

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 490

Short Title: Automobile Insurance Regulatory Modernization. (Public)

Sponsors: Senators Rucho; Brock and Rouzer.

Referred to: Insurance.

April 4, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE NONFLEET PRIVATE PASSENGER AUTOMOBILE
3 AND MOTORCYCLE INSURANCE REGULATORY ENVIRONMENT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 36 of Chapter 58 of the General Statutes reads as rewritten:

6 "Article 36.

7 "North Carolina Rate Bureau.

8 **"§ 58-36-1. North Carolina Rate Bureau created.**

9 There is hereby created a Bureau to be known as the "North Carolina Rate Bureau," with
10 the following objects and functions:

11 (1) To assume the functions formerly performed by the North Carolina Fire
12 Insurance Rating Bureau, the North Carolina Automobile Rate
13 Administrative Office, Bureau and the Compensation Rating and Inspection
14 Bureau of North Carolina, with regard to the promulgation of rates, for
15 insurance against loss to residential real property with not more than four
16 housing units located in this State and any contents thereof and valuable
17 interest therein and other insurance coverages written in connection with the
18 sale of such property insurance; ~~except as provided in G.S. 58-36-3(a)(6), for~~
19 ~~theft of and physical damage to nonfleet private passenger motor vehicles;~~
20 ~~for liability insurance for such motor vehicles, automobile medical payments~~
21 ~~insurance, uninsured motorists coverage and other insurance coverages~~
22 ~~written in connection with the sale of such liability insurance; and for~~
23 workers' compensation and employers' liability insurance written in
24 connection therewith except for insurance excluded from the Bureau's
25 jurisdiction in G.S. 58-36-1(3).

26 (2) The Bureau shall provide reasonable means to be approved by the
27 Commissioner whereby any person affected by a rate or loss costs made by
28 it may be heard in person or by the person's authorized representative before
29 the governing committee or other proper executive of the Bureau.

30 (3) The Bureau shall promulgate and propose rates for insurance against loss to
31 residential real property with not more than four housing units located in this
32 State and any contents thereof or valuable interest therein and other
33 insurance coverages written in connection with the sale of such property
34 insurance; ~~for insurance against theft of or physical damage to nonfleet~~
35 ~~private passenger motor vehicles; for liability insurance for such motor~~
36 ~~vehicles, automobile medical payments insurance, uninsured and~~
37 ~~underinsured motorists coverage and other insurance coverages written in~~



1 ~~connection with the sale of such liability insurance; and, as provided in~~
2 ~~G.S. 58-36-100, for loss costs and residual market rate filings for workers'~~
3 ~~compensation and employers' liability insurance written in connection~~
4 ~~therewith. This subdivision does not apply to motor vehicles operated under~~
5 ~~certificates of authority from the Utilities Commission, the Interstate~~
6 ~~Commerce Commission, or their successor agencies, where insurance or~~
7 ~~other proof of financial responsibility is required by law or by regulations~~
8 ~~specifically applicable to such certificated vehicles.~~

9 (4) Agreements may be made between or among members with respect to
10 equitable apportionment among them of insurance which may be afforded
11 applicants who are in good faith entitled to but who are unable to procure
12 such insurance through ordinary methods. The members may agree between
13 or among themselves on the use of reasonable rate modifications for such
14 insurance, agreements, and rate modifications to be subject to the approval
15 of the Commissioner.

16 (5) a. It is the duty of every insurer that writes workers' compensation
17 insurance in this State and is a member of the Bureau, as defined in
18 this section and G.S. 58-36-5 to insure and accept any workers'
19 compensation insurance risk that has been certified to be "difficult to
20 place" by any fire and casualty insurance agent who is licensed in
21 this State. When any such risk is called to the attention of the Bureau
22 by receipt of an application with an estimated or deposit premium
23 payment and it appears that the risk is in good faith entitled to such
24 coverage, the Bureau will bind coverage for 30 days and will
25 designate a member who must issue a standard workers'
26 compensation policy of insurance that contains the usual and
27 customary provisions found in those policies. Multiple coordinated
28 policies, as defined by the Bureau and approved by the
29 Commissioner, may be used for the issuance of coverage under this
30 subdivision for risks involved in employee leasing arrangements.
31 Coverage will be bound at 12:01 A.M. on the first day following the
32 postmark time and date on the envelope in which the application is
33 mailed including the estimated annual or deposit premium, or the
34 expiration of existing coverage, whichever is later. If there should be
35 no postmark, coverage will be effective 12:01 A.M. on the date of
36 receipt by the Bureau unless a later date is requested. Those
37 applications hand delivered to the Bureau will be effective as of
38 12:01 A.M. of the date following receipt by the Bureau unless a later
39 date is requested. The Bureau will make and adopt such rules as are
40 necessary to carry this section into effect, subject to final approval of
41 the Commissioner. As a prerequisite to the transaction of workers'
42 compensation insurance in this State, every member of the Bureau
43 that writes such insurance must file with the Bureau written authority
44 permitting the Bureau to act in its behalf, as provided in this section,
45 and an agreement to accept risks that are assigned to the member by
46 the Bureau, as provided in this section.

47 b. The Bureau shall maintain a compendium of employers refused
48 voluntary coverage, which shall be made available by the Bureau to
49 all insurers, licensed agents, and self-insureds' administrators doing
50 business in this State. It shall be stored and indexed to allow access
51 to information by industry, primary classifications of employees,

1 geography, experience modification, and in any other manner the
 2 Bureau determines is commercially useful to facilitate voluntary
 3 coverage of listed employers. The Bureau shall be immune from civil
 4 liability for erroneous information released by the Bureau pursuant to
 5 this section, provided that the Bureau acted in good faith and without
 6 malicious or willful intent to harm in releasing the erroneous
 7 information.

8 c. Failure or refusal by any assigned employer risk to make full
 9 disclosure to the Bureau, servicing carrier, or insurer writing a policy
 10 of information regarding the employer's true ownership, change of
 11 ownership, operations, or payroll, or any other failure to disclose
 12 fully any records pertaining to workers' compensation insurance shall
 13 be sufficient grounds for the termination of the policy of that
 14 employer.

15 ~~(6) The Bureau shall maintain and furnish to the Commissioner on an annual~~
 16 ~~basis the statistics on earnings derived by member companies from the~~
 17 ~~investment of unearned premium, loss, and loss expense reserves on nonfleet~~
 18 ~~private passenger motor vehicle insurance policies written in this State.~~
 19 ~~Whenever the Bureau proposes rates under this Article, it shall prepare a~~
 20 ~~separate exhibit for the experience years in question showing the combined~~
 21 ~~earnings realized from the investment of such reserves on policies written in~~
 22 ~~this State. The amount of earnings may in an equitable manner be included~~
 23 ~~in the ratemaking formula to arrive at a fair and equitable rate. The~~
 24 ~~Commissioner may require further information as to such earnings and may~~
 25 ~~require calculations of the Bureau bearing on such earnings.~~

26 ~~(7) Member companies shall furnish, upon request of any person carrying~~
 27 ~~nonfleet private passenger motor vehicle insurance in the State upon whose~~
 28 ~~risk a rate has been promulgated, information as to rating, including the~~
 29 ~~method of calculation.~~

30 ~~"§ 58-36-2. Private passenger motor vehicles; number of nonfleet policies.~~

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

35 ~~"§ 58-36-3. Limitation of scope; motorcycle endorsements allowed; Department of~~
 36 ~~Insurance report.~~

37 (a) The Bureau has no jurisdiction over:

38 (1) Excess workers' compensation insurance for employers qualifying as
 39 self-insurers as provided in Article 47 of this Chapter or Article 5 of Chapter
 40 97 of the General Statutes.

41 (2) Farm buildings, farm dwellings, and their appurtenant structures; farm
 42 personal property or other coverages written in connection with farm real or
 43 personal property.

44 (3) Travel or camper trailers designed to be pulled by private passenger motor
 45 ~~vehicles, unless insured under policies covering nonfleet private passenger~~
 46 ~~motor vehicles.vehicles.~~

47 (4) ~~Mechanical breakdown insurance covering nonfleet private passenger motor~~
 48 ~~vehicles and other incidental coverages written in connection with this~~
 49 ~~insurance, including emergency road service assistance, trip interruption~~
 50 ~~reimbursement, rental car reimbursement, and tire coverage.~~

1 (5) Residential real and personal property insured in multiple line insurance
2 policies covering business activities as the primary insurable interest; and
3 marine, general liability, burglary and theft, glass, and animal collision
4 insurance, except when such coverages are written as an integral part of a
5 multiple line insurance policy for which there is an indivisible premium.

6 ~~(6) Insurance against theft of or physical damage to motorcycles, as defined in~~
7 ~~G.S. 20-4.01(27)d.~~

8 (7) Personal excess liability or personal "umbrella" insurance.

9 ~~(b) Member companies writing motorcycle liability insurance under this Article and~~
10 ~~writing insurance against theft of or physical damage to motorcycles under Article 40 of this~~
11 ~~Chapter may incorporate motorcycle theft and physical damage coverage as an endorsement to~~
12 ~~the liability policy issued under this Article.~~

13 ~~(c) Beginning on February 1, 2003, and annually thereafter, the Department of~~
14 ~~Insurance shall report to the President Pro Tempore of the Senate and the Speaker of the House~~
15 ~~of Representatives on the effectiveness of S.L. 2001-389 in assuring the provision of insurance~~
16 ~~coverage to motorcycleists at fair and economical rates.~~

17 ...

18 **"§ 58-36-5. Membership as a prerequisite for writing insurance; governing committee;**
19 **rules and regulations; expenses.**

20 (a) Before the Commissioner shall grant permission to any stock, nonstock, or
21 reciprocal insurance company or any other insurance organization to write in this State
22 insurance against loss to residential real property with not more than four housing units located
23 in this State or any contents thereof or valuable interest therein or other insurance coverages
24 written in connection with the sale of such property insurance; ~~or insurance against theft of or~~
25 ~~physical damage to private passenger (nonfleet) motor vehicles; or liability insurance for such~~
26 ~~motor vehicles, automobile medical payments insurance, uninsured motorists coverage or other~~
27 ~~insurance coverage written in connection with the sale of such liability insurance; or workers'~~
28 ~~compensation and employers' liability insurance written in connection therewith; except for~~
29 ~~insurance excluded from the Bureau's jurisdiction in G.S. 58-36-1(3); it shall be a requisite that~~
30 ~~they shall subscribe to and become members of the Bureau.~~

31 ...

32 **"§ 58-36-10. Method of rate making; factors considered.**

33 The following standards shall apply to the making and use of rates:

34 ...

35 (4) Risks may be grouped by classifications and lines of insurance for
36 establishment of rates, loss costs, and base premiums. Classification rates
37 may be modified to produce rates for individual risks in accordance with
38 rating plans that establish standards for measuring variations in hazards or
39 expense provisions or both. Those standards may measure any differences
40 among risks that can be demonstrated to have a probable effect upon losses
41 or expenses. ~~The Bureau shall establish and implement a comprehensive~~
42 ~~classification rating plan for motor vehicle insurance under its jurisdiction.~~
43 ~~No such classification plans shall base any standard or rating plan for private~~
44 ~~passenger (nonfleet) motor vehicles, in whole or in part, directly or~~
45 ~~indirectly, upon the age or gender of the persons insured.~~ The Bureau shall at
46 least once every three years make a complete review of the filed
47 classification rates to determine whether they are proper and supported by
48 statistical evidence, and shall at least once every 10 years make a complete
49 review of the territories for nonfleet private passenger motor vehicle
50 ~~insurance to determine whether they are proper and reasonable evidence.~~

1 (5) In the case of workers' compensation insurance and employers' liability
2 insurance written in connection therewith, due consideration shall be given
3 to the past and prospective effects of changes in compensation benefits and
4 in legal and medical fees that are provided for in General Statutes Chapter
5 97.

6 (6) To ensure that policyholders in the beach and coastal areas of the North
7 Carolina Insurance Underwriting Association whose risks are of the same
8 class and essentially the same hazard are charged premiums that are
9 commensurate with the risk of loss and premiums that are actuarially correct,
10 the North Carolina Rate Bureau shall revise, monitor, and review the
11 existing territorial boundaries used by the Bureau when appropriate to
12 establish geographic territories in the beach and coastal areas of the
13 Association for rating purposes. In revising these territories, the Bureau shall
14 use statistical data sources available to define such territories to represent
15 relative risk factors that are actuarially sound and not unfairly
16 discriminatory. The new territories and any subsequent amendments
17 proposed by the North Carolina Rate Bureau or Association shall be subject
18 to the Commissioner's approval and shall appear on the Bureau's Web site,
19 the Association's Web site, and the Department's Web site once approved.

20 **"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.**

21 (a) The Bureau shall file with the Commissioner copies of the rates, loss costs,
22 classification plans, rating plans and rating systems used by its members. Each rate or loss costs
23 filing shall become effective on the date specified in the filing, but not earlier than 210 days
24 from the date the filing is received by the Commissioner: Provided that (1) rate or loss costs
25 filings for workers' compensation insurance and employers' liability insurance written in
26 connection therewith shall not become effective earlier than 210 days from the date the filing is
27 received by the Commissioner or on the date as provided in G.S. 58-36-100, whichever is
28 earlier; and (2) any filing may become effective on a date earlier than that specified in this
29 subsection upon agreement between the Commissioner and the Bureau.

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

32 (c) The Bureau shall maintain reasonable records, of the type and kind reasonably
33 adapted to its method of operation, of the experience of its members and of the data, statistics
34 or information collected or used by it in connection with the rates, rating plans, rating systems,
35 loss costs and other data as specified in G.S. 58-36-100, underwriting rules, policy or bond
36 forms, surveys or inspections made or used by it.

37 ~~(d) With respect to the filing of rates for nonfleet private passenger motor vehicle~~
38 ~~insurance, the Bureau shall, on or before February 1 of each year, or later with the approval of~~
39 ~~the Commissioner, file with the Commissioner the experience, data, statistics, and information~~
40 ~~referred to in subsection (c) of this section and any proposed adjustments in the rates for all~~
41 ~~member companies of the Bureau. The filing shall include, where deemed by the~~
42 ~~Commissioner to be necessary for proper review, the data specified in subsections (c), (e), (g)~~
43 ~~and (h) of this section. Any filing that does not contain the data required by this subsection may~~
44 ~~be returned to the Bureau and not be deemed a proper filing. Provided, however, that if the~~
45 ~~Commissioner concludes that a filing does not constitute a proper filing he shall promptly~~
46 ~~notify the Bureau in writing to that effect, which notification shall state in reasonable detail the~~
47 ~~basis of the Commissioner's conclusion. The Bureau shall then have a reasonable time to~~
48 ~~remedy the defects so specified. An otherwise defective filing thus remedied shall be deemed to~~
49 ~~be a proper and timely filing, except that all periods of time specified in this Article will run~~
50 ~~from the date the Commissioner receives additional or amended documents necessary to~~
51 ~~remedy all material defects in the original filing.~~

1 ...

2 **"§ 58-36-30. Deviations.**

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

15 (b) A rate in excess of that promulgated by the Bureau may be charged by an insurer on
16 any specific risk if the higher rate is charged in accordance with rules adopted by the
17 Commissioner and with the knowledge and written consent of the insured. The insurer is not
18 required to obtain the written consent of the insured on any renewal of or endorsement to the
19 policy if the policy renewal or endorsement states that the rates are greater than those rates that
20 are applicable in the State of North Carolina. The insurer shall retain the signed consent form
21 and other policy information for each insured and make this information available to the
22 Commissioner, upon request of the Commissioner. ~~This subsection may be used to provide~~
23 ~~motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of~~
24 ~~the General Statutes and above those cedable to the Facility under Article 37 of this Chapter to~~
25 ~~persons whose personal excess liability insurance policies require that they maintain specific~~
26 ~~higher liability coverage limits.~~ Any data obtained by the Commissioner under this subsection
27 is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100.

28 (c) Any approved rate under subsection (b) of this section with respect to workers'
29 compensation and employers' liability insurance written in connection therewith shall be
30 furnished to the Bureau.

31 ~~(d) Notwithstanding any other provision of law prohibiting insurance rate differentials~~
32 ~~based on age, with respect to nonfleet private passenger motor vehicle insurance under the~~
33 ~~jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State,~~
34 ~~subject to the Commissioner's approval, a downward deviation in the rates for insureds who are~~
35 ~~55 years of age or older. A member of the Bureau may condition a deviation under this~~
36 ~~subsection or a deviation under subsection (a) of this section on the successful completion of a~~
37 ~~motor vehicle accident prevention course that has been approved by the Commissioner of~~
38 ~~Motor Vehicles, as designated in the deviation.~~

39 ...

40 **"§ 58-36-90. Prohibitions on using credit scoring to rate ~~noncommercial private~~**
41 **~~passenger motor vehicle and residential property insurance; exceptions.~~**

42 (a) Definitions. – As used in this section:

- 43 (1) "Adverse action" has the same meaning as in ~~section 1681a(k) of the federal~~
44 ~~Fair Credit Reporting Act~~ section 603(k) of the federal Fair Credit Reporting
45 Act, § 15 U.S.C. § 1681a(k), and includes a denial or cancellation of, an
46 increase in any charge for, or a reduction or other adverse or unfavorable
47 change in the terms of coverage or amount of any insurance, existing or
48 applied for, in connection with the underwriting of insurance.
- 49 (2) "Credit report" means any written, oral, or other communication of any
50 information by a consumer reporting agency that bears on a consumer's
51 credit worthiness, credit standing, or credit capacity. Credit report does not

1 include accident or traffic violation records as maintained by the North
 2 Carolina Division of Motor Vehicles or any other law enforcement agency, a
 3 property loss report or claims history that does not include information that
 4 bears on a consumer's credit worthiness, credit standing, or credit capacity,
 5 or any report containing information solely as to transactions or experiences
 6 between the consumer and the person making the report.

7 (3) "Credit score" means a score that is derived by utilizing data from an
 8 individual's credit report in an algorithm, computer program, model, or other
 9 process that reduces the data to a number or rating.

10 (4) ~~"Noncommercial private passenger motor vehicle" means a "private
 11 passenger motor vehicle," as defined by G.S. 58-40-10, that is neither
 12 insured under a commercial policy nor used for commercial purposes.~~

13 (5) ~~"Private passenger motor vehicle" has the same meaning as set forth in
 14 G.S. 58-40-10.~~

15 (6) "Residential property" means real property with not more than four housing
 16 units located in this State, the contents thereof and valuable interest therein,
 17 and insurance coverage written in connection with the sale of that property.
 18 It also includes mobile homes, modular homes, townhomes, condominiums,
 19 and insurance on contents of apartments and rental property used for
 20 residential purposes.

21 (b) Prohibitions; Exceptions. – In the rating and underwriting of ~~noncommercial private
 22 passenger motor vehicle and residential property insurance coverage~~, insurers shall not use
 23 credit scoring as the sole basis for terminating an existing policy or any coverage in an existing
 24 policy or subjecting a policy to consent to rate as specified in G.S. 58-36-30(b) without
 25 consideration of any other risk factors, but insurers may use credit scoring as the sole basis for
 26 discounting rates. For purposes of this subsection only, "existing policy" means a policy that
 27 has been in effect for more than 60 days.

28"

29 **SECTION 2.** G.S. 58-36-41, G.S. 58-36-65 through 58-36-85, and G.S. 58-36-95
 30 are repealed.

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

32 "Article 40.

33 "Regulation of Insurance Rates.

34 ...

35 **"§ 58-40-10. Other definitions.**

36 As used in this Article and in Articles ~~36 and 37~~36, 37, 37A, and 41 of this Chapter:

37 (1) "Private passenger motor vehicle" means:

38 a. A motor vehicle of the private passenger or station wagon type that is
 39 owned or hired under a long-term contract by the policy named
 40 insured and that is neither used as a public or livery conveyance for
 41 passengers nor rented to others without a driver; or

42 b. A motor vehicle that is a pickup truck or van that is owned by an
 43 individual or by husband and wife or individuals who are residents of
 44 the same household if it:

45 1. Has a gross vehicle weight as specified by the manufacturer
 46 of less than 10,000 pounds; and

47 2. Is not used for the delivery or transportation of goods or
 48 materials unless such use is (i) incidental to the insured's
 49 business of installing, maintaining, or repairing furnishings or
 50 equipment, or (ii) for farming or ranching.

1 Such vehicles owned by a family farm copartnership or a family farm
2 corporation shall be considered owned by an individual for the
3 purposes of this section; or

4 c. A motorcycle, ~~motorized scooter or other similar motorized vehicle~~
5 ~~not used for commercial purposes as defined in G.S. 20-4.01(27)d.~~

6 (2) "Nonfleet" motor vehicle means a motor vehicle not eligible for
7 classification as a fleet vehicle for the reason that the motor vehicle is one of
8 four or fewer motor vehicles hired under a long-term contract or owned by
9 the insured named in the policy.

10 **"§ 58-40-15. Scope of application.**

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

- 13 (1) Reinsurance, other than joint reinsurance to the extent stated in
14 G.S. 58-40-60;
- 15 (2) Any policy of insurance against loss or damage to or legal liability in
16 connection with property located outside this State, or any motor vehicle or
17 aircraft principally garaged and used outside of this State, or any activity
18 wholly carried on outside this State;
- 19 (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine
20 protection and indemnity, or other risks commonly insured under marine, as
21 distinguished from inland marine, insurance policies;
- 22 (4) Accident, health, or life insurance;
- 23 (5) Annuities;
- 24 (6) Repealed by Session Laws 1985, c. 666, s. 43;
- 25 (7) Mortgage guaranty insurance;
- 26 (8) Workers' compensation and employers' liability insurance written in
27 connection therewith;
- 28 (9) ~~For private passenger (nonfleet) motor vehicle liability insurance,~~
29 ~~automobile medical payments insurance, uninsured motorists' coverage and~~
30 ~~other insurance coverages written in connection with the sale of such~~
31 ~~liability insurance;~~
- 32 (10) ~~Theft of or physical damage to nonfleet private passenger motor vehicles;~~
33 ~~except this Article applies to insurance against theft of or physical damage to~~
34 ~~motorcycles, as defined in G.S. 20-4.01(27)d.; and~~
- 35 (11) Insurance against loss to residential real property with not more than four
36 housing units located in this State or any contents thereof or valuable interest
37 therein and other insurance coverages written in connection with the sale of
38 such property insurance. Provided, however, that this Article shall apply to
39 insurance against loss to farm dwellings, farm buildings and their
40 appurtenant structures, farm personal property and other coverages written in
41 connection with farm real or personal property; travel or camper trailers
42 designed to be pulled by private passenger motor vehicles ~~unless insured~~
43 ~~under policies covering nonfleet private passenger motor vehicles; vehicles;~~
44 residential real and personal property insured in multiple line insurance
45 policies covering business activities as the primary insurable interest; and
46 marine, general liability, burglary and theft, glass, and animal collision
47 insurance except when such coverages are written as an integral part of a
48 multiple line insurance policy for which there is an indivisible premium.

49 The provisions of this Article shall not apply to hospital service or medical service
50 corporations, investment companies, mutual benefit associations, or fraternal beneficiary
51 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. Prohibitions on using credit scoring to rate nonfleet private passenger motor vehicle insurance; exceptions.

(a) Definitions. – The following definitions apply in this section:

- (1) Adverse action. – As defined in section 603(k) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a(k), a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of insurance.
- (2) Credit report. – Any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's creditworthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.
- (3) Credit score. – A score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(b) Prohibitions; Exceptions. – In the rating and underwriting of noncommercial private passenger motor vehicle coverage, insurers shall not use credit scoring as the sole basis for

1 terminating an existing policy or any coverage in an existing policy or subjecting a policy to
2 consent to rate as specified in G.S. 58-40-30(c) without consideration of any other risk factors,
3 but insurers may use credit scoring as the sole basis for discounting rates. For purposes of this
4 subsection only, "existing policy" means a policy that has been in effect for more than 60 days.

5 (c) Notification. – If a credit report is used in conjunction with other criteria to take an
6 adverse action, the insurer shall provide the applicant or policyholder with written notice of the
7 action taken, in a form approved by the Commissioner. The notification shall include, in easily
8 understandable language:

9 (1) The specific reason for the adverse action and, if the adverse action was
10 based upon a credit score, a description of the factors that were the primary
11 influence on the score.

12 (2) The name, address, and toll-free telephone number of the credit bureau that
13 provided the insurer with the credit-based information.

14 (3) The fact that the consumer has the right to obtain a free copy of the
15 consumer's credit report from the appropriate credit bureau.

16 (4) The fact that the consumer has the right to challenge information contained
17 in the consumer's credit report.

18 (d) Disputed Credit Report Information. – If it is determined through the dispute
19 resolution process set forth in section 611(a) of the federal Fair Credit Reporting Act, 15 U.S.C.
20 § 1681i(a), that the credit information of a current insured was incorrect or incomplete and if
21 the insurer receives notice of such determination from either the consumer reporting agency or
22 from the insured, the insurer shall re-underwrite or re-rate the consumer within 30 days of
23 receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any
24 adjustments necessary, consistent with its underwriting guidelines. If an insurer determines the
25 insured has overpaid premium, the insurer shall refund to the insured the amount of
26 overpayment calculated back to the shorter of either the last 12 months of coverage or the
27 actual policy period.

28 (e) Indemnification. – An insurer shall indemnify, defend, and hold agents harmless
29 from and against all liability, fees, and costs arising out of or relating to the actions, errors, or
30 omissions of an agent who obtains or uses credit information or credit scores for an insurer,
31 provided the agent follows the instructions or procedures established by the insurer and
32 complies with any applicable law or regulation. Nothing in this subsection shall be construed to
33 provide a consumer or other insured with a cause of action that does not exist in the absence of
34 this subsection.

35 (f) Filing. – Insurers that use credit scores to underwrite and rate risks shall file their
36 scoring models, or other scoring processes, with the Department. A filing that includes credit
37 scoring may include loss experience justifying the applicable surcharge or credit. A filer may
38 request that its credit score data be considered a trade secret and may designate parts of its
39 filings accordingly.

40 **§ 58-40-150. Use of nonoriginal crash repair parts.**

41 (a) The following definitions apply in this section:

42 (1) Crash repair part. – Sheet metal or plastic parts that are intended for use as
43 replacements for components of the exterior of a motor vehicle.

44 (2) Insurer. – Any insurance company licensed by the Commissioner to write
45 nonfleet private passenger motor vehicle insurance policies, as well as any
46 person authorized to represent an insurer with respect to a claim.

47 (3) Nonoriginal. – When used to describe a crash repair part, windshield, auto
48 glass, or other component of a motor vehicle, "nonoriginal" means the
49 component was not manufactured by or for the original equipment
50 manufacturer of the vehicle.

1 **(b)** An insurer shall disclose to a claimant in writing, either on the estimate or on a
2 separate document attached to the estimate, the following in no smaller than 10 point type:
3 "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE
4 PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE
5 REPAIR OF YOUR VEHICLE MADE BY OTHER THAN THE ORIGINAL
6 MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUIVALENT IN TERMS OF
7 FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL
8 MANUFACTURER PARTS THEY ARE REPLACING."

9 **(c)** It is a violation of G.S. 58-3-180 for an automobile repair facility or parts person to
10 place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a
11 motor vehicle and to submit an invoice for an original repair part.

12 **(d)** Any insurer or other person who has reason to believe that fraud has occurred under
13 this section shall report that fraud to the Commissioner for further action pursuant to
14 G.S. 58-2-160.

15 **"§ 58-40-155. Material misrepresentation on application for motor vehicle insurance**
16 **policy.**

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

22 **(1)** Cancel or refuse to renew the policy.

23 **(2)** Surcharge the policy.

24 **(3)** Recover from the applicant the appropriate amount of premium or surcharge
25 that would have been collected by the insurer had the applicant furnished the
26 correct information."

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

28 **"§ 58-41-50. Policy form and rate filings; punitive damages; data required to support**
29 **filings.**

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

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

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

49 **(d)** The following information must be included in each policy form, rule, and rate
50 filing:

- 1 (1) A detailed list of the rates, rules, and policy forms filed, accompanied by a
2 list of those superseded; and
- 3 (2) A detailed description, properly referenced, of all changes in policy forms,
4 rules, and rates, including the effect of each change.
- 5 (e) Each policy form, rule, and rate filing that is based on statistical data must be
6 accompanied by the following properly identified information:
- 7 (1) North Carolina earned premiums at the actual and current rate level; losses
8 and loss adjustment expenses, each on paid and incurred bases without
9 trending or other modification for the experience period, including the loss
10 ratio anticipated at the time the rates were promulgated for the experience
11 period;
- 12 (2) Credibility factor development and application;
- 13 (3) Loss development factor derivation and application on both paid and
14 incurred bases and in both numbers and dollars of claims;
- 15 (4) Trending factor development and application;
- 16 (5) Changes in premium base resulting from rating exposure trends;
- 17 (6) Limiting factor development and application;
- 18 (7) Overhead expense development and application of commission and
19 brokerage, other acquisition expenses, general expenses, taxes, licenses, and
20 fees;
- 21 (8) Percent rate change;
- 22 (9) Final proposed rates;
- 23 (10) Investment earnings, consisting of investment income and realized plus
24 unrealized capital gains, from loss, loss expense, and unearned premium
25 reserves;
- 26 (11) Identification of applicable statistical plans and programs and a certification
27 of compliance with them;
- 28 (12) Investment earnings on capital and surplus;
- 29 (13) Level of capital and surplus needed to support premium writings without
30 endangering the solvency of the company or companies involved; and
- 31 (14) Such other information that may be required by any rule adopted by the
32 Commissioner.

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

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

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

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

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

49 "Article 37A.

50 "Motor Vehicle Insurance Flex-Rating.

51 "§ 58-37A-1. Scope.

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

4 **"§ 58-37A-5. Definitions.**

5 The following definitions apply in this Article:

- 6 (1) Inadequate. – With respect to a rate filed under this Article, unreasonably
7 low for the insurance coverage provided and, with continued use, likely to
8 result in any of the following:
9 a. Endanger the solvency of insurers using the rate.
10 b. Substantially lessen competition among insurers.
11 c. Creation of a monopoly in the market for nonfleet private passenger
12 motor vehicle insurance in the State.
13 (2) Nonfleet. – Defined in G.S. 58-40-10.
14 (3) 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 such motor vehicles, and for automobile medical
17 payments insurance, uninsured motorists coverage, and other insurance
18 coverages written in connection with the sale of such liability insurance.
19 (4) Private passenger motor vehicle. – Defined in G.S. 58-40-10.
20 (5) Unfairly discriminatory. – With respect to a rate filed under this Article,
21 congruent with the standard in G.S. 58-40-20.

22 **"§ 58-37A-10. Flex-Rating.**

23 (a) Notwithstanding any other provision of this Chapter, a nonfleet private passenger
24 motor vehicle insurance rate filing made by an insurer that provides for an overall statewide
25 rate increase or decrease of no more than fifteen percent (15%), when aggregated for all
26 policyholders and all coverages subject to the filing, may take effect on or after the date it is
27 filed. The filing and effective dates of the rate increase or decrease shall be decided by the
28 insurer and set forth in the rate filing. No more than one rate filing may be made by an insurer
29 pursuant to the expedited process provided by this section during any 12-month period, unless a
30 rate filing, when combined with any other rate filings made by that insurer within the 12-month
31 period, does not result in an overall statewide rate increase or decrease of no more than fifteen
32 percent (15%) when aggregated for all policyholders and all coverages subject to the filing.

33 (b) Rate filings that provide for an overall statewide rate increase or decrease greater
34 than fifteen percent (15%), when aggregated for all policyholders and all coverages subject to
35 the filing, shall be subject to Articles 40 and 41 of this Chapter.

36 (c) Notwithstanding any other provision of this Chapter, a filing subject to subsection
37 (a) of this section submitted to the Commissioner shall be deemed to comply with
38 G.S. 58-40-20 and approved by the Commissioner upon filing. If the Commissioner
39 subsequently determines that the filing is inadequate or unfairly discriminatory, the
40 Commissioner shall issue a written order specifying in detail the basis for the determination
41 that the filing is inadequate or unfairly discriminatory, and setting forth a reasonable future date
42 on which the filing shall be considered no longer effective. An order by the Commissioner
43 pursuant to this subsection shall apply prospectively only, and shall not affect any contract of
44 insurance issued or made before the effective date of the order."

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

46 **"§ 58-37-35. The Facility; functions; administration.**

47 ...

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

1 Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a
2 nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal
3 operator, and each licensed operator in the owner's household have two years' driving
4 experience as licensed drivers and if none of the persons has been assigned any Safe Driver
5 Incentive Plan points under ~~Article 36 of this Chapter~~ G.S. 58-37-80 during the three-year
6 period immediately preceding either (i) the date of application for a motor vehicle insurance
7 policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The
8 filings may incorporate by reference any other material on file with the Commissioner. Rates
9 shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds,
10 after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, the
11 Commissioner shall issue an order specifying in what respect it is deficient and stating when,
12 within a reasonable period thereafter, the rate is no longer effective. The order is subject to
13 judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the
14 filed classification plan and the filed rates may be used, charged and collected in the same
15 manner as set out in G.S. 58-40-45 of this Chapter. The order shall not affect any contract or
16 policy made or issued before the expiration of the period set forth in the order. All rates shall be
17 on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a
18 profit nor a loss. ~~However, the rates made by or on behalf of the Facility with respect to "clean~~
19 ~~risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility.~~
20 However, the rates for "clean risks" reinsured in the Facility on policies becoming effective on
21 or after October 1, 2012, shall provide for an incremental elimination over the four year period
22 from October 1, 2012, to October 1, 2016, of the difference between the rate in effect on
23 September 30, 2012, for "clean risks" reinsured in the Facility and actuarially sound rates for all
24 risks reinsured in the Facility. The difference between the actual rate charged and the
25 actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be
26 recouped in similar manner as assessments under G.S. 58-37-40(f). Rates shall not include any
27 factor for underwriting profit on Facility business, but shall provide an allowance for
28 contingencies. There shall be a strong presumption that the rates and premiums for the business
29 of the Facility are neither unreasonable nor excessive.

30 (m) In addition to annual premiums, the rules of the Facility shall allow semiannual and
31 quarterly premium terms."

32 **SECTION 6.(b)** G.S. 58-37-40 reads as rewritten:

33 **"§ 58-37-40. Plan of operation.**

34 ...

35 (f) The plan of operation shall provide that every member shall, following payment of
36 any pro rata assessment, begin recoupment of that assessment by way of a surcharge on motor
37 vehicle insurance policies issued by the member or through the Facility until the assessment has
38 been recouped. Any surcharge under this subsection or under subsection (e) of this section shall
39 be a percentage of premium adopted by the Board of Governors of the Facility; and the charges
40 determined on the basis of the surcharge shall be ~~combined with and displayed as a part of the~~
41 applicable premium charges, set out as a separate charge on any statement of applicable
42 premium charges provided to the policyholder. Recoupment of losses sustained by the Facility
43 since September 1, 1977, with respect to nonfleet private passenger motor vehicles may be
44 made only by surcharging nonfleet private passenger motor vehicle insurance policies. If the
45 amount collected during the period of surcharge exceeds assessments paid by the member to
46 the Facility, the member shall pay over the excess to the Facility on a date specified by the
47 Board of Governors. If the amount collected during the period of surcharge is less than the
48 assessments paid by the member to the Facility, the Facility shall pay the difference to the
49 member. Except as otherwise provided in this Article, the amount of recoupment shall not be
50 considered or treated as a rate or premium for any purpose. The Board of Governors shall adopt
51 and implement a plan for compensation of agents of Facility members when recoupment

1 surcharges are imposed; that compensation shall not exceed the compensation or commission
2 rate normally paid to the agent for the issuance or renewal of the automobile liability policy
3 issued through the North Carolina Reinsurance Facility affected by the surcharge. However, the
4 surcharge shall include an amount necessary to recover the amount of the assessment to
5 member companies and the compensation paid by each member, under this section, to agents.

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

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

12 (i) The Facility shall file with the Commissioner revisions in the Facility plan of
13 operation for his approval or modification. Such revisions shall be made for the purpose of
14 revising the classification and rating plans for other than nonfleet private passenger motor
15 vehicle insurance ceded to the Facility."

16 **SECTION 6.(c)** Article 37 of Chapter 58 of the General Statutes is amended by
17 adding two new sections to read:

18 **§ 58-37-80. Classifications and Safe Driver Incentive Plan.**

19 (a) The Facility shall file, subject to review, modification, and promulgation by the
20 Commissioner, such rate classifications, schedules, or rules that the Commissioner deems to be
21 desirable and equitable to classify drivers of nonfleet private passenger motor vehicles for
22 purposes of reinsurance under this Article. Subsequently, the Commissioner may require the
23 Facility to file modifications of the classifications, schedules, or rules. If the Facility does not
24 file the modifications within a reasonable time, the Commissioner may promulgate the
25 modifications. In promulgating or modifying these classifications, schedules, or rules, the
26 Commissioner may give consideration to the following:

- 27 (1) Uses of vehicles, including without limitation to farm use, pleasure use,
28 driving to and from work, and business use;
29 (2) Principal and occasional operation of vehicles;
30 (3) Years of driving experience of insureds as licensed drivers;
31 (4) The characteristics of vehicles; or
32 (5) Any other factors, not in conflict with any law, deemed by the
33 Commissioner to be appropriate.

34 (b) The Facility shall file, subject to review, modification, and promulgation by the
35 Commissioner, a Safe Driver Incentive Plan ("Plan") that adequately and factually
36 distinguishes among various classes of drivers assigned to the Facility that have safe driving
37 records and various classes of drivers that have a record of at-fault accidents; a record of
38 convictions of major moving traffic violations; a record of convictions of minor moving traffic
39 violations; or a combination thereof; and that provides for premium differentials among those
40 classes of drivers. Subsequently, the Commissioner may require the Facility to file
41 modifications of the Plan. If the Facility does not file the modifications within a reasonable
42 time, the Commissioner may promulgate the modifications. The Commissioner is authorized to
43 structure the Plan to provide for surcharges above and discounts below the rate otherwise
44 charged.

45 (c) The classifications and Plan filed by the Facility shall be subject to the filing,
46 hearing, modification, approval, disapproval, review, and appeal procedures provided by law.

47 (d) Whenever any policy ceded to the Facility is surcharged due to an accumulation of
48 points under the Plan, the insurer shall, pursuant to rules adopted by the Commissioner, prior to
49 or simultaneously with the billing for additional premium, inform the named insured of the
50 surcharge or loss of discount by mailing to such insured a notice that states the basis for the
51 surcharge or loss of discount, and that advises that upon receipt of a written request from the

1 named insured it will promptly mail to the named insured a statement of the amount of
2 increased premium attributable to the surcharge or loss of discount. The statement of the basis
3 of the surcharge or loss of discount is privileged, and does not constitute grounds for any cause
4 of action for defamation or invasion of privacy against the insurer or its representatives, or
5 against any person who furnishes to the insurer the information upon which the insurer's
6 reasons are based, unless the statement or furnishing of information is made with malice or in
7 bad faith.

8 (e) Records of convictions for moving traffic violations to be considered under this
9 section shall be obtained at least annually from the Division of Motor Vehicles and applied by
10 the Facility's member companies in accordance with rules to be established by the Facility.

11 (f) The Facility is authorized to establish reasonable rules providing for the exchange of
12 information among its member companies as to chargeable accidents and similar information
13 involving persons to be insured under policies. Neither the Facility, any employee of the
14 Facility, nor any company or individual serving on any committee of the Facility has any
15 liability for defamation or invasion of privacy to any person arising out of the adoption,
16 implementation, or enforcement of any such rule. No insurer or individual requesting,
17 furnishing, or otherwise using any information that such insurer or person reasonably believes
18 to be for purposes authorized by this section has any liability for defamation or invasion of
19 privacy to any person on account of any such requesting, furnishing, or use. The immunity
20 provided by this subsection does not apply to any acts made with malice or in bad faith.

21 (g) As used in this section, "conviction" means a conviction as defined in G.S. 20-279.1
22 and means an infraction as defined in G.S. 14-3.1.

23 (h) If an insured disputes his insurer's determination that the operator of an insured
24 vehicle was at fault in an accident, such dispute shall be resolved following a procedure
25 developed by the Facility, unless there has been an adjudication or admission of negligence of
26 such operator.

27 (i) Subclassification plan surcharges shall be applied to a policy for a period of not less
28 nor more than three policy years.

29 (j) The subclassification plan may provide for premium surcharges for insureds having
30 less than three years' driving experience as licensed drivers.

31 **§ 58-37-85. At-fault accidents and certain moving traffic violations under the Safe**
32 **Driver Incentive Plan.**

33 (a) The subclassification plan promulgated pursuant to G.S. 58-37-80(b) may provide
34 for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an
35 at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of
36 three thousand dollars (\$3,000) or more. An "intermediate accident" is an at-fault accident that
37 results in only property damage of more than one thousand eight hundred dollars (\$1,800) but
38 less than three thousand dollars (\$3,000). A "minor accident" is an at-fault accident that results
39 in only property damage of one thousand eight hundred dollars (\$1,800) or less. The
40 subclassification plan may also exempt certain minor accidents from the Facility recoupment
41 surcharge. The Facility shall assign varying Safe Driver Incentive Plan point values and
42 surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the
43 injury, provided that the point value and surcharge assigned for the most severe bodily injury
44 shall not exceed the point value and surcharge assigned to a major accident involving only
45 property damage.

46 (b) The subclassification plan shall provide that there shall be no premium surcharge or
47 assessment of points against an insured where (i) the insured is involved and is at fault in a
48 "minor accident," as defined in subsection (a) of this section; (ii) the insured is not convicted of
49 a moving traffic violation in connection with the accident; (iii) neither the vehicle owner,
50 principal operator, nor any licensed operator in the owner's household has a driving record
51 consisting of one or more convictions for a moving traffic violation or one or more at-fault

1 accidents during the three-year period immediately preceding the date of the application for a
2 policy or the date of the preparation of the renewal of a policy; and (iv) the insured has been
3 covered by liability insurance with the same company or company group continuously for at
4 least the six months immediately preceding the accident. Notwithstanding (iv) of this
5 subsection, if the insured has been covered by liability insurance with the same company or
6 company group for at least six continuous months, some or all of which were after the accident,
7 the insurance company shall remove any premium surcharge or assessment of points against
8 the insured if requirements (i), (ii), and (iii) of this subsection are met. Also notwithstanding
9 (iv) of this subsection, an insurance company may choose not to assess a premium surcharge or
10 points against an insured who has been covered by liability insurance with that company or
11 with the company's group for less than six months immediately preceding the accident, if
12 requirements (i), (ii), and (iii) are met.

13 (c) The subclassification plan shall provide that there shall be no premium surcharge or
14 assessment of points against an insured where (i) the insured's drivers license has been revoked
15 under G.S. 20-16.5; and (ii) the insured is subsequently acquitted of the offense involving
16 impaired driving, as defined in G.S. 20-4.01(24a), that is related to the revocation, or the charge
17 for that offense is dismissed. In addition, no insurer shall use, for rating, underwriting, or
18 classification purposes, including ceding any risk to the Facility or writing any kind of
19 coverage subject to this Article, any license revocation under G.S. 20-16.5 if the insured is
20 acquitted or the charge is dismissed as described in this subsection.

21 (d) There shall be no Safe Driver Incentive Plan surcharges under G.S. 58-37-80 for
22 accidents occurring when only operating a firefighting, rescue squad, or law enforcement
23 vehicle in accordance with G.S. 20-125(b) and in response to an emergency if the operator of
24 the vehicle at the time of the accident was a paid or volunteer member of any fire department,
25 rescue squad, or any law enforcement agency. This exception does not include an accident
26 occurring after the vehicle ceases to be used in response to the emergency and the emergency
27 ceases to exist.

28 (e) The subclassification plan shall provide that with respect to a conviction for a
29 "violation of speeding 10 miles per hour or less over the speed limit" there shall be no premium
30 surcharge nor any assessment of points unless there is a driving record consisting of a
31 conviction or convictions for a moving traffic violation or violations, except for a prayer for
32 judgment continued for any moving traffic violation, during the three years immediately
33 preceding the date of application or the preparation of the renewal. The subclassification plan
34 shall also provide that with respect to a prayer for judgment continued for any moving traffic
35 violation, there shall be no premium surcharge nor any assessment of points unless the vehicle
36 owner, principal operator, or any licensed operator in the owner's household has a driving
37 record consisting of a prayer or prayers for judgment continued for any moving traffic violation
38 or violations during the three years immediately preceding the date of application or the
39 preparation of the renewal. For the purpose of this subsection, a "prayer for judgment
40 continued" means a determination of guilt by a jury or a court though no sentence has been
41 imposed. For the purpose of this subsection, a "violation of speeding 10 miles per hour or less
42 over the speed limit" does not include the offense of speeding in a school zone in excess of the
43 posted school zone speed limit.

44 (f) The subclassification plan shall provide that in the event an insured is at fault in an
45 accident and is convicted of a moving traffic violation in connection with the accident, only the
46 higher plan premium surcharge between the accident and the conviction shall be assessed on
47 the policy.

48 (g) As used in this section, "conviction" means a conviction as defined in G.S. 20-279.1
49 and means an infraction as defined in G.S. 14-3.1.

50 (h) The Facility shall assign one insurance point under the Safe Driver Incentive Plan
51 for persons who fail to yield to a pedestrian under G.S. 20-158(b)(2)b."

1 **SECTION 7.** On or before October 1, 2016, and again on or before October 1,
2 2018, the Executive Director and the Chair of the Board of Governors of the North Carolina
3 Reinsurance Facility shall report to the Joint Legislative Commission on Governmental
4 Operations on the size and market share of the Reinsurance Facility, and the analysis of the
5 Reinsurance Facility of the effect of the flex-rating authorized by Article 37A of the General
6 Statutes in reducing the size of the Reinsurance Facility. The reports shall include the
7 recommendations, if any, of the Reinsurance Facility of transitioning the North Carolina
8 involuntary automobile insurance mechanism from a reinsurance facility to an assigned risk
9 plan, joint underwriting association, or other mechanism for an involuntary automobile
10 insurance market.

11 **SECTION 8.** Sections 6(a) and 7 of this act become effective October 1, 2012. The
12 remainder of this act becomes effective October 1, 2014.