

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 425

Short Title: Auto Ins. Rate-Making Reform/AB.

(Public)

Sponsors: Representative Hensley.

Referred to: Insurance.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS GOVERNING THE APPROVAL OF RATES IN PRIVATE PASSENGER AUTOMOBILE AND HOMEOWNERS' INSURANCE, INCLUDING THE REMOVAL OF CONSIDERATION OF CONTINGENCIES IN RATE MAKING AND THE ESTABLISHMENT OF A REFUND OF EXCESS INCOME BY THE MOTOR VEHICLE REINSURANCE FACILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-10(2) reads as rewritten:

"(2) ~~Due~~ For workers' compensation insurance, due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which ~~such~~ the information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that

1 countrywide expense and loss experience and other countrywide data
2 may be considered only where credible North Carolina experience or
3 data is not available. For all other coverage under this Article, due
4 consideration shall be given to actual loss and expense experience
5 within this State for the most recent three-year period for which the
6 information is available; to prospective loss and expense experience
7 within this State; to the hazards of conflagration and catastrophe; to a
8 reasonable margin, on a total return basis; for underwriting profit; to
9 investment income earned or realized by insurers; to past and
10 prospective expenses specially applicable to this State; and to all other
11 relevant factors within this State: Provided, however, that countrywide
12 expense and loss experience and other countrywide data may be
13 considered only where credible North Carolina experience or data is not
14 available."

15 Sec. 2. G.S. 58-36-25(b) reads as rewritten:

16 "(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and
17 no longer effective by order of the Commissioner issued under ~~G.S. 58-36-20~~, G.S. 58-36-
18 20 or G.S. 58-36-70, the members of the Bureau, in accordance with rules and regulations
19 established and adopted by the governing committee, shall have the option to adopted by the
20 Commissioner, may continue to use such-the rate for the interim period pending judicial
21 review of such-the order, provided each such-member shall place in escrow account the
22 purportedly unfairly discriminatory or excessive portion of the premium collected during
23 such-the interim period. Upon a final determination by the Court, the Commissioner shall
24 order the escrowed funds to be distributed appropriately, except that individual refunds
25 that are five dollars (\$5.00) or less shall not be required. The court may also require that
26 purportedly excess premiums resulting from an adjustment of premiums ordered pursuant
27 to G.S. 58-36-20(b) or G.S. 58-36-70(d) be placed in such-the escrow account pending
28 judicial review. If refunds made to policyholders are ordered under this subsection, the
29 amounts refunded shall bear interest at the rate determined under this subsection. That
30 rate shall be the average of the prime rates of the four largest banking institutions
31 domiciled in this State, plus three percent (3%), as of the effective date of the filing, to be
32 computed by the Commissioner."

33 Sec. 3. G.S. 58-37-35(l) reads as rewritten:

34 "(l) The classifications, rules, rates, rating plans and policy forms used on motor
35 vehicle insurance policies reinsured by the Facility may be made by the Facility or by any
36 licensed or statutory rating organization or bureau on its behalf and shall be filed with the
37 Commissioner. The Board of Governors shall establish a separate subclassification
38 within the Facility for 'clean risks' as herein defined. For the purpose of this Article, a
39 'clean risk' shall be any owner of a nonfleet private passenger motor vehicle as defined in
40 G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's
41 household have two years' driving experience as licensed drivers and if none of the
42 persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this
43 Chapter during the three-year period immediately preceding either (i) the date of

1 application for a motor vehicle insurance policy or (ii) the date of preparation of a
2 renewal of a motor vehicle insurance policy. ~~Such filings~~ Filings may incorporate by
3 reference any other material on file with the Commissioner. Rates shall be neither
4 excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a
5 hearing, that a rate is either excessive, inadequate or unfairly discriminatory, ~~he~~ the
6 Commissioner shall issue an order specifying in what respect it is deficient and stating
7 when, within a reasonable period thereafter, ~~such~~ the rate shall be deemed no longer
8 effective. ~~Said~~ The order is subject to judicial review as set out in Article 2 of this
9 Chapter. Pending judicial review of ~~said~~ the order, the filed classification plan and the
10 filed rates may be used, charged and collected in the same manner as set out in G.S. 58-
11 40-45 of this Chapter. ~~Said~~ The order shall not affect any contract or policy made or
12 issued prior to the expiration of the period set forth in the order. All rates shall be on an
13 actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a
14 profit nor a loss. However, the rates made by or on behalf of the Facility with respect to
15 'clean risks', as defined above, shall not exceed the rates charged 'clean risks' who are not
16 reinsured in the Facility. The difference between the actual rate charged and the
17 actuarially sound and self-supporting rates for 'clean risks' reinsured in the Facility may
18 be recouped in similar manner as assessments pursuant to G.S. 58-37-40(f) or allocated
19 pursuant to G.S. 58-37-75. Rates shall not include any factor for underwriting profit on
20 Facility ~~business, but shall provide an allowance for contingencies.~~ business. There shall be a
21 strong presumption that the rates and premiums for the business of the Facility are neither
22 unreasonable nor excessive."

23 Sec. 4. G.S. 58-37-40(e) reads as rewritten:

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

29 The plan of operation shall provide for, among other matters, (i) the establishment of
30 necessary facilities, ~~facilities;~~ (ii) the management of the Facility, ~~Facility;~~ (iii) the
31 preliminary assessment of all members for initial expenses necessary to commence
32 operations, ~~operations;~~ (iv) the assessment of members if necessary to defray losses and
33 expenses, ~~expenses;~~ (v) the distribution of gains to defray losses incurred since the
34 effective date hereof and then to persons reinsured by the Facility, the recoupment of losses
35 sustained by the Facility, September 1, 1977; (vi) the distribution of gains by credit or
36 reduction of recoupment or allocation surcharges to policies subject to recoupment or
37 allocation surcharges pursuant to this Article (the Facility may apportion the distribution
38 of gains among the coverages eligible for cession pursuant to this Article); (vii) the
39 recoupment or allocation of losses sustained by the Facility since September 1, 1977,
40 pursuant to this Article, which losses may be recouped by equitable pro rata assessment
41 of member companies, ~~companies;~~ (viii) the standard amount (one hundred percent
42 (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a
43 member company may cede to the Facility, ~~Facility;~~ and (ix) the procedure by which

1 reinsurance shall be accepted by the Facility; and Facility. The plan shall further provide
2 that:

- 3 (1) Members of the Board of Governors shall receive reimbursement from
4 the Facility for their actual and necessary expenses incurred on Facility
5 business, en route to perform Facility business, and while returning
6 from Facility business plus a per diem allowance of twenty-five dollars
7 (\$25.00) a day which may be waived.
- 8 (2) In order to obtain a transfer of business to the Facility effective when
9 the binder or policy or renewal thereof first becomes effective, the
10 company must within 30 days of the binding or policy effective date
11 notify the Facility of the identification of the insured, the coverage and
12 limits afforded, classification data, and premium. The Facility shall
13 accept risks at other times on receipt of necessary information, but such
14 acceptance shall not be retroactive. The Facility shall accept renewal
15 business after the member on underwriting review elects to again cede
16 the business.

17 Any gains realized by the Facility that must be distributed under this subsection shall
18 bear interest from the date the Board adopted the amount of recoupment or allocation that
19 caused the gains. That interest rate shall be the average of the prime rates of the four
20 largest banking institutions domiciled in this State on the date the Board adopted the
21 amount of recoupment or allocation."

22 Sec. 5. If any section or provision of this act is declared unconstitutional or
23 invalid by the courts, it does not affect the validity of the act as a whole or any part other
24 than the part declared unconstitutional or invalid.

25 Sec. 6. This act is effective upon ratification.