

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 562
HOUSE BILL 918

AN ACT TO AMEND THE INSURANCE LAWS TO CLARIFY THE PERMISSIBLE
ACTIVITIES OF INSURANCE AGENCY OFFICE EMPLOYEES, AND TO
PROVIDE FOR TRANSFER BY DESIGNATED AGENTS UNDER THE
REINSURANCE FACILITY OF THEIR DESIGNATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

- (1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
- (2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.
- (3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.
- (4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of ~~such the~~ agent's license, in the acceptance of ~~requests for insurance and applications, personally underwritten by the agent,~~ payment of premiums, and the performance of clerical, stenographic, and similar office ~~duties~~; provided that the activity does not amount to the interpretation of insurance policies, provisions or coverage, to sales or negotiation of

insurance policies, to any underwriting function, or to the signing or verification of applications for insurance.

- (5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent."

Sec. 2. G.S. 58-37-35(g) reads as rewritten:

"(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 of Insurance 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. ~~Such standard~~ 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 ~~prior to~~ 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 ~~said~~ 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 unauthorized 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 which cannot be recouped pursuant to G.S. 58-37-40(f) or which cannot be recouped or allocated under G.S. 58-37-75, 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 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."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July,

1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives