

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

FILED SENATE  
Mar 15, 2017  
S.B. 294  
PRINCIPAL CLERK

S

D

SENATE BILL DRS35130-MH-46 (02/14)

Short Title: Depopulate Reinsurance Fac./NCRB Opt Out. (Public)

Sponsors: Senators Meredith, Wade, and Britt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE A TWO-YEAR PHASEOUT OF THE "CLEAN RISK"  
3 SUBCLASSIFICATION WITHIN THE REINSURANCE FACILITY AND ESTABLISH  
4 AN OPT OUT FROM THE RATE BUREAU FOR AUTO INSURANCE.

5 The General Assembly of North Carolina enacts:

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

7 "§ 58-36-30. Deviations.

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

21 ...

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



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

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

6 "§ 58-37-35. The Facility; functions; administration.

7 ...  
8 (l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle  
9 insurance policies reinsured by the Facility may be made by the Facility or by any licensed or  
10 statutory statistical organization or bureau on its behalf and shall be filed with the  
11 Commissioner. The Board of Governors shall establish a separate subclassification within the  
12 Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a  
13 nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal  
14 operator, and each licensed operator in the owner's household have two years' driving  
15 experience as licensed drivers and if none of the persons has been assigned any Safe Driver  
16 Incentive Plan points under Article 36 of this Chapter during the three-year period immediately  
17 preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date  
18 of preparation of a renewal of a motor vehicle insurance policy. The filings may incorporate by  
19 reference any other material on file with the Commissioner. Rates shall be neither excessive,  
20 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is  
21 either excessive, inadequate or unfairly discriminatory, the Commissioner shall issue an order  
22 specifying in what respect it is deficient and stating when, within a reasonable period thereafter,  
23 the rate is no longer effective. The order is subject to judicial review as set out in Article 2 of  
24 this Chapter. Pending judicial review of said order, the filed classification plan and the filed  
25 rates may be used, charged and collected in the same manner as set out in G.S. 58-40-45 of this  
26 Chapter. The order shall not affect any contract or policy made or issued before the expiration  
27 of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be  
28 calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made  
29 by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged  
30 "clean risks" who are not reinsured in the Facility. The Facility, except that rates for "clean  
31 risks" on policies reinsured by the Facility that become effective on or after January 1, 2018,  
32 shall be established on a schedule that provides that any difference between rates charged for  
33 "clean risks" reinsured in the Facility on policies becoming effective immediately prior to  
34 January 1, 2018, and the actuarially sound rate for all risks reinsured by the Facility shall be  
35 eliminated over a two-year period ending on December 31, 2020. Any difference between the  
36 actual rate charged and the actuarially sound and self-supporting rates for "clean risks"  
37 reinsured in the Facility may be recouped in similar manner as assessments under  
38 G.S. 58-37-40(f). Rates shall not include any factor for underwriting profit on Facility business,  
39 but shall provide an allowance for contingencies. There shall be a strong presumption that the  
40 rates and premiums for the business of the Facility are neither unreasonable nor excessive.

41 ...."

42 SECTION 2.(b) G.S. 58-37-35, as rewritten by subsection (a) of this section, reads

43 as rewritten:

44 "§ 58-37-35. The Facility; functions; administration.

45 ...

46 (l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle  
47 insurance policies reinsured by the Facility may be made by the Facility or by any licensed or  
48 statutory statistical organization or bureau on its behalf and shall be filed with the  
49 Commissioner. ~~The Board of Governors shall establish a separate subclassification within the~~  
50 ~~Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a~~  
51 ~~nonfleet private passenger motor vehicle as defined in G.S. 58-40-10, if the owner, principal~~

operator, and each licensed operator in the owner's household have two years' driving experience as licensed drivers and if none of the persons has been assigned any Safe Driver Incentive Plan points under Article 36 of this Chapter during the three-year period immediately preceding either (i) the date of application for a motor vehicle insurance policy or (ii) the date of preparation of a renewal of a motor vehicle insurance policy. The 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, the Commissioner shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, the rate is no longer effective. The 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 G.S. 58-40-45 of this Chapter. The order shall not affect any contract or policy made or issued before 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, the rates made by or on behalf of the Facility with respect to "clean risks" shall not exceed the rates charged "clean risks" who are not reinsured in the Facility, except that rates for "clean risks" on policies reinsured by the Facility that become effective on or after January 1, 2018, shall be established on a schedule that provides that any difference between rates charged for "clean risks" reinsured in the Facility on policies becoming effective immediately prior to January 1, 2018, and the actuarially sound rate for all risks reinsured by the Facility shall be eliminated over a two-year period ending on December 31, 2020. Any difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments under G.S. 58-37-40(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.

...."

**SECTION 3.(a)** G.S. 58-37-40(e) is amended by adding a new subdivision to read:

"(3) For insurers that cede more than seventy-five percent (75%) of their direct written motor vehicle insurance premiums in North Carolina to the Facility, the ceding expense allowance paid to such member shall not exceed twenty percent (20%) of the total North Carolina motor vehicle insurance premiums the member writes on ceded business."

**SECTION 3.(b)** G.S. 58-37-45 reads as rewritten:

**"§ 58-37-45. Procedure for cession provided in plan of operation; limitation.**

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. The plan of operation shall limit cession to the Facility to no more than ninety-five percent (95%) of any company's direct written motor vehicle insurance premiums in the State unless the company has obtained the specific approval of the Commissioner."

**SECTION 3.(c)** G.S. 58-37-45, as rewritten by subsection (b) of this section, reads as rewritten:

**"§ 58-37-45. Procedure for cession provided in plan of operation; limitation.**

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. The plan of operation shall limit cession to the Facility to no more than ~~ninety-five percent (95%)~~ ninety percent (90%) of any company's direct written motor vehicle insurance premiums in the State unless the company has obtained the specific approval of the Commissioner."

**SECTION 3.(d)** G.S. 58-37-45, as rewritten by subsections (b) and (c) of this section, reads as rewritten:

1 **"§ 58-37-45. Procedure for cession provided in plan of operation; limitation.**

2 Upon receipt by the company of a risk which it does not elect to retain, the company shall  
3 follow such procedures for ceding the risk as are established by the plan of operation. The plan  
4 of operation shall limit cession to the Facility to no more than ~~ninety percent (90%)~~eighty-five  
5 percent (85%) of any company's direct written motor vehicle insurance premiums in the State  
6 unless the company has obtained the specific approval of the Commissioner."

7 **SECTION 4.(a)** G.S. 58-36-5 reads as rewritten:

8 **"§ 58-36-5. ~~Membership as a prerequisite for writing insurance;~~Membership; governing**  
9 **committee; rules and regulations; expenses.**

10 (a) Before the Commissioner shall grant permission to any stock, nonstock, or  
11 reciprocal insurance company or any other insurance organization to write in this State  
12 insurance against loss to residential real property with not more than four housing units located  
13 in this State or any contents thereof or valuable interest therein or other insurance coverages  
14 written in connection with the sale of such property insurance; ~~or~~or, with respect to insurers  
15 electing under G.S. 58-36-7 to develop rates and forms under this Article, insurance against  
16 theft of or physical damage to private passenger (nonfleet) motor vehicles; or liability insurance  
17 for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage  
18 or other insurance coverage written in connection with the sale of such liability insurance; or  
19 workers' compensation and employers' liability insurance written in connection therewith;  
20 except for insurance excluded from the Bureau's jurisdiction in G.S. 58-36-1(3); it shall be a  
21 requisite that they shall subscribe to and become members of the Bureau.

22 "...."

23 **SECTION 4.(b)** Article 36 of Chapter 58 of the General Statutes is amended by  
24 adding two new sections to read:

25 **"§ 58-36-7. Membership election for certain motor vehicle insurers.**

26 A stock, nonstock, or reciprocal insurance company or any other insurance organization  
27 writing insurance in this State against theft of or physical damage to nonfleet private passenger  
28 motor vehicles, or liability insurance for such motor vehicles, automobile medical payments  
29 insurance, uninsured motorists coverage, or other insurance coverage written in connection  
30 with the sale of such liability insurance shall elect to develop its rates and forms pursuant to  
31 either Article 36 or Article 40 of this Chapter. The insurer shall make its election by notifying  
32 the Commissioner in a form prescribed by the Commissioner. An election shall remain in effect  
33 until revised by the insurer. An insurer that makes no election shall develop its rates and forms  
34 pursuant to Article 36 of this Chapter.

35 **"§ 58-36-8. Applicability of Article 36 to motor vehicle insurers.**

36 Notwithstanding any provision in this Chapter to the contrary, with respect to its writing of  
37 insurance in this State against theft of or physical damage to nonfleet private passenger motor  
38 vehicles, or liability insurance for such motor vehicles, automobile medical payments  
39 insurance, uninsured motorists coverage, or other insurance coverage written in connection  
40 with the sale of such liability insurance, Article 40 of this Chapter has no effect and is wholly  
41 inapplicable to an insurer that elects to develop its rates pursuant to Article 36 of this Chapter,  
42 and Article 36 has no effect and is wholly inapplicable to an insurer that elects to develop its  
43 rates pursuant to Article 40 except as otherwise specifically provided in those Articles."

44 **SECTION 4.(c)** G.S. 58-40-15 reads as rewritten:

45 **"§ 58-40-15. Scope of application.**

46 The provisions of this Article shall apply to all insurance on risks or on operations in this  
47 State, except for all of the following:

- 48 (1) Reinsurance, other than joint reinsurance to the extent stated in  
49 G.S. 58-40-60.  
50 (2) Any policy of insurance against loss or damage to or legal liability in  
51 connection with property located outside this State, or any motor vehicle or

- 1 aircraft principally garaged and used outside of this State, or any activity  
 2 wholly carried on outside this State.
- 3 (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine  
 4 protection and indemnity, or other risks commonly insured under marine, as  
 5 distinguished from inland marine, insurance policies.
- 6 (4) Accident, health, or life insurance.
- 7 (5) Annuities.
- 8 (6) Repealed by Session Laws 1985, c. 666, s. 43.
- 9 (7) Mortgage guaranty insurance.
- 10 (8) Workers' compensation and employers' liability insurance written in  
 11 connection therewith.
- 12 (9) ~~For private~~ Private passenger (nonfleet) motor vehicle liability insurance,  
 13 automobile medical payments insurance, uninsured motorists' coverage and  
 14 other insurance coverages written in connection with the sale of such  
 15 liability insurance. The exclusion under this subdivision shall not apply to  
 16 insurers electing under G.S. 58-36-7 to develop rates under this Article.
- 17 (10) ~~Theft~~ Insurance against theft of or physical damage to nonfleet private  
 18 passenger motor vehicles; except this Article applies to insurance against  
 19 theft of or physical damage to motorcycles, as defined in G.S. 20-4.01(27)d.,  
 20 and moped, as defined in G.S. 20-4.01(27)d1. The exclusion under this  
 21 subdivision shall not apply to insurers electing under G.S. 58-36-7 to  
 22 develop rates under this Article.
- 23 (11) Insurance against loss to residential real property with not more than four  
 24 housing units located in this State or any contents thereof or valuable interest  
 25 therein and other insurance coverages written in connection with the sale of  
 26 such property insurance. Provided, however, that this Article shall apply to  
 27 insurance against loss to any of the following:
- 28 a. ~~farm~~ Farm dwellings, farm buildings and their appurtenant structures,  
 29 farm personal property and other coverages written in connection  
 30 with farm real or personal ~~property;~~ property.
- 31 b. ~~travel~~ Travel or camper trailers designed to be pulled by private  
 32 passenger motor vehicles ~~unless insured under policies covering~~  
 33 ~~nonfleet private passenger motor vehicles;~~ vehicles.
- 34 c. ~~residential~~ Residential real and personal property insured in multiple  
 35 line insurance policies covering business activities as the primary  
 36 insurable ~~interest; and~~ interest.
- 37 d. ~~marine;~~ Marine, general liability, burglary and theft, glass, and animal  
 38 collision insurance except when such coverages are written as an  
 39 integral part of a multiple line insurance policy for which there is an  
 40 indivisible premium.

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

44 **SECTION 5.** Sections 2(b), 3(d), and 4 of this act become effective January 1,  
 45 2020. Section 3(c) of this act becomes effective January 1, 2019. The remainder of this act  
 46 becomes effective January 1, 2018.