

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 988

Short Title: WC/Fund for Misclassified Workers. (Public)

Sponsors: Representative L. Hall (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Finance.

April 18, 2013

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A RESERVE FUND FOR THE BENEFIT OF NORTH
3 CAROLINA WORKERS INJURED ON THE JOB ELIGIBLE FOR WORKERS'
4 COMPENSATION BENEFITS BUT DENIED THEM THROUGH
5 MISCLASSIFICATION OF EMPLOYMENT STATUS OR FAILURE OF THE
6 EMPLOYER TO MAINTAIN SUCH COVERAGE WHEN REQUIRED.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding
9 a new section to read:

10 "**§ 97-40.2. Uninsured Employers' Fund; administration; maintenance; disbursement;**
11 **penalties.**

12 (a) There is established within the North Carolina Industrial Commission a fund in the
13 General Fund to be known as the Uninsured Employers' Fund (Fund). Monies in the Fund shall
14 provide for the payment of awards against uninsured defaulting employers who fail to provide
15 compensation to employees or their beneficiaries in accordance with the provisions of this
16 Chapter. The Fund shall be administered, maintained, and disbursed by the Chair of the North
17 Carolina Industrial Commission (Chair) in accordance with the provisions of this section.

18 (b) For the purpose of administering and maintaining this Fund:

19 (1) The North Carolina Commissioner of Insurance (Commissioner) shall be
20 responsible for administering the collection of surcharges and the payment
21 of those funds received in accordance with the provisions of this section and
22 all regulations adopted under this section. The annual surcharge imposed
23 under this section shall apply to all workers' compensation and employers'
24 liability insurance policies written or renewed or, in the case of self-insured
25 employers, to coverage provided on or after January 1, 2014. However, the
26 surcharge shall not apply to any reinsurance or retrocessional transaction; to
27 the State or to any local political subdivision of the State that acts as a
28 self-insured employer; or to any workers' compensation endorsement
29 required pursuant to any other exclusions. If the Commissioner of Insurance
30 determines, pursuant to subdivision (2) of this subsection, that the fund will
31 have to its credit a sum in excess of five million dollars (\$5,000,000) at the
32 end of any calendar year, the annual surcharge shall be suspended for the
33 next following year and its collection not resumed until the calendar year
34 immediately following any calendar year in which the balance in the Fund is
35 reduced below five million dollars (\$5,000,000).



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- 1 (2) For the calendar year 2014, the total amount of the surcharge levied by the
2 Commissioner of Insurance shall be that necessary to yield a balance of the
3 Fund of five million dollars (\$5,000,000). Beginning September 1, 2013, and
4 annually thereafter, the Commissioner of Insurance shall estimate the
5 amount of benefits that have been paid and will be paid from the Fund
6 during that calendar year and shall calculate in consultation with the Chair of
7 the Industrial Commission the total amount of the annual surcharge for the
8 Fund to be levied during the next following calendar year upon all workers'
9 compensation and employers' liability insurance policyholders and
10 self-insured employers pursuant to subdivision (1) of this subsection. The
11 total amount of the annual surcharge shall equal one hundred fifty percent
12 (150%) of the funds estimated by the Chair of the Industrial Commission to
13 be payable from the Fund during the calendar year preceding the year during
14 which the annual surcharge will be imposed.
- 15 (3) The total amount of the annual surcharge calculated pursuant to subdivision
16 (2) of this subsection shall be added to the aggregate annual surcharge
17 amount to be levied upon and apportioned among all workers' compensation
18 and employers' liability policyholders and self-insured employers and be
19 levied and apportioned in the same manner as the annual surcharge for the
20 Second Injury Fund as provided in G.S. 97-40.1. The surcharge to be
21 collected from policyholders and self-insured employers pursuant to this
22 section shall, however, be stated separately on the policy or billing
23 statement, and the amount of the surcharge as applied pursuant to this
24 section shall not be subject to reduction for special adjustment and
25 supplemental benefits paid or payable under this Chapter.
- 26 (4) All funds collected pursuant to this section shall be deposited in the Fund.
27 Collection of the annual surcharge shall be under the authority of the North
28 Carolina Commissioner of Insurance.
- 29 (5) In any fiscal year during which benefit payments are made from the Fund,
30 the Chair of the Industrial Commission shall apply an amount equal to one
31 hundred dollars (\$100.00) for each employee to whom such benefits have
32 been paid from the Fund toward the expenses of the Commission arising
33 from the administration of those benefit payments and the Fund. However,
34 the total amount withdrawn from the Fund to cover administrative expenses
35 shall not exceed the sum of fifty thousand dollars (\$50,000) during any fiscal
36 year.

37 For the purposes of this subsection, the term "policyholder" means a holder of a workers'
38 compensation and employers' liability insurance policy issued by an insurer that is a domestic,
39 foreign, or alien mutual association or stock company writing workers' compensation or
40 employers' liability insurance on risks located in this State and subject to premium taxes. The
41 term "self-insured employer" means an employer that self-insures for workers' compensation or
42 employers' liability insurance.

43 (c) The Chair, upon rendering a decision with respect to any claim for compensation
44 that the employer is liable for but has failed to secure the payment of compensation with
45 respect to a claim, shall impose a penalty of one thousand dollars (\$1,000) against the employer
46 and direct its payment into the Fund in connection with each such claim. The Chair shall also
47 impose an additional assessment of fifteen percent (15%) of the award or awards made in each
48 claim. This additional assessment shall not exceed, however, the sum of five thousand dollars
49 (\$5,000) on any one claim and shall be paid into the Fund. If the employer fails to pay these
50 assessments into the Fund within 10 days after the date of mailing of notice to the employer,

1 the failure shall constitute a default in payment of compensation due pursuant to the provisions
2 of this Chapter, and judgment therefor shall be entered in accordance with this Chapter.

3 All sums collected from an uninsured defaulting employer with respect to any claim for
4 compensation referred to in this section but not payable from the Fund, whether such collection
5 is made prior or subsequent to entry of judgment against the employer, shall be deemed in
6 payment of and applicable first in satisfaction of any compensation and benefits due from the
7 employer with respect to the claim and security demand, if any, in connection therewith, and
8 only when the obligations are satisfied in full shall the balance of said sums collected, if any, be
9 deemed payment in satisfaction of and applicable to the assessments above prescribed in this
10 section.

11 All sums recovered from uninsured defaulting employers on judgments entered for failure
12 to pay assessments as hereinafter provided and for failure to pay compensation and benefits
13 which were paid from the Fund shall upon recovery be paid into the Fund.

14 (d) In any case in which a claim for compensation is filed pursuant to the provisions of
15 this Chapter, and the employer has failed to secure the payment of compensation and to make
16 payment of compensation according to the terms of any award within 45 days thereafter and
17 fails or refuses to deposit with the Chair within 10 days after demand, the commuted or
18 estimated value of the compensation payable under the award as security for prompt and
19 convenient payment of compensation periodically as it accrues, then, unless a notice of appeal
20 has been timely filed, the award shall be payable out of the Fund.

21 (e) Benefit payments from the Fund may include compensation for reasonable medical
22 expenses covered by this Chapter and compensation for temporary disability.

23 (f) Benefit payments from the Fund shall not include any compensation not included in
24 the award or judgment upon which a claim against the Fund is made.

25 (g) Temporary disability benefits paid from the Fund shall be offset or reduced by an
26 amount equal to the amount of disability benefits received by the claimant pursuant to the
27 federal Old-Age, Survivors' and Disability Insurance Act, 42 U.S.C. § 401, et seq., amended.

28 (h) Benefits shall be paid to a claimant from the Fund only if the claimant (i) was, at the
29 time of the injury or death, an employee performing service for an employer such that he or she
30 would be eligible for benefits but for the absences of provision of insurance coverage by the
31 employer and (ii) did not recover full compensation for reasonable medical expenses and
32 temporary disability benefits from the uninsured defaulting employer.

33 (i) The Chair of the Commission, in any case in which an award of compensation
34 payable by an uninsured employer or an assessment has been ordered, shall file the following
35 with the clerk of the superior court:

36 (1) A statement containing the findings of fact, conclusions of law, and the
37 award and judgment of the judge making the award, or

38 (2) A certified copy of the Commission's order imposing, and the demand for
39 payment of, the assessment, and the filing of that statement or order, as the
40 case may be, shall have the same effect and may be collected and docketed
41 in the same manner as judgments rendered in causes tried in the superior
42 court. The court shall vacate or modify the judgment to conform to any later
43 award or decision by any authorized officer upon presentation of a statement
44 thereof as provided for in this subsection.

45 The award may be compromised by the Chair of the Commission in that the Chair's
46 discretion may best serve the interest of the persons entitled to receive the compensation or
47 benefits.

48 (j) After an award has been entered against an employer for compensation under any
49 provision of this Chapter, and if the Chair of the Commission has filed an order for payment of
50 compensation and assessments with the clerk of the superior court as a result of the employer's
51 failure to provide lawful compensation, the claimant may apply to the Chair of the Industrial

1 Commission for compensation from the Fund in accordance with the procedures established by
2 administrative rule.

3 (k) The Chair of the Commission is charged with the conservation of the assets of the
4 Fund. Notwithstanding the provisions of any other section of this act, no payments shall be
5 made from the Fund except upon application to and approval by the Chair. Review of any
6 decision by the Commissioner shall be in accordance with the Administrative Procedures Act.
7 The Chair may adopt rules for the review of claims against the Fund and hire and reimburse
8 medical and other expert witnesses that are necessary to properly conserve and defend the
9 Fund. In the event of the appeal of a decision made by the Chair regarding claims against the
10 Fund, the Chair shall defend the Fund. The Chair may also employ such employees as may be
11 required to maintain and conserve the Fund and may also employ legal counsel to represent the
12 Fund and conduct investigations on behalf of the Fund.

13 (l) To the extent of the compensation and benefits paid or payable to an employee or
14 the employee's dependents from the Uninsured Employers' Fund, the Fund, by subrogation,
15 shall be entitled to all the rights, powers, and benefits of the employee or the employee's
16 dependents against the employer arising under law and in any case shall have the same rights as
17 the employer with respect to any rights to said claim.

18 (m) Payments to applicants from the Fund shall be authorized by the Chair of the
19 Commission and approved by the State Treasurer.

20 (n) The Chair of the Industrial Commission may adopt rules necessary for the
21 processing and payment of compensation out of the Fund in accordance with Chapter 150B of
22 the General Statutes to establish and administer an application and review process for claims
23 made against the Fund.

24 (o) The liability of the State with respect to payment from the Fund of any
25 compensation, benefits, expenses, or fees for disbursements properly chargeable against the
26 Fund shall be limited to the assets in the Fund as exceed fifty thousand dollars (\$50,000), and
27 the Fund and the State shall not otherwise in any way or manner be liable for the making of any
28 such payment.

29 (p) If an employer fails to provide compensation to an employee or the employee's
30 beneficiaries as required by this Chapter, the employee, who has sustained a compensable
31 injury or died as a result of the employee's employment, the employee's beneficiaries may bring
32 an action against the employer to recover all or part of any damages and costs sustained by the
33 employee for any injury or death which has been deemed compensable under this Chapter and
34 for which the employee or the employee's estate has not received compensation from the Fund.

35 (q) The Commission shall use every available administrative means to ensure that
36 benefit payments from the Fund are paid only to individuals who meet the eligibility
37 requirements of this Chapter and that persons who are required to make payments pursuant to
38 this Chapter have provided lawful compensation and paid any penalty, fine, or assessment
39 imposed by law.

40 (r) The burden is upon the claimant to immediately notify in writing the Chair of the
41 Commission of any increase or decrease in the claimant's income that may affect the claimant's
42 eligibility for benefits payable from the Fund. Within 10 days after notice has been given to the
43 claimant and the Industrial Commission, the Chair may modify or terminate an award payable
44 from the Fund as conditions may require. Any payment to a claimant that is later determined by
45 the Chair of the Commission to have been procured by fraud, mistake, or an unreported change
46 in condition shall be recovered from the claimant and deposited in the Fund.

47 (s) The Chair of the Industrial Commission shall, on behalf of the Fund, exhaust all
48 remedies at law against the uninsured delinquent employer of the claimant to collect the
49 amount of any award to the claimant paid by the Fund.

50 (t) Nothing in this section is intended, nor may be deemed, to affect the obligations of
51 insurance carriers or self-insured employers imposed by any other section of this Chapter."

1 **SECTION 2.** There is appropriated from the General Fund to the North Carolina
2 Industrial Commission Uninsured Employers' Fund created by this act the sum of two million
3 five hundred thousand dollars (\$2,500,000) for the 2013-2014 fiscal year to serve as the initial
4 installment and corpus of the Fund.

5 **SECTION 3.** Beginning January 1, 2014, the Chair of the North Carolina Industrial
6 Commission shall annually submit an accounting of the Fund to the State Treasurer and to the
7 Joint Legislative Commission on Governmental Operations. The report to the Legislative
8 Commission shall include the following information:

9 (1) An estimate of the total amount of benefits paid from the Fund in the
10 preceding calendar year; an estimate of the benefits that may be paid from
11 the Fund in the current calendar year; a determination of the average cost to
12 employers in the State, on a per employee basis, of providing benefits
13 through the Fund; and

14 (2) A determination of the amount of money drawn from the Fund during the
15 preceding calendar year for administrative purposes.

16 **SECTION 4.** This act becomes effective July 1, 2013.