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SENATE DRS15067-MH-13B* (01/08)

Short Title: Automobile Insurance Regulatory Modernization. (Public)

Sponsors: Senators Meredith, Pate, and Hise (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW NORTH CAROLINA CONSUMERS TO ENJOY THE BENEFITS OF
3 ENHANCED COMPETITION IN THE AUTOMOBILE AND MOTORCYCLE
4 INSURANCE MARKET AND TO RESTORE FAIRNESS BY ENDING SUBSIDIES
5 FOR HIGHER RISK DRIVERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 36A.

10 "Choice for Nonfleet Private Passenger Automobile Insurance.

11 **"§ 58-36A-1. Definitions.**

12 The following definitions apply in this Article:

13 (1) Nonfleet. – Defined in G.S. 58-40-10.

14 (2) Nonfleet private passenger motor vehicle insurance. – Coverage for theft of
15 and physical damage to nonfleet private passenger motor vehicles, for
16 liability insurance for motor vehicles, and for automobile medical payments
17 insurance, uninsured motorists coverage, and other insurance coverages
18 written in connection with the sale of liability insurance for motor vehicles.

19 (3) Private passenger motor vehicle. – Defined in G.S. 58-40-10.

20 **"§ 58-36A-5. Choice.**

21 By January 1, 2015, an insurer writing nonfleet private passenger motor vehicle insurance
22 shall elect to develop its rates and forms pursuant to either Article 36 or Articles 40 and 37A of
23 this Chapter. The insurer shall make its election by notifying the Commissioner in a form
24 prescribed by the Commissioner. An election shall remain in effect until revised by the insurer.
25 An insurer that makes no election shall develop its rates and forms pursuant to Article 36.

26 **"§ 58-36A-10. Applicability.**

27 Notwithstanding any provision in this Chapter to the contrary, with respect to its writing of
28 nonfleet private passenger motor vehicle insurance, Articles 40 and 37A of this Chapter have
29 no effect and are wholly inapplicable to an insurer that elects to develop its rates pursuant to
30 Article 36, and Article 36 has no effect and is wholly inapplicable to an insurer that elects to
31 develop its rates pursuant to Articles 40 and 37A except as otherwise specifically provided in
32 those Articles.

33 **SECTION 2.** G.S. 58-3-25 reads as rewritten:

34 **"§ 58-3-25. Discriminatory practices prohibited.**



1 (a) ~~No insurer shall after September 1, 1975, base any standard or rating plan for~~
 2 ~~private passenger automobiles or motorcycles, in whole or in part, directly or indirectly, upon~~
 3 ~~the age or sex of the persons insured.~~

4 (b) No insurer shall refuse to insure or refuse to continue to insure an individual, limit
 5 the amount, extent, or kind of coverage available to an individual, or charge an individual a
 6 different rate for the same coverage, solely because of blindness or partial blindness or deafness
 7 or partial deafness. With respect to all other physical conditions, including the underlying cause
 8 of the blindness or partial blindness or deafness or partial deafness, individuals who are blind or
 9 partially blind shall be subject to the same standards of sound actuarial principles or actual or
 10 reasonably anticipated experience as are sighted individuals or individuals whose hearing is not
 11 impaired. Refusal to insure or refusal to continue to insure includes denial by an insurer
 12 providing disability insurance on the grounds that the policy defines disability as being
 13 presumed in the event that the insured loses his eyesight or hearing: Provided that an insurer
 14 providing disability insurance may except disability coverage for blindness, partial blindness,
 15 deafness, or partial deafness when those conditions existed at the time the application was
 16 made for the disability insurance policy. The provisions of this subsection shall be construed to
 17 supplement the provisions of G.S. 58-63-15(7) and G.S. 168-10. This subsection shall apply
 18 only to the underwriting of life insurance, accident, health, or accident and health insurance
 19 under Articles 1 through 66 of this Chapter, and annuities.

20 (c) No insurer shall refuse to insure or refuse to continue to insure an individual; limit
 21 the amount, extent, or kind of coverage available to an individual; or charge an individual a
 22 different rate for the same coverage, because of the race, color, or national or ethnic origin of
 23 that individual. This subsection supplements the provisions of G.S. 58-3-120, 58-33-80,
 24 58-58-35, and 58-63-15(7)."

25 **SECTION 3.** Article 40 of Chapter 58 of the General Statutes reads as rewritten:

26 "Article 40.

27 "Regulation of Insurance Rates.

28 ...

29 **"§ 58-40-15. Scope of application.**

30 The provisions of this Article shall apply to all insurance on risks or on operations in this
 31 State, except:

- 32 (1) Reinsurance, other than joint reinsurance to the extent stated in
 33 G.S. 58-40-60;
- 34 (2) Any policy of insurance against loss or damage to or legal liability in
 35 connection with property located outside this State, or any motor vehicle or
 36 aircraft principally garaged and used outside of this State, or any activity
 37 wholly carried on outside this State;
- 38 (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine
 39 protection and indemnity, or other risks commonly insured under marine, as
 40 distinguished from inland marine, insurance policies;
- 41 (4) Accident, health, or life insurance;
- 42 (5) Annuities;
- 43 (6) Repealed by Session Laws 1985, c. 666, s. 43;
- 44 (7) Mortgage guaranty insurance;
- 45 (8) Workers' compensation and employers' liability insurance written in
 46 connection therewith;
- 47 (9) ~~For private passenger (nonfleet) motor vehicle liability insurance,~~
 48 ~~automobile medical payments insurance, uninsured motorists' coverage and~~
 49 ~~other insurance coverages written in connection with the sale of such~~
 50 ~~liability insurance;~~

(10) ~~Theft of or physical damage to nonfleet private passenger motor vehicles; except this Article applies to insurance against theft of or physical damage to motorcycles, as defined in G.S. 20-4.01(27)d.; and~~

(11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm dwellings, farm buildings and their appurtenant structures, farm personal property and other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor ~~vehicles unless insured under policies covering nonfleet private passenger motor vehicles;~~ vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

"§ 58-40-17. Private passenger motor vehicles; number of nonfleet policies.

Notwithstanding the definition of "nonfleet" in G.S. 58-40-10(2), an insurer may adopt rules, subject to the Commissioner's approval, that specify the circumstances under which more than four private passenger motor vehicles may be covered under a nonfleet private passenger motor vehicle policy that is subject to this Article.

"§ 58-40-30. Filing of rates and supporting data.

(a) With the exception of inland marine insurance that is not written according to manual rates and rating ~~plans, plans and rate filings~~ subject to Article 37A of this Chapter, every admitted insurer and every licensed statistical organization, which has been designated by any insurer for the filing of rates under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and amendments ~~thereto to rates~~ made by it for use in this State prior to the time they become effective.

(b) The Commissioner may require the filing of supporting data including:

- (1) The experience and judgment of the filer, and to the extent the filer wishes or the Commissioner requires, of other insurers or rating organizations;
- (2) The filer's interpretation of any statistical data relied upon; and
- (3) Descriptions of the methods employed in setting the rates.

(c) Upon written consent of the insured stating the insured's reasons, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, in accordance with rules adopted by the Commissioner. The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates or deductible, or both, are greater than those rates or deductibles, or both, that are applicable in the State of North Carolina. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner.

(d) This section and G.S. 58-41-50 shall be construed in pari materia.

"§ 58-40-145. Limitations and applicability.

1 (a) Nothing in this Article shall apply to any town or county farmers mutual fire
2 insurance association restricting its operations to not more than six adjacent counties in this
3 State, or to domestic insurance companies, associations, orders, or fraternal benefit societies
4 now doing business in this State on the assessment plan.

5 **"§ 58-40-150. Material misrepresentation on application for motor vehicle insurance**
6 **policy.**

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

12 (1) Cancel or refuse to renew the policy.

13 (2) Surcharge the policy.

14 (3) Recover from the applicant the appropriate amount of premium or surcharge
15 that would have been collected by the insurer had the applicant furnished the
16 correct information."

17 **SECTION 4.** G.S. 58-41-50 reads as rewritten:

18 **"§ 58-41-50. Policy form and rate filings; punitive damages; data required to support**
19 **filings.**

20 (a) With the exception of inland marine insurance that is not written according to
21 manual rates and rating plans, all policy forms must be filed with and either approved by the
22 Commissioner or 90 days have elapsed and he has not disapproved the form before they may be
23 used in this State. With respect to liability insurance policy forms, an insurer may exclude or
24 limit coverage for punitive damages awarded against its insured.

25 (b) With the exception of inland marine insurance that is not written according to
26 manual rates and rating ~~plans,~~ plans and rate filings subject to Article 37A of this Chapter, all
27 rates or prospective loss cost multipliers by licensed fire and casualty companies or their
28 designated statistical organizations must be filed with the Commissioner at least 60 days before
29 they may be used in this State. Any filing may become effective on a date earlier than that
30 specified in this subsection upon agreement between the Commissioner and the filer.

31 (c) ~~A~~ With the exception of nonfleet private passenger motor vehicle insurance filings,
32 a filing that does not include the statistical and rating information required by subsections (d)
33 and (e) of this section is not a proper filing, and will be returned to the filing insurer or
34 organization. The filer may then remedy the defects in the filing. An otherwise defective filing
35 thus remedied shall be deemed to be a proper filing, except that all periods of time specified in
36 this Article will run from the date the Commissioner receives additional or amended documents
37 necessary to remedy all material defects in the filing.

38 (d) The following information must be included in each policy form, rule, and rate
39 filing:

40 (1) A detailed list of the rates, rules, and policy forms filed, accompanied by a
41 list of those superseded; and

42 (2) A detailed description, properly referenced, of all changes in policy forms,
43 rules, and rates, including the effect of each change.

44 (e) Each policy form, rule, and rate filing that is based on statistical data must be
45 accompanied by the following properly identified information:

46 (1) North Carolina earned premiums at the actual and current rate level; losses
47 and loss adjustment expenses, each on paid and incurred bases without
48 trending or other modification for the experience period, including the loss
49 ratio anticipated at the time the rates were promulgated for the experience
50 period;

51 (2) Credibility factor development and application;

- (3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;
- (4) Trending factor development and application;
- (5) Changes in premium base resulting from rating exposure trends;
- (6) Limiting factor development and application;
- (7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;
- (8) Percent rate change;
- (9) Final proposed rates;
- (10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;
- (11) Identification of applicable statistical plans and programs and a certification of compliance with them;
- (12) Investment earnings on capital and surplus;
- (13) Level of capital and surplus needed to support premium writings without endangering the solvency of the company or companies involved; and
- (14) Such other information that may be required by any rule adopted by the Commissioner.

Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if the filer has not been required to collect such information pursuant to statistical plans or programs or to report such information to statistical agents, except where the Commissioner has given reasonable prior notice to the filer to begin collecting and reporting such information or except when the information is readily available to the filer.

(f) It is unlawful for an insurer to charge or collect, or attempt to charge or collect, any premium for insurance except in accordance with filings made with the Commissioner under this section and Article 40 of this Chapter.

(g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner.

(h) For purposes of this Article, "nonfleet" and "private passenger motor vehicle" shall be defined as set forth in G.S. 58-40-10."

SECTION 5. Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 37A.

"Motor Vehicle Insurance Flex-Rating.

"§ 58-37A-1. Scope.

The provisions of this Article shall apply only to nonfleet private passenger motor vehicle insurance written in this State by any insurer licensed by the Commissioner to write nonfleet private passenger motor vehicle insurance.

"§ 58-37A-5. Definitions.

The following definitions apply in this Article:

- (1) Excessive. – With respect to a rate filed under this Article, a rate that is likely to produce a long-term profit that is unreasonably high for the insurance provided.
- (2) Inadequate. – With respect to a rate filed under this Article, unreasonably low for the insurance coverage provided and, with continued use, likely to result in any of the following:
 - a. Endanger the solvency of insurers using the rate.

b. Substantially lessen competition among insurers.

c. Creation of a monopoly in the market for nonfleet private passenger motor vehicle insurance in the State.

(3) Nonfleet. – Defined in G.S. 58-40-10.

(4) Nonfleet private passenger motor vehicle insurance. – Coverage for theft of and physical damage to nonfleet private passenger motor vehicles, liability insurance motor vehicles, automobile medical payments insurance, uninsured motorists coverage, and other insurance coverages written in connection with the sale of liability insurance for motor vehicles.

(4) Private passenger motor vehicle. – Defined in G.S. 58-40-10.

(5) Unfairly discriminatory. – With respect to a rate filed under this Article, congruent with the standard in G.S. 58-40-20.

"§ 58-37A-10. Flex-Rating.

(a) Notwithstanding any other provision of this Chapter, a nonfleet private passenger motor vehicle insurance rate filing made by an insurer that provides for an overall statewide rate increase or decrease of no more than twelve percent (12%), when aggregated for all policyholders and all coverages subject to the filing, may take effect on or after the date it is filed. The filing and effective dates of the rate increase or decrease shall be decided by the insurer and set forth in the rate filing. No more than one rate change may be made by an insurer pursuant to the expedited process provided by this section during any 12-month period, unless a rate filing, when combined with any other rate filings made by that insurer within the 12-month period, does not result in an overall statewide rate increase or decrease of no more than twelve percent (12%) when aggregated for all policyholders and all coverages subject to the filing.

(b) Rate filings that provide for an overall statewide rate increase or decrease greater than twelve percent (12%), when aggregated for all policyholders and all coverages subject to the filing, shall be subject to Articles 40 and 41 of this Chapter.

(c) Notwithstanding any other provision of this Chapter, a filing subject to subsection (a) of this section submitted to the Commissioner shall be deemed to comply with G.S. 58-40-20 and approved by the Commissioner upon filing, and shall be presumed not to be excessive, inadequate, or unfairly discriminatory. The Commissioner may disapprove a filing subject to subsection (a) of this section only if the Commissioner determines after a hearing that the filing is excessive, inadequate, or unfairly discriminatory. The Commissioner's determination that the filing is excessive, inadequate, or unfairly discriminatory shall be supported by written findings specifying in detail the basis for the determination that the filing is excessive, inadequate, or unfairly discriminatory, and setting forth a reasonable future date on which the filing shall be considered no longer effective. An order by the Commissioner pursuant to this subsection shall apply prospectively only and shall not affect any contract of insurance issued or made before the effective date of the order.

"§ 58-37A-15. Limitation and applicability.

(a) Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State, or to domestic insurance companies, associations, orders, or fraternal benefit societies now doing business in this State on the assessment plan.

(b) The requirements of G.S. 58-36-90 and G.S. 58-36-95 shall also apply to an insurer that elects to develop its private passenger auto and motorcycle rates and forms pursuant to this Article."

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

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

...

(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

1 statutory statistical organization or bureau on its behalf and shall be filed with the
2 Commissioner. The Board of Governors shall establish a separate subclassification within the
3 Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a
4 nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal
5 operator, and each licensed operator in the owner's household have two years' driving
6 experience as licensed drivers and if none of the persons has been assigned any Safe Driver
7 Incentive Plan points under Article 36 of this Chapter during the three-year period immediately
8 preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date
9 of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by
10 reference any other material on file with the Commissioner. Rates shall be neither excessive,
11 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is
12 either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order
13 specifying in what respect it is deficient and stating when, within a reasonable period thereafter,
14 the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of
15 this Chapter. Pending judicial review of said order, the filed classification plan and the filed
16 rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this
17 Chapter. The order shall not affect any contract or policy made or issued before the expiration
18 of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be
19 calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made
20 by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged
21 "clean risks" who are not reinsured in the Facility. Facility, except that rates for "clean risks" on
22 policies reinsured by the Facility that become effective on or after January 1, 2014, shall be
23 established on a schedule that provides that any difference between rates charged for "clean
24 risks" reinsured in the Facility on policies becoming effective immediately prior to January 1,
25 2014, and the actuarially sound rate for all risks reinsured by the Facility shall be eliminated
26 over a five-year period ending on December 31, 2018. The Any difference between the actual
27 rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in
28 the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates
29 shall not include any factor for underwriting profit on Facility business, but shall provide an
30 allowance for contingencies. There shall be a strong presumption that the rates and premiums
31 for the business of the Facility are neither unreasonable nor excessive.

32"

33 **SECTION 6.(b)** G.S. 58-37-35, as rewritten by Section 6(a) of this act, reads as
34 rewritten:

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

36 ...

37 (1) The classifications, rules, rates, rating plans and policy forms used on motor vehicle
38 insurance policies reinsured by the Facility may be made by the Facility or by any licensed or
39 statutory statistical organization or bureau on its behalf and shall be filed with the
40 Commissioner. ~~The Board of Governors shall establish a separate subclassification within the~~
41 ~~Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a~~
42 ~~nonfleet private passenger motor vehicle as defined in G.S. 58 40 10, if the owner, principal~~
43 ~~operator, and each licensed operator in the owner's household have two years' driving~~
44 ~~experience as licensed drivers and if none of the persons has been assigned any Safe Driver~~
45 ~~Incentive Plan points under Article 36 of this Chapter during the three year period immediately~~
46 ~~preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date~~
47 ~~of preparation of a renewal of a motor vehicle insurance policy.~~ The filings may incorporate by
48 reference any other material on file with the Commissioner. Rates shall be neither excessive,
49 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is
50 either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order
51 specifying in what respect it is deficient and stating when, within a reasonable period thereafter,

1 the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of
2 this Chapter. Pending judicial review of said order, the filed classification plan and the filed
3 rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this
4 Chapter. The order shall not affect any contract or policy made or issued before the expiration
5 of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be
6 calculated, insofar as is possible, to produce neither a profit nor a loss. ~~However, the rates made~~
7 ~~by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged~~
8 ~~"clean risks" who are not reinsured in the Facility, except that rates for "clean risks" on policies~~
9 ~~reinsured by the Facility that become effective on or after January 1, 2014 shall be established~~
10 ~~on a schedule that provides that any difference between rates charged for "clean risks"~~
11 ~~reinsured in the Facility on policies becoming effective immediately prior to January 1, 2014~~
12 ~~and the actuarially sound rate for all risks reinsured by the Facility shall be eliminated over a~~
13 ~~five-year period ending on December 31, 2018. Any difference between the actual rate charged~~
14 ~~and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility~~
15 ~~may be recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not~~
16 include any factor for underwriting profit on Facility business, but shall provide an allowance
17 for contingencies. There shall be a strong presumption that the rates and premiums for the
18 business of the Facility are neither unreasonable nor excessive.

19"

20 **SECTION 7.** On or before October 1, 2016, and again on or before October 1,
21 2018, the Executive Director and the Chair of the Board of Governors of the North Carolina
22 Reinsurance Facility shall report to the Joint Legislative Commission on Governmental
23 Operations on the size and market share of the Reinsurance Facility and present the
24 Reinsurance Facility's analysis of the effect of this act in reducing the size of the Reinsurance
25 Facility.

26 **SECTION 8.** Sections 6(a) and 7 of this act become effective January 1, 2014.
27 Section 6(b) of this act becomes effective January 1, 2019. The remainder of this act becomes
28 effective January 1, 2015.