

§ 58-36-65. Classifications and Safe Driver Incentive Plan for nonfleet private passenger motor vehicle insurance.

(a) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, such rate classifications, schedules, or rules that the Commissioner deems to be desirable and equitable to classify drivers of nonfleet private passenger motor vehicles for insurance purposes. Subsequently, the Commissioner may require the Bureau to file modifications of the classifications, schedules, or rules. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. In promulgating or modifying these classifications, schedules, or rules, the Commissioner may give consideration to the following:

- (1) Uses of vehicles, including without limitation to farm use, pleasure use, driving to and from work, and business use;
- (2) Principal and occasional operation of vehicles;
- (3) Years of driving experience of insureds as licensed drivers;
- (4) The characteristics of vehicles; or
- (5) Any other factors, not in conflict with any law, deemed by the Commissioner to be appropriate.

(b) The Bureau shall file, subject to review, modification, and promulgation by the Commissioner, a Safe Driver Incentive Plan ("Plan") that adequately and factually distinguishes among various classes of drivers that have safe driving records and various classes of drivers that have a record of at-fault accidents; a record of convictions of major moving traffic violations; a record of convictions of minor moving traffic violations; or a combination thereof; and that provides for premium differentials among those classes of drivers. Subsequently, the Commissioner may require the Bureau to file modifications of the Plan. If the Bureau does not file the modifications within a reasonable time, the Commissioner may promulgate the modifications. The Commissioner is authorized to structure the Plan to provide for surcharges above and discounts below the rate otherwise charged.

(c) The classifications and Plan filed by the Bureau shall be subject to the filing, hearing, modification, approval, disapproval, review, and appeal procedures provided by law; provided that the 210-day disapproval period in G.S. 58-36-20(a) and the 50-day deemer period in G.S. 58-36-20(b) do not apply to filings or modifications made under this section. The classifications or Plan filed by the Bureau and promulgated by the Commissioner shall of itself not be designed to bring about any increase or decrease in the overall rate level.

(d) Whenever any policy loses any safe driver discount provided by the Plan or is surcharged due to an accumulation of points under the Plan, the insurer shall, pursuant to rules adopted by the Commissioner, prior to or simultaneously with the billing for additional premium, inform the named insured of the surcharge or loss of discount by mailing to such insured a notice that states the basis for the surcharge or loss of discount, and that advises that upon receipt of a written request from the named insured it will promptly mail to the named insured a statement of the amount of increased premium attributable to the surcharge or loss of discount. The statement of the basis of the surcharge or loss of discount is privileged, and does not constitute grounds for any cause of action for defamation or invasion of privacy against the insurer or its representatives, or against any person who furnishes to the insurer the information upon which the insurer's reasons are based, unless the statement or furnishing of information is made with malice or in bad faith.

(e) Records of convictions for moving traffic violations to be considered under this section shall be obtained at least annually from the Division of Motor Vehicles and applied by the Bureau's member companies in accordance with rules to be established by the Bureau. Prior to the sale of a new policy of motor vehicle insurance, records of convictions for moving traffic violations shall be obtained in accordance with rules established by the Bureau. Such rules shall

permit a reasonable period for underwriting review following the binding of coverage in the event access to such records of convictions are unavailable at the time of sale or the applicant has provided incorrect or incomplete data necessary to access such records of convictions.

(f) The Bureau is authorized to establish reasonable rules providing for the exchange of information among its member companies as to chargeable accidents and similar information involving persons to be insured under policies. Neither the Bureau, any employee of the Bureau, nor any company or individual serving on any committee of the Bureau has any liability for defamation or invasion of privacy to any person arising out of the adoption, implementation, or enforcement of any such rule. No insurer or individual requesting, furnishing, or otherwise using any information that such insurer or person reasonably believes to be for purposes authorized by this section has any liability for defamation or invasion of privacy to any person on account of any such requesting, furnishing, or use. The immunity provided by this subsection does not apply to any acts made with malice or in bad faith.

(g) If an applicant for the issuance or renewal of a nonfleet private passenger motor vehicle insurance policy knowingly makes a material misrepresentation of the years of driving experience or the driving record of any named insured or of any other operator who resides in the same household and who customarily operates a motor vehicle to be insured under the policy, the insurer may:

- (1) Cancel or refuse to renew the policy;
- (2) Surcharge the policy in accordance with rules to be adopted by the Bureau and approved by the Commissioner; or
- (3) Recover from the applicant the appropriate amount of premium or surcharge that would have been collected by the insurer had the applicant furnished the correct information.

(h) If an insured disputes his insurer's determination that the operator of an insured vehicle was at fault in an accident, such dispute shall be resolved pursuant to G.S. 58-36-1(2), unless there has been an adjudication or admission of negligence of such operator.

(i) As used in this section, "conviction" means a conviction as defined in G.S. 20-279.1 and means an infraction as defined in G.S. 14-3.1.

(j) Subclassification plan surcharges shall be applied to a policy for a period of not less nor more than three policy years.

(k) The subclassification plan may provide for premium surcharges for insureds having less than three years' driving experience as licensed drivers.

(l) Except as provided in G.S. 58-36-30(d), no classification or subclassification plan for nonfleet private passenger motor vehicle insurance shall be based, in whole or in part, directly or indirectly, upon the age or gender of insureds.

(m) Notwithstanding any other provision of law, with respect to motorcycle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety Instruction Program or a comparable motorcycle safety program provided by federally certified instructors for members of the military. (1985 (Reg. Sess., 1986), c. 1027, s. 1; 1987, c. 864, ss. 28, 33; c. 869, s. 9; 1987 (Reg. Sess., 1988), c. 975, ss. 4, 5; 1989, c. 755, s. 3; 1993, c. 320, s. 5; 2002-187, s. 4.3; 2012-176, s. 1; 2018-120, s. 4.9(a).)