

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 477

Short Title: Reduce Overpopulation of Reinsurance Facility. (Public)

Sponsors: Senators Apodaca; and Jackson.

Referred to: Insurance.

March 31, 2011

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE EXCESSIVE NUMBER OF NORTH CAROLINA DRIVERS
INSURED BY THE NORTH CAROLINA REINSURANCE FACILITY BY PROVIDING
FOR FILE AND USE RATE DEVIATIONS FOR AUTOMOBILE LIABILITY
INSURANCE AND BY PROVIDING A FIVE-YEAR PHASEOUT OF THE "CLEAN
RISK" SUBCLASSIFICATION WITHIN THE REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-30 reads as rewritten:

"§ 58-36-30. **Deviations.**

(a) Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, or subsection (e) of this section for nonfleet private passenger motor vehicle liability insurance, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. An insurer may deviate from the rates promulgated by the Bureau if the insurer has filed the proposed deviation with the Bureau and the Commissioner, if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. Amendments to deviations are subject to the same requirements as initial filings. An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination.

...

(e) The provisions of this subsection apply only to the setting of rates for nonfleet private passenger motor vehicle liability insurance. An insurer may deviate from the rates promulgated by the Bureau if the insurer has filed the proposed deviation with the Bureau and the Commissioner and if the proposed deviation is based on sound actuarial principles. Rate deviations shall take effect upon filing. The Commissioner may disapprove a deviation filing submitted under this section only if the Commissioner determines that the filing is excessive, inadequate, or unfairly discriminatory. Deviations above the Bureau rate up to the applicable rates established for risks ceded to the Reinsurance Facility shall be presumed not to be excessive, inadequate, or unfairly discriminatory. If, after a hearing, the Commissioner disapproves a deviation filing, the Commissioner shall issue a written order specifying in detail the reasons the filing is excessive, inadequate, or unfairly discriminatory and stating a reasonable future date on which the filing is to be considered no longer effective. An order by the Commissioner pursuant to this subsection is prospective only and does not affect any policy that takes effect or is delivered before the effective date of the order, even if the effective date



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1 of the policy is subsequent to the effective date of the order. Amendments to deviations are
2 subject to the same requirements as initial filings. An insurer may terminate a deviation only if
3 the deviation has been in effect for a period of six months before the effective date of the
4 termination and the insurer notifies the Commissioner of the termination no later than 15 days
5 before the effective date of the termination."

6 **SECTION 2.(a)** G.S. 58-37-35 reads as rewritten:

7 **"§ 58-37-35. The Facility; functions; administration.**

8 ...

9 (l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle
10 insurance policies reinsured by the Facility may be made by the Facility or by any licensed or
11 statutory statistical organization or bureau on its behalf and shall be filed with the
12 Commissioner. The Board of Governors shall establish a separate subclassification within the
13 Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a
14 nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal
15 operator, and each licensed operator in the owner's household have two years' driving
16 experience as licensed drivers and if none of the persons has been assigned any Safe Driver
17 Incentive Plan points under Article 36 of this Chapter during the three-year period immediately
18 preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date
19 of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by
20 reference any other material on file with the Commissioner. Rates shall be neither excessive,
21 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is
22 either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order
23 specifying in what respect it is deficient and stating when, within a reasonable period thereafter,
24 the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of
25 this Chapter. Pending judicial review of said order, the filed classification plan and the filed
26 rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this
27 Chapter. The order shall not affect any contract or policy made or issued before the expiration
28 of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be
29 calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made
30 by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged
31 "clean risks" who are not reinsured in the Facility. The Facility, except that rates for "clean
32 risks" on policies reinsured by the Facility that become effective on or after January 1, 2013,
33 shall be established on a schedule that provides that any difference between rates charged for
34 "clean risks" reinsured in the Facility on policies becoming effective immediately prior to
35 January 1, 2013, and the actuarially sound rate for all risks reinsured by the Facility shall be
36 eliminated over a five-year period ending on December 31, 2017. Any difference between the
37 actual rate charged and the actuarially sound and self-supporting rates for "clean risks"
38 reinsured in the Facility may be recouped in similar manner as assessments under
39 G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business,
40 but shall provide an allowance for contingencies. There shall be a strong presumption that the
41 rates and premiums for the business of the Facility are neither unreasonable nor excessive.

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43 **SECTION 2.(b)** G.S. 58-37-35, as rewritten by Section 2(a) of this act, reads as
44 rewritten:

45 **"§ 58-37-35. The Facility; functions; administration.**

46 ...

47 (l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle
48 insurance policies reinsured by the Facility may be made by the Facility or by any licensed or
49 statutory statistical organization or bureau on its behalf and shall be filed with the
50 Commissioner. ~~The Board of Governors shall establish a separate subclassification within the~~
51 ~~Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a~~

1 ~~nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal~~
2 ~~operator, and each licensed operator in the owner's household have two years' driving~~
3 ~~experience as licensed drivers and if none of the persons has been assigned any Safe Driver~~
4 ~~Incentive Plan points under Article 36 of this Chapter during the three year period immediately~~
5 ~~preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date~~
6 ~~of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by~~
7 ~~reference any other material on file with the Commissioner. Rates shall be neither excessive,~~
8 ~~inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is~~
9 ~~either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order~~
10 ~~specifying in what respect it is deficient and stating when, within a reasonable period thereafter,~~
11 ~~the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of~~
12 ~~this Chapter. Pending judicial review of said order, the filed classification plan and the filed~~
13 ~~rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this~~
14 ~~Chapter. The order shall not affect any contract or policy made or issued before the expiration~~
15 ~~of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be~~
16 ~~calculated, insofar as is possible, to produce neither a profit nor a loss. However, rates for~~
17 ~~"clean risks" on policies reinsured by the Facility that become effective on or after January 1,~~
18 ~~2013 shall be established on a schedule that provides that any difference between rates charged~~
19 ~~for "clean risks" reinsured in the Facility on policies becoming effective immediately prior to~~
20 ~~January 1, 2013 and the actuarially sound rate for all risks reinsured by the Facility shall be~~
21 ~~eliminated over a five year period ending on December 31, 2017. Any difference between the~~
22 ~~actual rate charged and the actuarially sound and self-supporting rates for "clean risks"~~
23 ~~reinsured in the Facility may be recouped in similar manner as assessments under~~
24 ~~G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business,~~
25 ~~but shall provide an allowance for contingencies. There shall be a strong presumption that the~~
26 ~~rates and premiums for the business of the Facility are neither unreasonable nor excessive.~~

27"

28 **SECTION 3.** Section 2(b) of this act becomes effective January 1, 2018. The
29 remainder of this act becomes effective January 1, 2012.