

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 602*
Commerce Committee Substitute Adopted 6/1/05

Short Title: Liability Insurance for State Employees.

(Public)

Sponsors:

Referred to:

March 16, 2005

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO PROFESSIONAL LIABILITY OF STATE EMPLOYEES
3 AND AGENCIES.

4 Whereas, it is in the public policy of this State for State departments,
5 agencies, educational institutions, and hospitals to purchase professional liability
6 insurance; and

7 Whereas, the rates charged for professional liability insurance should be
8 regulated to the end that the rates shall not be excessive, inadequate, or unfairly
9 discriminatory; and

10 Whereas, the public interest requires that existing legislation should be
11 amended to clarify and make certain the intent of existing legislation and to clarify,
12 strengthen, and provide adequate remedies to the State to ensure that rates being
13 charged and collected from State agencies, educational institutions, and hospitals for
14 professional liability insurance pursuant to filings of rates and forms under Chapter 58
15 of the General Statutes are not excessive in violation of the standards in effect at the
16 time the rates were charged; and

17 Whereas, the public interest requires that State departments, agencies,
18 educational institutions, and hospitals should have the opportunity for a hearing on the
19 reasonableness of rates charged for professional liability insurance to prevent the
20 collection of rates that are found to be excessive and to clarify that a refund shall be
21 provided for any rate found to be excessive which has been charged or collected; Now,
22 therefore,

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** Article 40 of Chapter 58 of the General Statutes is amended by
25 adding a new section to read:

26 **"§ 58-40-145. Professional liability insurance for State departments, agencies, and**
27 **institutions and State employees and officers.**

28 (a) Any rate, form, or filing actually used by an insurer to calculate a premium to
29 be charged or collected as the final premium in a retrospective rating plan for

1 professional liability insurance for State hospitals, agencies, universities, colleges,
2 institutions, and State employees and officers which would result in the payment of
3 premiums or charges by an insured which exceed the insurer's actual paid and incurred
4 loss and loss expense for the policy period, plus a reasonable allowance for unallocated
5 expenses and a reasonable margin for an underwriting profit of the insurer for the policy
6 period, shall be presumed to be excessive within the meaning of G.S. 58-40-20. In the
7 event of the receipt by the Commissioner and the insurer of a written demand from the
8 Attorney General on behalf of the insured for a hearing thereon, the insurer shall not
9 collect or attempt to collect the premium, rate, or charge without the express written
10 approval of the Commissioner following a hearing at which the parties to the policy
11 may be heard and present evidence.

12 (b) On the Commissioner's own motion, the Commissioner may hold a hearing
13 and, at the request of the Attorney General on behalf of the insured, the Commissioner
14 shall hold a hearing to determine if a rate filed pursuant to this Article and Article 41 of
15 this Chapter for professional liability insurance for State hospitals, agencies,
16 universities, colleges, institutions, and their employees and officers complies with the
17 requirements of G.S. 58-40-20. If, after a hearing, the Commissioner disapproves a rate,
18 the Commissioner must issue an order specifying in what respects the rate fails to meet
19 the requirements of G.S. 58-40-20. If the Commissioner finds a rate to be excessive, the
20 Commissioner shall order the excess premium, plus interest at a rate determined in the
21 same manner as in G.S. 58-36-25(b) as of the dates the rates were effective for
22 policyholders, to be returned to those policyholders who have paid the excess premium.
23 If the Commissioner finds a rate to be unfairly discriminatory, the Commissioner shall
24 order an appropriate adjustment for policyholders who have paid the unfairly
25 discriminatory premium. The order must be issued within 30 business days after the
26 close of the hearing.

27 (c) An insurer is prohibited from charging or collecting, or attempting to charge
28 or collect, any premium or any additional fee or charge for professional liability
29 insurance for State hospitals, agencies, universities, colleges, institutions, and State
30 employees and officers except in accordance with filings made with the Commissioner
31 under this section and Article 41 of this Chapter. This section may be enforced by the
32 Commissioner and by the Attorney General against any insurer charging, collecting, or
33 attempting to charge or collect the premium.

34 (d) An insurer providing professional liability insurance for State hospitals,
35 agencies, universities, colleges, institutions, and State employees and officers which
36 was developed and used in individual form or rate as the result of the uniqueness of a
37 particular risk, may file and use such rates and forms in accordance with rules adopted
38 by the Commissioner pursuant to G.S. 58-41-50(g). Provided, however, that those rules
39 shall not be interpreted to eliminate the requirement for the filing of any rate or form
40 which affects the premium or charge collected or attempted to be collected from an
41 insured. With respect to any rate charged or attempted to be collected by an insurer
42 pursuant to the filings, if there has been no prior hearing on the rates and filings before
43 the Commissioner, each insurer which issues or has issued policies pursuant to
44 G.S. 58-41-50(g) which are subject to this section shall, upon demand by the Attorney

1 General on behalf of the insureds under the policies, refund, or otherwise credit to those
2 purchasing the policies any excessive profit, as determined by the Commissioner after a
3 hearing pursuant to the standards set policies, including retrospective premiums, during
4 any period of consecutive, continuous coverage pursuant to a multiyear agreement."

5 **SECTION 2.** G.S. 58-32-15 is amended by adding a new subsection to read:

6 "(e) A committee is hereby established to adopt criteria for the selection of
7 insurance carriers from which the Commission may acquire professional liability
8 insurance for State employees and officers under this section. The committee shall
9 consist of three members, including the Administrator of the Commission, a designee of
10 the Attorney General, and a designee of the Governor who is also an employee of a
11 State agency that utilizes professional liability insurance. All members of the committee
12 shall be elected for their knowledge of professional liability insurance. In adopting
13 criteria for the selection of insurance carriers from which the Commission may acquire
14 professional liability insurance for State officers and employees, due consideration shall
15 be given by the committee to the following factors:

- 16 (1) The size and financial strength of the insurance carrier.
- 17 (2) The experience and expertise of the insurance carrier in the particular
18 line of professional liability insurance for which coverage is to be
19 placed.
- 20 (3) The past experience of State officers and employees with the insurance
21 carrier with respect to the reasonableness of premiums charged, policy
22 service, loss prevention programs, and the sharing of information with
23 risk managers of State departments, institutions, agencies, universities,
24 and community colleges.
- 25 (4) The past experience of the insurance carrier with consumer
26 complaints.
- 27 (5) A willful failure to perform in accordance with one or more insurance
28 contracts of professional liability insurance for State officers and
29 employees or agencies.
- 30 (6) A history of failure to perform, or unsatisfactory performance of, one
31 or more contracts of professional liability insurance entered into for
32 the coverage of State officers and employees or agencies.
- 33 (7) The past experience of the insurance carrier with respect to lawsuits or
34 disputes with State officials or agencies concerning rates charged or
35 coverage provided to State officers and employees or agencies.
- 36 (8) Any other factor that a person reasonably knowledgeable about
37 professional liability insurance would consider in determining whether
38 to place insurance with an insurance carrier.

39 The committee shall apply these criteria in the evaluation of prospective insurance
40 carriers for professional liability insurance for State employees, officers, and agencies
41 and shall prepare and maintain a list of approved insurance carriers. The Commission
42 shall not acquire professional liability insurance under this Article except from an
43 insurance carrier which currently appears on the list adopted by the committee pursuant
44 to this section.

1 The committee shall meet at least once each calendar quarter, on the first business
2 day after January 15, April 15, July 15, and October 15, and upon the call of the
3 Administrator of the Commission. The Administrator of the Commission shall be
4 responsible for issuing notices of meetings of the committee and maintaining the books
5 and records of the proceedings of the committee. Members of the committee shall be
6 reimbursed for travel and subsistence expenses at rates set out in G.S. 138-6 from funds
7 made available to the Commission for the reimbursement of the committee members.
8 There is no liability of, and no cause of action of any nature arises against, the members
9 of the committee or of the Commission for the performance of their powers and duties
10 under this section."

11 **SECTION 3.** G.S. 58-31-25 reads as rewritten:

12 **"§ 58-31-25. Professional liability insurance for officials and employees of the**
13 **State.**

14 The Commissioner may acquire professional liability insurance covering the officers
15 and employees of any State department, institution or agency upon the request of such
16 State department, institution or ~~agency~~—agency in accordance with G.S. 58-32-15.
17 Premiums for such insurance coverage shall be paid by the requesting department,
18 institution or agency at rates fixed by the Commissioner in accordance with G.S.
19 58-40-145 and from funds made available to it for the purpose. The Commissioner, in
20 placing a contract for such insurance is authorized to place such insurance through the
21 Public Officers and Employees' Liability Insurance Commission, and shall exercise all
22 efforts to place such insurance through the said commission prior to attempting to
23 procure such insurance through any other source.

24 The Commissioner, pursuant to this section, may acquire professional liability
25 insurance covering the officers and employees of a department, institution or agency of
26 State government only if the coverage to be provided by such policy is coverage of
27 claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of
28 the General Statutes.

29 The purchase, by any State department, institution or agency of professional liability
30 insurance covering the law-enforcement officers, officers or employees of such
31 department, institution or agency shall not be construed as a waiver of any defense of
32 sovereign immunity by such department, institution or agency. The purchase of such
33 insurance shall not be deemed a waiver by any employee of the defense of sovereign
34 immunity to the extent that such defense may be available to him.

35 The payment, by any State department, institution or agency of funds as premiums
36 for professional liability insurance through the plan provided herein, covering the
37 law-enforcement officers or officials or employees of such department, institution or
38 agency is hereby declared to be for a public purpose."

39 **SECTION 4.** This act is effective when it becomes law and applies to
40 pending litigation and arbitration proceedings.