\$3,000,000) for the 1995-96 fiscal year and the sum of two million dollars (\$2,000,000)
31 for the 1996-97 fiscal year. Funds from the reserve shall be used to provide the initial
32 funding for a self-insurance trust fund if the Public Officers and Employees Liability
33 Insurance Commission elects to establish such a fund to provide State employee excess
34 liability coverage in accordance with Article 32 of Chapter 58 of the General Statutes.
35 Funds in the Reserve shall not revert.

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