

§ 58-37-35. The Facility; functions; administration.

(a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk and the Facility shall accept all placements made 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 in the Facility to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the Facility's 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: thirty thousand dollars (\$30,000) each person, sixty thousand dollars (\$60,000) each accident;
 - b. Property damage liability: twenty-five thousand dollars (\$25,000) each accident;
 - c. Medical payments: one thousand dollars (\$1,000) each person; except that this coverage shall not be available for motorcycles or mopeds;
 - d. Uninsured motorist: thirty thousand dollars (\$30,000) each person; sixty thousand dollars (\$60,000) each accident for bodily injury; twenty-five thousand dollars (\$25,000) each accident property damage (one hundred dollars (\$100.00) deductible);
 - e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.
- (2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:
 - a. Bodily injury liability: one hundred thousand dollars (\$100,000) each person, three hundred thousand dollars (\$300,000) each accident;
 - b. Property damage liability: fifty thousand dollars (\$50,000) each accident;
 - c. Medical payments: two thousand dollars (\$2,000) each person; except that this coverage shall not be available for motorcycles or mopeds;
 - d. Underinsured motorist: one million dollars (\$1,000,000) each person and each accident for bodily injury liability; and
 - e. Uninsured motorist: one million dollars (\$1,000,000) each person and each accident for bodily injury and fifty thousand dollars (\$50,000) each accident for property damage (one hundred dollars (\$100.00) deductible).
- (2a) For persons who must maintain liability coverage limits above those available under subdivision (2) of this subsection in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies, additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:
 - a. Bodily injury liability: two hundred fifty thousand dollars (\$250,000) each person, five hundred thousand dollars (\$500,000) each accident.
 - b. Property damage liability: one hundred thousand dollars (\$100,000) each accident.

- c. Medical payments: five thousand dollars (\$5,000) each person; except that this coverage shall not be available for motorcycles or mopeds.
- d. Uninsured motorist: one hundred thousand dollars (\$100,000) each accident for property damage (one hundred dollars (\$100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-37-35(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau.

(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 12 members having one vote each from the classifications specified in this subsection and 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: the American Insurance Association (or its successors), the Property Casualty Insurers Association of America (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. The Commissioner shall appoint two members of the Board who are Facility insurance company members domiciled in this State. The Commissioner shall appoint five 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 term of office of the Board members shall be 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 classifications specified in this subsection until the vacancies are filled in accordance with this Article. The Board of Governors of the Facility shall also have as nonvoting members two persons who are not employed by or affiliated with any insurance company or the Department and who are appointed by the Governor to serve at the Governor's pleasure.

(e) The Commissioner and member companies shall provide for a Board of Governors. The Board of Governors shall elect from its membership a chair and shall meet at the call of the chair or at the request of four members of the Board of Governors. The chair shall retain the right to vote on all issues. Seven members of the Board of Governors shall constitute a quorum. The same member may not serve as chair for more than two consecutive years; provided, however, that a member may continue to serve as chair until a successor chair is elected and qualified.

(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 cessions.
- (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) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. The standards shall be:
 - a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;
 - b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars (\$20,000) from motor vehicle insurance;
 - c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of application was 200 or more;
 - d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;
 - e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

With respect to business produced by designated agents, adequate provision shall be made by the Facility to assure that such business is rated using Facility rates. All business produced by designated agents may be ceded to the Facility, except designated agents appointed before September 1, 1987, may place liability insurance policies with a voluntary carrier, provided that all policies written by the voluntary carrier are retained by the voluntary carrier unless ceded to the Facility using Facility rates. Designated agents must provide the Facility with a list of such policies written by the

voluntary carrier at least annually, or as requested by the Facility, on a form approved by the Facility. If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agent to write directly on behalf of the Facility. However, for this purpose the Facility does not act as an insurer, but acts only as the statutory agent of all of the members of the Facility, which shall be bound on risks written by the Facility's appointed agent. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through those servicing carriers shall be rated using Facility rates. All business produced by Facility agents may be ceded to the Facility. Any designated agent who is disabled or retiring or the estate of any deceased designated agent may transfer the designation and the book of business to some other licensed fire and casualty agent meeting the requirements of this section and under rules established by the Facility, and a transfer from a designated agent appointed before September 1, 1987, shall entitle the transferee designated agent to place liability insurance policies with a voluntary carrier.

The Commissioner shall require, as a condition precedent to the issuance, renewal, or continuation of a resident agent's license to any designated agent to act for the company appointing such designated agent under contract with the Facility, that the designated agent file and thereafter maintain in force while so licensed a bond in favor of the State of North Carolina executed by an authorized corporate surety approved by the Commissioner, cash, mortgage on real property, or other securities approved by the Commissioner, in the amount of ten thousand dollars (\$10,000) for the use of aggrieved persons. Such bond, cash, mortgage, or other securities shall be conditioned on the accounting by the designated agent (i) to any person requesting the designated agent to obtain motor vehicle insurance for moneys or premiums collected in connection therewith, and (ii) to the company providing coverage with respect to any such moneys or premiums under contract with the Facility. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is cancelled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon 30 days' advance notice in writing filed with the Commissioner.

No agent may be designated under this subdivision to any insurer that does not actively write voluntary market business.

- (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 members of any loss on Facility business that cannot be recouped under G.S. 58-37-40(e) and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. The 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 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.

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive.

(m) In addition to annual premiums, the rules of the Facility shall allow semiannual and quarterly premium terms. (1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19; 1977, 2nd Sess.,

c. 1135; 1979, c. 676, ss. 1, 2; 1981, c. 776, ss. 2, 3; c. 776, ss. 2, 3; 1983, c. 416, ss. 3, 4; c. 690; 1985, c. 666, s. 49; 1985 (Reg. Sess., 1986), c. 1027, ss. 7, 19, 33, 43; 1987, c. 869, ss. 3, 4(1), (2), 15; 1989, c. 67; 1991, c. 469, s. 7; c. 562, s. 2; c. 709, s. 1; c. 720, s. 4; 1999-132, ss. 6.2, 8.3, 8.4, 8.7, 8.8; 1999-228, s. 8; 2001-236, s. 1; 2001-423, s. 3; 2002-185, s. 6; 2002-187, ss. 1.2, 1.3; 2005-210, s. 19; 2005-242, s. 1; 2006-105, s. 1.7; 2006-264, s. 83; 2016-90, s. 12.6(c).)