

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 828
HOUSE BILL 658

AN ACT TO REPEAL ARTICLES 13, 13A, 13B AND 25 OF GENERAL STATUTES CHAPTER 58 RELATING TO THE FIRE INSURANCE RATING BUREAU, FIRE AND CASUALTY INSURANCE RATE REGULATIONS, AND REGULATION OF AUTOMOBILE LIABILITY INSURANCE RATES; TO PROVIDE A NEW METHOD OF RATE REGULATION; AND TO AMEND CHAPTERS 58 AND 97 TO CONSOLIDATE THE FUNCTIONS OF THE FIRE INSURANCE RATING BUREAU, THE COMPENSATION RATING AND INSPECTION BUREAU, AND THE AUTOMOBILE RATE ADMINISTRATIVE OFFICE; AND TO ASSURE THE PROPER OPERATION OF THE NORTH CAROLINA REINSURANCE FACILITY ON A SUSTAINING BUT NONPROFIT BASIS.

The General Assembly of North Carolina enacts:

Section 1. Articles 13, 13A, 13B and 25 of G.S. Chapter 58 are repealed in their entirety.

Sec. 2. Chapter 58 of the General Statutes is amended by adding a new Article 13C to read as follows:

"ARTICLE 13C.

"Regulation of Insurance Rates.

"§ 58-131.34. **Purposes.** — The purposes of this Article are

- (1) to promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;
- (2) to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers;
- (3) to encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;
- (4) to authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and
- (5) to encourage the most efficient and economic marketing practices.

"§ 58-131.35. **Definitions.** — As used in this Article:

- (1) 'Advisory organization' means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.
- (2) 'Commissioner' means the Commissioner of Insurance.

- (3) 'Inland marine insurance' shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.
- (4) 'Member', unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.
- (5) 'Rating organization' means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-131.45, G.S. 58-131.46, G.S. 58-131.47 and G.S. 58-131.48, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.
- (6) 'Subscriber', unless otherwise apparent from the context, means an insurer which is furnished at its request (a) with rates and rating manuals by a rating organization of which it is not a member, or (b) with advisory services by an advisory organization of which it is not a member.
- (7) 'Willful' means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.
- (8) 'Private passenger motor vehicle' means:
 - (a) a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
 - (b) a motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or
 - (c) a motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.
- (9) 'Nonfleet' motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or less motor vehicles owned or hired under a long-term contract by the policy named insured.

"§ 58-131.36. Scope of application. — The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

- (1) reinsurance, other than joint reinsurance to the extent stated in G.S. 58-131.45;
- (2) any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;
- (3) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

- (4) accident, health, or life insurance;
- (5) annuities;
- (6) title insurance;
- (7) mortgage guaranty insurance;
- (8) workmen's compensation and employers' liability insurance written in connection therewith;
- (9) for private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance;
- (10) theft of or physical damage to private passenger (nonfleet) motor vehicles; 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.

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

"§ 58-131.37. Rate standards. — (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) Rates are not excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. It is presumed that a reasonable degree of price competition exists if there are a number of insurers actively engaged in the class of business and there are rate differentials in that class of business.

(c) If such competition does not exist, rates are excessive if they clearly produce a long-run underwriting profit that is unreasonably high for the class of business.

(d) No rate shall be held to be inadequate unless (1) the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer, or unless (2) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(e) A rate is not unfairly discriminatory in relation to another in the same class if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy.

"§ 58-131.38. Rating methods. — In determining whether rates comply with the standards under G.S. 58-131.37, the following criteria shall be applied:

- (1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; provided, however, that countrywide expense and loss experience and other countrywide data shall be considered where credible North Carolina experience or data is not available.
- (2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards

for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

- (3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience.

"§ 58-131.39. Filing of rates and supporting data. — (a) Except as to inland marine risks which by general custom of the business are not written according to manual rates and rating plans, every admitted insurer and every licensed rating organization, which has been designated by any insurer for the filing of rates under G.S. 58-131.41, shall file with the commissioner all rates and all changes and amendments thereto 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 his reasons therefor, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, provided that it is filed with the commissioner in accordance with Subsection (a) of this section.

"§ 58-131.40. Filing open to inspection. — Each filing and supporting data filed under this Article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

"§ 58-131.41. Delegation of rate making and rate filing obligation. — (a) An insurer may itself establish rates based on the factors in G.S. 58-131.38 or it may use rates prepared by a rating organization, with average expense factors determined by the rating organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-131.39 by giving notice to the commissioner that it uses rates prepared by a designated rating organization, with such information about modifications thereof as are necessary to fully inform the commissioner. The insurer's rates shall be those filed from time to time by the rating organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer.

"§ 58-131.42. Disapproval of rates; interim use of rates. — (a) If the commissioner finds after a hearing that a rate is not in compliance with G.S. 58-131.37, he shall issue an order specifying in what respects it so fails, and stating when, following a reasonable period thereafter, the rate shall be deemed no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(b) Whenever a rate of an insurer is held to be unfairly discriminatory or excessive and the rate is deemed no longer effective by order of the commissioner issued under subsection (a) of this section, the insurer shall have the option to continue to use the rate for the interim period pending judicial review of the order, provided that the insurer shall place in an escrow account approved by the commissioner the purported unfairly discriminatory or excessive portion of the premium collected during the interim period. The court, upon a final determination, shall order

the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

"§ 58-131.43. Rating organizations. — (a) No rating organization shall provide any service relating to rates subject to this Article and no insurer shall utilize the service of such organization for such purpose unless the organization has obtained a license from the commissioner.

(b) No rating organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A rating organization applying for a license shall include with its application:

- (1) a copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
- (2) a list of its members and subscribers;
- (3) the name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the commissioner may be served;
- (4) a statement showing its technical qualifications for acting in the capacity for which it seeks a license; and
- (5) any other relevant information and documents that the commissioner may require.

(d) If the commissioner finds that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the commissioner.

(f) Every rating organization providing services in this State on the effective date of this Article may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after the effective date of this Article.

"§ 58-131.44. Advisory organizations. — (a) No advisory organization shall conduct its operations in this State unless and until it has filed with the commissioner:

- (1) a copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;
- (2) a list of its members and subscribers; and
- (3) the name and address of a resident of this State upon whom notices, process affecting it, or orders of the commissioner may be served.

(b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the commissioner.

(c) No advisory organization shall engage in any unfair or unreasonable practice with respect to its activities.

"§ 58-131.45. Joint underwriting and joint reinsurance organizations. — (a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall file with the commissioner:

- (1) a copy of its constitution, articles of incorporation, agreement, or association, and bylaws;

- (2) a list of its members; and
- (3) the name and address of a resident of this State upon whom notices, process affecting it, or orders of the commissioner may be served.

(b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the commissioner.

(c) If after a hearing, the commissioner finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, he may issue a written order specifying in what respects the activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, and requiring the discontinuance of the activity or practice.

"§ 58-131.46. Insurers authorized to act in concert. — Subject to and in compliance with the provisions of this Chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

"§ 58-131.47. Insurers authorized to act in concert; admitted insurers with common ownership or management; matters relating to co-surety bonds. — With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. To the extent that such matters relate to co-surety bonds, two or more admitted insurers executing co-surety bonds are authorized to act in concert between or among themselves the same as if they constituted a single insurer.

"§ 58-131.48. Agreements to adhere. — No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section shall not apply to apportionment agreements among insurers approved by the commissioner pursuant to G.S. 58-131.52: Provided, however, that members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, consistently or intermittently use the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

"§ 58-131.49. Exchange of information or experience data; consultation with rating organizations and insurers. — Rating organizations licensed pursuant to G.S. 58-131.43 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with rating organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems.

"§ 58-131.50. Recording and reporting of experience. — The commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order

that the experience of such insurers may be made available to him. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The commissioner may designate one or more rating organizations to assist him in gathering and making compilations of such experience.

"§ 58-131.51. Examination of rating, joint underwriting, and joint reinsurance organizations. — The commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-131.43 and each advisory organization licensed pursuant to G.S. 58-131.44. He may, as often as he may deem it expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-131.45. Such examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The reasonable cost of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, account, documents or agreements governing its method of operation. In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of such state.

"§ 58-131.52. Apportionment agreements among insurers. — Agreements may be made between or among insurers with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The insurers may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the commissioner.

"§ 58-131.53. Request for review of rate, rating plan, rating system or underwriting rule. — Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the commissioner, and shall specify the grounds relied upon. If the commissioner has information concerning a similar complaint he may deny the hearing. If the commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-131.54.

"§ 58-131.54. Hearing and judicial review. — (a) Any insurer, person, or organization to which the commissioner has directed an order or decision made without a hearing may, within 30 days after notice to it of the order or decision, make written request to the commissioner for a hearing thereon. The commissioner shall hear the party or parties within 20 days after receipt of the request and shall give not less than 10 days' written notice of the time and place of hearing. Within 15 days after the hearing, the commissioner shall affirm, reverse, or modify his previous action, and specify his reasons therefor. Pending such hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

(b) Any order or decision of the commissioner shall be subject to judicial review as provided in Article 2 of this Chapter.

"§ 58-131.55. Penalties. — (a) The commissioner may, if he finds that any person or organization has violated any provision of this Article, impose a penalty of not more than five hundred dollars (\$500.00) for each such provision violated; but if he finds such violation to be

willful, he may impose a penalty of not more than five thousand dollars (\$5,000) for each such provision violated. Such penalties may be in addition to any other penalty provided by law.

(b) The commissioner may suspend the license of any rating organization or insurer that fails to comply with an order of the commissioner within the time limited by such order, or within any extension thereof that the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of a license shall become effective, and such suspension shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization, and specifying the alleged violation.

"§ 58-131.56. Policy forms. — Except for fidelity, surety, or guaranty bonds and except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, no policy form applying to insurance on risks or operations covered by this Article shall be delivered or issued for delivery unless it has been filed with the commissioner and either he has approved it, or 90 days have elapsed and he has not disapproved it.

"§ 58-131.57. Existing rates, rating systems, territories, classifications and policy forms. — Rates, rating systems, territories, classifications, and policy forms lawfully in use on the effective date of this Article may continue to be used thereafter, notwithstanding any provision of this Article.

"§ 58-131.58. Payment of dividends not prohibited or regulated; plan for payment into rating system. — Nothing in this Article shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system.

"§ 58-131.59. Notice of coverage or rate change. — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article.

"§ 58-131.60. Limitation. — Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan."

Sec. 3. G.S. 58-176(c), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by deleting from lines 3 and 4 the words, "for the North Carolina Fire Insurance Rating Bureau."

Sec. 4. G.S. 58-27.2(a), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by deleting from lines 2, 6, and 11 the word "bureau" and substituting therefor the word "organization".

Sec. 5. G.S. 58-27.2(b), as it appears in the 1975 Replacement Volume 2B of the General Statutes, is amended by deleting from lines 1 and 5 the word "bureaus" and substituting therefor the word "organizations".

Sec. 6. Chapter 58 of the General Statutes of North Carolina is hereby amended by the addition of a new Article thereto to be designated "Article 12B" reading as follows:

"ARTICLE 12B.

"North Carolina Rate Bureau.

"§ 58-125. North Carolina Rate Bureau created. — There is hereby created a bureau to be known as the 'North Carolina Rate Bureau', with the following objects and functions:

- (1) To assume the functions formerly performed by the North Carolina Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for theft of and physical damage to private passenger (nonfleet) motor vehicles as the same are defined under Article 13C of this Chapter; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith.
- (2) The bureau shall provide reasonable means to be approved by the commissioner whereby any person affected by a rate made by it may be heard in person or by his authorized representative before the governing committee or other proper executive of the bureau.
- (3) The bureau shall have the duty and responsibility of promulgating and proposing rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith. The provisions of this subdivision shall not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles.
- (4) Agreements may be made between or among members with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The members may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the commissioner.
- (5) It shall be the duty of all insurers underwriting workers' compensation insurance in this State and being members of the bureau, as defined in this section and G.S. 58-126 to insure and accept any workers' compensation insurance risk which shall have been certified to be 'difficult to place' by any fire and casualty insurance agent licensed in this State. When any such risk is called to the attention of the North Carolina Rate Bureau and it appears that said risk is in good faith entitled to such coverage, the bureau shall fix

the initial premium therefor, (subject to the approval of the Insurance Commissioner), and upon its payment said bureau shall designate a member whose duty it shall be to issue a standard workers' compensation policy of insurance containing the usual and customary provisions found in such policies therefor. Upon receipt of the required premium at the office of the bureau during regular working hours the bureau shall instruct the designated carrier to issue its policy of insurance to become effective as of 12:01 a.m. the following day, and the carrier shall be so bound; provided, that the carrier may request of the bureau a certificate of the Department of Labor that the insured is complying with the laws, rules and regulations of that department. Said certificate shall be furnished within 30 days by the Department of Labor, unless extension of time is granted by agreement between the bureau and the Department of Labor. The bureau shall make and adopt such rules as may be necessary to carry this section into effect, subject to final approval of the Insurance Commissioner. As a prerequisite to the transaction of worker's compensation insurance in this State every member of said bureau writing such insurance shall file with the Insurance Commissioner written authority permitting said bureau to act in its behalf as provided in this section, and an agreement to accept such risks as are assigned to said insurance by said bureau, as provided in this section.

"§ 58-126. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses. — (a) Before the Commissioner of Insurance shall grant permission to any stock, nonstock, or reciprocal insurance company or any other insurance organization to write in this State 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 or other insurance coverages written in connection with the sale of such property insurance; or insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; or liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage or other insurance coverage written in connection with the sale of such liability insurance; or workers' compensation and employers' liability insurance written in connection therewith; it shall be a requisite that they shall subscribe to and become members of the bureau.

(b) Each member of the bureau writing any one or more of the above lines of insurance in North Carolina shall, as a requisite thereto, be represented in the bureau and shall be entitled to one representative and one vote in the administration of the affairs of the bureau. They shall, upon organization, elect a governing committee which governing committee shall be composed of equal representation by stock and nonstock members.

(c) The bureau, when created, shall adopt such rules and regulations for its orderly procedure as shall be necessary for its maintenance and operation. No such rules and regulations shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. The expense of such bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the bureau the necessary expense of the bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee. The bureau shall be empowered to subscribe for or purchase any necessary service, and employ and fix the salaries of such personnel and assistants as are necessary.

(d) The Commissioner of Insurance is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the underwriting experience of lines of insurance referred to in this Article, and this information shall be available and for the use of the bureau for the capitulation and promulgation of rates on lines of insurance as are subject to the rate-making authority of the bureau.

"§ 58-127. Method of rate making; factors considered. — The following standards shall apply to the making and use of rates:

- (1) Rates shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to past and prospective loss 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 past and prospective expenses specially applicable to this State, and to all other relevant factors including judgment factors, deemed relevant, within this State; provided, however, that countrywide expense and loss experience and other countrywide data shall be considered where credible North Carolina experience or data is not available.
- (3) In the case of fire insurance rates, as are subject to the rate-making authority of the bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which such experience is available.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The bureau is directed to establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of the effective date hereof. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence.

"§ 58-128. Filing rates, plans with commissioner; public inspection of filings. — (a) The bureau shall file with the commissioner copies of the rates, classification plans, rating plans and rating systems used by its members. Each filing shall become effective immediately on the date specified therein but not earlier than 90 days from the date such filing is received by the commissioner.

(b) A filing shall be open to public inspection immediately upon submission to the commissioner.

(c) The bureau shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(d) On or before July 1 of each calendar year the bureau shall submit to the commissioner for the motor vehicle liability insurance subject to the provisions of this Article

the experience, data, statistics, and information referred to in subsection (c) of this section and a rate review based on such data.

"§ 58-129. Disapproval; hearing, order; adjustment of premium, review of filing. — (a) At any time within 30 days from and after the date of any filing, the commissioner may give written notice to the bureau specifying in what respect and to what extent he contends such filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. At such hearing the factors specified in G.S. 58-127 shall be considered. If the commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which such filing shall no longer be effective. Any order of disapproval under this section must be entered within 90 days of the date such filing is received by the commissioner.

(b) In the event that no notice of hearing shall be issued within 30 days from the date of any such filing, the filing shall be deemed to be approved. If the commissioner disapproves such filing pursuant to subsection (a) as not being in compliance with G.S. 58-127, he may order an adjustment of the premium to be made with the policyholder either by refund or collection of additional premium, if the amount is substantial and equals or exceeds the cost of making the adjustment. The commissioner may thereafter review any such filing in the manner provided, but if so reviewed, no adjustment of premium may be ordered.

"§ 58-130. Appeal of commissioner's order. — (a) Any order or decision of the commissioner shall be subject to judicial review as provided in Article 2 of this Chapter.

(b) Whenever a bureau rate is held to be unfairly discriminatory or excessive and no longer effective by order of the commissioner issued under G.S. 58-129, the members of the bureau shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided each such member shall place in escrow account the purportedly unfairly discriminatory or excessive portion of the premium collected during such interim period and the court, upon a final determination, shall order the escrowed funds to be distributed appropriately, except that refunds that are de minimis shall not be required. The court may also require that purportedly excess premiums resulting from an adjustment of premiums ordered pursuant to G.S. 58-129(b) be placed in such escrow account pending judicial review. The amounts escrowed hereunder shall bear interest at the prime rate as of the date such rates were put into effect, but in no event, less than the legal rate, from the date of the commissioner's order relating thereto.

"§ 58-131. Deviations. — (a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the bureau. However, an insurer may deviate from the rates promulgated by the bureau provided the insurer has filed the deviation to be applied both with the bureau and the commissioner, and provided the said deviation is uniform in its application to all risks in the State of the class to which such deviation is to apply; and provided such deviation is approved by the commissioner. The commissioner shall approve proposed deviations if the same do not render the rates excessive, inadequate or unfairly discriminatory. If approved the deviation shall remain in force for a period of one year from the date of approval by the commissioner. Such deviation may be renewed annually subject to all of the foregoing provisions. Those portions of this section providing for deviations shall not apply to workers' compensation and employers' liability insurance written in connection therewith.

(b) A rate in excess of that promulgated by the bureau may be charged on any specific risk provided such higher rate is charged with the approval of the commissioner and with the knowledge and written consent of the insured.

"§ 58-131.2. Appeal to commissioner from decision of bureau. — Any member of the bureau may appeal to the commissioner from any decision of the bureau and the commissioner shall, after a hearing held on not less than 10 days' written notice to the appellant and to the bureau, issue an order approving the decision of the bureau or directing it to give further consideration to such proposal. In the event the bureau fails to take satisfactory action, the commissioner shall make such order as he may see fit.

"§ 58-131.3. Existing rates, rating systems, territories, classifications and policy forms. — Rates, rating systems, territories, classifications and policy forms lawfully in use on the effective date of this Article may continue to be used thereafter, notwithstanding any provision of this Article.

"§ 58-131.4. Cap on automobile insurance rate increases. — Notwithstanding any other provision of this Article or Chapter, and with respect to private passenger (nonfleet) automobile liability insurance, automobile medical payments insurance, uninsured motorists coverage, and private passenger (nonfleet) automobile physical damage insurance, neither the North Carolina Rate Bureau nor any member thereof nor the North Carolina Motor Vehicle Reinsurance Facility shall increase the total combined general rate level for these coverages by more than twelve percent (12%) from the general rate level existing at the time of the ratification of this Article, provided that such increase shall not exceed six percent (6%) on or prior to July 1, 1978. Provided, however, the prohibition specified in this section shall terminate on July 1, 1979.

"§ 58-131.5. Notice of coverage or rate change. — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article.

"§ 58-131.6. Limitation.— Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan."

Sec. 7. G.S. 97-400(a) as the same appears in the 1972 Replacement Volume of Volume 2D of the General Statutes of North Carolina is hereby rewritten in its entirety to read as follows:

"(a) The rates charged by all carriers of insurance, including the parties to any mutual insurance association writing insurance against the liability for compensation under this Article, shall be fair, reasonable, and adequate."

Sec. 8. Article 2 of Chapter 97 of the General Statutes of North Carolina is hereby repealed in its entirety.

Sec. 9. G.S. 58-30.4, as the same appears in the 1975 Cumulative Supplement to Volume 2B of the General Statutes of North Carolina, is hereby amended to read as follows:

"The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or

having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof, and the premium income from insureds subject to this premium surcharge shall provide not less than one-fourth of the total premium income of insurers in writing and servicing the aforesaid coverages in this State.

The classification plans and subclassification plans so promulgated by the bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-128, G.S. 58-129, and G.S. 58-130."

Sec. 10. G.S. 58-248.26, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by deleting in its entirety subdivision (10) thereof and amending subdivision (1) thereof to read as follows:

"(1) 'Cede' or 'cession' means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility."

Sec. 11. G.S. 58-248.32, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by designating the present provisions of said section as "subsection (a)" and by adding thereto the following subsection to be designated "subsection (b)" and reading as follows:

"(b) It shall be the responsibility of the agent to write the coverage applied for at what he believes to be the appropriate rate level. If coverage is written at the facility rate level and the company elects not to cede, the policy shall be rated at the voluntary rate level. Coverage written at the voluntary rate level which is not acceptable to the company must either be placed with another company or rated at the facility rate level by the agent."

Sec. 12. G.S. 58-248.29, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by deleting the words "or gain" therefrom which appear in line 3 thereof following the word "assessments".

Sec. 13. G.S. 58-248.30, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this section to read as follows:

"§ 58-248.30. Merger, consolidation or cession. — When a member has been merged or consolidated into another insurer, or has reinsured its entire motor vehicle liability insurance business in the State with another insurer, such company or its successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the facility according to the rules of operation."

Sec. 14. Subsection (a) of G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this subsection to read as follows:

"(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."

Sec. 15. Subdivision (2) of subsection (g) of G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this subdivision to read as follows:

"(2) To receive and record cessions."

Sec. 16. Subdivision (6) of subsection (g) of G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this subdivision to read as follows:

"(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 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 his 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.

If no insurer is willing to contract with any such agent on terms acceptable to the board, the facility shall license such agents to write directly on behalf of the facility. However, for this purpose, the facility does not act as an insurer, but only as the statutory agent of all the members of the facility which shall be bound on risks written by the facility's appointed agent. Adequate provision shall be made by the facility to assure that business produced by designated agents which would meet the underwriting criteria of the company shall be written at the voluntary rate and not at the facility rate if higher. 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 carriers shall be appropriately classified and rated. To this end, the same underwriting criteria for classification and rates used for its voluntary agents shall be used by the servicing carrier servicing such facility agents in order to determine whether the voluntary rate or the facility rate shall apply. All business produced by designated agents or facility agents may be ceded to the facility."

Sec. 17. Subdivision (8) of subsection (g) of G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this subdivision to read as follows:

- "(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. 58-248.34(f) 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."

Sec. 18. Subdivision (10) of subsection (g) of G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this subdivision to read as follows:

- "(10) To accept all risks submitted in accordance with this Article."

Sec. 19. G.S. 58-248.33, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by the addition of the following two subsections, to be designated subsections (l) and (m), and reading as follows:

"(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 rating organization or bureau on its behalf and shall be filed with the commissioner. The commissioner may establish separate sub-classifications within the facility for clean risks as defined by the commissioner. Such 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, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said 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 Section 131.42 of this Chapter. Said order shall not affect any contract or policy made or issued prior to 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, if the commissioner determines, after hearing, that any class reinsured in the facility is entitled to a subsidy, the commissioner can order that such subsidy shall be provided in which event the difference between the actual rate charged and the actuarially sound and self-supporting rates for such class shall be recouped in similar manner as assessments pursuant to G.S. 58-248.34(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 semi-annual and quarterly premium terms."

Sec. 20. Subsection (e) of G.S. 58-248.34, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this section to read as follows:

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

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members if necessary to defray losses and expenses, the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the facility, the recoupment of losses sustained by the facility, which losses may be recouped either through surcharging persons reinsured by the facility or by equitable pro rata assessment of member companies, the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the facility, and the procedure by which reinsurance shall be accepted by the facility; and shall further provide that:

- (1) Members of the board of governors shall receive reimbursement from the facility for their actual and necessary expenses incurred on facility business, en route to perform facility business, and while returning from facility business plus a per diem allowance of twenty-five dollars (\$25.00) a day which may be waived.
- (2) In order to obtain a transfer of business to the facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The facility shall accept risks at other

times on receipt of necessary information, but such acceptance shall not be retroactive. The facility shall accept renewal business after the member on underwriting review elects to again cede the business."

Sec. 21. G.S. 58-248.34, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by the addition of three subsections to be designated subsections (f), (g) and (h) thereto and reading as follows:

"(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, commence recoupment of that assessment by way of an identifiable surcharge on motor vehicle insurance policies issued by the member or through the facility until the assessment has been recouped. Such surcharge may be at a percentage of premium or dollar amount per policy adopted by the board of governors of the facility. With the exception of the recoupment provided for in G.S. 58-248.33(l) and with the exception of the surcharge against persons reinsured by the facility as provided for in G.S. 58-248.34(e), recoupment, if necessary, shall not be made based on loss or expense experience prior to July 1, 1979. If the amount collected during the period of surcharge exceeds assessments paid by the member to the facility, the member shall pay over the excess to the facility at a date specified by the board of governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the facility, the facility shall pay the difference to the member. The amount of recoupment shall not be considered or treated as premium for any purpose.

(g) The plan of operation shall provide that all investment income from the premium on business reinsured by the facility shall be retained by or paid over to the facility. In determining the cost of operation of the facility, all investment income shall be taken into consideration.

(h) The plan of operation shall provide for audit of the annual statement of the facility by independent auditor approved by the Legislative Services Commission."

Sec. 22. G.S. 58-248.35, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this section to read as follows:

"§ 58-248.35. Procedure for cession provided in plan of operation. — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation."

Sec. 23. G.S. 58-248.37, as the same appears in the 1975 Replacement Volume 2B of the General Statutes, is hereby amended by rewriting this section to read as follows:

"§ 58-248.37. Exemption from requirements of this Article of companies and their agents. — The board of governors may exempt a company and its agents from the requirements of this Article, insofar as new business is concerned. The board may further exempt a company and its agents from the requirements of this Article regarding the selling and servicing a particular category of business, if the company is not qualified to service the business."

Sec. 24. If any provision of this act or the application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions or application that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 25. This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy.

In the General Assembly read three times and ratified, this the 30th day of June, 1977.