

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 432

Manufacturing and Labor Committee Substitute Adopted 6/20/91

Finance Committee Substitute #2 Adopted 7/2/91

Short Title: Special Industrial Comm. Fund.

(Public)

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Sponsors:

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Referred to:

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April 1, 1991

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE SPECIAL INDUSTRIAL COMMISSION FUND FOR  
2 THE OPERATION OF THE INDUSTRIAL COMMISSION AND TO DIRECT  
3 THAT A PORTION OF THE TAX PAID ON WORKERS' COMPENSATION  
4 PREMIUMS BE PAID TO THIS FUND.  
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6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 97-100 reads as rewritten:

8 **"§ 97-100. Rates for insurance; carrier to make reports for determination of**  
9 **solvency; tax upon premium; returned or canceled premiums; reports of**  
10 **premiums collected; wrongful or fraudulent representation of carrier**  
11 **punishable as misdemeanor; notices to carrier; employer who carries**  
12 **own risk shall make report on payroll.**

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

16 (b) Each such insurance carrier shall report to the Commissioner of Insurance, in  
17 accordance with such reasonable rules as the Commissioner of Insurance may at any  
18 time prescribe, for the purpose of determining the solvency of the carrier and the  
19 adequacy of its rates; for such purpose the Commissioner of Insurance may inspect the  
20 books and records of such insurance carrier, and examine its agents, officers, and  
21 directors under oath.

1 (c) Every person, partnership, association, corporation, whether organized under  
2 the laws of this or any other state or country, every mutual company or association and  
3 every other insurance carrier insuring employers in this State against liability for  
4 personal injuries to their employees, or death caused thereby, under the provisions of  
5 this Article, shall, as hereinafter provided, pay a tax upon the premium received,  
6 whether in cash or notes, in this State, or on account of business done in this State, for  
7 such insurance in this State, at the rate provided in the Revenue Act then in force, which  
8 tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and  
9 collected as hereinafter provided; provided, however, that such insurance carriers shall  
10 be credited with all canceled or returned premiums actually refunded during the year on  
11 such insurance.

12 (d) Every such insurance carrier shall, for the six months ending December 31,  
13 1929, and annually thereafter, make a return, verified by the affidavit of its president  
14 and secretary, or other chief officers or agents, to the Commissioner of Insurance,  
15 stating the amount of all such premiums and credits during the period covered by such  
16 return. Every insurance carrier required to make such return shall file the same with the  
17 Commissioner of Insurance on or before the first day of April after the close of the  
18 period covered thereby, and shall at the same time pay to the State Insurance  
19 Commissioner the tax provided in the Revenue Act then in force on such premium  
20 ascertained, as provided in subsection (c) hereof, less returned premium on canceled  
21 policies.

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

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

37 (g) Any person or persons who shall in this State act or assume to act as agent for  
38 any such insurance carrier whose authority to do business in this State has been  
39 suspended, while such suspension remains in force, or shall neglect or refuse to comply  
40 with any of the provisions of this section obligatory upon such person or party or who  
41 shall willfully make a false or fraudulent statement of the business or condition of any  
42 such insurance carrier, or false or fraudulent return as herein provided, shall be deemed  
43 guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less  
44 than one hundred (\$100.00) nor more than one thousand dollars (\$1,000), or by

1 imprisonment for not less than 10 nor more than 90 days, or both such fine and  
2 imprisonment in the discretion of the court.

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

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

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

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

28 (l) A special fund in the Office of the State Treasurer, the Special Industrial  
29 Commission Fund, is created. Twenty-two and five-tenths percent (22.5%) of the tax  
30 on premiums collected by the Commissioner of Insurance pursuant to subsections (d),  
31 (j), and (k) of this section, together with any assessments or taxes dedicated to the  
32 support of the Commission, shall be deposited in the Special Industrial Commission  
33 Fund. Interest derived from the Fund shall be credited to the Fund. Monies in the Fund  
34 shall only be spent pursuant to appropriation by the General Assembly.

35 The Special Industrial Commission Fund shall be subject to the provisions of the  
36 Executive Budget Act except that no unexpended surplus of the Fund shall revert to the  
37 General Fund. All funds credited to the Fund shall be used for the operation of the  
38 North Carolina Industrial Commission. The percentage of the tax on premiums credited  
39 to the Fund shall not be considered a special purpose obligation or assessment based on  
40 premium tax, or a dedicated special purpose tax based on premium tax, within the  
41 meaning of G.S. 105-228.8(e). Appropriations and receipts to the Industrial  
42 Commission from the General Fund for the fiscal year 1991-92 shall be refunded to the  
43 General Fund from the Special Industrial Commission Fund.

1        The remaining seventy-seven and five-tenths percent (77.5%) of the tax on  
2 premiums collected by the Commissioner of Insurance under subsections (d), (j), and  
3 (k) of this section shall be credited to the General Fund."

4                Sec. 2. This act becomes effective July 1, 1991, and applies to all taxes  
5 imposed on workers' compensation premiums that are collected on or after that date.