

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 818
HOUSE BILL 212

AN ACT TO ESTABLISH A REINSURANCE PLAN FOR ALL MOTOR VEHICLE
INSURANCE AND TO TERMINATE THE NORTH CAROLINA AUTOMOBILE
INSURANCE PLAN.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes of North Carolina is amended by the addition of a new Article thereto to be designated as "Article 30A" which shall read as follows:

"Article 30A.

"North Carolina Motor Vehicle Reinsurance Facility.

"§ 58-316. North Carolina Motor Vehicle Reinsurance Facility; creation, membership. — There is created a non-profit unincorporated legal entity to be known as the North Carolina Reinsurance Facility consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State shall be a member of the Facility and shall be bound by the Rules of Operation thereof as provided for in this Article and as promulgated by the Board of Governors. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance.

"§ 58-317. Obligations after termination of membership. — Any company whose membership in the Facility has been terminated by withdrawal shall, nevertheless, with respect to its business prior to midnight of the effective date of such termination continue to be governed by this Article.

"§ 58-318. Insolvency. — Any unsatisfied net liability to the Facility of any insolvent member shall be assumed by and apportioned among the remaining members in the Facility in the same manner in which assessments or gain are apportioned by the Facility. The Facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the Facility in accordance with this Article.

"§ 58-319. Merger, consolidation or cession. — When a member has been merged or consolidated into another insurer, or has ceded its entire motor vehicle liability insurance business in the State to another insurer, such Company or its successor in interest, shall remain liable for all obligations hereunder and such Company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the Facility according to the Rules of Operation.

"§ 58-320. General obligations of insurers. — Except as otherwise provided in this Article all insurers as a prerequisite to the further engaging in this State in the writing of motor vehicle insurance or any component thereof shall accept and insure any otherwise unacceptable applicant therefor who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the Facility. All such insurers shall equitably share the results of such otherwise unacceptable business through the Facility and shall be bound by the acts of their agents in accordance with the provisions of this Article. No insurer shall impose upon any of its agents, solely on account of ceded business received from such agents, any quota or

matching requirement for any other insurance as a condition for further acceptance of ceded business from such agents.

"§ 58-321. General obligations of agents. — Except as otherwise provided in this Article, no licensed agent of an insurer authorized to solicit and accept premiums for motor vehicle insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for such insurance and to immediately bind the coverage applied for and for a period of not less than six months if cession of the particular coverage and coverage limits applied for are permitted in the Facility, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the agent's customary practices and procedures. The commission paid on the insurance coverages provided in this act shall not be less than the commission on insurance coverage written through the N.C. Insurance Plan on May 1, 1973. The same commission shall apply uniformly statewide.

"§ 58-322. Definitions. — As used in this Article:

- (1) 'Cede' or 'cession' means the act of transferring the profit or loss of otherwise unacceptable business (to the extent permitted in the plan of operation) from the individual insurer to all insurers through the operation of the Facility.
- (2) 'Commissioner' means the Commissioner of Insurance.
- (3) 'Company' means each member of the Facility.
- (4) 'Eligible Risk' means a person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State or who has a valid driver's license in this State or who is required to file proof of financial responsibility pursuant to Article 9A or 13 of the North Carolina Motor Vehicle Code in order to register his motor vehicle or obtain a driver's license in this State; or a nonresident of this State who owns a motor vehicle registered or principally garaged in this State, or the State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided, however, that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.
- (5) 'Facility' means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of this Article.
- (6) 'Motor Vehicle' means any motor vehicle as defined under Article 9A of Chapter 20 of the General Statutes of North Carolina.
- (7) 'Motor vehicle insurance' means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle as defined in Article 9A of Chapter 20 of the General Statutes of North Carolina for bodily injury including death and property damage and includes medical payments and uninsured motorist coverages.
- (8) 'Person' means every natural person, firm, partnership, association, corporation or government or agency thereof.
- (9) 'Plan of Operation' means the plan of operation approved pursuant to the provisions of this Article.
- (10) 'Reinsurance' means that the profit or loss of otherwise unacceptable insurance risks are equitably shared by all companies.

"§ 58-323. The Facility— (a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk by means of reinsurance and the Facility shall accept for transfer to the account of all members, the profit or loss of the business ceded in

accordance with this Article, the Plan of Operation adopted pursuant thereto, and any amendments to either.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of 100% or lesser equitable percentage established in the Plan of Operation as follows:

- (1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
 - a. Bodily Injury Liability: \$25,000 each person, \$50,000 each accident;
 - b. Property Damage Liability: \$10,000 each accident;
 - c. Medical Payments: \$1,000 each person; except that this coverage shall not be available for motorcycles.
 - d. Uninsured Motorist: \$25,000 each person; \$50,000 each accident for bodily injury; \$5,000 each accident property damage (\$100.00 deductible);
- (2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following: Bodily Injury Liability: \$100,000 each person, \$300,000 each accident Property Damage Liability: \$50,000 each accident Medical Payments: \$2,000 each person Uninsured Motorist: \$100,000 each person and each accident for bodily injury and \$5,000 for property damage (\$100.00 deductible) Any other motor vehicle insurance required by law: In twice the amount of coverage limits required by law.

(c) The Facility shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses are adjusted and to effect settlement where settlement is appropriate.

(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other non-stock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by The Carolinas Association of Mutual Insurance Agents, North Carolina Division. The initial term of office of said Board members shall be two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article.

(e) The Commissioner and member companies shall provide for a Board of Governors within thirty days after the ratification of the act enacting this Article. If any member seat on

the initial Board of Governors is not filled in accordance with this Article within such time, then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board. After the Board of Governors have been selected it shall then elect from its membership a Chairman and shall then meet thereafter as often as the Chairman shall require or at the request of three members of the Board of Governors. The Chairman shall retain the right to vote on all issues. Five members of the Board of Governors shall constitute a quorum. The same member may not serve as Chairman for more than two consecutive years.

(f) The Board of Governors shall have full power and administrative responsibility for the operation of the Facility. Such administrative responsibility shall include but not be limited to:

- (1) Proper establishment and implementation of the Facility.
- (2) Employment of a manager who shall be responsible for the continuous operation of the Facility and such other employees, officers and committees as it deems necessary.
- (3) Provision for appropriate housing and equipment to assure the efficient operation of the Facility.
- (4) Promulgation of reasonable rules and regulations for the administration and operation of the Facility and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.

(g) Except as may be delegated specifically to others in the Plan of Operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

- (1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.
- (2) To receive and record reinsurance cessions from member companies.
- (3) To assess members on the basis of participation ratios established in the Plan of Operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the Plan of Operation.
- (4) To contract for goods and services from others to assure the efficient operation of the Facility.
- (5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.
- (6) To review the market for motor vehicle insurance throughout North Carolina to make certain that eligible risks can readily obtain such insurance and to provide in the Plan of Operation a reasonable means for achieving this objective. The Facility is authorized to require all companies in a fair and equitable manner who are writers of motor vehicle insurance in this State to appoint and license any fire and casualty agent duly licensed to write insurance in North Carolina, in such places where a market need has been demonstrated, to be their agent to write motor vehicle insurance. The companies and agents may enter into such agency contract as may be agreeable to both parties. If a company ceases to be a member of the Facility after appointing and licensing agents pursuant to this provision, then the Facility shall promptly require another company or companies to appoint and license such agents in these places. Notwithstanding the provisions of this subdivision, the Commissioner may review the market for motor vehicle

insurance or any component thereof. After notice to and consultation with the Board of Governors, if the Commissioner finds that reasonable facilities are not being provided to make motor vehicle insurance or any component thereof available in a particular county, then in that event, he may require the Board to provide adequate facilities in such county. If the Board fails to comply with the requirements of the Commissioner, then the Commissioner may exercise all the powers of the Facility to provide such adequate facilities. Additionally, the Commissioner may require the company or companies selected to service a particular county to pay or provide for reasonable compensation for the services of the agent appointed to represent said company or companies, and, if necessary, the Commissioner may appoint such agent.

- (7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.
- (8) To establish fair and reasonable procedures for the sharing among the members of profit and loss on Facility business and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.
- (9) To receive or distribute all sums required by the operation of the Facility.
- (10) To accept all risks submitted from the companies in accordance with this Article.
- (11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.
- (12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.

(h) Each member company shall authorize the Facility to audit that part of the company's business which is written subject to the Facility in a manner and time prescribed by the Board of Governors.

(i) The Board of Governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the Board of Governors.

(j) There shall be furnished to each member an annual report of the operation of the Facility in such form and detail as may be determined by the Board of Governors.

(k) Each member shall furnish statistics in connection with insurance subject to the Facility as may be required by the Facility. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums charged, expenses and losses.

"§ 58-324. Plan of operation. — (a) Within 60 days after the initial organizational meeting, the Facility shall submit to the Commissioner, for his approval, a proposed Plan of Operation, consistent with the provisions of this act, which shall provide for economical, fair and non-discriminating administration and for the prompt and efficient provision of motor vehicle insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period,

then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this act.

(b) The Plan of Operation, unless sooner approved in writing, shall be deemed to meet the requirements of the act if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed Plan of Operation the Commissioner shall notify the Facility in what respect the Plan of Operation fails to meet the specific requirements of this act. The Facility shall, within 30 days thereafter, submit for his approval a revised Plan of Operation which meets the specific requirements of this act. In the event the Facility fails to submit a revised Plan of Operation which meets the specific requirements of this act within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this act.

(c) Any revision of the proposed Plan of Operation or any subsequent amendments to an approved Plan of Operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial Plan of Operation.

(d) Any order of the Commissioner with respect to the Plan of Operation or any revision of amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the Plan so submitted or the promulgation of a Plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the Plan so approved.

The Plan of Operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members to defray losses and expenses, the distribution of gains, the standard amount (100% or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, and the procedure by which reinsurance shall be accepted by the Facility; and shall further provide that:

- (1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of \$25.00 a day which may be waived.
- (2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business.

"§ 58-325. Limit on cessions. — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the Plan of Operation; provided, however, that no company can cede to the Facility more than fifty percent (50%) of all its motor vehicle insurance business in North Carolina without specific approval of the Board of Governors.

"§ 58-326. Termination of insurance. — No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

- (1) Non-payment of premium when due to the insurer or producing agent.

- (2) The named insured has become a non-resident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
- (3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.
- (4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-56.

"§ 58-327. Exemption from requirements of this Article of companies and their agents. — By reason of the limit on cessions provided in this Article, the Board of Governors may exempt a company and its agents from the requirements of this Article, insofar as new business is concerned. The Board may further exempt a company and its agents from the requirements of this Article regarding the selling and servicing a particular category of business, if the company is not qualified to service the business.

"§ 58-327.1. Physical damage insurance availability. — No physical damage insurer shall refuse to make physical damage coverage available to any applicant for the reason that such applicant has, or may acquire, auto liability insurance through the facility plan as provided herein; further that no such insurer may levy a surcharge or increased rate for such physical damage coverage on the basis that such applicant has, or may acquire, auto liability insurance through the facility plan as provided herein.

Any such insurer or representative thereof failing to comply with, or otherwise violating the provisions of this section, shall be punished as prescribed in G.S. 58-248.4 and G.S. 58-248.5.

"§ 58-328. Hearings; review. — (a) Any applicant for a policy from any carrier, any person insured under such a policy, any member of the Facility and any agent duly licensed to write motor vehicle insurance, may request a formal hearing and ruling by the Board of Governors of the Facility on any alleged violation of or failure to comply with the Plan of Operation or the provisions of this Article or any alleged improper act or ruling of the Facility directly affecting him as to coverage or premium or in the case of a member directly affecting its assessment, and in the case of an agent, any matter affecting his appointment to a carrier or his account therewith. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request. The hearing may be held by any panel of the Board of Governors consisting of not less than three members thereof, and the ruling of a majority of the panel shall be deemed to be the formal ruling of the Board, unless the full Board on its own motion shall modify or rescind the action of the panel.

(b) Any formal ruling by the Board of Governors may be appealed to the Commissioner by filing notice of appeal with the Facility and Commissioner within 30 days after issuance of the ruling.

(c) The Commissioner shall issue an order approving the action or decision, disapproving the action or decision, or directing the Board of Governors to reconsider the ruling.

(d) Any aggrieved person or organization, any member of the Facility or the Facility may request a public hearing and ruling by the Commissioner on the Provisions of the Plan of Operation, rules, regulations or policy forms approved by the Commissioner. The request for hearing shall specify the matter or matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matter or matters to be considered not less than 15 days in advance of the hearing date.

(e) In any hearing held pursuant to this section by the Board of Governors or the Commissioner, the Board or the Commissioner, as the case may be, shall issue a ruling or order within 30 days after the close of the hearing.

(f) All rulings or orders of the Commissioner under this section shall be subject to judicial review as approved in G.S. 58-9.3."

Sec. 2. The Commissioner of Insurance is authorized and directed to terminate the North Carolina Automobile Insurance Plan established pursuant to G.S. 20-279.34 when it appears to his satisfaction that the Facility herein established is fully operational and when the policies issued under the prior Plan have expired.

Sec. 3. Severability. If any provision or part of this act or application thereof is held invalid, the invalidity shall not affect other provisions, parts or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 4. This act shall become effective upon ratification; provided, however, the Facility shall not be required by the Commissioner to be operational earlier than prior to 60 days after the Plan of Operation has been approved and in no event later than January 1, 1974.

In the General Assembly read three times and ratified, this the 24th day of May, 1973.