

2011-2012

**AUTOMOBILE
INSURANCE
MODERNIZATION
COMMITTEE
(LRC)**

MINUTES

LEGISLATIVE RESEARCH COMMISSION JOINT STUDY COMMITTEE

ON

AUTOMOBILE INSURANCE MODERNIZATION

2011-2012 Session

Senator Tom Apodaca, Co-Chairman

Representative Fred Steen, Co-Chairman

Nicole McGuinness-Hines and Judy Lowe, Committee Assistants

Legislative Research Commission Joint Study Committee on Automobile Insurance Modernization

2011-2012 Session

<u>Senate Members</u>	<u>Assistant</u>	<u>Phone</u>	<u>Office</u>
Senator Tom Apodaca Chair	Carolyn Gooden Nicole McGuinness (Committee Clerk)	733-5745 715-4647	2010 LB
Senator Rick Gunn	Gayle Gunn Karen Johns	301-1446	312 LOB
Senator Ellie Kinnaird	Kathie Young	733-5804	628B LOB
Senator Bob Rucho	Helen Long	733-5655	300A1 LOB

<u>House Members</u>	<u>Assistant</u>	<u>Phone</u>	<u>Office</u>
Representative Fred Steen Chair (<u>call 704-791-9819</u>)	Chris Floyd Judy Lowe (Committee Clerk)	733-5881 733-5786	305A LOB 506 LOB
Representative Justin Burr	Dina Long	733-5908	538A LOB
Representative Susi Hamilton	Ruth Merkle	733-5754	1319A LOB
Representative Harry Warren	Shara Graham	733-5784	533B LOB
Representative Jerry Dockham	Regina Irwin	715-2526	2204B

<u>Staff</u>	<u>Phone</u>
Jeff Cherry	733-6660
Kory Goldsmith	733-2578
Tim Hovis	733-2578
Bill Patterson	733-2578

Legislative Research Commission Joint Study Committee on
Automobile Insurance Modernization
Membership List

2011-2012 Session

Senator Tom Apodaca, Chair
1504 Fifth Avenue West
Hendersonville, NC 28739
Tom.apodaca@ncleg.net
828-696-0574
828-696-7882 (Fax)

Representative Fred Steen, Chair
317 Daybrook Drive
Landis, NC 28088
Fred.steen@ncleg.net
704-857-0857

Senator Rick Gunn
P.O. Box 308
Burlington, NC 27216
Rick.gunn@ncleg.net
336- 229-6981
336-229-6983 (Fax)

Representative Justin Burr
125 South Third Street
Albemarle, NC 28001
Justin.burr@ncleg.net
704-983-4663
919-754-3177 (Fax)

Senator Ellie Kinnaird
750 Weaver Dairy Road
Chapel Hill, NC 27514
Ellie.Kinnaird@ncleg.net
(919) 918-3432
919-856-2223 (Fax)

Representative Susi Hamilton
206 Nun Street
Wilmington, NC 28401
Susi.hamilton@ncleg.net
910-443-2830
910-221-0146 (Fax)

Senator Bob Rucho
Room 300-A, Raleigh,
NC 27603-5925
Bob.rucho@ncleg.net
704-364-3770
704-847-0417 (Fax)

Representative Harry Warren
201 Kingsbridge Road
Salisbury, NC 28144
Harry.warren@ncleg.net
704-603-8898
919-754-3135 (Fax)

Representative Jerry Dockham
PO Box 265
Denton, NC 27239
Jerry.dockham@ncleg.net
336-859-3804
336-859-2996 (Fax)

NORTH CAROLINA GENERAL ASSEMBLY

**Legislative Research Commission Joint Study Committee on
Automobile Insurance Modernization**

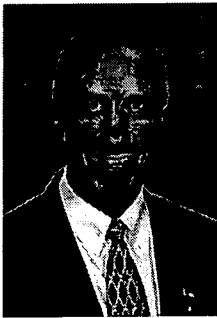
2011-2012 SESSION



**SENATOR TOM APODACA
CO-CHAIR**



**REPRESENTATIVE FRED STEEN
CO-CHAIR**



SENATOR RICK GUNN



**SENATOR ELLIE
KINNAIRD**



**REPRESENTATIVE
JUSTIN BURR**



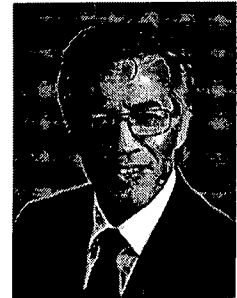
**REPRESENTATIVE SUSI
HAMILTON**



SENATOR BOB RUCHO



**REPRESENTATIVE
JERRY DOCKHAM**



**REPRESENTATIVE
HARRY WARREN**

ATTENDANCE

LRC Joint Study Committee on Automobile Insurance Modernization

[illegible]

Judy Lowe (Rep. McComas)

From: Nicole McGuinness Hines (Sen. Apodaca)
Sent: Thursday, November 17, 2011 10:51 AM
To: @InterimCommitteeNotice; Andrew Tripp (Senate); Bill Patterson (Research); Carolyn Gooden (Sen. Apodaca); Chris Floyd (Rep. Steen); Dina Long (Rep. Burr); Gayle Gunn/Karen Johns (Sen. Gunn); Helen Long (Sen. Rucho); Jeff Cherry (Bill Drafting); Judy Lowe (Rep. McComas); Kathie Young (Sen. Kinnaird); Kory Goldsmith (Research); Nicole McGuinness Hines (Sen. Apodaca); Rep. Fred Steen; Rep. Harry Warren; Rep. Justin P. Burr; Rep. Susi Hamilton; Ruth Merkle (Rep. Hamilton); Sen. Bob Rucho; Sen. Ellie Kinnaird; Sen. Rick Gunn; Sen. Tom Apodaca; Shara Graham (Rep. Harry Warren); Tim Hovis (Research)
Subject: <NCGA> Automobile Insurance Modernization Committee [LRC][2011]

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

December 6th, 2011

MEMORANDUM

TO: Members: Senator Rucho, Senator Kinnaird, Senator Gunn, Representative Burr, Representative H. Warren, Representative Hamilton
FROM: Chairman Apodaca and Chairman Steen
SUBJECT: Meeting Notice for LRC Committee on Automobile Insurance Modernization

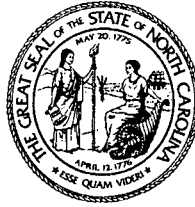
DAY	DATE	TIME	ROOM
Tuesday	December 6 th	9:00 AM	1228 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Nicole McGuinness Hines at 715-4647 or apodacara@ncleg.net.

cc: Committee Record ☒

Interested Parties ☒



**Legislative Research Commission
Joint Study Committee
Automobile Insurance Modernization**

AGENDA

December 6, 2011
Room 1228, Legislative Building
9:00 AM

WELCOME AND INTRODUCTORY REMARKS

Senator Tom Apodaca, Co-Chair, Presiding
Representative Fred Steen, Co-Chair

I. Overview of LRC Rules, Committee Charge, and Proposed Budget

- Kory Goldsmith, Research Division

II. Overview of Automobile Insurance Rate Making Process and Related Factors

- Rose Vaughan Williams, Legislative Counsel, Department of Insurance
- Raymond Evans, General Manager of the North Carolina Rate Bureau
- Edith Davis, Director of the Reinsurance Facility

III. 2011 Session Related Legislation:

H 834/S 477 Reduce Overpopulation of the Reinsurance Facility
S 490 Automobile Insurance Regulatory Modernization

- Tim Hovis, Research Division

IV. Department of Insurance's Position on Insurance Modernization

- Rose Vaughan Williams, Legislative Counsel, Department of Insurance

V. Committee Discussion and Instructions to Staff

VI. Adjournment

MINUTES

JOINT LEGISLATIVE RESEARCH AUTO INSURANCE MODERNIZATION COMMITTEE

Tuesday, December 6, 2011

9:00 AM

Room 1228, Legislative Building

The Joint Legislative Research Auto Insurance Modernization Committee met on Tuesday, December 6, 2011 at 9:00 AM in Room 1228 of the Legislative Building. Senators Apodaca (Co-Chair), Gunn, Kinnaird, and Rucho, attended as did Representatives Steen (Co-Chair), Burr, Dockham, Hamilton, and Warren.

Senator Apodaca, Co-Chairman, presided. He called the meeting to order at 9:00, reviewed the agenda (**attachment A**) and welcomed the members, staff and visitors. The Sergeants-at-Arms from the Senate, Steve Wilson and Dedrick Anders and from the House, Fred Hines and Reggie Sills were introduced. Staff members in attendance were Tim Hovis, Kory Goldsmith, Jeff Cherry and Bill Patterson. Nicole McGuinness-Hines and Judy Lowe were the Committee Assistants.

PRESENTATIONS

Overview of LRC Rules, Committee Charge and Proposed Budget

Ms. Kory Goldsmith, Research Division, was introduced by the Chairman to present a brief overview of LRC Rules, Committee Charge, and Proposed Budget. The charge to the committee is in the committee folders and is **attachment B**. Ms. Goldsmith also reviewed the rules of the LRC Committee. The committees are limited to four meetings prior to the convening of the 2012 Session unless approved in advance by the President Pro Tem and the Speaker. It takes a simple majority to adopt something from the Committee. If the Committee is going to make recommendation to the Commission, the full LRC, the staff and the Chairs have to compose a draft and send to all members of the Committee and the Commission seven days before it is adopted. The actual text of the report has to be what is before the Committee when it is adopted including any specific language and legislation. Any report that would go to the 2012 Session must be submitted to the Commission no later than Friday, April 27th, 2012; if there were continued study on into the next interim, no later than Friday, January 4th, 2013. Finally, there is an advisory budget (**attachment C**) showing approximately how much the cost of the meetings would be, assuming four meetings. Representative Dockham moved to adopt the budget and it was approved unanimously.

Overview of Automobile Insurance Rate Making Process and Related Factors

Chairman Apodaca next introduced Ms. Rose Vaughan Williams, Legislative Counsel for the NC Department of Insurance. A copy of her report is **attachment D**. She summarized it saying North Carolina has low rates that are sufficient for the companies, low loss ratios, a stable market, there are few uninsured drivers, plenty of competition, and market concentrations are where they should be. Ms. Williams then gave a brief statement about the Reinsurance Facility and noted that Ms. Edith Davis, Director of the NC Reinsurance Facility, would speak more about it.

How Automobile Insurance in the Marketplace in North Carolina Works

The next speaker, Mr. Raymond Evans, General Manager of the North Carolina Rate Bureau and the Reinsurance Facility, was introduced by the Chairman. He announced that he and others would talk about the Rate Bureau, some of the background of what it does, the Safe Driver Insurance Program, the Reinsurance Facility and clean risk. **(attachment E)**

The Rate Bureau is an unincorporated legal entity established by NCGS 58-36-1. The Bureau has responsibility for proposing rates on behalf of insurance carriers for non-fleet private passenger autos, residential property, and Worker's Compensation. The Bureau also manages the Worker's Compensation Assigned Risk Program for employers who have difficulty finding Worker's Compensation insurance. Every insurance carrier, so long as it is authorized to write auto insurance, property insurance or Workers Compensation insurance in the State of North Carolina must be a member of the Rate Bureau. Currently 731 companies are members. The Rate Bureau is managed by a Governing Committee which is comprised of 12 insurance company members and 2 public members. There are a number of committees and the General Manager provides resources and oversees the work that is required of the Bureau. Each member company has one vote in the operation. Members pay an annual membership fee and each is assessed based on their premium volumes in a particular line.

Mr. Evans introduced Ms. Sue Taylor, Director of Insurance Operations for the insurance part of the Rate Bureau. She stated that her intent was to take the committee through the automobile ratemaking process. The Bureau has the responsibility to analyze and propose fair and adequate rates for automobile policy holders in the State. The Bureau must review the experience for the most recent 3-year period; then a filing for auto insurance must be made to the Department of Insurance by February 1st each year. She reviewed what is involved in the ratemaking process. The Department of Insurance reviews the filing and the ultimate approval is from the Commissioner of Insurance. Approved rates are communicated to the insurance carriers in the State. The carriers take these rates and apply their underwriting criteria and possible deviations for discounts. The rates are then communicated to the insurance agents who do their marketing and discuss coverage options and pricing with the customer. The policy holders make the ultimate buying decision. The choice of company and coverage creates more data that is sent back to the statistical agents and the whole process begins again. The *ratemaking formula* determines the amount of rate that is needed; that is, *premium = expected losses + expected expenses + a reasonable profit*. The result is an average rate. An individual policy holder premium is determined by several factors; some are decisions that the policy holder makes and some are determined by the characteristics of the policy holder.

Ms. Taylor then turned the presentation back to Mr. Evans.

The Safe Driver Insurance Plan

He began by saying the Rate Bureau is not lobbying but noted that their primary purpose is to do what the statutes instruct them to do. They do not advocate but will advocate for what they believe are the adequate premiums. Since 2006, the Rate Bureau has increased liability premiums about 9.1 percent and decreased physical damage premiums by 20.6 percent. The North Carolina rates look very much like those throughout the country.

The Safe Driver Insurance Plan is required by NCGS 58-38-65 and it tries to apportion losses among the drivers that have those losses. The notion is that rates should be adequate, not excessive and not unfairly discriminatory. The statute applies to most of the cars, trucks and vans, under 10,000

pounds as well as motorcycles and only applies to vehicles that are owned by an individual. The statute also requires differences in premiums among these groups. Points are accumulated for the owner and all resident operators. The points last for a three year period although there are a lot of exceptions to getting points. No points are assigned for non-moving traffic violations. The average premium in North Carolina is about \$800/automobile. Approximately 8 percent of the total premium comes from SDIP surcharges.

Upon conclusion of Mr. Evans' presentation, Senator Apodaca asked if there was a definition of a reasonable profit when it comes to an insurance carrier. Mr. Evans responded that what it means to the Bureau is the amount of money an insurance company would need to attract investors to invest in their company. Representative Dockham asked about liability insurance rates. Mr. Evans stated that rates are based on a number of things including the severity and the frequency and they have changed significantly over a period of time.

In response to Representative Steen's question about how many states develop rates through ratemaking, Mr. Evans responded that there were not very many at this time. The North Carolina Rate Bureau's primary function is to comply with statute and the mechanics have been determined by statute.

The North Carolina Reinsurance Facility

The Reinsurance Facility is a distinct and separate entity created in 1973 by NCGS 58.37. It is not a state agency and it does not lobby. The Reinsurance Facility replaced the Assigned Risk Automobile Plan and has been changed many times in the interim. The authority for making decisions is the Board of Governors, consisting of 7 insurance companies, including two of which must be domicile, 5 insurance agents that are selected by the Commissioner, the Commissioner as an ex-officio member and two non-voting public members appointed by the Governor. The Facility was created because it is a mandatory liability state. You can't drive a car without having liability insurance or the equivalent. It is also a "take all comers" State for insurers. Companies want to retain business essentially on which they think they can make a profit. The "take all comers" law interferes with that so companies are able, through the reinsurance facility, to cede those risks which they would prefer not to insure. As part of the statute, the facility operates at neither a profit nor a loss—it is funded completely by premiums, investment incomes and recoupment on clean risk. The mission, as identified by the Board of Governors, is to collect the right premiums for insurance companies that did the ceding business, pay the right losses and minimize the impact on policy holders and companies in North Carolina.

At this point, Mr. Evans introduced Ms. Edith Davis who is the Director of Operations for the Facility and is responsible for its day-to-day operations. The Facility only covers automobiles and liability insurance within statutory limits including bodily injury, property damage, medical payment, and uninsured and underinsured motorists. There is a statutory definition of eligible risks. It is designed for people who live in North Carolina or need to be in the State for some reason. It also covers college students who are out of the State. The Facility is not an assigned risk plan, but it is reinsurance described as "behind the scene". When a person needs to buy insurance for a vehicle, he/she has to demonstrate to the DMV that they have liability insurance. He/she goes to an insurance agent; the agent will evaluate the driver as a risk and then try to place with a company. The company has to issue a policy because drivers have to have insurance to be on the road. They do have the choice of whether or not to keep it in their voluntary market (taking all the risks themselves), risk it, reinsure it or cede it to the Reinsurance Facility. The companies make the decision whether to stay with the driver or pass on to the Reinsurance Facility at which time they

transfer the risk for that policy to the Facility along with the premium and any additional claims that end up being paid on that policy. The Facility does not issue policy, does not talk to insurers, and a perspective policy holder can't call the Facility and get a policy issued. He/she has to go through an insurance agent and the company makes the decision whether or not to place the person in the Facility. By law the companies are required to give these people the exact same service; these are not second-class policies and the holders are not second-class citizens. On ceded policies, the Facility reimburses companies for the cost of writing and servicing policies, the cost of adjusting claims, and claims payments.

Next, Ms. Davis noted the size of the Facility. Twenty-one percent of all NC exposures are reinsured by the Facility. Exposures equal one auto insured for one year. She stated that there are three populations that are in the Reinsurance Facility. The smallest one is Commercial, including trucks, vans and vehicles. The next is "Other-Than-Clean Risks". The State allows the Facility to file rates for that population. It files an adequate, break-even rate for the commercial risks. The third, "Clean Risks", pay rates equal to voluntary rates filed by the Rate Bureau and approved by the Commissioner.

The Facility is authorized for a Clean Risk Surcharge, which is the difference between the actual rate charged and the actuarially sound and self-supporting rates for clean risks reinsured in the Facility. Clean risks do not pay enough to cover losses and expenses; the shortfall this year is \$151 million. The Facility recovers this shortfall by a surcharge on all private passenger liability policies. The amount is calculated every year and then spread across all policy holders in North Carolina. The average amount is \$17.00 per car per year. It operates like a tax; it is collected by the companies and given back to the Reinsurance Facility.

At this point, the podium was turned back over to Mr. Evans for a summary. He stated that it is a pretty complex system that we have in North Carolina. He noted the idiosyncrasies of the State. First, there is a limited classification plan; relatively limited in its scope compared to other companies. The Reinsurance Facility is unique to North Carolina. The surcharge is 4 percent and applies only to the liability portion of the premium. The SDIP is detailed and included in the legislative statutes; that is a change from other states where companies can use what they want. The "take all comers" is pretty much unique to North Carolina and clean risks is unique to NC. The Reinsurance Facility has 52 percent of the premiums in the countrywide residual market. The insurers must use Rate Bureau rates as the basis for which they operate. They can deviate downward from that rate but they can't go up. The insurers must use Rate Bureau forms and no classification shall be based on age or gender. All rates and forms are subject to the Insurance Commissioner's approval or disapproval.

In conclusion, he stated there are checks and balances defined by statute. North Carolina currently has the 8th lowest premium, so rates in NC tend to be on the low side. The incidence of uninsured motorists in NC, according to a widely viewed publication, is 13 percent compared to about 15 percent country wide. The Rate Bureau's calculations show that as being much less, more likely in the 7-8 percent range, based on a number of claims reviewed and the number of coverages the Bureau has. The uninsured motorist is a measurement of how well the insurance business is operating in a particular State. The Bureau has not requested a premium change for automobiles for the last two years.

Senator Apodaca thanked the presenters noting they covered a large area and it was very informative.

2011 Session Related Legislation

The Chairman asked Tom Hovis from the Research Division, for a broad overview of what is to be considered. Mr. Hovis stated he would give a general overview of the two legislative proposals that were filed during the 2011 Session. He stressed that the Committee is not limited by these proposals and can consider any changes it chooses. He briefly recapped what members heard. With regard to rates, base rates are filed jointly for all insurers by the NC Rate Bureau. The Commissioner may disapprove the filings and hold a hearing. If the order of disapproval is appealed, the rates can still take effect but pending judicial review, the funds are placed in escrow. With regard to deviations, current law does allow individual insurers to deviate from the base rate if the deviation is filed with the Bureau and the Commissioner and approved by the Commissioner. Insurers may cede to the Reinsurance Facility any eligible risks it chooses for liability and other required coverage. The Facility is required to establish a separate sub-classification for clean risks. Rates in the Facility must be actuarially sound but notwithstanding this requirement, rates for clean risks may not exceed the base rate approved for clean risks outside of the Facility. The difference in the actuarially sound rate and the rate actually charged for the risk in the Facility is recouped by a surcharge on all policies. The Facility rate, for drivers other than clean risk who were ceded to the Facility, the Facility files with the Commissioner a Facility rate, and that rate is approximately 20-30 percent higher than the base rate approved by the Commissioner for drivers outside of the Facility. The Safe Driver Incentive Plan is a system of insurance points which authorizes insurers to implement percentage increases or a surcharge to the base rate. Mr. Hovis noted that the two proposals filed during the Session were SB490 Automobile Insurance Regulatory Modernization and HB834/SB 477 Reduce Overpopulation of the Reinsurance Facility (**attachment F**). He reviewed and compared the bills as noted on the attachment.

Following the completion of Mr. Hovis 's report, Chairman Apodaca stated that the next meeting looks good for January 25th, 2012. At this meeting the Committee will hear from company representatives to get the other side; why they think this legislation is needed, what it would mean, and then go forward from there. The Committee will not be too limited as there are other ideas as to how the uninsured motorists' problem can be attacked. There are innovative technologies that the Committee will have presented to it along with other areas that deal with car insurance.

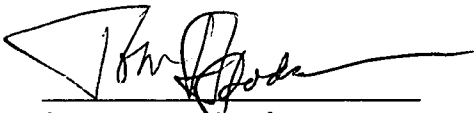
Chairman Apodaca asked Ms. Rose Vaughan Williams for closing comments. (**Attachment G**) She thanked the Chairman for the opportunity to speak on behalf of the Department of Insurance's position on the proposals that Mr. Hovis outlined. The out-of-state auto insurance companies want the North Carolina General Assembly to change North Carolina's auto insurance rate-making system. Not all national companies support the proposals nor do all domestic companies. The Department strongly opposes the proposed changes that were outlined. Major newspapers across the State have studied the bills, researched what was behind them, the effect they would have and then the papers wrote critical articles and lead editorials opposing both changes. The proposals may change slightly but the mission behind all the proposals from the insurance companies is clear and sure. The auto insurance companies want to be able to charge more to anyone they want to in the State even if the person has not had a point or conviction in years. They are for-profit companies; if they were doing anything besides trying to increase their profit, they would not be doing their job. That is what they should do as they are there to make money. There is nothing in the bills about being able to charge lower rates to anyone. The law already allows the companies to charge a lower rate on anyone they want to. One of the large companies pushing these bills in North Carolina could offer a large chunk of its customers an additional 20 percent discount and the companies' profits would not go down a full percentage point. The average discount or deviation in

North Carolina is 20 percent. Good drivers with good records are rewarded for their good driving in NC. The proposals would allow companies to charge more to anyone even if they have no points or convictions. One would allow the companies to charge up to 15% more in the aggregate than the cap on the rate set by the Commissioner; as long as it's not higher than that 15%, the Commissioner couldn't intervene. It also means that the next year the companies could make those increases again and there is nothing the Commissioner could do to stop it because the bill takes out the requirement that the rate not be excessive. The bill also means there would no longer be standardized forms and shopping for insurance is more complicated than most products. To get a level playing field with the big companies, standardized forms help them compare what they are getting.

The other bills would allow the companies to charge close to 30% more than the cap on the rate on anyone they wanted to, even if that person had no points or convictions. That bill says they can charge up to the Facility rate which now is close to 30%. The companies will say they want a gradual change with small steps but the proposed changes will bring about seismic change to the system. Neither bill guarantees a rate decrease or says that if the rates don't decrease, the bill sunsets. The companies want more money. They will try to make arguments about the 4.3 surcharge we all pay for bad drivers. The surcharge (about \$17 or less per year) for bad drivers sounds bad until we realize that it is the company who will be deciding who is a bad driver. To get rid of a surcharge of \$17 or less per year, the insurance companies want the State to give the insurance companies the ability to charge anyone significantly more with virtually no checks or balances on a product citizens are required by law to buy or be sent to jail. She stated that there is no auto insurance crisis in North Carolina. There are over 100 insurance companies writing in this State with more coming every year. The beneficiaries of the proposed bills, if the lobbyists are successful, are the large out-of-state auto insurance companies whose duty is to their bottom-line. In conclusion, she stated that North Carolina has low rates, companies are doing well here, there are lots of companies; a good market. The bills will increase our rates.

Senator Apodaca thanked Ms. Williams and noted that at the next meeting the big bad insurance companies with their good lobbyists will make the presentation.

The meeting was adjourned at 10:57AM with a tentative date for the next meeting of January 25, 2012. The list of visitors attending the meeting is **attachment H**.



Senator Tom Apodaca
Co-Chairman



Judy Lowe
Committee Assistant

ATTACHMENTS:

- A. Agenda
- B. Charge of the Committee
- C. Advisory Budget Estimate
- D. Rose Vaughan Williams, Legislative Counsel, Department of Insurance
- E. North Carolina Rate Bureau and Reinsurance Facility Presentation
- F. Comparison of S490 and H834/S477
- G. Rose Vaughan Williams, Closing Remarks
- H. Visitor Registration Sheets (5)

- **Automobile Insurance Modernization** – (a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product, and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

(b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

2011-2013 Committee Budget Estimate - Auto Insurance Modernization

1) Legislative Members Subsistence		\$5,616.00
	\$104.00 Legislative Subsistence	
X	9 Number of Legislative members	
X	1.5 Half of Members using Two Days of Subsistence	
X	4 Number of Meetings	
=	<u>\$5,616.00</u> Total Legislative Members Subsistence	
2) Non-Legislative Members Subsistence		\$0.00
	\$116.00 * Non-Legislative Members Subsistence	
X	0 Number of Non-Legislative Members	
X	1.5 Half of Non-Legislative Members using Two Days Subsistence	
X	0 Number of Meetings	
=	<u>\$0.00</u> Total Non-Legislative Members Subsistence	
* \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS138-5)		
3) Travel Expenses		\$2,520.00
a) Legislative Members		
	\$70.00 Round Trip Reimbursement (Based on 242 miles @ \$0.29 per mile*)	
X	9 Number of Legislative Members	
X	4 Number of Meetings	
=	<u>#####</u> Total Travel for Legislative Members	
b) Non-Legislative Member		
	\$73.00 Round Trip Reimbursement (Based on 242 miles @ \$0.30 per mile*)	
X	0 Number of Non-Legislative Members	
X	0 Number of Meetings	
=	<u>\$0.00</u> Total Travel for Non-Legislative Members	
* 242 Miles is an Average per Member based on the Total Certified Round Trip Mileage		
4) Clerical Staff		\$3,272.00
	\$818.00 * Average Salary with Benefits for 5 day work week	
X	4 Number of Meetings	
=	<u>\$3,272.00</u> Total Clerical Staff	
* Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.		
5) Professional Staff		\$0.00
6) Special Travel and Expenses		\$0.00
7) Postage and Telephone Expenses		\$0.00
8) Supplies		\$0.00
9) Copying and Printing		\$0.00
10) Reserve		\$0.00
Total		\$11,408.00

In North Carolina, as in all states but a few, anyone who wants to drive on our roads is required by law to carry liability insurance. It is a crime, a Class 1 misdemeanor, one of the highest misdemeanors, under North Carolina law if you drive without buying this product.

The law requires the Department to make sure companies are solvent to pay the claims they've contracted to pay, while making sure consumers are not overcharged for a product they're required to buy to be able to drive to work, or...take their mom to the doctor's office.

As regulators we make sure the companies are giving the discounts they've contracted to give... that is not always obvious with this product. The Department also makes sure the companies use forms that are uniform so that customers can shop more easily and compare products more easily as companies compete.

RATEMAKING IN NC

The Rate Bureau is here and will speak in more detail about how they work and the rate making system in North Carolina. The basics of the system are that the companies submit their proposed rate through the Rate Bureau to the Department for approval. The Rate Bureau is not a state organization. It is run by the insurance companies. We have 166 auto insurers actively writing auto insurance in NC.

If each company filed an individual rate, the Department would receive potentially more than one hundred filings. Unless we increased staff in both our Property and Casualty and our Actuarial

Services Divisions we could not give them an adequate or meaningful review.

North Carolina has a prior approval system for auto insurance. This means that the auto insurance companies must seek approval from the Commissioner before a rate filing becomes effective. If the Commissioner does not approve the rate increase after a hearing, the companies may begin charging the new higher rate pending appeal. If the companies lose on appeal, the law requires them to refund with interest the money generated by the increases to the policyholders who were overcharged.

The companies make a rate filing once a year. A filing is voluminous. It includes the last three years of data. The Department is required by law to review the filing to make sure it is not discriminatory, excessive or inadequate.

1. NORTH CAROLINA HAS LOW INSURANCE RATES.

North Carolina has the 8th lowest insurance rates in the country (including "the surcharge" I'll talk about later. The only states that have lower average premiums than us are states such as North and South Dakota that have lower population, and more importantly, much lower population density.

North Carolina has the lowest rates in the entire southeast.

Rates are so good here that the General Assembly had to pass a law a few years ago to keep people from other states from coming here to buy their insurance at the lower NC rates.

The Department sets a cap on auto insurance rates...a rate the companies cannot go above. The companies can offer rates lower than that rate....DISCOUNTS.

People are not complaining about their auto insurance rates in North Carolina.

People do complain about how companies handle their claims; they complain when companies deny their claims they do not think should be denied, they complain about delays by auto insurance companies in paying; they complain about companies not valuing the damages to vehicles enough, and they complain about unsatisfactory settlements.

The shorter bar shows the number of complaints the Department receives about premiums...those complaints about rate in this chart include increases in premium the companies charge when folks have an accident or get a ticket, they are not all just complaints about rate in general. The data on this chart also include the complaints that came in when the legislature changed the law to mandate uninsured and underinsured motorist's coverage.

North Carolina is a great state, but it is not a rich state. According to the US Census Bureau, as of 2009, more than 17% of all North Carolinians live below the poverty level and that number is rising since the 2008 recession. In every district represented here there are thousands of people living on a fixed income, paycheck to paycheck.

Low auto insurance rates mean our system works well for our citizens.

Our system works well for the companies profit line as well, which is the second point.

2. COMPANIES DOING BUSINESS IN NC HAVE GOOD LOSS RATIOS.

Auto insurance companies doing business in North Carolina do not see high loss ratios

A “loss ratio” is calculated by dividing the total premiums received by the losses and expenses of the company. If total premium is one dollar and expenses are 60 cents that would mean a “loss ratio” of 60%. For every dollar of premium received, 60 cents is spent on claims and claim related expenses.

Insurers use “loss ratios” as a quick and simple measure to determine how well they are doing. If the loss ratio is too high, it means the companies aren’t making enough money. If loss ratios are too low, it means the consumers are paying too much.

This exhibit shows that companies doing auto insurance business in North Carolina are right at the national average. Not too high and not too low.

The numbers shown on this chart show their loss ratios even after the companies have paid dividends and even after discounts that have been given. So, even after discounts, these numbers are good for them. They’re good for consumers, too...not too high, not too low.

North Carolina ranks 24 in the country...right in the middle.

And these numbers have been consistent for the companies. That is the third point.

3. NC HAS A STABLE MARKET

Over the past 10 years companies doing business in North Carolina have seen a stable market.

In the insurance business stability and predictability are important, because insurers are the bearers of risks. The last column shows that North Carolina ranks 3rd in the nation in loss ratio stability. The insurance companies' loss ratios are good and they're holding steady over a long period of time.

Low and stable loss ratios mean our system works well for companies.

4. NORTH CAROLINA HAS FEWER UNINSURED DRIVERS THAN THE NATIONAL AVERAGE.

Compulsory automobile liability insurance is one way North Carolina helps to minimize the number of uninsured drivers, but there will always be some. North Carolina is a green state on this map, in the 10-14 percent level.

If insurance is too expensive more and more people will not be able to buy it and, those who continue to buy will lower their limits...and thus their chances to adequately pay for damages they cause when they hit you....

The country is seeing an uptick in uninsured motorists and commentators have attributed it to the downturn in the economy.

Compliance with the compulsory auto insurance law means our system works well for people who are victims of accidents, and doctors and hospitals that need to be paid.

**5. THERE ARE MANY CHOICES FOR CONSUMERS
IN THE NC MARKETPLACE- CHART # companies
coming in**

In North Carolina, we have 166 auto insurance companies doing business here and more coming to the state every year. Once here..they stay.

In the past five years 72 new companies have begun writing auto insurance in North Carolina. That is on top of the more than one hundred already here.

This is evidence of a healthy market. Those companies would not come here if they did not want to be here and more choice means our system works well for consumers.

We are not aware of any well known insurer that has ever pulled out of North Carolina because they are not making a profit writing auto insurance.

**6. WE DO NOT HAVE UNUSUAL MARKET
CONCENTRATIONS IN NC**

We do not have unusual market concentrations in NC. An unusual market concentration is when one company or just a few companies dominate the market, lessening competition, which could make discounts harder to get. North Carolina is a more diversified market than most other states.

REINSURANCE FACILITY

The facility does not issue or sell insurance policies. It offers insurance to the insurance companies. In other words, it reinsures the risk for the insurance companies. It is a reinsurance facility, not an assigned risk plan.

As I mentioned, all but a couple of states in the country require folks who drive on their roads to buy auto insurance. In return, the states have to be sure folks are going to be able to find someone willing to sell insurance to them. So, the General Assembly has passed laws allowing auto insurance companies doing business here to send the risk of a driver they don't like to the NC Reinsurance Facility.

States that mandate the purchase of auto liability insurance have some form of sub-standard or non-standard market. They don't call it a "reinsurance facility", but they have some form of substandard market. Some states have a sub-standard market where people who may not have any points or convictions can be charged a higher rate, just because they look like they will be a chancy risk.

Some states use an assigned risk plan. This is what North Carolina used a long time ago. Before NC created the facility we had an “assigned risk plan”. In an assigned risk plan system, the companies are required by law to take turns insuring the drivers they don’t want to insure based on their market share. So, you may go to the agent you know down the street who has your home or your life insurance, but he won’t be able to sell you auto insurance because it is not his company’s turn. So, you’re shuttled off to go looking to find the company who has been assigned to you and will take you.

The company is not too happy to have you. Customers in NC were treated like second class citizens by these companies in that system

With a Reinsurance Facility, your own company, Nationwide, or GMAC or Allstate issues the policy. You are treated as one of their customers. The company is compensated for the service and the upshot is...you get good service and you’re not treated like a second class citizen.

The percentage of population in the Reinsurance Facility in North Carolina has been about the same since it was created in the 70s. It has been decreasing in size in recent years. The percentage is similar to or less than some other states we’ll be compared to in this study when you consider the large population of NC.

Over one half of the folks in the facility have no points or convictions, but they are people the companies have identified as being bad drivers, or risks they don't want to take alone.

We did a survey of companies a few years ago to find out what the companies consider in deciding to send or "cede" to the facility. We learned that some companies send people to the facility if the driver is in the US Armed Forces, or based on the driver's marital status, their occupation and education, whether they own or rent, whether they've had a period of unemployment....

So...when the companies speak of "bad drivers", that's who they're speaking about. The folks with no points or convictions, but who look like a bad risk to the company.

The companies can charge significant increases to drivers with points and convictions, and they do. The true "bad drivers" are indeed paying their freight.

As the law is now these folks with no points or convictions the companies decide to reinsure in the facility don't receive an increase in premium when they are sent to the facility. The company is just not taking on the risk.

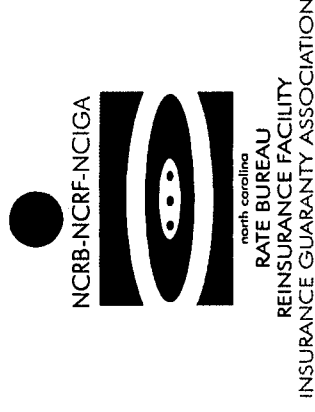
The Reinsurance Facility looks at data from prior years to determine if they think they're going to have a shortfall in the upcoming year. They set a surcharge to cover any shortfall.

To pay for that shortfall, all drivers in the state pay a surcharge. The NC Supreme Court has ruled the Commissioner cannot set this

surcharge. For this year the surcharge is 4.3%. About \$17 PER YEAR.

Even with that surcharge our rates are the 8th lowest in the country and the absolute lowest of all the southeastern states.

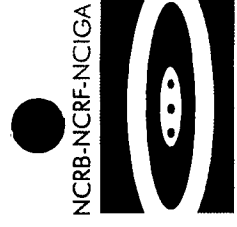
Insurance is about spreading the risk.



Presentation to the LRC Joint Study Committee on Automobile Insurance Modernization

**By the
North Carolina Rate Bureau
North Carolina Reinsurance Facility
December 6, 2011**

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

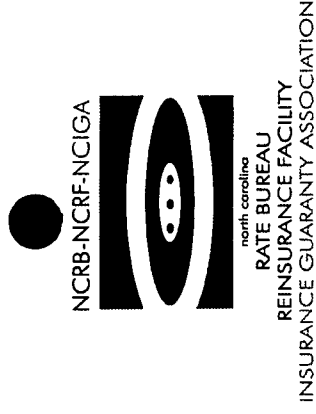


north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Representatives

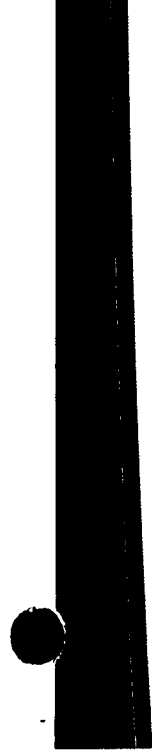
- Ray Evans, General Manager, NCRB/NCRF
- Sue Taylor, Director of Insurance Operations
- Edith Davis, Director, NC Reinsurance Facility
- Young Moore & Henderson, General Counsel

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

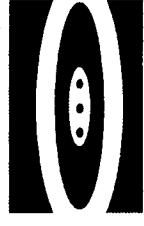


Creation of the Rate Bureau

- NCGS 58-36-1
 - “There is hereby created a Bureau to be known as the “North Carolina Rate Bureau,” ...

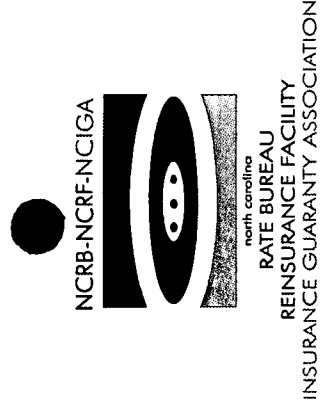


NCRB-NCIFGA



north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

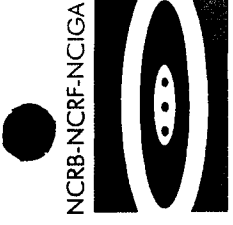
- The Rate Bureau is an unincorporated legal entity with responsibility for proposing rates and forms for:
 - Non-fleet Private Passenger Motor Vehicle Insurance
 - Residential Real Property
 - Workers Compensation and Employers Liability Insurance
 - The Rate Bureau administers the residual market for employers who are “difficult to place”



What is the Bureau?

Article V Rate Bureau Constitution

Every insurance carrier so long as it is authorized to write Automobile Insurance, Property Insurance or Workers Compensation Insurance in the State of North Carolina shall subscribe to and become a Member of the Bureau...



RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Rate Bureau Membership

- There are 731 companies that are members of the North Carolina Rate Bureau that are licensed to write one or more lines of insurance
- 653 companies are licensed to write private passenger auto
- 142 companies writing private passenger auto

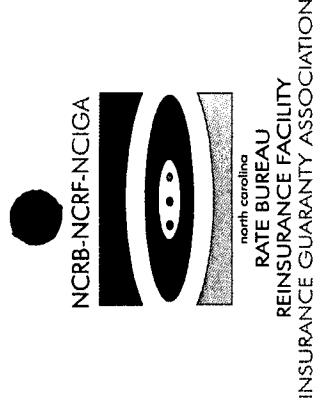
This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

How is the Rate Bureau Managed?

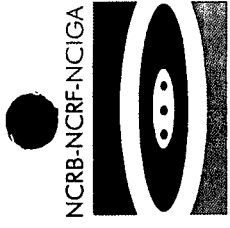
- Governing Committee
 - 12 company members
 - 2 public members
- Other Committees
- General Manager
- Each company member shall be entitled to one representative and one vote in the administration of the affairs of the Bureau

Who Pays for the Rate Bureau?

- Members pay an annual membership fee
- Members pay an annual assessment based on their premium volume



This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.



RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

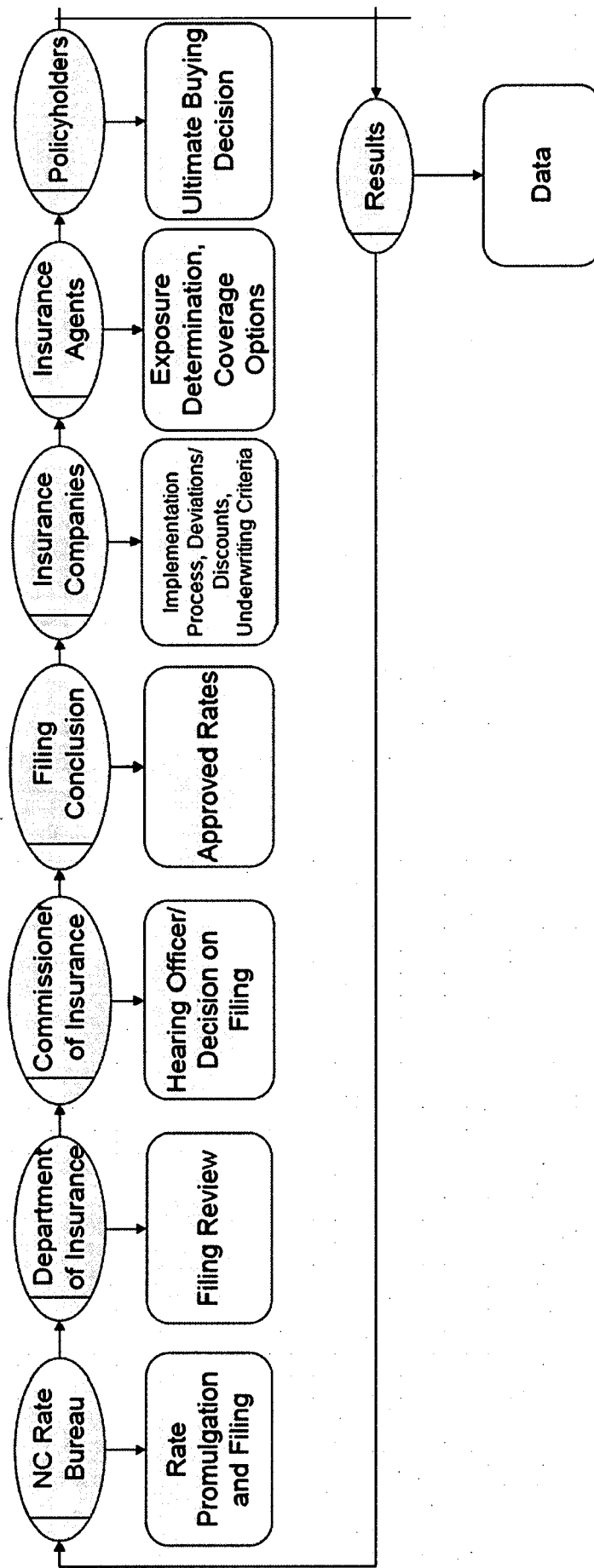
Private Passenger Motor Vehicle Filing

“...the Bureau shall on or before February 1 of each year...file with the Commissioner the experience, data, statistics, and information...and any proposed adjustments in the rates...”

NCGS 58-36-15(d)



Ratemaking Process



This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

Ratemaking Formula

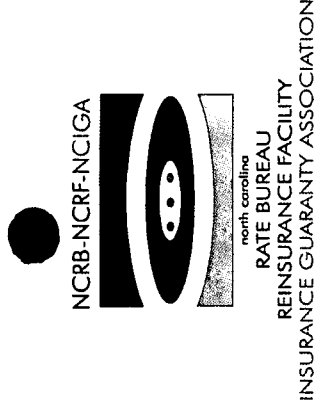
(The insurance equation)

$$\begin{aligned} \text{Premium} &= \text{Expected losses} \\ &+ \text{Expected expenses} \\ &+ \text{Reasonable profit} \end{aligned}$$

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

Ratemaking Formula Results

Average Rate



This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

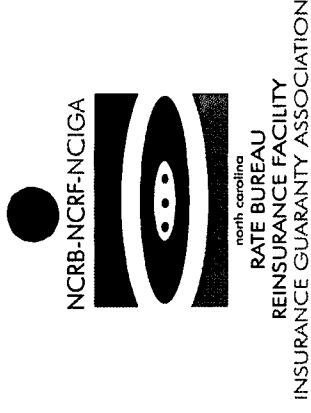
How is an individual Premium Determined?

- Territories
- Deductibles
- Model Year
- Classifications
- Safe Driver Insurance Plan

Company factors

- Deviations
- Consent to Rate – Physical Damage only

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.

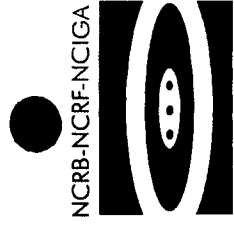
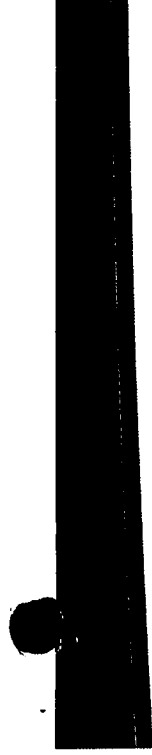


History of Rate Changes

Since 2006, on average:

- Liability premiums have increased 9.1%
- Physical Damage premiums have decreased 20.6%

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.



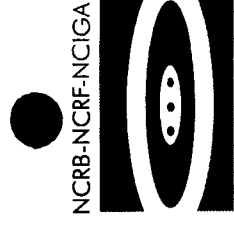
north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION



Safe Driver Insurance Plan

- SDIP – required by NCGS 58-38-65
- Applies to cars, trucks and vans under 10,000 lbs. and motorcycles
- Applies only to vehicles owned by an individual

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.



north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Safe Driver Insurance Plan

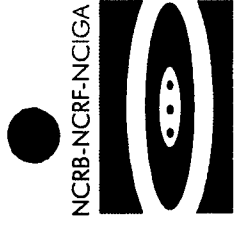
- Statute requires premium differences among drivers:
 - With safe driving records
 - With at fault accidents
 - With records of convictions of major moving traffic violations
 - With convictions of minor moving traffic violations

Safe Driver Insurance Plan

- Points are accumulated for the owner and all resident operators – regardless of what vehicle they were driving at the time
- Points result in a surcharge on a policy for 3 policy years

Safe Driver Insurance Plan

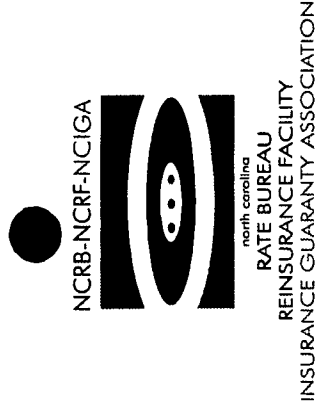
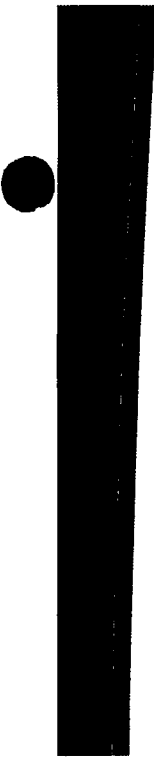
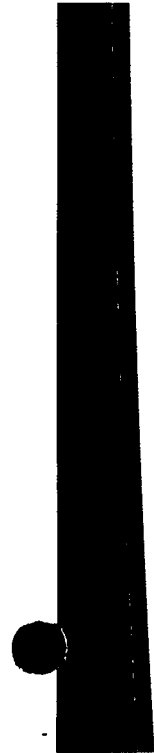
- Statutory exceptions to getting points (NCGS 58-36-75):
 - If convicted of speeding 10 mph or less over the speed limit and no other conviction of moving traffic violation within three years, no points are assigned for the speeding ticket
 - PJC not considered a conviction unless the driver or another operator in the household has another PJC within the past 3 years.
 - Minor accidents (\$1800 or less in damage) - no points assigned if operator not convicted of moving traffic violation and no operators in household have conviction or at-fault accident during the past three years
 - Firemen and police responding to an emergency
 - Failure to wear seat belts/failure to utilize child restraint
 - Red light camera violation



north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Safe Driver Insurance Plan

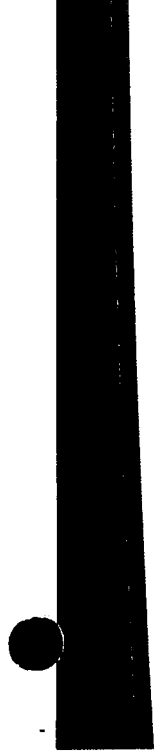
- No points assigned for non-moving traffic violations such as:
 - Inadequate muffler
 - Improper lights or other equipment except brakes
 - Failure to sign or display registration
 - Failure to display license plates
 - Failure to have a drivers license with you if you have a valid one
 - Failure to display current inspection certificate



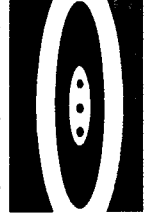
Current Safe Driver Insurance Plan Surcharges

# Pts.	Surcharge
1	.30
2	.45
3	.60
4	.80
5	1.10
6	1.35
7	1.65
8	1.95
9	2.25
10	2.60
11	3.00
12	3.40

This NCRB presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.



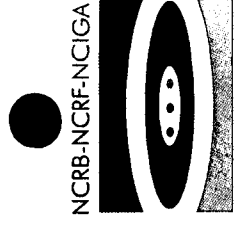
NCRB-NCRF-NCIGA



north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Safe Driver Insurance Plan

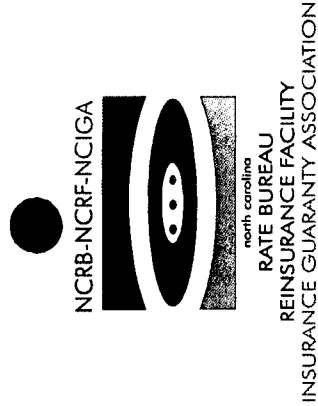
- Apply SDIP factor to premium for car with highest total base premium to determine SDIP surcharge amount
- Average Annual North Carolina Liability and Physical Damage Premium: \$800



INSURANCE GUARANTY ASSOCIATION

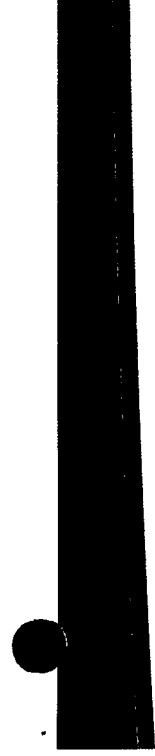
Safe Driver Insurance Plan

- Approximately 8.0% of total premium comes from SDIP surcharges
 - This 8.0% is accounted for in rates by reducing base rates by 8.0%
 - Thus, no additional overall premium to insurance companies because of SDIP surcharges
 - If SDIP surcharge premium changes, base rates will be adjusted to offset the change

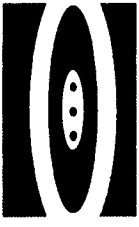


North Carolina Reinsurance Facility

This presentation is incomplete without the accompanying discussion; it is intended for the information and benefit of the LRC Joint Study Committee on Automobile Insurance Modernization.



NCRB-NCIGA

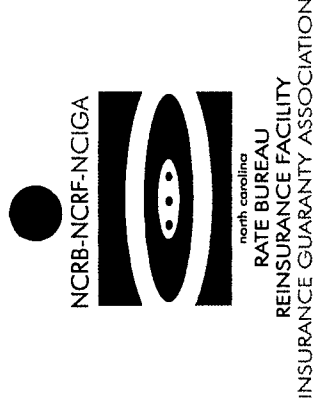


north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION



Legislative History

- Created by the Legislature in 1973 – NCGS 58-37
 - Not a state agency
 - Do not lobby
- Replaced an Assigned Risk Auto Plan
 - Perceived stigma of being in bad risk pool
 - Enabled drivers to select company of choice
 - The mechanics are different
- The Legislature has made many changes since creating the Facility



Board of Governors

“...full power and administrative responsibility for the operation of the Facility”

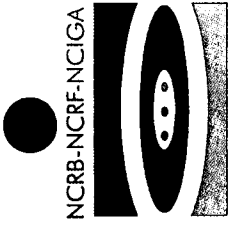
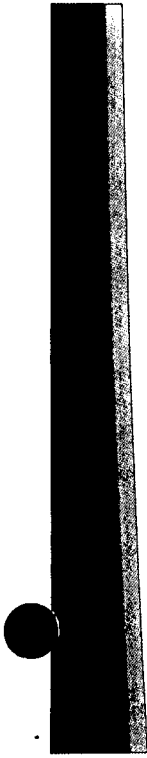
Composition:

- 7 insurance companies
 - including 2 domiciled members selected by the Commissioner
- 5 insurance agents selected by the Commissioner
- The Commissioner as ex officio member
- Two non-voting public members appointed by the Governor

NCGS 58-37-35

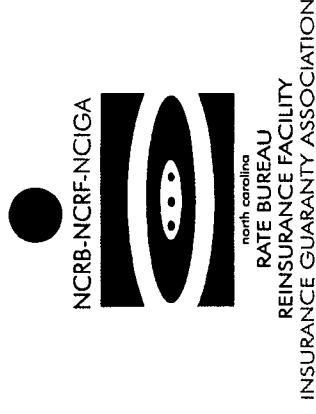
Why the Facility was created

- Mandatory liability state
- “Take all comers” requirement for insurers
- Facility created to ensure coverage to drivers that companies are not willing to insure at voluntary rates



Why the Facility was created

- Companies want to retain business on which they can make a profit
- Companies cede those risks which they feel are inadequately priced using approved voluntary rates
- Facility operates at neither a profit or loss
 - Funded by premiums, investment income & recoupment



Mission

- Collect the right premiums
- Pay the right losses
- Minimize the impact on policyholders and companies in North Carolina

What does the Facility Reinsure?

- **Motor vehicles** – every self-propelled vehicle that is designed for use upon a highway, including trailers, semitrailers and motorcycles
- **Liability Insurance** (within statutory limits)
 - Bodily Injury
 - Property Damage
 - Medical Payments (excluding motorcycles)
 - Uninsured Motorists
 - Underinsured Motorists

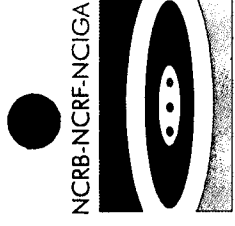
NCGS 58-37-1

Who does the Facility Reinsure?

Eligible risks (summary only)

- Resident of NC who
 - owns a motor vehicle registered **or** principally garaged in NC;
 - has a valid drivers license; or
 - is required to file proof of financial responsibility in order to register a motor vehicle or obtain a NC drivers license
- A non-resident who
 - owns a motor vehicle registered **and** principally garaged in NC
 - is a member of the armed forces (including spouses) stationed on or deployed from a base in NC who intends to return to their home state
 - is an out of state student enrolled in school in NC who intends to return home upon completion of time as student

NCGS 58-37-1



How the Facility Works

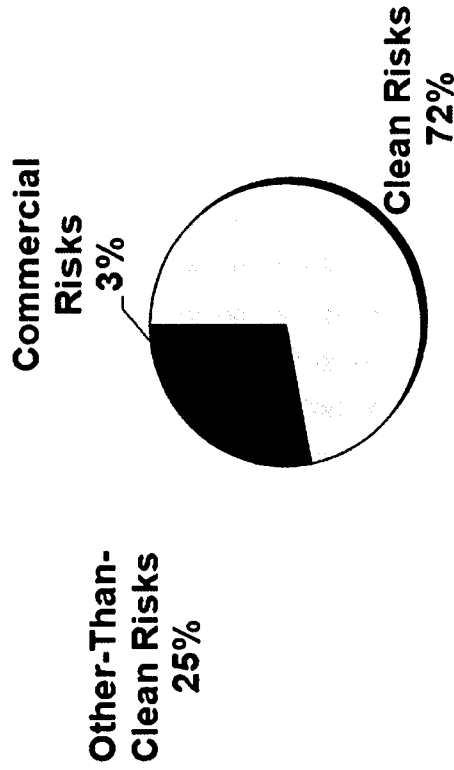
- Companies issue policies
- Companies make choices:
 - Keep (retain) and charge voluntary rates
 - Cede (reinsure), charge Facility rates and send premium to the Facility
- Regardless of choice, companies must treat all policies the same
- On ceded policies, Facility reimburses companies:
 - Cost of writing and servicing policies
 - Cost of adjusting claims
 - Claims payments

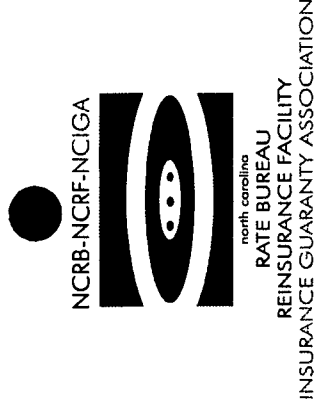
Size of the Facility

21% of all NC exposures are reinsured by the Facility

Distribution by number of exposures

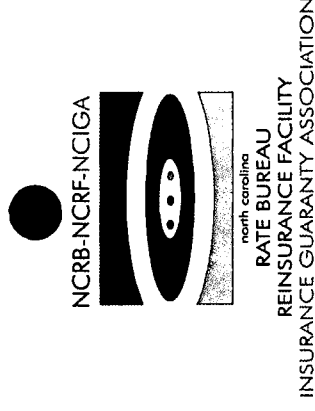
Exposure = one auto insured for one year





Commercial Risks

- The Facility files rates for all classes of eligible commercial risks



Other-Than-Clean Risks

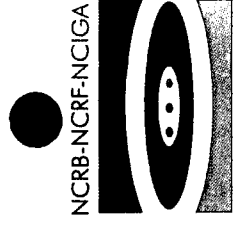
- The Facility files rates for other-than-clean risks
- For non-fleet private passenger motor vehicles, Facility base rates for other-than-clean risks are approximately 30% higher than voluntary rates

NCGS 58-37-35 (I)

Clean Risks

- A clean risk is the owner of a motor vehicle, if the owner, principal operator and each licensed operator in the household:
 - Have at least two years driving experience as licensed drivers
 - None of the persons have been assigned any SDIP points during the three-year period immediately preceding the date of application or renewal
- Clean Risks pay rates equal to voluntary rates filed by the Rate Bureau and approved by the Commissioner
 - Current rate is inadequate by \$151 million

NCGS 58-37-35 (I)



RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

Clean Risk Surcharge

- The difference between the actual rate charged and the actuarially sound and self-supporting rates for clean risks reinsured in the Facility may be recouped....

NCGS 58-37-(l))

- Clean risks do not pay enough to cover losses and expenses
 - Shortfall this year is \$151 million

- The Facility recoups (recovers) this shortfall by a surcharge on all private passenger liability policies

NCGS 58-37-40 (f)



NCRB-NCRF-NCIGA



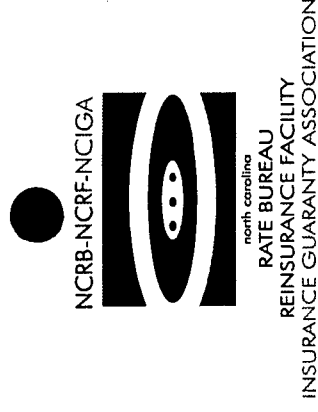
north carolina
RATE BUREAU
REINSURANCE FACILITY
INSURANCE GUARANTY ASSOCIATION

The Idiosyncrasies of North Carolina

- Limited classification plan narrowly defined in the statute
- Reinsurance Facility
- Detailed and proscribed SDIP - Very little definition in other states
- “Take all comers” liability insurance
- Clean risks
- Reinsurance Facility has 52% of the countrywide residual market
- Insurers must use Rate Bureau rates which are capped
- Insurers must use Rate Bureau forms
- No classification shall be based in whole or in part upon the age or gender of insureds
- Rates and forms subject to prior approval process

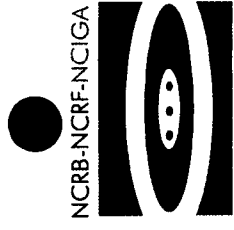
Checks and Balances

- Responsibilities defined by statute
- Plan of operation approved by the Commissioner
- Rates and forms approved by the Commissioner
- Statutorily required review by outside independent auditors (NCRF only)



Measurement of Effectiveness

- Number of insurance companies writing business in NC
- PPA pricing in NC compared to other states
- Incidence of uninsured motorists
- Changes in rates



Thank you

www.ncrb.org
(919) 783-9790

- **Ray Evans – NCRB/NCRF General Manager**
- **Sue Taylor – NCRB Insurance Operations Director**
- **Edith Davis – NCRF Director**
- **Counsel - Young Moore & Henderson**

Presentation to the LRC Automobile Insurance Modernization Committee



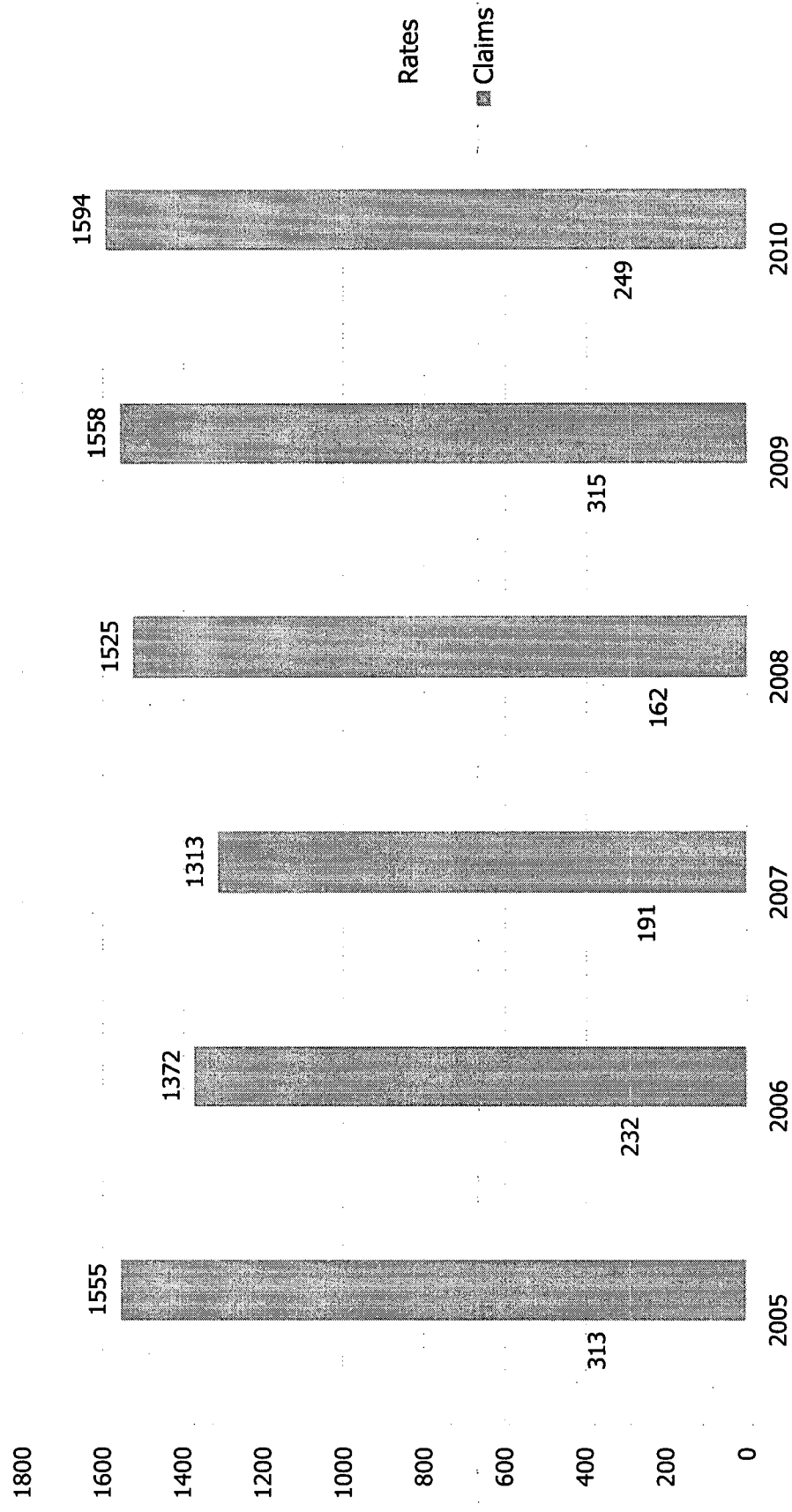
Average Auto Premiums by State (2008)

State	Average Premium Expenditure	Rank
Iowa	\$518.55	2
New Jersey	\$1,081.28	49
New York	\$1,044.04	47
North Carolina	\$595.48	8
North Dakota	\$503.18	1
South Carolina	\$751.39	30
Virginia	\$662.77	18
Countrywide	\$788.94	

Source: 2005 NAIC Auto Insurance Database Report

Private Passenger Auto Complaints Received Per Year (by Reason)

Rates (Premium, Classification) vs.
Claims (Delay, Denial, Unsatisfactory Settlement)



Source: DOI Consumer Services

Ten Year Loss Ratios

2000-2009

State	10 Year Average	Standard Deviation	Ratio Rank 1=Highest	Std Dev Rank 1=Lowest
FL	68.7%	4.5%	2	16
GA	62.3%	3.3%	25	8
LA	69.9%	12.2%	1	48
ME	55.8%	6.0%	49	30
MI	N/A	N/A	N/A	N/A
MS	65.9%	10.1%	5	46
NC	62.6%	2.7%	24	3
VA	62.3%	3.7%	26	11
US Total	63.6%	4.2%		

Source: NAIC Annual Statements, DOI Actuarial Analysis

Estimated Percentage of Uninsured Motorists by State (2009)



Source: The Insurance Research Council

Companies Applying to do Auto Business in NC Years 2007 — 2011

2007	19
2008	13
2009	13
2010	15
2011	12 (through Nov. 2011)

- **NC has low rates that are sufficient for the companies.**
- **NC companies have low loss ratios.**
- **NC has a stable market.**
- **NC has few uninsured drivers.**
- **NC has plenty of competition.**
- **NC market concentrations are where they should be.**

Comparison of S490 and H834/S477

	S490	H834/S477
Rate Bureau	Removes private passenger automobile insurance from Rate Bureau's jurisdiction; Allows individual insurers to file rates with the Commissioner through a new "Flex Rating" band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward deviations with the Commissioner from the approved base rate
Flex Rating versus Deviations	Flex Rating - Rate filings by individual insurers increasing or decreasing rates no more than 15%, aggregated for all insureds, are deemed to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - May be used upon filing or as specified by the insurer - Allows a filing, or combination of filings, up to 15% in a 12 month period - Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is inadequate or unfairly discriminatory - Order is prospective only - Filing(s) greater than 15% are subject to Commissioner's disapproval and refund to insureds (Article 40)	Deviations - Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are presumed to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - Currently, the Facility rate is approximately 20% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. - Deviation takes effect upon filing - Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective - Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 4 year period Moves the SDIP and corresponding insurance points system from the Rate Bureau to the Facility (anticipates that the need for the point system will be reduced with Flex Rating) Requires the Facility surcharge to be set out separately on premium statements	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Leaves the SDIP in the Rate Bureau applicable to all drivers ~~to all drivers~~ Eliminates the Facility surcharge at the end of the 5 year period

The out of state auto insurance companies want the North Carolina General Assembly to change North Carolina's auto insurance rate making system. Not all of the National companies support these proposals. Not all Domestic auto insurance companies operating in this state support these proposed changes. The Department of Insurance strongly opposes the proposed changes to our system that have just been described by Tim Hovis.

Major newspapers across this state studied these bills, researched what was behind them and the effect they would have. And, then, the newspapers wrote critical articles and lead editorials opposing the proposed changes. One paper wrote that it did not believe the companies when the companies said "heavens to Betsy, we won't raise rates"

The proposals may change slightly, but the mission behind all of the proposals from the insurance companies is clear and sure. These auto insurance companies want to be able to charge more to anyone they want in North Carolina. Even if that person hasn't had a point or conviction in years. Whether that person is in the "facility" or out of the facility.

These are for profit companies. If they were doing anything besides trying to increase their profits they wouldn't be doing their job. That is what they do. And that is what they should do. They're there to make money. They'd be crazy not to give this effort to change our law all they've got.

There is nothing in the bills that were just described about being able to lower rates on anyone. The law already allows the companies to charge a lower rate on anyone they want to. They don't need a law

change to charge a lower rate. Our actuary ran numbers on one of the large companies pushing these bills in NC and said that that company could offer a large chunk of its customers an additional 20 % discount and the company's profits would not even go down a full percentage point.

If someone shows you a driver in another state getting a lower rate, ask them why the company is not charging that rate here, because they can, in one way or another. The AVERAGE discount or "deviation" in NC is 20%. That is the average so it includes discounts given to drivers with points and convictions. So...that means drivers with no points are getting even higher discounts. So..."good" drivers with no points are well rewarded for their good driving records.

The proposals just described would allow the companies to charge MORE to anyone they want to...even if that person has no points or convictions. One of the bills (SB 490) would allow the companies to charge up to 15% more per year "in the aggregate" than the cap on the rate set by the Commissioner. "In the aggregate" means that some people could receive significantly more than a 15% increase in any given year. Many could receive a 50% increase. Yet, the Commissioner could not intervene, because it would still be less than a 15% increase "in the aggregate". It also means that the next year the rates could go up by that much again the next year and there is really nothing the Commissioner could do to stop it because the bill takes out the requirement that the rate not be excessive.

That bill also means there will no longer be standardized forms. Shopping for insurance is more complicated than most products. If NC citizens are to get a level playing field with these big companies

standardized forms help folks compare what they are getting from each company.

Folks need to know if they're really getting a discount, or...if they're actually paying for the discount. One major company was caught charging for its "new and innovative product" not too long ago in another state.

The other bills (SB 477/HB 834) would allow the companies to charge close to 30% more than the cap on the rate to anyone they wanted to...even if that person had no points or convictions. (That bill says they can charge "up to the facility rate"...that rate is close to 30%).

The companies will say they want gradual change in small steps. These proposed changes will bring about seismic change to our system.

Neither bill guarantees a rate decrease or says that if the rates don't decrease the bill sunsets.

I know you receive complaints from constituents about things their auto insurance companies are doing that the constituent doesn't like...It really won't matter anymore...If these proposed changes pass, those complaints will be a drop in the pond.

The companies want more money. They're going to try to make arguments about a 4.3% surcharge we all pay for "bad drivers". A surcharge to pay for bad drivers sounds bad until you realize that the companies will be deciding who is a "bad driver". It could be you. It could be me. It could be anyone they decide for it to be...inside the "facility" or outside the facility, points or no points. And the

surcharge sounds bad until you realize it is about \$17 or less per YEAR.

So...to get rid of a surcharge of less than \$20 per year, the insurance companies want the state to give the insurance companies the ability to charge anyone they want to significantly more with virtually no checks or balances. On a product citizens are required by law to buy or be sent to jail.

If people are upset now about a \$1 increase per gallon in the price of gas, they will be livid when they get their new insurance bills and they know they've not done anything wrong. Yet they will see that their insurance has increased...and it will increase significantly more than the amount of the 4.3% "surcharge" the companies will have saved them from by their effort here in the legislature.

The economy in NC is suffering terribly. People are suffering. Adding this "reform" will compound issues many NC citizens face.

The proposed changes would not be good for some of the companies. We've heard from the HO insurance companies in the ongoing property insurance study that HO insurance has not been as profitable lately and that the companies have to count on their auto policies to do well. Disturbing the stability of the auto market could be disastrous to some smaller, especially domestic companies.

We surveyed the companies a few years ago to find out what they considered when they decided someone was a "bad driver" they didn't want to assume the risk for. We asked the companies how they decided someone was a bad driver who should be sent to the facility.

Here are some examples of what some companies said they looked at to see if someone was a bad driver:

Income, education, job history and job changes and service in the US Armed Forces. These are the same factors these companies will be using to decide who is a bad driver if this law is changed.

That doesn't seem like the way we should do things in North Carolina, even if the computer programs in these out of state companies say we should. Lose your job? Lose your home? Decide to serve your country in the US military? A computer at an insurance office in another state may decide you are a "bad driver".

There is no auto insurance crisis in North Carolina. Other states who have "modernized" have done so because they faced a crisis. Those states had such a bad system they could not get enough insurance companies to write in their state. There is no crisis in North Carolina. We have 166 insurance companies doing business here and more knocking on the doors to get here every day.

The companies pushing for change here know there is no crisis in North Carolina. They know that, but you can't blame them for trying.

The auto insurance companies have hired the best lobbyists they know to hire here in Raleigh, and have pumped up the sheer number of lobbyists to work you on this issue. These lobbyists are people we know and for most, trust. They are faces we know, accents we recognize. And that is why the companies have sent them here to be the companies' face. The beneficiary of these bills, if these lobbyists

are successful, though, are large out of state auto insurance companies whose duty is to their bottom line.

In the world of financial regulation, “modernization” meant “credit default swaps”. “Modernization” in what the companies are proposing here consists of new ways to get NC citizens to pay more for auto insurance.

North Carolina has the 8th lowest auto insurance rates in the country including the “surcharge”. We’re getting close to becoming the 7th largest state in the country. Yet, we have the lowest rates in the whole south and the 8th lowest auto insurance rates in the country. Only states like North Dakota, South Dakota, Nebraska, Idaho, Kansas and Wisconsin have lower rates.

We have low rates. Companies are doing well here, but not so well that consumers are overcharged.

These bills will raise our rates.

The evidence in this case consists of the facts I presented about our market earlier this morning. We have a good market. We have a good system. We can certainly understand that these large companies out of state want to push a button and do business here the same way they do elsewhere. Our system may be different than what the auto insurance companies wish it was, but it works well for NC.

I’m very grateful to have gotten to speak to you today. I don’t know if I’ll have another chance in this process, so I ask that as you listen to the other folks who speak during the course of this study you’ll remember what I’ve said. If in the course of this study in the committee room or outside the committee room anyone tells you

anything different from what I've said, or if you have any questions, please contact me and ask me and I'll do the best I can to answer.

VISITOR REGISTRATION SHEETLRC Joint Study Committee on Automobile Insurance Modernization

12/6/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Fred Fuller	NCDOT
Art Lyon	GRUIC INSURANCE
Roger Baldoff	NC Farm Bureau
ES 12/11	TSS
Tom Fitzgerald	FSP
JOE LANIER	NELSON MULLINS
B WALZ	WM
Arthur Bennett	WM
Micaela Tshur	DCI
Dave Kline	Smith, Hudson
Jim Lipp	ECR
BILL GILKESON	BAILEY & DIXON
REBECCA WILLIAMS	NCRB
KAREN OTT	NCRB
Liz Reynolds	NAMIC
BIN Tibbens	Farmers Group, Inc.

VISITOR REGISTRATION SHEET

A.I.M.
Name of Committee

12/6/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Frank Folger	Nationwide Insurance
SUSAN VOLCINI	Nationwide
Robert PASCHAL	Young Men
Anteegen	NMRS
DAVID REE	MANAGING DIRECTOR
John McMillen	MEOS
RAY FRANKLIN	AIA
Matthew Eistun	Smith A
Matthew Eistun	EWG, Inc.
Allison Waller	NMPS

VISITOR REGISTRATION SHEET

A.I.M

Name of Committee

12/6/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	Smith Allen
DAVID BAUM	TROUTMAN SANDERS
Mike Stewart	NC Chamber
Bill Croppin	Troutman Sanders
Bob Hendrix	McGuire Woods
Erin Erab	Hall Finner Insurance
Jim Conners	State Farm Insurance
TIM LUCAS	NC Rate Bureau
DAVID SINK	NC RATE BUREAU
Amy Powell	Nationwide

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

12/6/11
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
TOMMY PETERSON	CAPS 'EM'
Kerrin	INCLOS
Louis Bob	NCDOI
Yancy Buh	NCDOI
Brian Deery	NCDOI
JE TERMINI	GEICO
Sara Fender	IFNC
Kevin McGee	Progressive
Bryan Hecktz	NCDOI
Ernest P. Dickson	NCDOI
Sherri Hubbard	NCDOI
Tricia Ford	NCDOI

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

12/6/11

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Mark E. [unclear]	NC 1107
Ken [unclear]	[unclear]

Judy Lowe (Rep. McComas)

From: Nicole McGuinness Hines (Sen. Apodaca)
Sent: Thursday, December 22, 2011 10:12 AM
To: @InterimCommitteeNotice; Andrew Tripp (Senate); Bill Patterson (Research); Carolyn Gooden (Sen. Apodaca); Chris Floyd (Rep. Steen); Dina Long (Rep. Burr); Gayle Gunn/Karen Johns (Sen. Gunn); Helen Long (Sen. Rucho); Jeff Cherry (Bill Drafting); Judy Lowe (Rep. McComas); Kathie Young (Sen. Kinnaird); Kory Goldsmith (Research); Nicole McGuinness Hines (Sen. Apodaca); Regina Irwin (Rep. Dockham); Rep. Fred Steen; Rep. Harry Warren; Rep. Jerry Dockham; Rep. Justin P. Burr; Rep. Susi Hamilton; Ruth Merkle (Rep. Hamilton); Sen. Bob Rucho; Sen. Ellie Kinnaird; Sen. Rick Gunn; Sen. Tom Apodaca; Shara Graham (Rep. Harry Warren); Tim Hovis (Research)
Subject: <NCGA> Automobile Insurance Modernization Committee [LRC][2011]

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

Wednesday, January 25th, 2012

MEMORANDUM

TO: Members: Senator Rucho, Senator Kinnaird, Senator Gunn, Representative Burr, Representative H. Warren, Representative Hamilton
FROM: Chairman Apodaca and Chairman Steen
SUBJECT: Notice for LRC Committee on Automobile Insurance Modernization

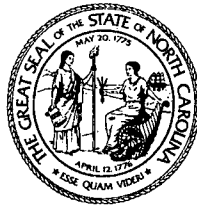
DAY	DATE	TIME	ROOM
Wednesday	January 25 th	9:00 AM	1228 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Nicole McGuinness Hines at 919-715-4647.

cc: Committee Record ☒

Interested Parties ☒



**Legislative Research Commission
Joint Study Committee
Automobile Insurance Modernization**

AGENDA

January 25th, 2012
Room 1228, Legislative Building
9:00 AM

WELCOME AND INTRODUCTORY REMARKS

Representative Fred Steen, Co-Chair, Presiding
Senator Tom Apodaca, Co-Chair,

I. Insurer's Perspective

- Mr. Steve Pociask
President, American Consumer Institute

Mr. John McMillan
Insurance Federation of North Carolina (IFNC)

Liz Reynolds
State Affairs Manager, Southeast Region, National Association of Mutual
Insurance Companies (NAMIC)

David Stoller
State Farm Insurance Companies, speaking on behalf of FAIR NC coalition

- R. Lee Morton
Regional Vice President / NC Operations
Nationwide Insurance

Steve Carroll
Executive Vice President and General Manager
NC Farm Bureau Mutual Insurance Company

Glenn Jernigan
Registered Lobbyist, GMAC Insurance

Jeff Butler
Alliance of Insurance Agents of North Carolina (AIANC)

II. Insurance Industry Expert Presentation

Eli Lehrer
Vice President of the Heartland Institute

V. Committee Discussion and Instructions to Staff

VI. Adjournment

VISITOR REGISTRATION SHEETLRC Joint Study Committee on Automobile Insurance Modernization

1. 25. 12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
RICHARD YARBROUGH <i>Hynd</i>	CRS, INC, RALEIGH, N.C.
RANDALL BROWN <i>Robson</i>	CRS INC RALEIGH, NC
Casey Brown <i>Chen</i>	CRS Inc Raleigh, NC
Boni Kuehn	NCDOI
<i>Lucy Paul</i>	NCDOI
Eli Lehrer	Heartland Institute
JOHN PETERSAS	<i>Capistrano</i>
<i>Tom L. Dickerson</i>	NCDOI
Sherri Hubbard	NCDOI
Fred Fuller	NCDOI
Louis Belo	NCDOI
<i>Made K...</i>	NC DOI
Winston Morris	Nationwide
Bryan Hecke	NC DOI
Nelson Whitley	NCDOI
Rose V. Williams	NCDOI
Tab Mack	NCDOI

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

1. 25. 12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Dana Simpson	Smith Anders
John Miletti	Travelers
Joseph Termin	GEICO
Grant Ragan	NMRS
Oyango Snel	Property Casualty Insurers (PCI)
Frank Folger	Nationwide
Liz Reynolds	NAMIC
David Stallen	STATE FARM
Tary Lyle	huc
Lee Morton	NATIONWIDE
Orval Scott	WPIF/NCNN
Alvin Ferguson	GMAC Insurance
Art Lyon	ARMY N. C.
Jeff Butler	GMAC INSURANCE
SUSAN VALAORI	Auto Ins Agents N.C.
Amy Powell	NATIONWIDE
Mendi Riddle	Nationwide
	nationwide

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

1. 25. 12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Lynn Collar	Nationwide
Caroline Carrington	Nationwide
Terry Collins	Nationwide
Mark McBhiey	Nationwide
Sherry McCoy	Nationwide
Amy McNair	"
Amy Rich	Nationwide
Land Marlett	Appalachian State University
Thomas Moore	F L M
Allison Waller	NMPS

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

1. 25. 12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Robert Paschal	Yonny Moore
Barbara Cansler	ACGR
Roger Batten	NC Farm Bureau
Julian Philpott	//
Beth Walters	AP
Katy Feinberg	MWC
Bill Tibbens	Farmers Group, Inc.

MINUTES

JOINT LEGISLATIVE RESEARCH AUTO INSURANCE MODERNIZATION COMMITTEE

Wednesday, January 25, 2012

9:00 AM

Room 1228, Legislative Building

The Joint Legislative Research Auto Insurance Modernization Committee held its second meeting on Wednesday, January 25, 2012 at 9:00 AM in Room 1228 of the Legislative Building. Senators Gunn, Kinnaid and Rucho attended as did Representatives Steen (Co-Chair), Dockham and Warren. Senator Apodaca (Co-Chair) and Representative Susi Hamilton had excused absences.

Representative Steen, presiding Co-Chair, called the meeting to order at 9:05. He thanked everyone for attending. He reviewed the agenda (**attachment A**) and welcomed members, staff and visitors. The Sergeants-at-Arms from the House, Jim Blackburn and Steve Wilson and from the Senate, Fred Hines and Martha Parrish were introduced. Staff members in attendance were Tim Hovis, Kory Goldsmith, Jeff Cherry and Bill Patterson. Judy Lowe and Nicole McGuinness-Hines were the Committee Assistants. The list of visitors is **attachment B**.

Co-Chairman Steen announced that The Committee would hear from several presenters on insurance perspectives and from the insurance industry. He noted that the Committee heard from the Insurance Commission at the last meeting. Senator Apodaca, Co-chair, was absent due to a family illness.

PRESENTATIONS

Mr. Steve Pociask, President, American Consumer Institute

Mr. Steve Pociask, President of the American Consumer Institute, was introduced. His report is **attachment C**. The Institute is a 501©3 educational research organization with a primary purpose of consumer research. He stated he would discuss some of the Institute's findings, comparisons with other states and what happens when going to some of the reforms that have been recommended.

Mr. Pociask referenced two primary issues that deserve the attention of the Committee. The first is hidden fees, brought on because of the residual market and secondly, the lack of competition in the industry, due to the situation of the Rate Bureau. Both lead to a higher cost for consumers.

The American Consumer Institute conducted a survey and found that 64% of North Carolina drivers were completely unaware of the cost subsidy currently hidden in their rates. It is not disclosed on the bill. Eighty percent of consumers oppose this sort of cost subsidies. This is the notion of providing a subsidy to more risker drivers which will ultimately lead to more speeding, more violations, more accidents and more claims. Those result in costs that are spread throughout the whole industry.

The Rate Bureau is a hold over and has mostly been removed from the transportation industry and other industries since the 1970's. There are very few examples of them anywhere. The reason is that it acts as a collusive nature of price-setting. It involves sharing of information and the whole objective is essentially that of a cartel except with Commission approval. Many insurance companies like the situation because it is pretty much guaranteed profit and there is a lack of price competition. In this system there is the inability to either raise or lower prices or to segment the market more efficiently and quickly; many insurers are comfortable with the cartel arrangement because it protects market share.

In the 70's there were a number of industries that were deregulated. In analyzing those industries today and calculating the consumer value of the savings that occurred, the result is a one-hundred billion dollar consumer welfare benefit per year. The justification for insurance regulation often is the result of lack of competition or concentration. In reality the insurance market, particularly for auto insurance, is very unconcentrated. It has everything in place to be a very competitive market.

From the Institute's review of the economic literature and a number of studies it has done, there was no justification found for the price regulation that is currently in place in some states, including North Carolina. There is no empirical evidence that consumers are benefitting from it. The Institute has found that when cost subsidies are reduced, the result is lower prices by as much as 40%. When there is price flexibility, consumers benefit. The empirical evidence shows that consumers are not helped by the regulations in NC. They are a miserable failure for consumers. The higher the regulations, the higher the price tag. Prior approval means that the Commissioner is actually setting the rates. The conclusion is that North Carolina isn't the lowest price. It is difficult to compare states due to the different environments and the cost of living. North Carolina prices are basically in the middle.

In review, the current regulations are anti-consumer because they protect insurance competitors instead of encouraging price competition. He stated that we should require government transparency, encourage price competition through flexibility and sunset profit guarantees by limiting the Rate Bureau itself. The Facility should be down-sized by allowing competitors to compete based on price and price according to risk. Regulation should focus on solvency and not prices. Economic theory doesn't justify the regulation and empirical evidence shows that it is costly to the consumer. It is time to stop protecting the competitors and start encouraging competition.

In response to a question by Senator Kinnaid, Mr. Pociask stated that the issue is whether or not a Rate Bureau or Commissioner can set prices better than the market can. Studies have shown that the market sets prices much better for insurance than Commissions do.

Representative Dockham thanked the speaker for an interesting presentation.

Mr. John McMillan, Insurance Federation of North Carolina (IFNC)

Co-Chairman Steen introduced Mr. John McMillan representing the Insurance Federation of North Carolina, an association made up of a number of member companies and associations. His report is **attachment D**. He began by asking "what is the residual market?" Every state has some sort of residual or shared market with respect to automobile private passenger liability insurance. That is what the two bills before the Committee refer to. Every vehicle in North Carolina must have this coverage to protect other drivers on the road. Companies must write anyone who walks into their agent's office due to the "take all comers" law. If a company doesn't want to retain that risk they pass it off to the shared market which is shared by all of the companies writing in that state. In North Carolina that is the Reinsurance Facility (in place since 1973) and there is a huge residual market or reinsurance facility. This was recognized by the Insurance Commissioner in 1988-89 when he said "I believe we need to depopulate the Facility." He also said "I agree that the percentage of drivers in the Facility must be reduced. There is always room for change, and we must consider targeted reforms and targeted modernization."

The Insurance Fact Book, which has been around for 40 years, lists the shared market by State. In North Carolina there are 1,392,804 vehicles in the shared market. The total for the entire United States is 1,727,895, meaning NC has 80% of the entire residual market for the country.

North Carolina is the only state with a Rate Bureau that proposes a base rate for all the drivers in the state. The Commissioner has to approve that rate, which is not the correct rate for all drivers. It is the correct rate for the middle driver. Half ought to be paying more and another half ought to be paying less. Companies can file downward deviations where they pay less and all major companies file downward deviations, sometimes as many as 24 different deviations for different things. Companies do not have the opportunity to deviate up. The Commissioner does not allow any upward deviations from the Bureau rates. The only alternative the company has then is to cede that business to the Reinsurance Facility. Currently Facility base rates, on average, are 26% higher than the Bureau approved rates. The 26% higher rate is also approved by the Commissioner.

If you have an average Bureau rate of \$100, the average Facility rate would be \$126. Companies can deviate down from the \$100 but they have to get the deviation approved and they can't deviate up. The big gap is the reason that there are so many drivers in cars insured by the Reinsurance Facility. Senate Bill 477/HB834 would allow companies to file deviations up to the Facility approved rates. Companies could then write policies in that gap. Many policies that would have been ceded to the Facility would be retained by the company. Current law directs the Facility Board to have a sub-classification for risks that have been ceded to the Facility but have no Safe Driver Incentive Plan points. These are called "clean risks" but underwriters have determined that those particular drivers pose a higher risk so they have ceded this risk to the Facility. These "clean risks" pay the lower Bureau rates and are currently being subsidized by all other drivers in the state to the tune of \$115 million this year. Every driver in the state pays a "clean risk" surcharge of 4.3% of the liability coverage to subsidize these drivers. It has been as high as 10%. SB477/HB834 gradually eliminates this subsidy over time by doing away with the "clean risk" sub-classification in the Facility and the "clean risk" surcharge over a period of 5 years. When fully implemented, this bill would result in 85% of North Carolina drivers paying lower premiums than they would have otherwise had to pay. The bill would have no effect on The North Carolina Rate Bureau, the ability of the Rate Bureau to propose rates to the Commissioner or the Commissioner's ability to set rates for both the Rate Bureau and the Reinsurance Facility.

As indicated, North Carolina does have fairly good liability rates. Liability insurance covers accidents in which the driver is at fault and protects whoever that driver has hit. Not just the cost-of-living differences between North Carolina and other states but the tort laws that govern the liability in those instances have a lot to do with insurance rates. As an example, 12 states have no fault insurance. Policy holders recover financial losses from their own carriers without regard to fault; totally different from how it is done in North Carolina. Thirteen states have pure comparative fault-everyone who is injured recovers, no matter how much at fault they may be. That represents a huge cost to a liability insurance carrier that has to pay for those losses thus making the rates higher. Twenty-one states have modified comparative fault. The injured party recovers even if they are 50% at fault. Only four states, including North Carolina, have contributory negligence. That has a significant impact on North Carolina's liability insurance rates.

Auto insurance companies actively compete for business. The largest growth in advertising last year was in the automobile market (up 27%) and in auto insurance (up 23%). Automobile insurance is one of the most competitive businesses that we can have if they are allowed to get involved and compete for business. The Commissioner has called for incremental change and for depopulation of the Facility. The two bills do exactly that.

Senator Rucho asked if insurance companies would like to have a larger percentage of their risk-adverse business in the Facility. Mr. McMillan responded that there are 8 companies doing business in NC that currently have ceded over 95% of their business to the Reinsurance Facility with 2 others at 90%. There are some companies that cede all of their business to the Facility. There is a list of these companies

posted on the re-insurance web site. The companies engage in this business because they receive an expense allowance for writing the business and a loss adjustment expense allowance for handling the policy. The policy holder does not know their risk has been ceded to the Facility. They get a policy from the company whose agents they go to see. Last year the cost of doing the operation of the Reinsurance Facility and handling over one million policies was seven million dollars, which is shared by all of us.

Chairman Steen thanked Mr. McMillan for his presentation and introduced Mr. R. Lee Morton from Nationwide Insurance.

Mr. R. Lee Morton, Regional Vice President/NC Operations, Nationwide Insurance.

Mr. Morton stated that he appreciated the invitation to talk about North Carolina's stable, robust, low-cost, consumer-friendly and highly competitive auto insurance market (**attachment E**). He began by saying that Nationwide Insurance is committed to North Carolina having done business in the State for more than 83 years. The company's insurance mission is simple, serving their customers across the US, working to become their trusted advocate by protecting what's most important to them. They are a full service property and casualty insurer with more than 1.2 million policyholders in the State, with nearly 670,000 being automobile policy holders. There are 1200 Associates, 381 principal agents and 1600 associate agents in 592 different locations across NC.

Nationwide is proud of its heritage as a mutual insurance company, having its roots in the collective purchasing power of fiercely independent, rural farmers. The company cares about their business, but also about their members, communities, producers, agents and associates. Their mutual heritage and viewpoint give them an ability to focus on things beyond the bottom line.

Mr. Morton stated that he would like to share his opinion on the certain consequences and the potential unintended consequences of proposed legislation (like SB 490) that would radically dismantle our State's automobile insurance ratemaking system.

These are the known consequences of enacting SB 490 or similar legislation:

About 992,000 NC policy holders would face an increase in their automobile insurance premium. This is undisputable.

These drivers are "clean risks" presently assigned to the NC Reinsurance Facility. Clean risks are drivers with no insurance points (chargeable convictions). For various reasons, these drivers are ceded and **state law requires that they be charged the rate approved by the Commissioner for individuals without insurance points.**

In Wake County alone, almost 57,000 drivers would pay higher bills from now on.

If the North Carolina Reinsurance Facility was abolished tomorrow, the average uptick in premium for every "clean risk" now written in the Facility would be \$150/policy.

Hundreds of thousands of North Carolina families with high school and college drivers will pay more to insure them.

The elected Commissioner of Insurance will lose his authority to prevent automatic rate hikes for consumers who by state law are required to buy auto liability insurance.

The likely UNINTENDED consequences are as follows:

North Carolina's historical auto rate stability will be extinct. In its place will come changing rates, both high and low. Consumers will no longer be able to compare insurance quotes on an apples-to-apples basis.

Every company will rewrite its auto insurance contracts, discarding the common Rate Bureau policy and forms, which surely will result in most costly consumer litigation.

The number of uninsured motorists will rise, reflecting the higher premiums charged to some drivers who will no longer be able to afford coverage. The cost of uninsured drivers will work its way back into the rates of the rest of us who buy auto insurance.

While some claim that NC's auto insurance system is broken—despite our very low rates and highly competitive market—the real problems lie elsewhere. If the auto insurance rate making system is dismantled, it will have an impact on other lines of insurance. Be prepared for the unintended consequences of remaking one system of insurance coverage and not the other.

There has been much discussion about NC's unique auto insurance system's pros and cons. The system is not perfect and it is admittedly unusual. From the eyes of North Carolina consumers, automobile insurance appears to work really well for 6.5 million NC drivers. The auto insurance system in place in North Carolina today has the lowest rates in the entire Southeast, a market that is so attractive that almost 170 companies are writing insurance here with a guarantee of core consumer protections, including independent oversight and no automatic rate hikes for a product the law requires drivers to purchase.

Those seeking to scrap our system claim that the result will be lower prices for consumers. Two simple facts call into question these claims. All NC auto insurers are already free today to offer lower prices to any customer without General Assembly intervention. Under the current system, premium discounts are already allowed by law. No auto insurer needs new laws to lower customer rates. Despite our state's growing population, and its numerous urban areas where accidents often occur, auto insurance rates in NC are the eighth lowest in American and the lowest among our nation's 10 most populous states. Rates are so good in NC that the General Assembly had to pass a law in 2007 to keep people from other states from coming here to buy their insurance at NC's lower costs.

For insurers and consumers alike, our State is the envy of many others. We have a very healthy, stable, competitive, low-cost and diverse auto insurance market with lots of product choices and sensible protections for North Carolina's consumers. Mr. Morton concluded by stating that Nationwide has been and remains committed to North Carolina.

Steve Carroll, Executive Vice President and General Manager, NC Farm Bureau Mutual Insurance Company

Chairman Steen next introduced Mr. Steve Carroll, Executive Vice President and General Manager of the NC Farm Bureau Mutual Insurance Company. His report is **attachment F**. He expressed appreciation for the opportunity to address the NC Legislative Research Commission subcommittee to discuss insurance rate making in NC. NC Farm Bureau is the largest domestic automobile insurance writer in the state and the fourth largest writer of automobile coverage among all companies. It is a mutual company that is controlled and directed by NC policy holders' Board of Directors with 414,000 auto policies of which 92%

are voluntary coverages and 8% are through the Reinsurance Facility. On a liability premium basis, only 13% is through the Reinsurance Facility. There are 180 offices in all 100 counties of the state.

On automobile insurance rate making questions, the company believes the current rate structure and approval process in NC works well for the personal automobile line of business. Automobile liability is a statutorily mandated coverage, as much if not more, for the protection of the public than for the insured driver. Current laws are written to ensure that all vehicles have liability coverage for the protection of the public and that liability coverages are affordable and obtainable for all drivers in the state.

The North Carolina Reinsurance Facility was created with the goal of all drivers having attainable liability insurance and the Facility serves that purpose. It is designed to be a break even entity; therefore, pricing shortfalls for the sake of affordability and public protection should be, and are covered by all drivers statewide through the recoupment process. It is a hidden charge now and the Farm Bureau, as a company, would have no problem if that recoupment charge were shown on the declaration page so insureds understand it and know what they are paying.

The North Carolina Rate Bureau's process of pooling data for the entire industry and filing the maximum rates for both voluntary and RF business provides a larger data pool for North Carolina and subsequently more accurate and predictable base rates. An appeals process for disagreements on base rates by the NC Rate Bureau and NCDOL is well established and can be pursued by one entity, the NC Rate Bureau, rather than appeals being filed by a multitude of individual companies in a crowded judiciary system.

The filing of uniform forms for all companies by the NC Rate Bureau also provides clarity and value for customers. Consistent and uniform forms regarding coverages have great value when dealing with a subject that is often very confusing to the public. Also, there is a system in place for the industry to expand and modify coverages that may be determined to be of value to the customer. These forms are subject to the Department of Insurance approval also.

Voluntary NC base rates are competitive nationally and good risks, as selected by the numerous companies, receive a multitude of various discounts. This adds additional emphasis to underwriting and risk selection for a successful automobile operation in North Carolina. Current rules and statutes allow for this necessary underwriting discretion. Competition is strong and there is a vibrant market for automobile insurance. Most companies' efforts in auto insurance focus on increased production and how to be even more competitive in today's thriving automobile market. The current system has stood the test of time and is very stable. This is especially important for a single state insurer and small companies that compete with the large national carriers. It is especially true during a time when being able to afford to continue to write property insurance is a serious challenge.

The current system is not perfect; no system anywhere is. We should not change ours just because it is different. Our system provides stability and predictability and helps achieve the balance of attainability and affordability that is necessary for the protection of both the public and insured. North Carolina's system provides a highly competitive market as evidenced by the many deviations offered and the strong advertising and marketing efforts of the industry.

The Farm Bureau's position is to leave our core system in place and modify as needed in areas where there is strong consensus among the NCDOL, the industry and the General Assembly that the changes would improve and strengthen the current system.

Senator Kinnaird stated that there is a need to depopulate the Reinsurance Facility and Mr. Carroll agreed that there should be discussion, as the Commissioner is proposing, about some effort to

depopulate the Facility, review clean risks rates and definition and how they should be addressed. In response to Senator Kinnaird's follow-up question about the proposed bills, Mr. Carroll noted that the Farm Bureau thinks they go too far and do too much and change too much of the current system. Rep. Warren addressed the recoupment of the surcharge and Mr. Carroll indicated the company had no problem with showing recoupment of the surcharge and an explanation of it given. Representative Dockham observed that over the years the Farm Bureau has some of the most competitive rates in NC.

Glenn Jernigan, Registered Lobbyist, GMAC Insurance

Chairman Steen recognized and introduced Mr. Glenn Jernigan, lobbyist for GMAC Insurance who stated that in view of the remarks of the two previous speakers, his remarks would be both brief and anticipated. GMAC Insurance, NC domestic companies are head quartered in Winston Salem with approximately 1000 employees and sold through more than 1,300 independent agencies throughout NC. They are the largest writer of automobile insurance through local, independent agents. They are the fifth largest writer of auto insurance overall in the state. He confirmed what had already been noted, that auto insurance is different in NC but it works. There is no crisis. The automobile insurance market is vibrant, highly competitive and it produces the 8th lowest rates in the nation. All current proposals before the committee to "modernize" auto insurance will significantly reduce the 115 million clean risks recruitment surcharges and the number of drivers in the Reinsurance Facility. The 115 million dollars does not disappear. Would the potential savings of up to \$17.00 per year be worth the risk of allowing insurance companies to increase their overall rates by 15% every 365 days with little or no protection to block these rates? The proposed changes are controversial and they are fraught with unintended consequences; potential, significant increases to NC drivers at a time when our latest unemployment rate figures reflect 9.8% unemployment and more than 440,000 unemployed North Carolinians. It would mean significant increases in economic prices for North Carolina drivers who need vehicles to get to work, to transport their children and for other uses. Increases to those who can least afford them will potentially increase uninsured motorists on our highways. Senate bill 490 is not necessary and it is not good for the drivers of North Carolina. Mr. Jernigan noted that he did not see consumers asking for changes in the current automobile system. There is not a request from the NC Commissioner of Insurance for proposed changes and he has appeared before the Legislature to oppose the changes. The motivation for this bill is about higher rates. Knowing the legislature is here to protect and to provide for the automobile insurance consumers the best protection is that there is no change in the current rates because there is not a demand for it and the system has proven to work satisfactorily promoting competition from within the State, keeping our rates the lowest in the Southeast and the 8th lowest in the nation. The General Assembly is here to protect the public and to promote rates that are competitive and to provide the insurance automobile drivers who use their vehicles daily need. The auto insurance companies that serve in the State have made a good case of saying that our current system needs no change. Mr. Jernigan stated that in addition to representing GMAC Insurance, he has also had the privilege of representing the automobile insurance agents in North Carolina.

Mr. Jernigan then presented Mr. Jeff Butler, President of the Automobile Insurance Agents of North Carolina.

Jeff Butler, President Able Auto/Cycle Insurance Inc., Vice President of Alliance of Agents of NC

Mr. Butler thanked the members for the opportunity to speak to the Committee. He began by answering the question on the recoupment fees. He recounted getting phone calls periodically and when explaining to the customer what the recoupment fee was for, most of the time there was never a problem and customers understood where it was coming from. Because of the requirement in NC to

have automobile insurance, the system is that the insurance companies cannot deny anybody liability insurance. It is a great system. When the application comes in the insurance company has the opportunity to look at that risk and decide whether to keep it, or write a voluntary or cede it to the Facility. All of the clean risk classifications that are being discussed have already been looked at by the insurance company and have been deemed unprofitable so the application is sent to the Facility because the company is afraid it will be unable to make a profit.

Mr. Butler noted that he had not heard today the definition of a clean risk, the name implying that a clean risk is someone that does not have any violations. But, it is somebody that doesn't have any chargeable violations. If a person gets a speeding ticket in NC, he/she is able to go to court and get it reduced and he/she will be considered a clean risk and insurance companies are unable to charge points. When they are underwriting, they are able to see that there is a violation. If that same person, a few months later gets another violation (a 90 in a 55 mph speed limit) he is able to hire an attorney, go to court, get a prayer for judgment and he will still be considered a clean risk even though the companies can see that there have been violations. If there are almost 1 million policies in the clean risk classification and the insurance companies have already picked through the policies and are afraid of that risk at the maximum rate they are allowed to charge, and we do away with that and start phasing it out, those 1 million people are going to be seeing rate increases.

Some of the bills that Mr. Butler has looked at have flex ratings. Insurance companies can go up and down (up to 15%) on the flex ratings. This does not mean an individual's rate going up 15% but rather a company's book of business going up or down 15%. Insurance companies have the ability now to write liability insurance at a lower rate. The Rate Bureau sets the maximum rate. Flex rating over a scope of business would mean some rates will stay flat and another person's might go up 24% as long as the book of business doesn't increase more than 15%. As stated our rates are the 8th lowest in the nation so it seems that perhaps 42 other states need to be changing to our system not us to theirs. Under NC's current statutes and current system of writing auto insurance, Mr. Butler noted that in his 25 years as an agent never has he had as much competition as he does today. This is a very good state for the consumer because we do have regulation. It is a good state for the insurance companies because they are able to look at the risks that they want to insure. Looking at some of the bills and considering different policy forms, the issue is about coverages. North Carolina has accident forgiveness. Anybody with an accident under \$1800 is forgiven; that is every single insurance company! In NC every vehicle for liability insurance is going to be charged the same rate. It does not matter if it is a Corvette, a Mustang, or a Chevy GEO Metro. In other states liability rates are going to differ depending on the vehicle. There are a lot of things that can happen when changing things with different laws. The Alliance of Agents believes that any changes in the current system will do nothing but raise the rates in NC.

Liz Reynolds, Sate Affairs Manager, Southeast Region, National Association of Mutual Insurance Companies (NAMIC)

Ms. Reynolds was introduced by Chairman Steen and she thanked the Committee for the opportunity to testify in favor of automobile insurance system modernization in North Carolina. Her report is **attachment G**. NAMIC is the voice of the mutual property/casualty insurance industry in the US with companies ranging in size from a one-person farm mutual to some of the world's largest insurers. The 1,400-plus members serve more than 135 million policyholders in every state and write 52% of all auto policies in the nation. In North Carolina, NAMIC members write over 50% of all auto policies. They are committed to promoting a healthy, vibrant insurance industry in the free-market environment and to representing the best interests of their members and policyholders. Rate modernization is a top priority for the association in all states.

Ms. Reynolds testified on NAMIC's behalf in support of auto insurance modernization during the 2011 Legislative Session and while disappointed that legislation did not pass, the organization understands this is a complex topic that merits thoughtful study and consideration. She thanked the Committee for tackling this important task in light of the fact that a divided industry and competing proposals during the legislative session made this topic even more complicated. However, the experience was instructive. NAMIC learned some valuable lessons from the 2011 Session and listened carefully to stakeholders fearful that marketplace disruption could be an unintended consequence of a well-intentioned system improvement.

NAMIC joined forces with another national insurance trade organization, the Property Casualty Insurance Association of America, known as PCI, to bring together individual insurers to work together constructively to find an approach that not only would improve North Carolina's outdated, inefficient and unfair auto insurance system, but also was responsive to the concerns heard last year. The groups have worked as a team and consulted with industry partners to develop ideas for an orderly transition to a more up-to-date auto insurance system. Auto insurance systems in other states were reviewed and discussion was held regarding best practices that could be applied in NC. The reform bills introduced in 2011 were scrutinized and the group selected what they believe are the best provision from each. They also determined that it makes sense to maintain the Insurance Commissioner's control over rates.

Much work has gone into the new and improved language and the organizations believe they have a good product to present. The proposal has the backing of the vast majority of auto insurers doing business in North Carolina.

Ms. Reynolds then announced that David Stoller of State Farm would take the Committee through the proposal and explain how the insurance marketplace in NC can be made the best it can be. It will be better for constituents than the current system allows and the proponents desperately want a chance to prove it. They are looking forward to making that happen.

Mr. David Stoller, State Farm Insurance Companies, on behalf of FAIR NC Coalition

Mr. Stoller announced that he was speaking on behalf, not only of State Farm, but also for those companies who participated in the FAIR NC Coalition which put together the new and improved proposal that was distributed to the Committee (**See attachment H**). He began by stating what the proposal does not do. It does not change anything about how North Carolina regulates market conduct, financial solvency, licensing or most other aspects of the regulatory system. It does not eliminate either the Rate Bureau or the Reinsurance Facility or the ability of the Commissioner to disapprove rates. It does not disrupt the market or do anything that by itself would change the "average rates". The two separate but related issues that are the subject of the Committee's discussion and this proposal are the size of the Reinsurance Facility and its tax on consumers and the bureaucratic rate setting process.

Every state has some sort of residual or involuntary auto insurance market; in NC it is the Reinsurance Facility, which is huge and way beyond any reasonable size. In comparing with other states, North Carolina had 80% of the total residual market in the entire country. The size isn't the only problem; there is also the "clean risk" category. By definition, this group doesn't have convictions for major violations on their driving records but that doesn't mean they were good drivers. Speeding tickets can be reduced and no matter how many times that occurs the driver is still a "clean risk". They are getting a hidden subsidy from safer drivers. In a 5-year period, consumers paid just under \$900,000 in hidden taxes for those "clean risks". Elimination of the subsidy will gradually reduce the cost of insurance for 85% of consumers.

The proposal noted above addresses the problems with the system in a gradual way that will help consumers. First, it calls for the clean risk category and the subsidies to be eliminated by moving higher risk drivers to their fair rate over five years. As they move, the hidden subsidy goes down and eventually is eliminated.

Second, the proposal would allow companies to choose to stay with the Rate Bureau system or to choose to file rates individually. There are two different methods for setting rates in Statute 58. Article 36 is the Rate Bureau method where all companies work together to develop one rate filing, which is reviewed by the DOI, hearings are held, appeals filed and eventually the rate cap for the industry is set. The other method, Article 40, is the existing system used for all other lines, where companies individually file their rates without consulting one another. The proposal lets companies choose which system to use and adds a tweak to Article 40 to make rate filings simpler and faster. Either way, the Commissioner retains the ability to disapprove rate filings. Rate flexibility will reduce the size of the Facility.

Third, for the Article 40 system, the proposal adds a "flex band" system. It comes from the National Conference of Insurance Legislators, a legislative group that works nationally to look at insurance issues. A "flex band" says if the rate request which is filed is within the rate set in statute there is a presumption that it is acceptable. If the filing is outside that range, there is no presumption. It can't be used until the Commissioner has approved it in advance. The flex band allows rates to be adjusted quickly and in small increments as market forces change, unlike the Rate Bureau where rate requests are made once a year and by the time they are implemented they are based on old data.

Mr. Stoller stated that saying North Carolina's rates are the 8th lowest in the country is confusing. While the rates are low, they are not the lowest even in the South, the Commissioner doesn't set average rates and there is no causal connection between the Commissioner's approval and low average rates. Rates are a function of losses, costs, and expenses and capping rates as the NC system does doesn't change the so-called "average rate". When a company wants to file a rate request, it looks at its costs and expenses, projects the losses it is likely to incur and matches rate to risk. Note the average rate. The Commissioner doesn't control any of the costs, expenses or losses; they stay the same. What the Commissioner does is set the cap on how much anyone can be charged. The actions of the Commissioner have nothing to do with average rates. NC has low averages rates not because of our rate system but because we have a very favorable tort system, safe roads, low jury awards, few accidents and lower claims. The Department and the Rate Bureau don't control any of those.

The current system was designed to protect insurance companies. To side with consumers, the Committee should consider the proposal being put forward due to the following:

1. Over time, the secret tax will go away effectively lowering the cost of insurance for most.
2. More drivers and better drivers could receive more and bigger discounts
3. Consumers in NC will be able to shop for new, innovative products and services.
4. By reducing costs and expenses of the system, there are fewer of them to be plugged into rates and eventually paid for by consumers.
5. States that have modernized their systems have seen an increase in the number of companies doing business with more choices, downward pressure on rates and increased jobs.

The proposal is simple. It does not eliminate the Commissioner's role in approving rates. It effects change gradually. It uses existing statutes and rate systems adding a way to make rate filings simpler and faster. It comes with no cost and no risk to consumers. Companies that like the current system are

free to keep it and keep their rates low. The companies using the Flex band will have reduced costs and expenses and competition will put downward pressure on rates. Either way, there is no risk to the consumer. The only ones who could be hurt are the companies who choose the wrong system. When companies compete for business, consumers are the ultimate winners.

Following Mr. Stoller's presentation, Senator Rucho asked if the Commissioner had had a chance to review the proposal. Mr. Stoller responded that he has had a chance to review it but has not formally issued any comment or discussion about it.

Eli Lehrer, Vice President of the Heartland Institute.

Next, Chairman Steen introduced Mr. Eli Lehrer, Vice President of the Heartland Institute, a national think tank with offices in Chicago, Washington, DC, Tallahassee, Austin and Columbus. He came at the invitation of the Committee to discuss North Carolina's automobile insurance system, the problems it faces and ways that it might be helped. He does not represent any company or individual besides himself, only the free market. **(Attachment I)**

He proposed to talk about the facts about the system and ways it might be helped. He began by stating four simple facts about the insurance environment in North Carolina. First, rates are average here. The states nearest to NC have vastly different insurance regulatory systems and the rates are pretty much the same. When it comes to the average rate paid in the state no set of reforms is going to greatly raise it or lower it. If the right things are done, consumers may get a 5-10% discount. If the wrong things are done, people may pay a little bit more. The fundamental costs can't be changed. Second, profits are guaranteed in North Carolina. This is a unique system and an unusual one. Insurers cannot lose money writing coverage in NC unless they have really incompetent management. Current NC law requires the insurance commissioner to take profitability into account in setting rates and, through free ceding to the Reinsurance Facility, lets insurers dump any policies that aren't profitable. The Reinsurance Facility is not really a residual market. It is a way of absolutely assuring that companies cannot lose money writing auto insurance in NC.

Third, the products offered in North Carolina are behind the times. Many of the more innovative and interesting products offered by the auto insurance industry are not sold in the state. The reason for this is not the fault of the Insurance Commissioner and it is not really the fault of the companies either. It is the cumbersome nature of the Rate Bureau assessment that makes it extremely unattractive for companies to offer these products.

Finally, the residual market is enormous. Seventy-eight percent of all drivers in the country who are in residual market are in this state while it has only about 3% of the country's population. This residual market (profit guarantee) should go. It is the major reason that so many people are not served at all by the private market but are subsidized by tax payers as a way of guaranteeing profit. What consumers get in the end is not a very good deal. The great majority of people in NC are paying more than they should and have fewer options than they should.

If the legislature is serious about making meaningful reforms, it should consider following plans that embody these principles. First, insurers should have to file their own rates. He stated that the industry proposal that leaves the Rate Bureau intact is not good. The Rate Bureau is expensive and anachronistic. Insurers should have to take responsibility for their own rates.

Second, the range of rating factors allowed should be expanded. North Carolina should drop its rule that prevents auto insurers from considering sex in determining auto insurance rates. The specific range

of rating factors allowed is a question that has no perfect answer; the use of some rating factors may offend our sensibilities or values but the evidence strongly supports allowing insurers to consider the sex of drivers.

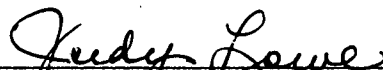
Third, the other purpose in doing this is to encourage insurers to offer new stuff. If insurers are to file their own rates, it would make it easier for them to offer innovative new products available in most other states. The Insurance Department should do what it can to encourage insurers to offer their products in NC.

Fourth, profit guarantees over time should be eliminated. This is not necessarily a matter of rewriting the statutes immediately. Companies that do not make a profit stop doing business in the state. It is not the job of state government to make sure that given companies make money. Ending free ceding to the residual market would be disruptive in the short term but the legislature should look to phase it out. Over time North Carolina can and should have a better auto insurance environment.

Chairman Steen thanked the speaker, the Committee staff, and the clerks, Nicole and Judy for getting the meeting ready. He asked the members to review the rate to risk option proposal. The committee will be notified when the next meeting will be.

The meeting was adjourned at 11:28 PM.


Rep. Fred Steen, Co-Chairman


Judy Lowe, Committee Assistant

ATTACHMENTS:

A-Agenda

B-List of Visitors

Reports:

C- Steve Pociask, President, American Consumer Institute

D- John McMillan, Insurance Federation of North Carolina (IFNC)

E- R. Lee Morton, Regional Vice President/NC Operations, Nationwide Insurance Co.

F-Steve Carroll, Executive Vice President/General Manager, NC Farm Bureau Mutual Ins. Co.

G-Liz Reynolds, State Affairs Manager, Southeast Region, National Association of Mutual Insurance Companies (NAMIC)

H-David Stoller, State Farm Insurance Companies, for FAIR NC coalition

I-Eli Lehrer, Vice President of the Heartland Institute.

*Before the North Carolina
Joint Legislative Study Committee on Automobile Insurance*

**Statement of Steve Pociask
President of the American Consumer Institute, Center for Citizen Research
January 25, 2012
Raleigh, North Carolina**

Today I will talk about a number of problems with the current regulatory system in North Carolina, including the existence of hidden fees and the lack of price competition – both of which lead to higher consumer prices. Let's look at the facts.

An American Consumer Institute survey found that 64% of North Carolina drivers did not know that they pay a surcharge on their auto insurance bill so that risky drivers can pay less. How could they know? After all, state law prohibits insurance companies from disclosing these surcharges on consumer bills. Also troubling, according to the same survey, 80% of drivers in the state oppose the idea of having good drivers pay more in order to help risky drivers pay less. In other words, North Carolinians object to the idea of subsidizing risky drivers, which explains why some want to keep these surcharges a secret, and one reason why reforms are needed.

Encouraging risky drivers to get behind the wheel is not without adverse consequences. These drivers are more likely to have accidents and file claims for losses, which pushes up everyone's auto rates. It also contributes to fatal crashes, which may explain, in part, why North Carolina has higher fatalities per miles driven, compared to the U.S. average.

The biggest opposition to fixing the current regulatory system is that that reform would somehow be anti-consumer and will help insurance companies enrich themselves. Think again. Another big secret is that the state's system of auto insurance regulation works like a system of cartel, and it is costly. Rates are set by an industry rate bureau that gathers together auto insurance companies (think collusion), shares cost data and sets an industry price. It is price-fixing, but it's perfectly legal and the largest insurance companies love it, because the process allows for nice profits, limits direct price competition and protects market share. Without price competition, consumers always pay more.

Some claim that North Carolina has among the lowest insurance rates in the country. Actually – and here's another secret – it doesn't. If you factor in the hidden fee, the mix of urban/rural driving and adjust for cost-of-living, North Carolina is more expensive than most states. That is the cost of encouraging risky driving.

The current regulations are anti-consumer – they protect insurance competitors instead of encouraging price competition. Let's end the secrets, require government transparency, lower the size of the residual market and encourage price competition for the benefit of consumers.

Price Competition is the Key to Consumer Benefits

**Before the Joint Legislative Study Committee on
Automobile Insurance**

January 25, 2012

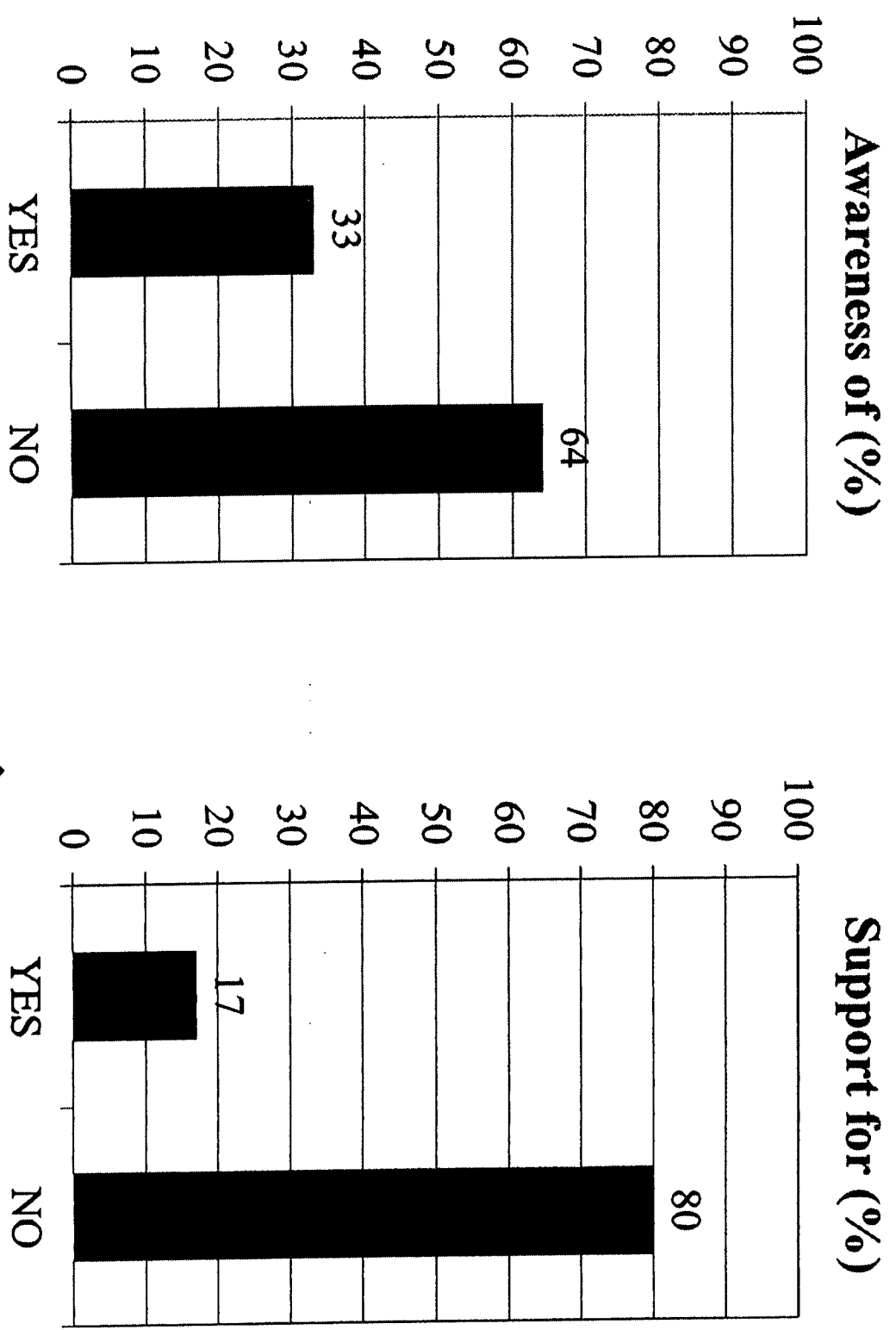
Raleigh, North Carolina

Steve Pociask



**The American Consumer Institute
Center for Citizen Research**

North Carolina Consumers Do Not Want “Hidden” Automobile Fees



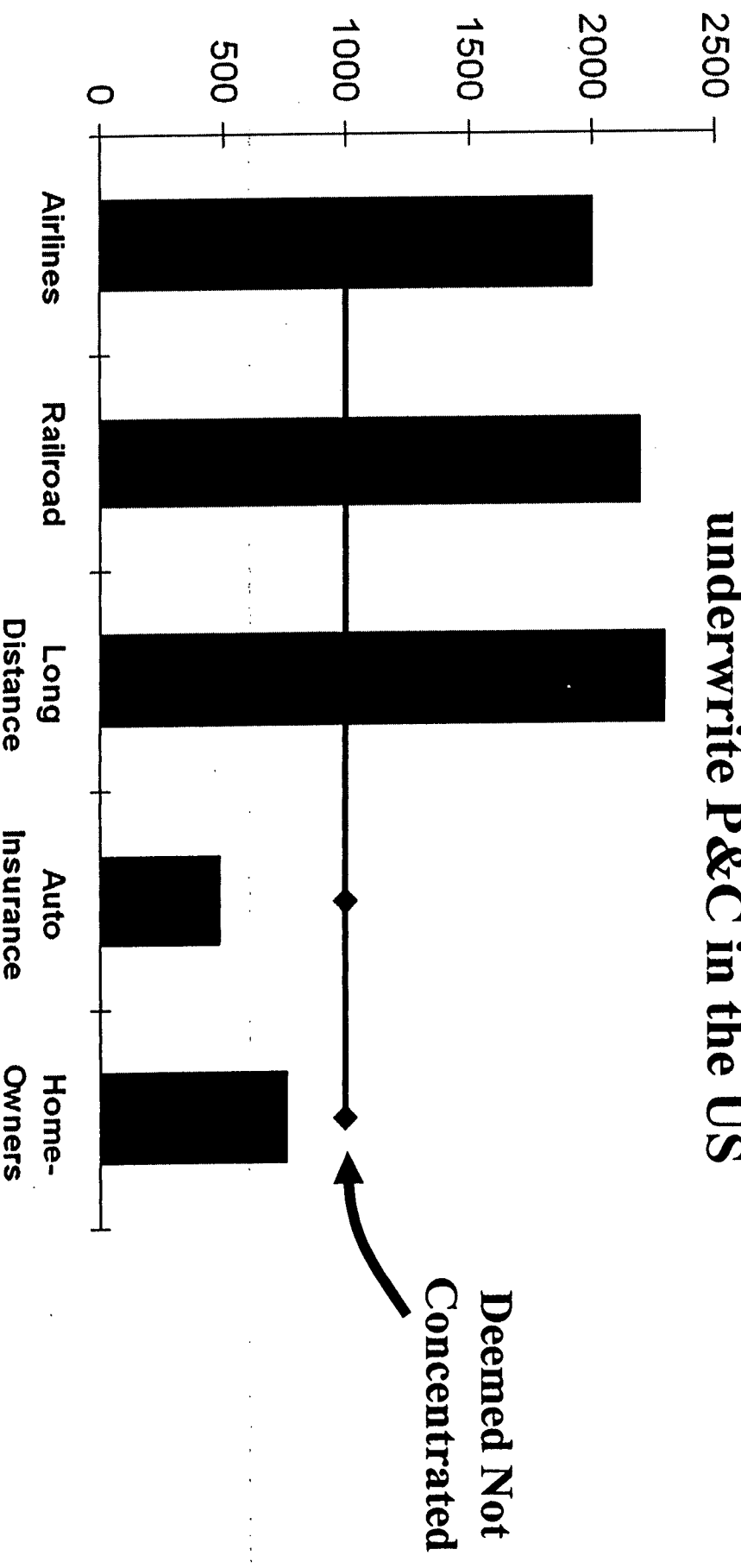
How Do Consumer Benefit?

- Highest Residual Market
 - Adverse selection
 - Moral hazard
 - Higher costs, higher prices
- Rate Bureau
 - Collusive decision-making
 - Guaranteed profits
 - Lack of price competition
 - Market share protections

Industry Concentration

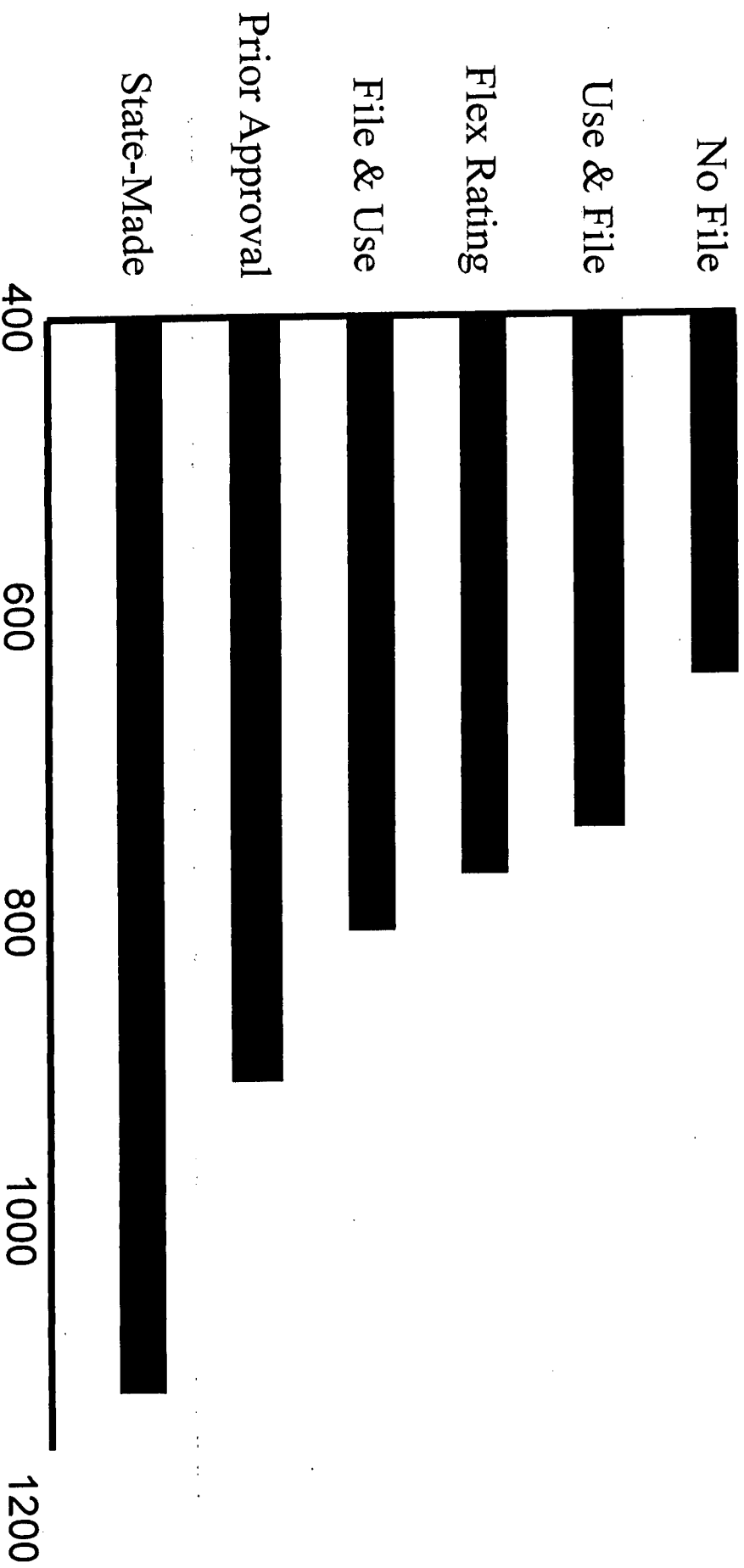
HHI Indexes for Select Industries

Over 2,000 companies are licensed to
underwrite P&C in the US



Sources: American Association of Railroads, FCC, American Insurance Association, and AIM Best

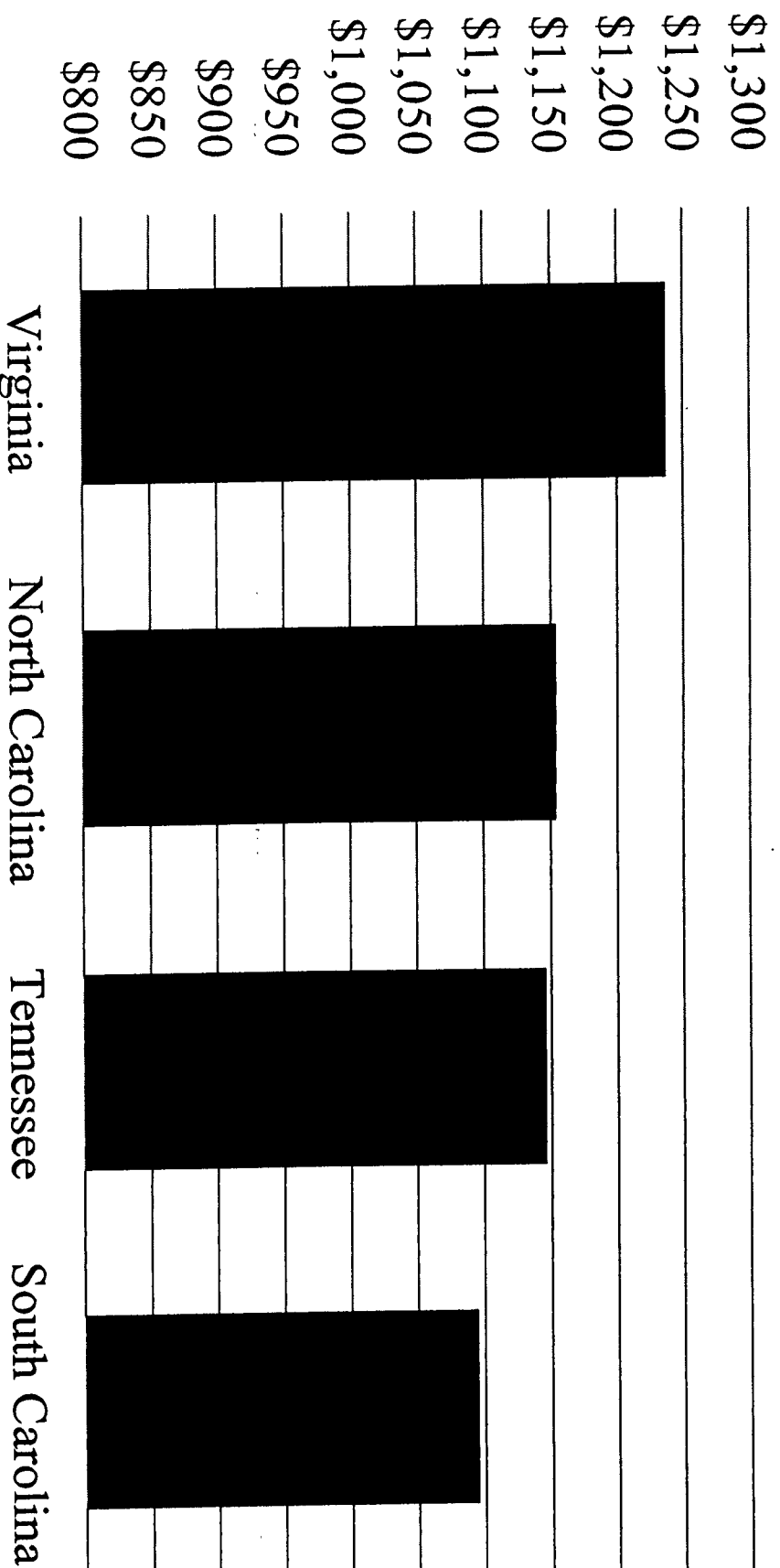
State Rate Filing Requirements – Automobile Insurance



Average Auto Expenditures

How Does the State Compare with Its Neighbors?

Auto Insurance Prices

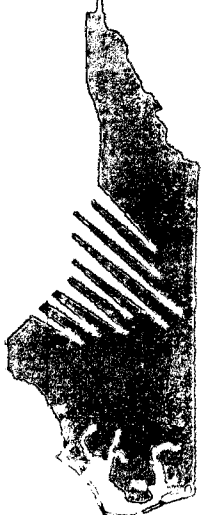


Source: Insure.com, 2011 Averages

Reform is Needed: Encourage Competition

- Introduce pricing flexibility
 - Sunset the rate bureau
- Fix the residual market
 - End cross-subsidies
 - Downsize the facility
 - Allow firms to price according to risk
- Focus on solvency, not prices

INSURANCE FEDERATION *of North Carolina*



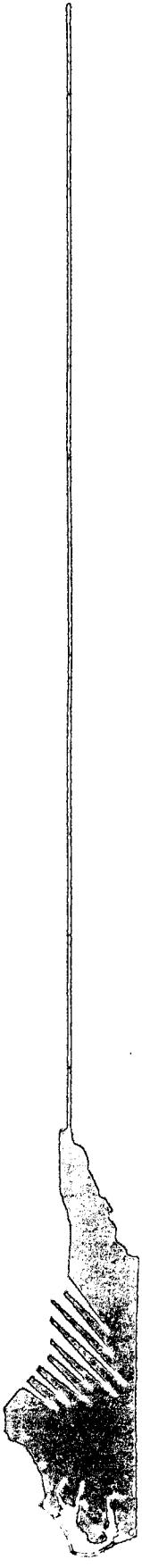
Member Companies

Allstate	Nationwide Insurance and Financial Services
Amica Mutual Insurance Company	Penn National Insurance
Auto-Owners Insurance Company	Progressive
Erie Insurance Group	State Auto Insurance Company
GEICO	USAA
GMAC Insurance	Travelers

Associates

American Insurance Association	Property & Casualty Insurance Association of America
National Association of Mutual Insurance Companies	Reinsurance Association of America

*John McMillan, Pres.
Federation of North Carolina*



**How big is the problem with the
Reinsurance Facility?**



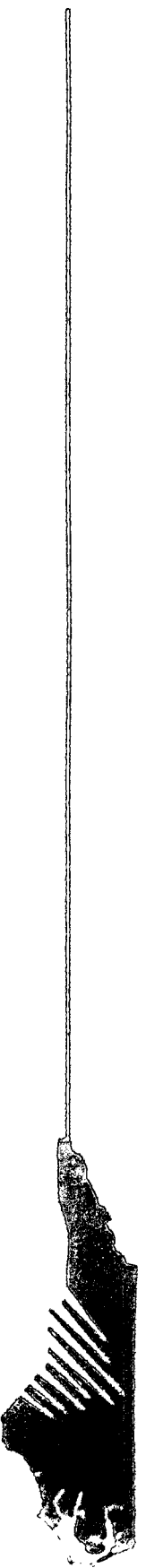
- “And I believe we need to depopulate the Facility.” – Commissioner Goodwin, May 2008. Candidates Forum
- “I agree that the percentage of drivers in the Facility must be reduced.”
 - Commissioner Goodwin, Business North Carolina, Jan. 2009
- “There’s always room for change, and we must consider targeted reforms and targeted modernization. For example, we need to depopulate the Reinsurance Facility.”
 - Commissioner Goodwin, Business North Carolina, Jan. 2009

**PRIVATE PASSENGER CARS INSURED
IN THE SHARED AND VOLUNTARY MARKETS, 2009**

State	Voluntary market	Shared market	Total	Shared market as a percent of total
Alabama	3,403,314	2	3,403,316	1
Alaska	646,172	37	646,209	0.035
Arizona	6,106,130	10	6,106,140	
Arkansas	2,084,936	3	2,084,939	
California	23,791,586	2,665	23,794,251	0.011
Colorado	3,997,549	0	3,997,549	
Connecticut	2,436,679	367	2,437,046	0.015
Delaware	699,061	16	699,077	0.002
D.C.	226,950	319	227,269	0.136
Florida	11,131,792	3	11,131,795	
Georgia	6,861,672	0	6,861,672	
Hawaii	838,149	4036	846,185	0.507
Idaho	1,220,000	60	1,220,060	0.005
Illinois	7,778,196	929	7,779,125	0.012
Indiana	4,393,161	3	4,393,164	
Iowa	2,420,436	13	2,420,449	0.001
Kansas	2,405,397	1,329	2,406,726	0.055
Kentucky	3,631,559	31	3,631,590	0.001
Louisiana	2,856,350	2	2,856,352	
Maine	999,485	10	999,495	0.002
Maryland	3,810,223	71,280	3,881,503	1.836
Massachusetts	3,989,131	106,378	4,095,509	2.556
Michigan	6,142,326	723	6,143,049	0.012
Minnesota	2,787,486	4	2,787,490	
Mississippi	1,826,702	42	1,826,744	0.002
Missouri	4,197,358	12	4,197,370	
Montana	787,172	111	787,283	0.019
Nebraska	1,531,137	5	1,531,142	
Nevada	1,778,578	6	1,778,584	
New Hampshire	887,429	104	887,533	0.012
New Jersey	5,228,228	29,530	5,257,758	0.557

**PRIVATE PASSENGER CARS INSURED
IN THE SHARED AND VOLUNTARY MARKETS, 2009 (Cont'd)**

State	Voluntary market	Shared market	Total	Shared market as a percent of total
New Mexico	1,685,223	26	1,685,249	0.002%
New York	9,259,388	90,693	9,350,081	0.970
North Carolina	5,641,649	1,392,806	7,034,455	19.800 ✓
North Dakota	607,276	1	607,277	
Ohio	8,040,076	1	8,040,077	
Oklahoma	2,623,765	33	2,623,798	0.001
Oregon	2,721,559	8	2,721,567	
Pennsylvania	8,563,617	15,566	8,579,183	0.181
Rhode Island	668,454	8,090	676,544	1.196
South Carolina	3,328,156	-1	3,328,155	0.000
South Dakota	690,876	1	690,877	
Tennessee	4,204,292	18	4,204,310	
Texas	NA	NA	NA	NA
Utah	1,821,162	1	1,821,163	
Vermont	467,390	282	467,672	0.060
Virginia	6,045,722	930	6,046,652	0.015
Washington	4,539,004	1	4,539,005	
West Virginia	1,306,645	14	1,306,659	0.001
Wisconsin	3,670,005	0	3,670,005	
Wyoming	511,863	1	511,864	
United States	185,054,325	1,727,695	186,782,220	0.925%



South Carolina	3,328.156	-1	3,328.155	0.000
-----------------------	------------------	-----------	------------------	--------------

Georgia	6,851.612	0	6,851.612	'
----------------	------------------	----------	------------------	----------

Tennessee	4,204.292	18	4,204.310	'
------------------	------------------	-----------	------------------	----------

Virginia	6,045.722	930	6,046.652	0.015
-----------------	------------------	------------	------------------	--------------

North Carolina	3,641.649	1,392,804	7,034,453	19,800
-----------------------	------------------	------------------	------------------	---------------



North Carolina has 80% of the total residual market for the whole country.

North Carolina	5,641,649	1,392,804	7,034,453	19,800
----------------	-----------	-----------	-----------	--------

United States	108,084,325	1,727,895	106,702,220	0.925%
---------------	-------------	-----------	-------------	--------



Why?

N.C is the only state with a Rate Bureau that proposes a base rate for all the drivers in the state. The Commissioner has to approve that rate. That rate is not the correct rate for all drivers. Some drivers should have lower rates and some should have higher rates.

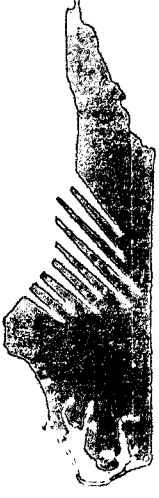
Most companies file downward deviations with the Commissioner to allow them to provide lower rates to the drivers the underwriters determine should have lower rates.



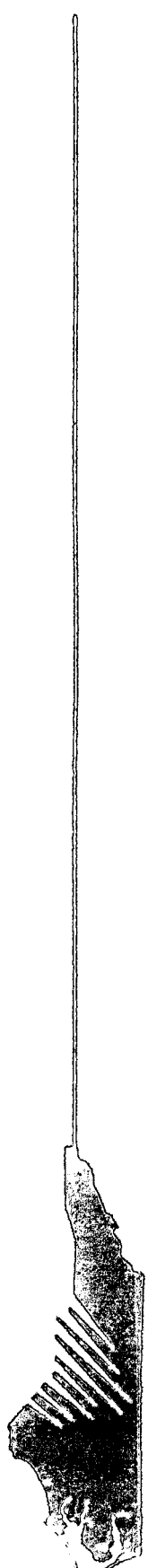
Companies are not allowed to deviate upward and provide adequate rates. The only alternative companies have is to cede those drivers to the Reinsurance Facility.

Facility base rates are on average 26% higher than the Bureau approved rates.

Rates for the Reinsurance Facility are also approved by the Commissioner.

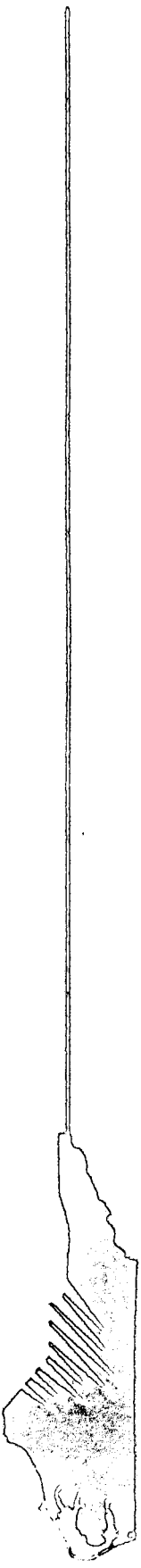


- If the average Bureau rate is \$100, the average Facility base rate would be \$126. Companies can deviate down from the Bureau rate and charge \$100 or whatever they file less than \$100.
- If the indicated rate is over \$100, the company can only cede the risk to the Reinsurance Facility.
- No company can charge a rate between \$100 and \$126. This is a huge gap.



SB 477/ HB 834 would allow companies to file deviations up to the Facility approved rates.

Companies could then write policies in that gap between the Bureau and Facility rates.



Current law directs the Facility Board to have a sub-classification for risks that have been ceded to the Facility but have no Safe Driver Incentive Plan points. These are called "clean risks" but underwriters have determined that they pose a higher risk.



These “clean risks” pay the lower Bureau rates and are currently being subsidized by all other drivers in the state to the tune of over \$115 million a year. Every driver in the state pays a “clean risk” surcharge of 4.3% of the liability coverage to subsidize these drivers. This surcharge has been as high as 10%.



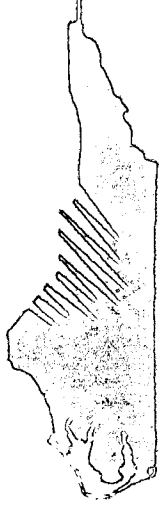
SB 477/ HB 834 gradually eliminates this subsidy over time by doing away with the "clean risk" sub-classification in the Facility and the "clean-risk" surcharge over a period of 5 years.

When fully implemented, SB 477/ HB 834 will result in 85% of North Carolina drivers paying lower premiums than they would have otherwise have to pay.



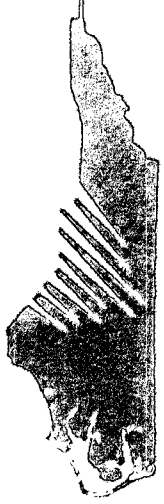
SB 477/ HB 834 will have no effect on:

- The North Carolina Rate Bureau
- The ability of the Rate Bureau to propose rates to the Commissioner
- The Commissioner's ability to set rates for both the Rate Bureau and the Reinsurance Facility



Comparing North Carolina's auto rates with other states is misleading:

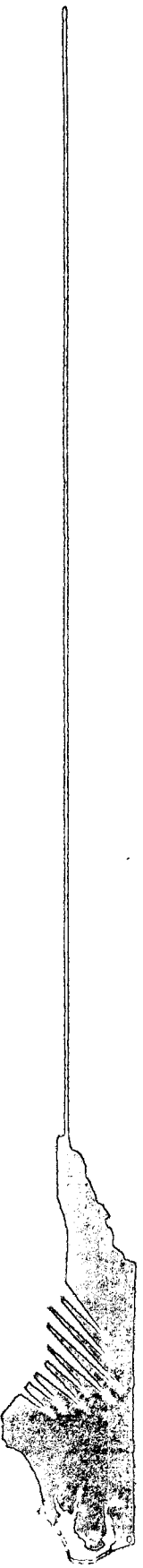
- 12 states have no fault insurance- policy holders recover financial losses from their own carriers without regard to fault.
- 13 states have pure comparative fault- everyone who is injured recovers, no matter how much at fault they may be. (3 of these are no fault states)
- 21 states have modified comparative fault- injured party recovers even if 50% at fault. (5 of these are also no fault states)
- Only four states, including North Carolina, have contributory negligence.



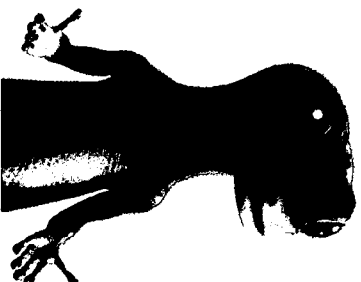
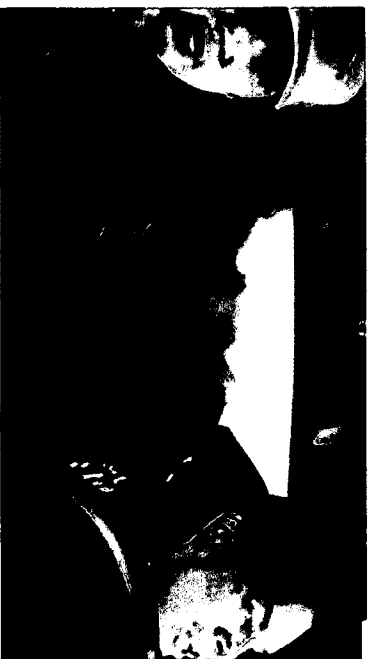
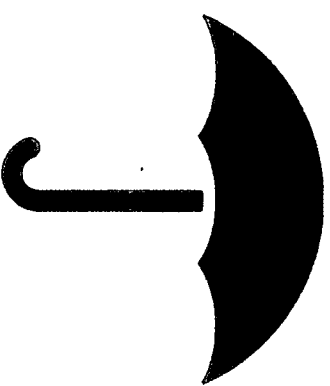
Auto Insurance Companies actively compete for business

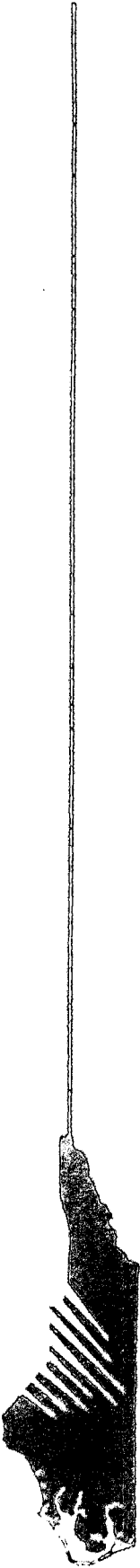
- The largest growth in advertising last year was in automotive (+27%) and auto insurance (+23%).
- Auto insurance companies maintain web sites that compare prices.

Start @ 31 minutes



Do you recognize any of these?





The Commissioner has called for:

- Incremental change
- Depopulation of the Facility

SB 477/ HB 834 does exactly those two things

Nationwide Insurance
Presentation to the LRC on Auto Insurance Modernization
January 25, 2012

Thank you, Mr. Chairman, Co-chairs, committee members, committee staff, and guests. My name is Lee Morton and I'm the vice president for the North Carolina region for Nationwide Insurance. I live and work here in Raleigh. I appreciate the invitation to talk about North Carolina's stable, robust, low-cost, consumer-friendly, and highly competitive auto insurance market.

First, allow me to tell you about Nationwide, and a little bit about me.

Make no mistake, Nationwide Insurance is committed to North Carolina. We've been doing business in North Carolina for more than 83 years. Our insurance mission is simple: we serve our customers here and across the United States working to become their trusted advocate by protecting what's most important to them. We're a full service property and casualty insurer with more than 1.2 million policyholders in the state. Of those, nearly 670,000 are automobile policyholders. We employ 1200 Associates, 381 principal agents, and 1600 associate agents in 592 different locations across North Carolina.

Nationwide is proud of its heritage as a mutual insurance company, having its roots in the collective purchasing power of fiercely independent, rural farmers. In 2012, we can still say that we care about our business, but we also care about our members, communities, producers, agents, and associates. Our mutual heritage and viewpoint give us an ability to focus on things beyond our bottom line. So when we say we're more than a business, we actively back up that statement every day.

As for me, I am born, raised, and educated here in North Carolina. I graduated from Atlantic Christian College, now Barton College, in Wilson. I grew up in an insurance household. My father was a career sales manager with Nationwide Insurance and I followed in his footsteps. Providing and managing insurance is all I have ever done, and all I ever wanted to do. I am proud to say I'm in my 32nd year with Nationwide.

I started as an agent, and then was given the opportunity to move into a variety of leadership roles at Nationwide as a sales manager, sales officer, vice president in three different regional operations, and three tours of duty at our corporate headquarters, including leading the company's sales organization. As an agent I was an advocate for our members and still see that as my most important role.

My first field sales management experience was in Charlotte for five years in the 1980s. Along the way, my career has taken me to Florida, Alabama, Texas, Maryland, and Ohio.

It is my great privilege to have come home to lead Nationwide's North Carolina regional operation since 2007.

I am a practical, hands-on insurance executive who understands the competitive market and the needs of the consuming public. From that perspective, I'd like to share with you my opinions on the certain consequences and the potential unintended consequences of proposed legislation (like SB 490) that would radically dismantle our state's auto insurance ratemaking system.

Here are known consequences of enacting SB 490 or similar legislation:

- About 992,000 North Carolina policyholders would face an increase in their automobile insurance premium. This is undisputable.
- These drivers are "clean risks" presently assigned to the NC Reinsurance Facility, our state's residual market. Clean risks are drivers with no insurance points (**chargeable** convictions). For various reasons, these drivers are ceded and **state law requires that they be charged the rate approved by the Commissioner for individuals without insurance points.**
- Right here in Wake County, where Nationwide is headquartered, almost 57,000 drivers would pay higher bills from now on.
- **In fact, if you were to abolish the North Carolina Reinsurance Facility tomorrow, the average uptick in premium for every "Clean Risk" now written in the Facility would be \$150/policy!**
- Hundreds of thousands of North Carolina families with high school and college drivers will pay more to insure them.
- And, the elected Commissioner of Insurance will lose his authority to prevent automatic rate hikes for consumers, who by state law are required to buy auto liability insurance.

There likely will be UNINTENDED consequences, as well:

- North Carolina's historical auto rate stability will be extinct.

- In its place will come changing rates, both high and low. Consumers will no longer be able to compare insurance quotes on an apples-to-apples basis.
- Every company will rewrite its auto insurance contracts, discarding the common Rate Bureau policy and forms, which surely will result in more costly consumer litigation.
- The number of uninsured motorists will rise, reflecting the higher premiums charged to some drivers who will no longer be able to afford coverage.
- The cost of uninsured drivers will work its way back into the rates of the rest of us who buy auto insurance.
- While some claim that North Carolina's auto insurance system is broken – **despite our very low rates and highly competitive market** – I think real problems lie elsewhere. If you “dismantle” the auto insurance rate making system, it will surely have an impact on other lines of insurance. Except for a few auto only companies, most of us in this room provide property coverage as well. Be prepared for the unintended consequences of re-making one system of insurance coverage and not the other.

Let's take a step back and look carefully at where North Carolina stands. There has been much discussion about our unique auto insurance system's pros and cons. **Our system is not perfect – none are -- and, it is admittedly unusual. But, from the eyes of North Carolina consumers, auto insurance appears to work really well for 6.5-million North Carolina drivers.**

But for the sake of argument, let's suppose you were starting from scratch, aiming to design an excellent auto insurance system for North Carolina citizens. What if I could promise to deliver to you a system with these features:

- The lowest auto rates in the entire Southeast.
- A market so attractive and competitive that almost 170 companies would open up shop here.
- A guarantee of core consumer protections, including independent oversight and no automatic rate hikes, for a product the law requires drivers to purchase.

Surely, the vast majority of North Carolinians would want such an effective, affordable system.

Oddly enough, this is precisely the auto insurance system in place in North Carolina today.

Those who seek to scrap our system claim that the result will be lower prices for consumers. Two simple facts call into question these claims:

- First, all North Carolina auto insurers are **already free** today to offer lower prices to any customer without General Assembly intervention. Under our current system, premium discounts are already allowed by law. **No auto insurer needs new laws to lower customer rates.**
- Second, despite our state's growing population, and its numerous urban areas where accidents often occur, auto insurance rates in North Carolina are the **eighth lowest in America ... the lowest anywhere in the Southeast ... and the lowest among our nation's 10 most populous states.**

In fact, rates are so good in North Carolina that the General Assembly had to pass a law in 2007 to keep people from other states from coming here to buy their insurance at North Carolina's lower costs. ✓

In addition, North Carolina has a highly competitive auto insurance market. Almost 170 insurers sell auto insurance in North Carolina, including 72 new ones in the past five years alone. Think about it: That's a separate insurer for *every single member* of the General Assembly. How many other markets of any kind in North Carolina have so many thriving competitors?

For insurers and consumers alike, our state is the envy of many others. The fact is that we have a very healthy, stable, competitive, low-cost, and diverse auto insurance market, with lots of product choices and sensible protections for North Carolina's consumers.

You've heard criticism about our state's large Reinsurance Facility, which is a safety net created by the General Assembly to guarantee insurance to all drivers. The Facility provides affordable coverage to drivers with key risk factors and coverage to those with moving violations and accidents. There might be prudent ways to reduce the number of drivers reinsured in the Facility, but let me be clear on 3 points:

- First, our state's almost 170 auto insurance companies can (and do) charge significantly higher rates to drivers with convictions for motor vehicle violations and accident histories. These high-risk drivers, measured objectively on their actual driving record, pay more premium.
- Second, the additional cost to all consumers of insuring "clean risks" in the Reinsurance Facility, a surcharge of only about 4 percent on liability coverage, amounts to an average

of only \$17 dollars a year or \$1.40 per month based on the most recent data. **Even with this small surcharge, North Carolina's auto insurance rates *still* are the eighth lowest in America, the lowest anywhere in the Southeast, and the lowest among the 10 biggest states.**

- Third, our residual market protects **all** North Carolina drivers. By encouraging more drivers to buy affordable insurance, it means there are fewer uninsured drivers on our streets and highways.

So here's my bottom line. Nationwide supports our state's **healthy, robust, competitive, diverse, and low-cost** auto insurance system in North Carolina, governed by **reasonable consumer protections**.

Though we are fierce rivals in attracting and keeping customers, Nationwide works alongside our industry competitors on many public policy initiatives. We respect our competitors. **We simply DISAGREE with some of them about the need to change the present auto insurance ratemaking system in North Carolina.**

I speak candidly and respectfully with industry knowledge and years of experience. My real-world experience tells me to urge that you use extreme caution as you weigh the merits of what's presented today.

If you really want to know what keeps me awake at night, as regional vice president of the largest property and casualty operation in North Carolina, I can tell you it's not the auto insurance regulatory system. Instead, it's the 7 weather catastrophes that hit North Carolina last year; the more than 46,000 claims those storms produced for Nationwide and our customers right here in North Carolina. And, it's the first tornado that has already struck North Carolina in 2012.

I lie awake trying to figure out how North Carolina residents are going to be served in a shrinking property insurance market that has no new property insurer clamoring to come in and compete.

That's what I'm worried about. And, as our state's elected officials, you should be concerned, too.

As I said at the outset, Nationwide has been and remains committed to North Carolina. I sincerely thank you all very much for giving me your time today. I will stay to answer any questions you might have later.

Automobile Insurance Rates - Legislative Research Commission Subcommittee

North Carolina Farm Bureau Mutual Insurance Company Discussion

January 25, 2012

Introduction

NCFBMIC appreciates the opportunity to address the NC Legislative Research Commission subcommittee to discuss automobile insurance rate making in North Carolina.

We are the largest domestic automobile insurance writer in the state, and the fourth largest writer of automobile among all companies.

We have over 180 offices in the 100 counties of our state.

Automobile Insurance Rate Making

We believe the current rate structure and approval process in North Carolina works well for the personal automobile line of business.

Automobile liability is a statutorily mandated coverage, as much if not more, for the protection of the public than for the insured.

Our current laws were written to ensure that all vehicles have liability coverage for the protection of the public, and that liability coverages are available to all North Carolina residents.

The North Carolina Reinsurance Facility

One of the primary goals of the automobile insurance system is for all drivers to have attainable liability insurance. The Reinsurance Facility provides that mechanism.

The Reinsurance Facility is designed to be a break even entity. Therefore, pricing shortfalls for the sake of affordability and public protection should be, and are covered by, all drivers statewide through the recoupment process.

So as currently structured, the Reinsurance Facility provides coverage for insureds, protection for the public, and a no gain or loss position for the industry on RF business.

The North Carolina Rate Bureau

The NC Rate Bureau process of pooling data for the entire industry and filing the maximum rates for both voluntary and RF business provides for a larger data pool for North Carolina, and subsequently, more accurate and predictable base rates.

In addition, an appeals process for disagreements on base rates by the NC Rate Bureau and the NCDOL is well established and can be pursued by one entity, the NC Rate Bureau, rather than appeals being filed by a multitude of individual companies in an already crowded judiciary system.

The filing of uniform forms for all companies by the NC Rate Bureau also provides clarity and value for customers. Consistent and uniform forms regarding coverages have great value when dealing with a subject that is often confusing to the public. Also, there is a system in place for

the industry to expand and modify coverages that may be determined to be of value to the customer.

The Voluntary Market

Voluntary NC base rates are competitive nationally and good drivers as selected by the numerous companies receive a multitude of various discounts (deviations). This adds additional emphasis to underwriting and risk selection for a successful automobile operation in North Carolina. Current rules and statutes allow for this necessary underwriting discretion.

Competition is strong and there is a vibrant market for automobile insurance in North Carolina. We believe most companies' efforts in automobile insurance focus on increased production and how to be competitive in today's thriving automobile market.

The current automobile system has stood the test of time and is stable. This is especially important for single state insurers and smaller companies that compete with the large national carriers.

It is especially true during a time when being able to afford to continue to write property insurance in North Carolina is a serious challenge.

Summary

Our current system in North Carolina is not perfect. But neither are systems in other states. We should not change ours just because it is different. Our system provides stability and predictability and helps achieve the balance of attainability and affordability that is necessary for the protection of both insured's and the public. North Carolina's system provides a highly

competitive market as evidenced by the many deviations offered and the strong advertising and marketing efforts of the industry.

Our position is to leave our core system in place and modify as needed in areas where there is consensus among the NCDOT, the General Assembly, and the industry that the changes will improve and strengthen our current system.

North Carolina Rate Modernization Testimony

January 25, 2012

Mr. Chairman, members of the committee, I appreciate the opportunity to testify in favor of automobile insurance system modernization in North Carolina. My name is Liz Reynolds, and I am the Southeast state affairs manager for the National Association of Mutual Insurance Companies, known as NAMIC.

NAMIC is the voice of the mutual property/casualty insurance industry in the United States, with companies ranging in size from a one-person farm mutual to some of the world's largest insurers. Our 1,400-plus members serve more than 135 million policyholders in every state in the country and write 52 percent of all auto policies and 43 percent of all homeowner policies in the nation.

In North Carolina, NAMIC members write over 50 percent of all homeowner policies and nearly 50 percent of all auto policies. We are committed to promoting a healthy, vibrant insurance industry in the free-market environment – and to representing the best interests of our members and their policyholders.

I testified on NAMIC's behalf in support of auto insurance rate modernization during the 2011 legislative session. Rate modernization is a top priority for our association in all states.

While we were disappointed that legislation to modernize the system did not pass in 2011, we understand this is a complex topic that merits thoughtful study and

consideration. We're pleased that you've taken on this important task, and we thank you for tackling it, particularly in light of the fact that a divided industry and competing proposals during the legislative session made this already complex topic even more complicated.

However, the experience was instructive. We learned some valuable lessons from the 2011 session, and we listened very carefully to stakeholders fearful that marketplace disruption could be an unintended consequence of a well-intentioned system improvement.

NAMIC took all that to heart and joined forces with another national insurance trade organization, the Property Casualty Insurance Association of America, known as PCI, to bring together individual insurers so that we could work together constructively to find an approach that not only would improve North Carolina's outdated, inefficient, and unfair auto insurance system, but also was responsive to the concerns we heard last year.

We have worked as a team and consulted with other industry partners to develop ideas for an orderly transition to a more up-to-date auto insurance system.

We reviewed auto insurance systems in other states and discussed best practices that could be applied in North Carolina.

We also scrutinized the reform bills introduced during 2011 and selected what we believe are the best provisions from each.

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

In addition, we determined it makes sense to maintain the Insurance Commissioner's control over rates.

We've worked very hard on this new and improved language, and we believe we have a good product to present to you today. Our proposal has the backing of the vast majority of auto insurers doing business here – about as united as we could get!

David Stoller of State Farm will now take you through our proposal and explain how together we can make the insurance marketplace in North Carolina the best it can be. We know that we can do better for your constituents than the current system allows. We desperately want a chance to prove it. We look forward to working with you to make that happen!

COMMENTS TO THE LRC AUTO INSURANCE MODERNIZATION COMMITTEE

January 25, 2012

Thank you, Mr. Chairman, Senator Apodaca, and members of the Committee. I'm here to speak to the proposal for modernizing the private passenger auto insurance regulatory system, and to answer any questions you may have.

First, let me tell you what the proposal does NOT do: it does not change anything about how North Carolina regulates market conduct, financial solvency, licensing or most other aspects of the regulatory system. It does NOT eliminate either the rate bureau or the reinsurance facility or the ability of the Commissioner to disapprove rates. It does NOT "blow up the system", disrupt the market, or do anything that by itself would change "average rates".

There are two separate but related issues that are the subject of the proposal: the size of the Reinsurance Facility and its tax on consumers; and the bureaucratic rate setting process. First, the Facility.

Every state has some sort of residual or involuntary auto insurance market. In North Carolina, it's the Reinsurance Facility. The Facility is huge and way beyond any reasonable size. Looking at the number of vehicles insured in the residual market, in 2008 our Facility insured 1,442,000, more than ten times the second largest state, Massachusetts, with 113,000. In that same year Virginia had 1,460, Tennessee had 24, South Carolina had 1. Put another way, North Carolina had 80% of the total residual market in the entire country. Something is out of whack.

But the size of the Facility isn't the only problem. You've heard of the "clean risk" category within the Facility. This group, by definition, doesn't have any convictions for major violations on their driving records, but that doesn't mean they were good drivers. If your speeding ticket is reduced to less than ten miles an hour over the limit, or to faulty equipment, no matter how many times you got your tickets fixed you are still a "clean risk". These folks receive a hidden subsidy from safer drivers. How big is the subsidy? In five years, from July, 2004 to July, 2009, consumers paid just under \$900 million dollars in hidden taxes for those "clean risks". And worst of all, State law requires the tax to be secret. If this is

such a good idea, why hide it? This isn't fair. In January 2008, Commissioner Long proposed eliminating the clean risk category and the subsidies. It's time to do that. Elimination of the subsidy will gradually reduce the cost of insurance for 85% of consumers.

The proposal before you addresses the problems with the system in a gradual way that will help consumers. Here's how:

First, it calls for the clean risk category to be eliminated, and the subsidies eliminated, by moving those higher risk drivers to their fair rate over five years. As they move toward a fair rate, the hidden subsidy goes down and eventually is eliminated.

Second, the proposal would allow companies to choose to stay with the Rate Bureau system, or to choose to file rates individually just as we already do with other lines. Under our existing statutes, there are two different methods for setting rates: Article 36 is the Rate Bureau system where all companies work together to develop one rate filing, which is then reviewed by the Department, hearings are held, appeals filed, and eventually the rate cap for the entire industry is set. After the cap is set, individual companies file their own rate plans to vary from the industry rate. The other method, Article 40, is the existing system used for all other lines, including commercial auto insurance, where companies individually file their rates without consulting one another. Our proposal simply lets companies choose which system to use and adds a "tweak" to Article 40 to make rate filings simpler and faster. The Rate Bureau system would stay in place for those companies who believe it works well. Those who disagree can choose to come under the existing Article 40 system. Either way, the Commissioner retains the ability to disapprove rate filings. Rate flexibility will reduce the size of the Facility.

Third, for the Article 40 system, the proposal adds a method from the National Conference of Insurance Legislators known as a "flex band" system. This simply says if the rate request filed by an insurer is within a limited range, it's presumed to be acceptable. If the filing is outside that range, there is no presumption. We suggest the NCOIL recommended range of 12%. The flex band allows rates to be

adjusted quickly and in small increments as market forces change, unlike the Rate Bureau where rate requests are made once a year and by the time they are implemented, are based on old data. But the proposal keeps the Commissioner's right to disapprove any rate filing that is excessive, inadequate, or unfairly discriminatory whether or not it's within the flex band. The primary difference is this: Companies using the flex band system will not be adding the cost or delay of the Rate Bureau to their rates.

You have heard that North Carolina has the 7th or 8th lowest average rates in the country, so don't change the system. This is meant to confuse you – these are two unrelated concepts. Here's the truth: while our rates are low, they're not the lowest in the South, the Commissioner doesn't set average rates, and there is no causal connection between the Commissioner's approval and low average rates.

The claim about average rates comes from data published by the National Association of Insurance Commissioners. But the NAIC does not look at what consumers actually pay for insurance. When you shop to see what real consumers pay for insurance and make a real comparison, this is what you find. Our rates are low, but not as low as South Carolina, or Tennessee, and just about the same as Ohio or Virginia, all states that have modernized. They use systems like the one we're proposing – why didn't their rates skyrocket? Here's why: Rates are a function of losses, costs, and expenses, and capping rates as our system does, does not change the so-called "average rate". When a company wants to file a rate request, it looks at its costs and expenses, projects the losses it's likely to incur, and matches rate to the risk. Here's a very simplified example with four drivers. We average our overhead expense, add in outside expenses like the Rate Bureau to come up with a total, project the likely losses, and match a rate to the risk. Note the average rate. Now the Commissioner doesn't control any of the costs, expenses, or losses. Those stay the same. What the Commissioner does is set the cap on how much anyone can be charged. Suppose the Commissioner says that \$15 is too much, I won't let you charge more than \$11. Here's what happens. Costs, expenses and losses stay the same, as does the average rate. Who benefits and who pays more? The truth is the actions of

the Commissioner have nothing to do with average rates. What they do affect is how the rates are allocated. And the more you lower the cap, the worse it is for the best and safest drivers, the ones who most deserve better rates. There is only one way to lower average rates – you've got to lower costs. We have low average rates not because of our rate system, but because we have a very favorable tort system, safe roads, low jury awards, fewer accidents, and lower claims. The Department and the Rate Bureau don't control any of those.

You may wonder, "What about the consumer?" You should be asking, "What's in it for the consumer if we keep this system?" The answer is "not much", because this system was designed to protect insurance companies. If you really want to side with consumers, consider our proposal:

First, over time, the secret tax will go away, effectively lowering the cost of insurance for most people.

Second, more drivers, and better drivers, could receive more and bigger discounts.

Third, consumers in North Carolina will be able to shop for new, innovative products and services available in the rest of the country, but not in North Carolina.

Fourth, by reducing the costs and expenses of the system, there are fewer costs and expenses to be plugged into rates, and eventually paid for by the consumer. A simpler, quicker process allows rate changes to be smaller.

Fifth, while no one can know the future with certainty, States that have modernized their systems have seen an increase in the number of companies doing business, with more choices, downward pressure on rates, and increased jobs. . Just last week the National Association of Insurance Commissioners released a study showing that in the two years after Massachusetts stopped setting the cap on insurance rates, rates went down by 13%. States that have modernized have not gone back.

The proposal before you is simple. It does not eliminate the Commissioner's role in approving rates. It effects change gradually. It uses existing statutes and rate

systems, adding a way to make rate filings simpler and faster. We know it works: it's used in South Carolina and Tennessee, where rates are lower than here. We know from studies and experience that this change by itself, does not cause an increase in average premiums.

Insurance is a highly competitive market where regulation of prices is unfair to consumers. We ask you to bring market forces to bear on auto insurance in North Carolina, end the unfair subsidies, stop protecting insurance companies, and better match rates to risks.

This proposal comes with no cost, and no risk to consumers. It applies only for those companies that want to try it. The companies that like the current system are free to keep it, and keep their rates low. If those who oppose change are right, and companies under the flex band raise rates every year in spite of the Commissioner, what would happen? Well, the companies in the Rate Bureau will have a huge advantage, and we will price ourselves right out of business.

Consumers would still have those low rates available from our competitors, and if we're too high, we lose our customers. North Carolinians are smart enough to shop for auto insurance. But if we are right, the companies using the Flex band will have reduced costs and expenses, and competition will put downward pressure on rates. Either way, there's no risk to the consumer. The only ones who could be hurt are the companies who choose the wrong system. So put us to the test. Force us to find the best way to offer the lowest rates and best products for consumers. Because, when companies compete for your business, consumers are the ultimate winners.

I would be happy to answer your questions.

Auto Regulatory Modernization

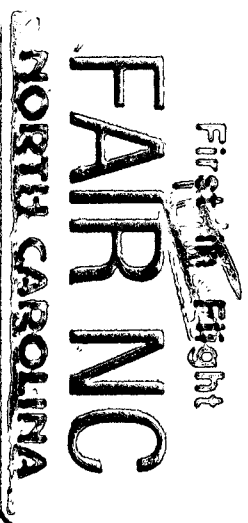


Chart 10D **PPNF Liability Car Years, 2008**

Rank	Jurisdiction	Amount	% of Total
1	North Carolina	1,442,470	80.51%
2	Massachusetts	112,891	6.30%
3	New York	92,283	5.15%
4	Maryland	73,328	4.09%
5	Pennsylvania	19,151	1.07%
6	New Jersey	15,048	0.84%
7	Rhode Island	9,335	0.52%
8	Texas	7,783	0.43%
9	California	5,941	0.33%
10	Hawaii	5,188	0.29%
Total of the 10 Jurisdictions		1,783,418	99.54%
Remaining 41		8,210	0.46%
Total		1,791,628	100.00%

For Texas, liability exposures are average vehicles in force.

Chart 10D **PPNF Liability Car Years, 2008**

Rank	Jurisdiction	Amount	% of Total
1	North Carolina	1,442,470	80.51%
2	Massachusetts	112,891	6.30%
3	New York	92,283	5.15%
4	Maryland	73,328	4.09%
5	Pennsylvania	19,151	1.07%
6	New Jersey	15,048	0.84%
7	Rhode Island	9,335	0.52%
8	Texas	7,783	0.43%
9	California	5,941	0.33%
10	Hawaii	5,188	0.29%
Total of the 10 Jurisdictions		1,783,418	99.54%
Remaining 41		8,210	0.46%
Total		1,791,628	100.00%

**for Texas, liability exposures are average vehicles in force.*

Number of vehicles insured: Voluntary market compared to Residual Market (2004-2008)

Voluntary Business

Involuntary Business

	2004	2005	2006	2007	2008		2004	2005	2006	2007	2008
NJ	4,997,843	5,039,114	5,116,044	5,244,074	5,290,260		150,955	88,921	43,288	26,844	15,048
NM	1,296,544	1,334,461	1,365,588	1,417,735	1,455,016		427	149	128	56	24
NY	8,832,281	8,875,604	9,030,120	9,153,639	9,233,103		343,429	213,655	154,284	112,518	92,283
NC	4,857,402	5,083,738	5,226,492	5,470,099	5,607,617		1,553,489	1,546,437	1,578,768	1,506,510	1,442,470
ND	553,945	561,315	576,542	578,335	592,814		14	1	0	3	4
OH	7,948,407	7,929,413	7,939,376	8,009,366	8,029,756		1	0	0	0	0
OK	2,517,380	2,549,443	2,606,348	2,671,919	2,719,636		439	277	177	92	52
OR	2,497,920	2,570,211	2,662,827	2,685,538	2,724,683		49	28	12	20	9
PA	8,355,712	8,219,462	8,377,855	8,452,000	8,483,438		62,657	51,308	36,501	26,342	19,151
RI	636,043	639,506	648,892	657,417	663,890		37,935	32,303	25,574	17,206	9,335
SC	2,918,192	3,026,697	3,132,125	3,232,099	3,294,512		-3	2	2	1	1
SD	630,776	649,697	651,101	664,362	681,839		34	0	-1	0	0
TN	3,877,515	3,995,832	4,095,160	4,148,021	4,187,461		262	96	63	38	24
TX	13,119,467	13,455,662	14,322,073	14,682,107	14,927,827		51,690	27,418	15,584	10,347	7,783
UT	1,552,247	1,618,570	1,693,718	1,759,548	1,808,234		8	3	7	-1	2
VT	468,966	464,187	468,847	473,219	474,881		2,470	1,708	1,169	754	450
WA	5,649,070	5,781,929	5,893,097	5,970,951	6,023,910		12,895	7,490	4,595	2,307	1,460
WV	4,149,780	4,217,136	4,398,399	4,428,320	4,513,296		11	3	0	2	0
WI	1,255,689	1,232,735	1,265,781	1,289,984	1,305,657		779	579	223	90	39
WY	3,548,327	3,620,046	3,600,204	3,661,583	3,674,130		24	0	-2	1	0

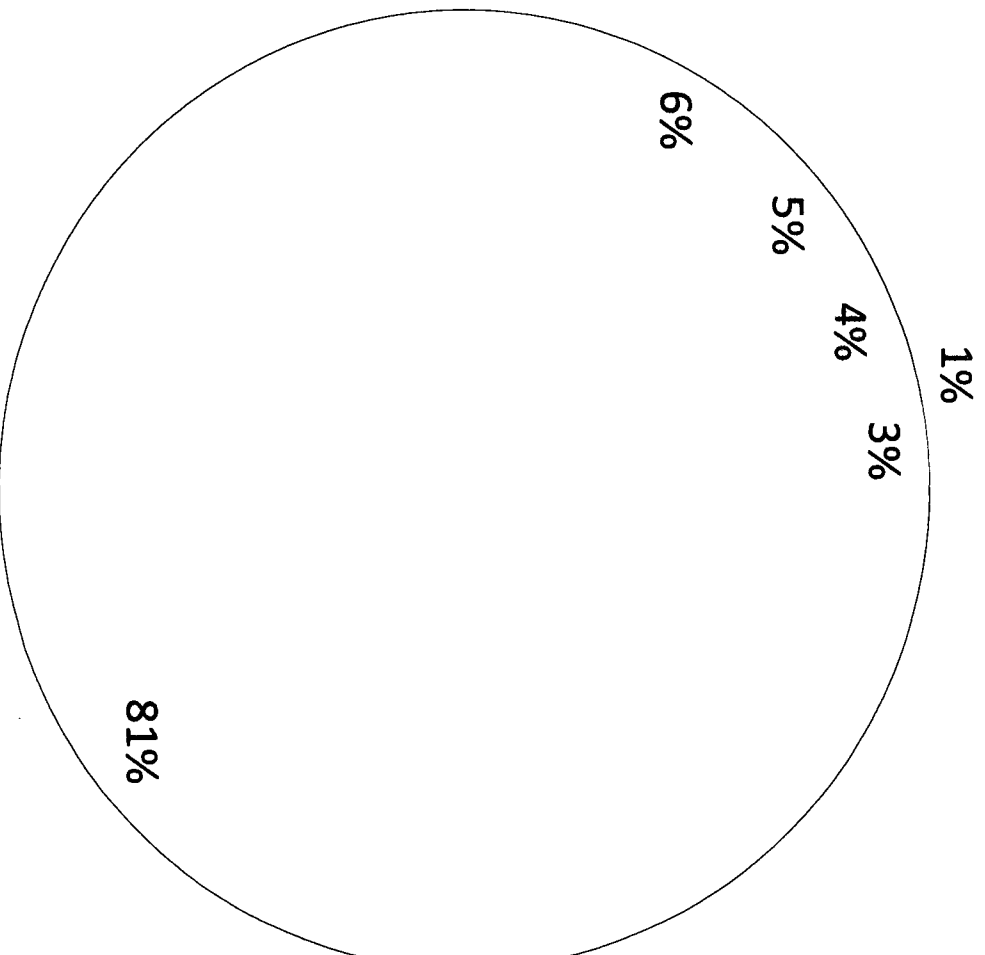
Number of vehicles insured: Voluntary market compared to Residual Market (2004-2008)

	Voluntary Business					Involuntary Business				
	2004	2005	2006	2007	2008	2004	2005	2006	2007	2008
NJ	4,997,843	5,039,114	5,116,044	5,244,074	5,290,260	150,955	88,921	43,288	26,844	15,048
NM	1,296,544	1,334,461	1,365,588	1,417,735	1,455,016	427	149	128	56	24
NY	8,832,281	8,875,604	9,030,120	9,153,639	9,233,103	343,429	213,655	154,284	112,518	92,283
NC	4,857,402	5,083,738	5,226,492	5,470,099	5,607,617	1,553,489	1,546,437	1,578,768	1,506,510	1,442,470
ND	553,945	561,315	576,542	578,335	592,814	14	1	0	3	4
OH	7,948,407	7,929,413	7,939,376	8,009,366	8,029,756	1	0	0	0	0
OK	2,517,380	2,549,443	2,606,348	2,671,919	2,719,636	439	277	177	92	52
OR	2,497,920	2,570,211	2,662,827	2,685,538	2,724,663	49	28	12	20	9
PA	8,355,712	8,219,462	8,377,855	8,452,000	8,483,438	62,657	51,308	36,501	26,342	19,151
RI	636,043	639,506	648,892	657,417	663,890	37,935	32,303	25,574	17,206	9,335
SC	2,918,192	3,026,697	3,132,125	3,232,099	3,294,512	-3	2	2	1	1
SD	630,776	649,697	651,101	664,362	681,839	34	0	-1	0	0
TN	3,877,515	3,995,832	4,095,160	4,148,021	4,187,461	262	96	63	38	24
TX	13,119,467	13,455,662	14,322,073	14,682,107	14,927,827	51,690	27,418	15,584	10,347	7,783
UT	1,552,247	1,618,570	1,693,718	1,759,548	1,808,234	8	3	7	-1	2
VT	468,966	464,187	468,847	473,219	474,861	2,470	1,708	1,169	754	450
VA	5,649,070	5,781,929	5,893,097	5,970,951	6,023,910	12,895	7,490	4,595	2,307	1,460
WA	4,149,780	4,217,136	4,398,399	4,428,320	4,513,296	11	3	0	2	0
WV	1,255,689	1,232,735	1,265,781	1,289,984	1,305,657	779	579	223	90	39
WI	3,548,327	3,620,046	3,600,204	3,661,583	3,674,130	24	0	-2	1	0

Number of vehicles insured: Voluntary market compared to Residual Market (2004-2008)

Voluntary Business						Involuntary Business					
	2004	2005	2006	2007	2008	2004	2005	2006	2007	2008	
NJ	4,997,843	5,039,114	5,116,044	5,244,074	5,290,260	150,955	88,921	43,286	26,844	15,048	
NM	1,296,544	1,334,461	1,365,588	1,417,735	1,455,016	427	149	128	56	24	
NY	8,832,281	8,875,604	9,030,120	9,153,639	9,233,103	343,429	213,655	154,284	112,518	92,283	
NC	4,857,402	5,083,738	5,226,492	5,470,099	5,607,617	1,553,489	1,546,437	1,578,768	1,506,510	1,442,470	
ND	553,945	561,315	576,542	578,335	592,814	14	1	0	3	4	
OH	7,948,407	7,929,413	7,939,376	8,009,366	8,029,756	1	0	0	0	0	
OK	2,517,380	2,549,443	2,606,348	2,671,919	2,719,636	439	277	177	92	52	
OR	2,497,920	2,570,211	2,662,827	2,685,538	2,724,683	49	28	12	20	9	
PA	8,355,712	8,219,462	8,377,855	8,452,000	8,483,438	62,657	51,308	36,501	26,342	19,151	
RI	636,043	639,506	648,892	657,417	663,890	37,935	32,303	25,574	17,206	9,335	
SC	2,918,192	3,026,697	3,132,125	3,232,099	3,294,512	-3	2	2	1	1	
SD	630,776	649,697	651,101	664,362	681,839	34	0	-1	0	0	
TN	3,877,515	3,995,832	4,095,160	4,148,021	4,187,461	262	96	63	38	24	
TX	13,119,467	13,455,662	14,322,073	14,682,107	14,927,827	51,690	27,418	15,584	10,347	7,783	
UT	1,552,247	1,618,570	1,693,718	1,759,548	1,808,234	8	3	7	-1	2	
VT	468,966	464,187	468,847	473,219	474,881	2,470	1,708	1,169	754	450	
VA	5,649,070	5,781,929	5,893,097	5,970,951	6,023,910	12,895	7,490	4,595	2,307	1,460	
WA	4,149,780	4,217,136	4,398,399	4,428,320	4,513,296	11	3	0	2	0	
WV	1,255,689	1,232,735	1,265,781	1,289,984	1,305,657	779	579	223	90	39	
WI	3,548,327	3,620,046	3,600,204	3,661,583	3,674,130	24	0	-2	1	0	

Concentration of residual market for private passenger liability - 2008



- ☐ North Carolina
- ☐ Massachusetts
- ☐ New York
- ☐ Maryland
- ☐ New Jersey
- ☐ Remaining 46

**Between July 2004 and
July 2009, consumers
paid \$900 MILLION
dollars in hidden
subsidies!**





DEPARTMENT OF INSURANCE

NEWS

*Jim Long
Insurance Commissioner*

Embargoed until 2 p.m.
Wed., Jan. 16, 2008

Contact: Chrissy Pearson
or Kristin Milam
(919) 733-5238

Commissioner Long, Department Suggest Changes to Auto Reinsurance Facility

Ideas Shared with Joint Legislative Study Committee During First Meeting

RALEIGH—During the first meeting of the Joint Legislative Study Committee on Automobile Insurance Modernization today, Insurance Commissioner Jim Long, a committee member, offered suggestions for changing the rating methodology used in the North Carolina Reinsurance Facility. The Facility, which serves as the high risk pool for drivers, has been criticized for requiring all drivers to pay a surcharge on their auto insurance. **The complicated system will be simplified and the surcharge eliminated if Long's suggestions are implemented.**

What the Commissioner is suggesting the Committee consider:

Eliminate the surcharge in the voluntary market. Instead of changing elements the voluntary rate, allow the Facility to set a rate appropriate for the potential risk. This increased rate should provide enough revenue to cover the claims generated by this segment of drivers. No longer will the general population pay a surcharge to make up the difference between premiums collected and claims paid.

**Car insurance rates by state: The most and least expensive places to buy
auto insurance in 2011 (March 14, 2011)**

Virginia	\$1,237
Iowa	\$1,179
North Carolina	\$1,154
Ohio	\$1,152
Tennessee	\$1,146
Wisconsin	\$1,128
Maine	\$1,126
South Carolina	\$1,095
Vermont	\$995
<i>Source: Insure.com</i>	

Driver	Cost/Expenses	RB	Anticipated Loss	Individual Rate
Worst	\$4	\$1	\$10	\$15
Higher	\$4	\$1	\$7	\$12
Average	\$4	\$1	\$3	\$8
Best	\$4	\$1	\$0	\$5
Total	\$16	\$4	\$20	\$40
<u>Average Premium:</u>				<u>\$10</u>

Driver	Cost/Expenses	RB	Ant. Loss	Individ. Rate	\$13 CAP	\$11 CAP
Worst	\$4	\$1	\$10	\$15	\$13	\$11
Higher	\$4	\$1	\$7	\$12	\$12	\$11
Average	\$4	\$1	\$3	\$8	\$9	\$10
Best	\$4	\$1	\$0	\$5	\$6	\$8
Total	\$16	\$4	\$20	\$40	\$40	\$40
<u>Average Premium:</u>				\$10	\$10	\$10

Driver	Cost/Expenses	RB	Ant. Loss	Ind. Rate	\$13 CAP	\$11 CAP	W/O RB
Worst	\$4	\$0	\$10	\$14	\$13	\$11	\$14
Higher	\$4	\$0	\$7	\$11	\$12	\$11	\$11
Average	\$4	\$0	\$3	\$7	\$9	\$10	\$7
Best	\$4	\$0	\$0	\$4	\$6	\$8	\$4
Total	\$16	\$0	\$20	\$36	\$40	\$40	\$36
<u>Average Premium:</u>				\$10	\$10	\$10	\$8

Auto insurance rates down 13%

By Chris Reidy GLOBE STAFF JANUARY 19, 2011

 [ARTICLE](#) [COMMENTS](#) [SUBSCRIBE](#)

[PRINT](#) [REPRINTS](#) [E-MAIL](#) [SHARE](#) ▼

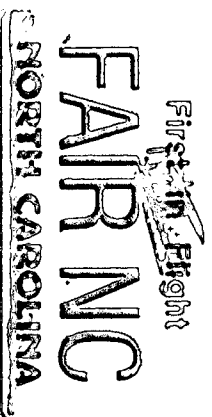
Premiums for auto insurance in Massachusetts decreased by nearly 13 percent between 2007 and 2009 after the state stopped setting auto insurance rates, according to a report by the National Association of Insurance Commissioners.

The average premium for personal auto insurance in Massachusetts, from the end of 2007 to the end of 2009, fell from \$1,056 to \$923, or 12.7 percent, according to the report. During the same period, the national average premium decreased by 1.4 percent. Massachusetts' average rate dropped the most in the country.

"Managed competition helped Massachusetts drivers see premiums drop at a higher rate than the rest of a country, a benefit we expected to be part of this reform," Joseph G. Murphy, the state's commissioner of insurance, said in a statement. "Consumers have a larger choice of company, coverage, and cost under this system, and shopping around for auto insurance can maximize those benefits."

The Boston Globe, January 19, 2011

When Companies Compete, Consumers Win



A BILL TO BE ENTITLED
AN ACT TO ALLOW NORTH CAROLINA CONSUMERS TO ENJOY THE BENEFITS OF
ENHANCED COMPETITION IN THE AUTOMOBILE AND MOTORCYCLE INSURANCE
MARKET AND RESTORE FAIRNESS BY ENDING FORCED SUBSIDIES OF HIGHER RISK
DRIVERS

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General statutes is amended by adding a new Article to read:

“Article X. Choice for Nonfleet Private Passenger Automobile Insurance”

§ 58-X-1. Definitions.

The following definitions apply in this Article:

- (1). Nonfleet. – Defined in G.S. 58-40-10.
- (2). Nonfleet private passenger motor vehicle insurance. – Coverage for theft of and physical damage to nonfleet private passenger motor vehicles, for liability insurance for such motor vehicles, and for automobile medical payments insurance, uninsured motorists coverage, and other insurance coverages written in connection with the sale of such liability insurance.
- (3). Private passenger motor vehicle. – Defined in G.S. 58-40-10.

§ 58-X-2. Choice.

By January 1, 2014, an insurer writing nonfleet private passenger motor vehicle insurance shall elect to develop its rates and forms pursuant to either Article 36 or Articles 40 and Y. The insurer shall make its election by notifying the Commissioner in a form prescribed by the Commissioner. An election shall remain in effect until revised by the insurer. An insurer that makes no election shall develop its rates and forms pursuant to Article 36.

§ 58-X-3. Applicability.

Notwithstanding any provision in this chapter to the contrary, with respect to its writing of nonfleet private passenger motor vehicle insurance, Articles 40 and Y have no effect and are wholly inapplicable to an insurer that elects to develop its rates pursuant to Article 36. Notwithstanding any provision in this chapter to the contrary, with respect to its writing of nonfleet private passenger motor vehicle insurance, Article 36 has no effect and is wholly inapplicable to an insurer that elects to develop its rates pursuant to Articles 40 and Y except as hereinafter specifically provided.

SECTION 2. Article 40 of Chapter 58 of the General Statutes reads as rewritten:

Article 40. Regulation of Insurance Rates

...
§ 58-40-15. 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. 58-40-60;
- (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) Repealed by Session Laws 1985, c. 666, s. 43;
- (7) Mortgage guaranty insurance;
- (8) Workers' 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 nonfleet private passenger motor vehicles; except this Article applies to insurance against theft of or physical damage to motorcycles, as defined in G.S. 20-4.01(27)d.; and~~
- (11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm dwellings, farm buildings and their appurtenant structures, farm personal property and other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles ~~unless insured under policies covering nonfleet private passenger motor vehicles;~~ vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium. The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations.

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

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

...

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

- (a) With the exception of inland marine insurance that is not written according to manual rates and rating ~~plans, plans and rate filings subject to Article Y 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.
- ...

"§ 58-40-141. Limitations and applicability.

- (a) The limitations of G.S. 58-36-50 with respect to Article 36 shall also apply to Articles 40 and Y.
- (b) The provisions of G.S. 58-36-90 and of G.S. 58-36-95 shall also apply to an insurer that elects to develop its private passenger auto and motorcycle rates and forms pursuant to Articles 40 and Y.

"§ 58-40-142. Material misrepresentation on application for motor vehicle insurance policy.

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

- (1) Cancel or refuse to renew the policy.
- (2) Surcharge the policy.
- (3) Recover from the applicant the appropriate amount of premium or surcharge that would have been collected by the insurer had the applicant furnished the correct information."

SECTION 3. Article 41 of Chapter 58 of the General Statutes reads as rewritten:

Article 41. Insurance Regulatory Reform Act

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

- (a) With the exception of inland marine insurance that is not written according to manual rates and rating plans, all policy forms must be filed with and either approved by the Commissioner or 90 days have elapsed and he has not disapproved the form before they may be used in this State. With respect to liability insurance policy forms, an insurer may exclude or limit coverage for punitive damages awarded against its insured.
- (b) 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 Y of this Chapter, all rates or prospective loss cost multipliers by licensed fire and casualty companies or their designated statistical organizations must be filed with the Commissioner at least 60 days before they may be used in this State. Any ~~fire and casualty~~ filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the filer.
- (c) ~~A~~ With the exception of nonfleet private passenger motor vehicle insurance filings, a filing that does not include the statistical and rating information required by subsections (d) and (e) of this section is not a proper filing, and will be returned to the filing insurer or organization. The filer may then remedy the defects in the filing. An otherwise defective filing thus remedied shall be deemed to be a proper filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the filing.
- (d) The following information must be included in each policy form, rule, and rate filing:
 - (1) A detailed list of the rates, rules, and policy forms filed, accompanied by a list of those superseded; and
 - (2) A detailed description, properly referenced, of all changes in policy forms, rules, and rates, including the effect of each change.
- (e) Each policy form, rule, and rate filing that is based on statistical data must be accompanied by the following properly identified information:
 - (1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period;
 - (2) Credibility factor development and application;

- (3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;
 - (4) Trending factor development and application;
 - (5) Changes in premium base resulting from rating exposure trends;
 - (6) Limiting factor development and application;
 - (7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;
 - (8) Percent rate change;
 - (9) Final proposed rates;
 - (10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;
 - (11) Identification of applicable statistical plans and programs and a certification of compliance with them;
 - (12) Investment earnings on capital and surplus;
 - (13) Level of capital and surplus needed to support premium writings without endangering the solvency of the company or companies involved; and
 - (14) Such other information that may be required by any rule adopted by the Commissioner.
- Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if the filer has not been required to collect such information pursuant to statistical plans or programs or to report such information to statistical agents, except where the Commissioner has given reasonable prior notice to the filer to begin collecting and reporting such information or except when the information is readily available to the filer.
- (f) It is unlawful for an insurer to charge or collect, or attempt to charge or collect, any premium for insurance except in accordance with filings made with the Commissioner under this section and Article 40 of this Chapter.
- (g) An insurer subject to this Article may develop and use an individual form or rate as a result of the uniqueness of a particular risk. The form or rate shall be developed, filed, and used in accordance with rules adopted by the Commissioner.
- (h) For purposes of this Article, "nonfleet" and "private passenger motor vehicle" shall be defined as set forth in G.S. 58-40-10. "

SECTION 4. Chapter 58 of the General Statutes is amended by adding a new Article to read:

Article Y.
Motor Vehicle Insurance Flex-Rating.

"§ 58-Y-1. Scope.

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

"§ 58-Y-5. Definitions.

The following definitions apply in this Article:

- (1) Excessive. – With respect to a rate filed under this Article, a rate that is likely to produce a long-term profit that is unreasonably high for the insurance provided.
- (2) Inadequate. – With respect to a rate filed under this Article, unreasonably low for the insurance coverage provided and, with continued use, likely to result in any of the following:
 - a. Endanger the solvency of insurers using the rate.
 - b. Substantially lessen competition among insurers.
 - c. Creation of a monopoly in the market for nonfleet private passenger motor vehicle insurance in the State.
- (3) Nonfleet. – Defined in G.S. 58-40-10.

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

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

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

"§ 58-Y-10. Flex-Rating.

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

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

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

SECTION 5(a). Article 37 of Chapter 58 of the General Statutes reads as rewritten:

Article 37. North Carolina Motor Vehicle Reinsurance Facility

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

...

(1) 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 statistical organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a 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. Facility, except that rates for "clean risks" on policies reinsured by the Facility that become effective on or after January 1, 2013, 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, 2013, and the actuarially sound rate for all risks reinsurance by the Facility shall be eliminated over a five-year period ending on December 31, 2017. Any The 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.

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

SECTION 5(b). Article 37 of Chapter 58 of the General Statutes reads as rewritten:

Article 37. North Carolina Motor Vehicle Reinsurance Facility

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

...

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory statistical organization or bureau on its behalf and shall be filed with the Commissioner. ~~The Board of Governors shall establish a separate subclassification within the Facility for "clean risks". For the purpose of this Article, a "clean risk" is any owner of a 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. The 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.

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

SECTION 6. On or before October 1, 2016, and again on or before October 1, 2018, the Executive Director and the Chair of the Board of Governors of the North Carolina Reinsurance Facility shall report to the Joint Legislative Commission on Governmental Operations on the size and market share of the Reinsurance Facility, and the analysis of the Reinsurance Facility of the effect of the Senate Bill _____ in reducing the size of the Reinsurance Facility. The reports shall include the recommendations, if any, of the Reinsurance Facility of transitioning the North Carolina involuntary automobile insurance mechanism from a reinsurance facility to an assigned risk plan, joint underwriting association, or other mechanism for an involuntary automobile insurance market.

SECTION 7. Sections 5(a) and 6 of this act are effective January 1, 2013. Section 5(b) of this act is effective January 1, 2018. The remainder of this act is effective January 1, 2014.

January 24, 2012

Mr. Chairman, Senator Apodaca, and Members of the Committee:

Thank you for inviting me to speak today. My name is Eli Lehrer, I'm Vice President of the Heartland Institute, a national free-market think tank. At Heartland, I run our Center on Finance, Insurance, and Real Estate, the largest of Heartland's six policy centers. In work I have done with the Raleigh-based John Locke Foundation, I have written extensively on North Carolina's automobile insurance system.

I come to you today as a disinterested party. I do not—and will not—support any of the particular proposals you have heard today. I do, however, wish to speak with you about the facts about North Carolina's automobile insurance system and offer some suggestions as to how it might be reformed. I'll start by making some points.

The Basic Facts

First, auto insurance rates in North Carolina are average for the region. The Southeast is a good place to buy auto insurance, and, like all nearby states, auto insurance in North Carolina is generally more affordable than it is elsewhere in the country. *North Carolina auto insurance rates are lower than those in Virginia, almost identical to those in Tennessee, and higher than those in South Carolina.* According to insure.com, which researches the actual quotes extended to insurance consumers rather than revenue to insurance companies, 2010 rates for North Carolina averaged \$1,154 while South Carolina rates averaged \$1,095. Virginia rates averaged \$1,272 and Tennessee rates averaged \$1,146.

These states regulate insurance in very different ways: North Carolina places numerous restrictions on companies' ability to raise and lower rates, while Virginia and South Carolina place very few restrictions and Tennessee is somewhere in-between. It's likely that no set of reforms with any serious amount of support will result in average rates that are vastly higher or vastly lower. Even reforms that lower rates on average would almost certainly increase them for some individuals.

Second, auto insurance industry profits are guaranteed in North Carolina. Insurers cannot lose money writing coverage in North Carolina unless they have truly incompetent management. Current North Carolina law both requires the insurance commissioner to take profitability into account in setting rates and, through free ceding, lets insurers dump any policies that aren't profitable (or profitable enough.) The result is pretty good for the insurance *business*. What private, profit making company wouldn't like a system that assured it would always make money? And that's what North Carolina's current system does. This leads directly to my third point.

Third, the insurance product mix available to North Carolina consumers is behind the times. A variety of insurance products like pay-per-mile automobile insurance and auto insurance that offers regular cash rebate checks are not sold at all in North Carolina. This is largely because of

the cumbersome Rate Bureau process that insurers must graft all new products onto. It's just too much trouble for them to offer innovations *even though* they are assured profits once they are introduced.

Finally, North Carolina's residual auto insurance market—the number of people who cannot get auto insurance in the private market—is enormous. North Carolina has just about 3 percent of the country's population and almost 80 percent (78 percent to be exact) of the drivers who are in residual markets in the entire country. All of these drivers, I would submit, pay the “wrong” rate: some pay too little and some pay too much.

The bottom line is simple. The auto insurance environment in North Carolina is pretty good for business. That's why so many insurers want to keep things the way they are. I don't blame them for that. But the overall environment is not good for consumers. That's why some reforms are needed. The right reforms can offer modestly lower rates on average, more choice for consumers, and safer roads in the state.

What to Do?

If the legislature is serious about making meaningful reforms, it should consider following plans that embody five principles.

First, auto insurers should be required to file rates themselves without going through the Rate Bureau. The Rate Bureau is expensive and anachronistic—no other state requires auto insurers to file rates in the same way. *Filing rates directly with the insurance department, as Commissioner Goodwin has rightly pointed out, will almost certainly require that the staff of the department be enlarged. This will almost certainly need to be done if the Rate Bureau is eliminated.*

Second, the range of rating factors allowed should be expanded. This means, for example, that North Carolina should drop its rule that prevents auto insurers from considering sex in determining auto insurance rates. Solid research indicates that men are more likely to get into accidents than women. The specific range of rating factors allowed is a question that has no perfect answer; the use of some rating factors may offend our sensibilities or values. But the evidence strongly supports allowing insurers to consider the sex of drivers. .

Third, requiring insurers to file their own rates would also make it easier for them to offer innovative new products available in almost all other states. The insurance department should do what it can to encourage insurers to offer these products in North Carolina as they file their own rates.

✓ Fourth, profit guarantees should be eliminated. Although, as the insurance industry will point out, a mandate to require the insurance commissioner to consider profitability is common, it's neither necessary nor wise. If insurers don't believe they can make money, they will leave the state. There's no need for a legal mandate. Ending “free ceding” to the residual market would be very disruptive in the short term, but, in time, the legislature should look to phase it out. Insurers that do not want to write a policy should not be able to make a penny off of it if they do not take at least a very large portion of the risk.

Finally, the Committee and legislature as a whole should realize that doing these things will allow the state's overgrown residual market to wither away and all North Carolina consumers to find solid, fairly priced automobile insurance that meets their specific needs.

Quite simply, North Carolina's automobile insurance system is not as fair as it could be. It can change and it should change. Changes may not benefit insurers. But the right changes, made in the right way can—and will—offer more choices and fairer prices to all of the State's citizens.

Respectfully Submitted,

Eli Lehrer
Vice President
The Heartland Institute
elehrer@heartland.org
(202)615-0586

NORTH CAROLINA'S AUTOMOBILE INSURANCE SYSTEM: STILL UNFAIR, STILL IN NEED OF REFORM

Four Facts to Keep in Mind:

1. **Rates are average for the region:** The Southeast is a good place to buy auto insurance. North Carolina's rates are lower than Virginia's, almost identical to Tennessee's, and higher than South Carolina's. As all these states have very different ways of regulating auto insurance, **no set of reforms in North Carolina would result in rates vastly higher *or* vastly lower.**
2. **Profits are guaranteed:** Insurers **cannot lose money** writing coverage in North Carolina. The commissioner is required to take profitability into account, and free ceding allows them to "dump" any policies they do not believe will be profitable.
3. **Products are behind the times:** Many products sold elsewhere—pay-per-mile-auto-insurance for example—aren't sold in North Carolina. This is not because of **the Rate Bureau**, not the Insurance Department.
4. **The residual market is enormous:** North Carolina has just about 3 percent of the country's population, but **almost 80 percent** of the drivers nationwide who are in residual markets.

What to Do?

1. **Require auto insurers to file their own rates:** The rate bureau is an anachronism that costs consumers and business **real money**.
2. **Charge good risks less and bad risks more:** Certain attributes, such as having XY chromosomes (sorry guys), correlate pretty strongly with being a worse driver. Insurers know these things and can price more efficiently if they use them.
3. **Offer new innovative products:** Requiring auto insurers to file their own rates would make it possible for them to offer new products in the state.
4. **End profit guarantees (over time):** Insurers should live and die by their own business practices, **not because state law assures them of profits.**
5. **Let the residual market wither away:** Ordering the immediate abolition of the residual market would be disruptive. It can, and will, simply wither away.

And, if you do these things, North Carolina consumers will be better off.

Eli Lehrer – Vice President – The Heartland Institute
elehrer@heartland.org - (202)615-0586

Committee Sergeants at Arms

AUTOMOBILE INSURANCE
NAME OF COMMITTEE MODERNIZATION

DATE: JAN 25, 2012 Room: 1228

House Sgt-At Arms:

1. Name: FRED HINES
2. Name: MARTHA PARRISH
3. Name: _____
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: TIM BLACKBURN
2. Name: STEVE WILSON
3. Name: _____
4. Name: _____
5. Name: _____

ANTHONY J. JIDOMOTNA
MODERNIZATION

1978

ZAN 22, 2013

FRED HINEZ
MARTHA PARISH

Judy Lowe (Rep. McComas)

From: Nicole McGuinness Hines (Sen. Apodaca)
Sent: Wednesday, February 15, 2012 3:27 PM
To: @InterimCommitteeNotice; Andrew Tripp (Senate); Bill Patterson (Research); Carolyn Gooden (Sen. Apodaca); Chris Floyd (Rep. Steen); Dina Long (Rep. Burr); Helen Long (Sen. Rucho); Jeff Cherry (Bill Drafting); Judy Lowe (Rep. McComas); Karen Johns/Gayle Gunn (Sen. Gunn); Kathie Young (Sen. Kinnaird); Kory Goldsmith (Research); Nicole McGuinness Hines (Sen. Apodaca); Regina Irwin (Rep. Dockham); Rep. Fred Steen; Rep. Harry Warren; Rep. Jerry Dockham; Rep. Justin P. Burr; Rep. Susi Hamilton; Ruth Merkle (Rep. Hamilton); Sen. Bob Rucho; Sen. Ellie Kinnaird; Sen. Rick Gunn; Sen. Tom Apodaca; Shara Graham (Rep. Harry Warren); Tim Hovis (Research)
Subject: <NCGA> Automobile Insurance Modernization Committee [LRC][2011]

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

Tuesday, March 6th, 2012

MEMORANDUM

TO: Members: Senator Rucho, Senator Kinnaird, Senator Gunn, Representative Burr, Representative H. Warren, Representative Hamilton, Representative Dockham

FROM: Chairman Apodaca and Chairman Steen

SUBJECT: Meeting Notice for LRC Committee on Automobile Insurance Modernization

DAY	DATE	TIME	ROOM
Tuesday	March 6 th	2:00 pm	1228 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can

view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Nicole McGuinness Hines at 715-4647.

cc: Committee Record ☒

Interested Parties ☒



**Legislative Research Commission
Joint Study Committee
Automobile Insurance Modernization**

AGENDA

March 6th, 2012
Room 1228, Legislative Building
2:00 PM

WELCOME AND INTRODUCTORY REMARKS

Chairman Tom Apodaca, Presiding
Chairman Fred Steen

- I. January Meeting Recap**
Tim Hovis, Research Staff
- II. Presentation on Technology and Financial Responsibility Enforcement**
Amy Jo Johnson, Research Staff

Brian Weibel, C.N.A. G.S.E.C.
FDI Group
- III. Diminished Value**
Rose Vaughn Williams, Legislative Counsel to the
NC Department of Insurance
- V. Committee Discussion and Instructions to Staff**
- VI. Adjournment**

MINUTES

JOINT LEGISLATIVE RESEARCH AUTO INSURANCE MODERNIZATION COMMITTEE

Tuesday, March 6, 2012

2:00 PM

Room 1228, Legislative Building

The Joint Legislative Research Auto Insurance Modernization Committee held its third meeting on Tuesday, March 6, 2012 at 9:00 AM in Room 1228 of the Legislative Building. Senators Apodaca (Co-Chair), Gunn, Kinnaird, and Rucho attended as did Representatives Steen (Co-Chair), Dockham, Warren, Burr, and Hamilton.

Senator Apodaca, presiding Co-Chair, called the meeting to order at 2:05. He thanked everyone attending and asked Representative Steen if he had any remarks. He briefly reviewed the Agenda (**Attachment A**) and welcomed members, staff and visitors. He also thanked the Sergeants-at-Arms from the Senate Steve Wilson and Robert Young and from the House Bob Rossi and Garland Shepherd. Staff members present were Tim Hovis, Kory Goldsmith, Jeff Cherry and Bill Patterson. Nicole McGuiness-Hines and Judy Lowe were the Committee Assistants. The list of visitors is **Attachment B**.

Representative Steen moved that the minutes that had been handed out for the Committee meetings on December 6, 2011 and January 25, 2012 be approved. There being no comments or questions, the minutes were approved unanimously. Chairman Apodaca reminded all Committee members to fill out their reimbursement forms.

Mr. Tim Hovis, Research Staff for January Meeting Recap

Mr. Hovis began with a **Brief Overview of Current Law** which is **Attachment C**. Under the current law the NC Rate Bureau files rates and rating plans jointly for all insurers with the Commissioner for approval. Current law allows individual insurers to deviate from the approved base rate. Companies can deviate downward but they cannot deviate upward. An insurer cannot deny insurance coverage to eligible risks; however, insurers may cede to the North Carolina Reinsurance Facility any eligible risk it chooses for liability and other required coverages. The rates for clean risks ceded to the Facility may not exceed the maximum rate approved by the Commissioner for clean risks outside of the Facility and the difference in the actuarially sound rate for clean risks in the Facility and the rate actually charged to these risks is recouped by a surcharge on all policies and this is known as the "**recoupment surcharge**". For drivers other than clean risks who are ceded to the Facility, the Facility files with the Commissioner a "Facility rate". The Facility rate serves as the base rate for these drivers ceded to the Facility and is approximately 20 to 30% higher than the base rate approved by the Commissioner.

The second page of the Overview is an update of the chart that was reviewed at the meeting on December 6th. It compares the **FAIR NC Coalition bill to SB477/HB834**. The new portion of the FAIR NC proposal gives insurers the option of remaining under the jurisdiction of the Rate Bureau or they can opt out of the current system and file rates directly with the Commissioner through a new "**Flex Rating**" band system. Under this system, rate filings by individual insurers increasing or decreasing rates no more than 12% aggregated for all insurers, are deemed to meet the standard and are approved upon filing. They may be used upon filing or as specified by the Commissioner. Flex rating would allow a filing or a combination of filings, up to 12% in a 12 month period. The Commissioner may disapprove the

filing but there is a presumption that it meets the necessary standard if it is within the 12% range. The Commissioner may disapprove a filing by written order specifying the reasonable future date the filing is not effective, if the rate is excessive, inadequate or unfairly discriminatory. The Commissioner's order is going to be prospective only. Filing(s) greater than 12% are subject to the Commissioner's disapproval with refunds to those insured, if upheld.

Mr. Hovis next referred to SB477/HB834 which leaves the Rate Bureau jurisdiction intact and allows individual insurers to file upward deviations with the Commissioner. Deviations filed by individual insurers above the Rate charged by the Reinsurance Facility are presumed to meet the necessary standards. Currently, the Facility rate is approximately 20 to 30% higher than the Rate Bureau base rate. The deviation takes effect upon filing and the Commissioner may disapprove the deviation but there is the presumption that, up to the Facility rate, it is going to be valid and meet the necessary standard.

The final page of Mr. Hovis' report is an **Overview of Issues from the January 25th meeting**. He reminded the Committee that it is not an exhaustive list but a compilation of the major points made by presenters.

The arguments supporting proposed changes. The speakers that spoke in favor of proposed changes were Steve Pociask, ACI, John McMillan, IFNC, Liz Reynolds, NAMIC, David Stoller, State Farm and FAIR NC Coalition. These arguments included the following:

1. Drivers ceded to the Facility represent 80% of the residual market in the country.
2. Recoupment surcharge is currently 4.3% of liability coverage; has been as high as 10%. It is a hidden subsidy paid for by safer drivers.
3. Current Rate Bureau system is antiquated, allows for sharing of information between insurers and leads to collusive price-setting that protects the market share of insurers. It does not allow for maximum competition.
4. NC's rates are low, but not lowest in south or 8th lowest in the country. The base rate approved by the Commissioner serves as the maximum rate or a cap on rates. The average rate paid by consumers is not related to the maximum approved rate. It is a reflection of the losses, costs and expenses of insurers and is directly related to other factors such as the State's tort system, safe roads, and cost-of-living.
5. Points Related Specifically to FAIR Coalition Proposal:
 - a. Eliminates the need for surcharge by depopulating the Facility
 - b. Allows for greater competition and more premium discounts to drivers
 - c. Allows companies to opt out of the Rate Bureau and file individually leading to more innovative products
 - d. Reduces administrative costs and expenses of filings
 - e. Increases the number of companies competing in the State
6. Points related Specifically to S477/H834
 - a. Eliminates need for Recoupment surcharge (as was argument for Flex Rating System)
 - b. Allows for greater competition between companies and lower premiums for most drivers
 - c. Rate Bureau would continue to file rates with the Commissioner and the Commissioner would retain ability to approve rates under current law.

The arguments opposing proposed changes. The speakers that spoke in opposition were R. Lee Morton, Nationwide, Steve Carroll, Farm Bureau; Glenn Jernigan, GMAC; Jeff Butler, Able Auto/Cycle Ins. Co. and Alliance of Agents. These arguments included the following:

1. Liability insurance coverage is required under State law for all drivers and North Carolina is a "take-all-comers" State. The Facility was created to encourage all drivers to comply with state law and acquire liability coverage. There are approximately 1,000,000 risks in the Facility who will see an increase in premiums if the current system is changed. As a result of this increase, the number of uninsured drivers will increase which will ultimately increase costs for everyone.
2. The current market is strong and competitive as evidenced by the large number of auto insurers currently in the State and the number of available discounts as downward deviations are allowed.
3. NC has the lowest rates in the Southeast, the 8th lowest in the US and the lowest rates among the 10 most populated states.
4. If current system for auto insurance is dismantled, rates in the auto insurance market will no longer be stable but will change on both ends.
5. If companies file individually, each filing will be different and consumers will no longer be able to compare rates and coverages between companies. Policies and forms will no longer be filed by the Rate Bureau and approved by the Department but will vary between insurers leading to increased confusion for the consumer.
6. Dismantling the current system could have an unintended impact on other lines of insurance.
7. Savings to consumer from the discontinuance of the recoupment surcharge is small compared to the potential rate increase under a flex rating system.

Chairman Apodaca thanked Mr. Hovis and stated he wanted to open it up to the Committee for discussion on how to proceed. In response to a question from Senator Kinnaird regarding why the term "safe driver" is used if that driver is put in the risk facility, Chairman Apodaca asked Rose Vaughn Williams from the Department of Insurance who responded that companies make the decision based on multiple factors which can include what kind of car the applicant drives, his/her credit, etc. Senator Kinnaird noted that some insurance companies are for this and some are against. Dave Stoller added that about 20 companies participated with the FAIR NC Coalition when this was discussed.

Senator Rucho commented that there is enough evidence that there may be enough of a problem in this complicated issue to share a report with other members of the General Assembly so that they can move forward in 2013. The issue needs to be evaluated if there is an opportunity to improve insurance rates.

Chairman Apodaca stated he tended to agree and asked Senator Rucho what he would like to see contained in the report. He asked if he would like both sides and Senator Rucho thought the facts should be laid out.

Chairman Apodaca recognized Representative Dockham who stated that whether this Committee makes a recommendation or not, this is something the GA will be talking about next Session. He **moved** that where the two bills agree in language, the Committee make that as a recommendation to carry forward in a formal report to a future Session. Senator Apodaca stated that he did not think this was something there would be time to take up in the Short Session and Representative Dockham agreed as did Representative Burr. There was consensus among Committee members and the **motion carried**.

Mr. Hovis asked for clarification and Senator Apodaca stated that the Committee will take what is agreed upon and put it in the report. Specific legislation would not be recommended but the report can pull the pieces out from the testimony and then identify the items not agreed upon and the Committee will keep moving and attacking those to see what to recommend to a future Session.

At this point, Senator Apodaca recognized the clerks of the Committee, Nichole McGuiness-Hines and Judy Lowe, and stated they had done a wonderful job and he appreciated their work and ethics.

Presentation on Technology and Financial Responsibility Enforcement

Chairman Apodaca stated that he asked this to be brought forth because he has had quite a few constituents complain to him about uninsured motorists and the premium and portion they have to pay on that. As technology becomes more and more part of our lives, he wanted to hear more information about the pros of cutting edge technology.

He introduced **Amy Jo Johnson from the Research Staff** to speak about a bill draft titled **Technology to Catch Uninsured Motorists (attachment D)**. The bill will direct use of an electronic identification system as a means for identifying vehicles without financial responsibilities and to make some other modifications to Article XIII of Chapter 20 with this new Financial Responsibility Act. She began by going through the Responsibility Act as it exists now. Currently under the Financial Responsibility Act no motor vehicle may be registered in North Carolina unless the owner provides proof of financial responsibility for operation of the motor vehicle. The owner must also maintain that financial responsibility continuously throughout that period of registration. Insurers are required to notify the Division of Motor Vehicles when the insurer issues new or replacement policies, terminates a policy or reinstates a policy. When the DMV receives this information and learns of a lapse of financial responsibility, the DMV is required to notify the owner via letter. The owner has ten days to respond and based upon the response, the DMV is required to take one of the following three actions: 1) Correct its records, 2) Assess a monetary penalty or 3) Assess a monetary penalty and revoke the registration. Correcting the records would take place if the owner is able to establish that there was not a lapse of financial responsibility. Only a monetary penalty occurs if all of the following applies: 1) If the owner had a lapse but has now established financial responsibility for the vehicle, 2) the vehicle was not involved in an accident during the lapse and the owner did not operate that vehicle during the lapse with knowledge that the owner did not have any financial responsibility. The third possible response by DMV is to assess a monetary penalty and revoke the registration of the owner's vehicle, and this takes place if any of the following applies: if the owner has had a lapse and continues to have a lapse; if a vehicle was actually involved in an accident during the lapse or if the owner operated the vehicle during the lapse with knowledge that they didn't have any financial responsibility. The penalties assessed by DMV are currently based on the number of lapses that occur in a previous three years and range from \$50-\$150. Anyone whose registration is revoked may request a hearing from DMV about the revocation. At this time it is also a Class 1 misdemeanor to operate a vehicle without financial responsibility. This is a brief summary of the current Article XIII.

Section 1 of the Financial Responsibility Act not only applies to vehicles registered or required to be registered in the State of North Carolina, but also to vehicles registered or required to be registered in other states if the other state requires the owner to have financial responsibility. **Section 2** of the bill allows for the use of the electronic verification systems by law enforcement agencies and officers as a means to identify the vehicles without financial responsibility. The bill defines an electronic verification system as either a mobile or fixed device consisting of an electronically automated camera and sensor

capable of producing digital photographs of the registration plate of a motor vehicle. The system also indicates the date, time and location of the vehicle when it is photographed. It must be approved by the Department of Public Safety and **Section II** also authorizes the Department of Transportation's co-signage notifying drivers in the State of the system. **Section 3** addresses the results of the electronic Verification System which would be admissible as prima facie evidence for establishing the operator of the vehicle did not have financial responsibility. This Section requires judicial notice be taken of the rules for approving the systems and the procedures for calibration and testing for accuracy. **Section 4** modifies current G.S. 20-311 which directs how DMV must respond when notified of a lapse and this is notice taken either by the electronic means or by law enforcement. The DMV would continue to send a letter to notify the owner of the lapse. This notice of violation must include the date, time and location of the violation (if an electronic verification system was used), the vehicle registration number and date of issuance and the process for paying the civil penalty or contesting the violation. Under the draft the owner must respond within 30 days instead of 10 and must do so by sworn affidavit or the right to protest the violation is waived. The penalties remain the same. For violations punishable by both penalty and registration revocation, the bill requires that DMV revoke the owner's driver's license for the same specified time as the revocation period of the registration. The bill also eliminates the current penalty schedule and instead has a flat \$300 penalty per violation. **Section 5** eliminates the Class 1 misdemeanor for operation of a vehicle without financial responsibility. This Section also requires that law enforcement notify the DMV within 48 hours if an officer learns a vehicle is being operated without financial responsibility. The DMV is then to send a notice of vehicle violation. **Section 6** requires the Commissioner of Motor Vehicles to make rules and regulations for administering the Act. **Sections 7 and 8** deal with hearings. Under Section 7 anyone whose registration is revoked for failure to maintain financial responsibility before December 1 of 2012 will remain entitled to request a hearing from DMV. Driver's license revocations occurring on or after December 1, 2012 may be appealed to the district court of Wake County or the county in which the violation occurred within 30 days of being notified of DMV's decision. **Section 9** directs the North Carolina Criminal Justice Education and Training Standards Commission to approve the use of specific models and types of electronic verification systems and to establish procedures for operation of the systems and standards for calibration and testing of accuracy. **Section 10** directs the Department of Public Safety to request proposals for contracts to provide the electronic verification systems including specific provisions as itemized in the bill. **Section 11** specifies sections and dates that the act becomes law.

Chairman Apodaca asked how many states do not require financial responsibility on automobiles. Dr. Jonathan Miller, InsureNet, stated that there was only one. Chairman Apodaca then asked how long someone's insurance would be lapsed before being notified. Ms. Johanna Reese, NCDMV, responded it would be 20 days or less. To a follow-up question regarding the number of notifications received during a year, Ms. Reese indicated she did not have the number with her but would find out and let him know. Senator Kinnaird asked if officers were checking every license and Chairman Apodaca responded that it was done electronically.

Chairman Apodaca next introduced Mr. Brian Weibel, C.N.A., G.S.E.C. of the FDI Group to give a brief overview of the technology (**Attachment E**). Mr. Weibel stated that he works for a company that is in the whole range of the private insurance industry. He has had exposure to a broad range of technology and how things work together in the insurance world. He noted that a lot of today's technology shares a common communication ancestor and that is an organization called the National Law Enforcement Telecommunications System, an organization that every law enforcement community in the country uses to get their information and pass information back and forth and share it with one another including officers in North Carolina. Insurance is required for obvious reasons such as reducing the

safety risk for the public, to increase revenue, to allow for effective enforcement and to equip law enforcement with the proper tools to do their job. North Carolina has the underlying foundation, the networking architecture, already in use toward many other purposes. The telecommunications system and automatic license plate recognition, paired together, make the technology work. The goal is to take information that the State already has, and use that information to enable law enforcement to insure that people who operate vehicles have insurance. As technology grows and information becomes more abundant, the idea is to get it into the hands of the people who can use it to the best means. In this case it is the law enforcement community. North Carolina has one of the more robust data collection bases already. Having the information and making it available in a centralized fashion, makes it very easy for photographs to be analyzed, reports to be shared, etc. The reporting could happen nightly but it can be mandated via the vendor that is selected. The way the bill is written now, the onus is on the vendor to solve any of the remaining technical issues. With the framework already in place in NC, there is no necessity to purchase any new framework. All of this is taking systems already here and using them more effectively and getting more of the investment out of them. It is a technical solution already in use in a bunch of different forms and applying it to the problem of verifying vehicle insurance. The law states if you are operating a vehicle you have to have insurance; there is an industry that provides it, and there is an industry of people to enforce it. There really is not a link commonly between all three of those. That is what the bill is attempting to do; to link the three together and make it an effective and revenue generating system as well.

Chairman Apodaca thanked Mr. Weibel and asked Committee members if there were any questions. To a question from Senator Kinnaird, Mr. Weibel stated that under most of the solutions that he has looked at, the system makes the determination but officers have their computer systems in the car with them when a plate is scanned and if they choose to identify a plate they are pursuing or considering initiating a traffic stop, they get a response immediately on the status of the vehicle. Representative Warren asked if the system worked constantly in scanning every plate that an officer runs up on or does it selectively scan plates. Mr. Weibel responded that that would be a choice that would be up to the State as the technical requirements are set based on the vendor that is chosen and it can be done either way. If every single car was scanned, it would be expected that 14-16% of them would not have insurance. Rep. Warren asked if officers scanned ones they suspected for some reason, would that open up to profiling. Senator Apodaca responded that technology is just being discussed right now, not implemented nor has the criteria been set.

Chairman Apodaca stated that the committee would continue to discuss this and watch the technology as it goes because various North Carolina companies are involved in the technology.

Ms. Rose Vaughn Williams, Legislative Counsel to the NC Department of Insurance
Diminished Value

Chairman Apodaca introduced Ms. Williams who stated that the Department does not handle diminution in value claims (**Attachment F**). She came at the request of Senator Apodaca to review the law in North Carolina now as to diminution in value claims. When a car has been damaged in an accident and then repaired, the resale value may be less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car. In North Carolina there is no statute that sets out that there is right to a third party diminished value claim when a car is damaged by the negligence of someone else. The right to assert that claim in a third party situation is not in statute but it exists in the "common law"; case law developed through the court system rather than through statutes or administrative rules. The North Carolina statutes do require liability policies to include a

method for how certain claims for diminution in value can be resolved if who is at fault for the accident is not an issue. That statute is found in the DMV statutes, Chapter 20. Under that statute if the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident AND if the difference in their opinion of the diminished value is greater than \$2000. or 25% of the fair market retail value of the vehicle prior to the accident, whichever is less, then either side can make a written demand for a determination under that statute. Within 20 days of that written demand either side makes, each side selects an appraiser and notifies the other side. The appraisers then appraise the loss. If they don't agree, the appraisers then select a competent and disinterested appraiser to serve as an umpire. If the appraisers can't agree on an umpire within 15 days, either side can request that a magistrate resident in the county where the car is registered or where the accident happened select an umpire. The umpire makes a decision between the two appraisers and files the report with both sides. The umpire's report determines the amount of the damages and both parties have 15 days to reject the report. If it is not rejected in 15 days, it is final and binding. The appraisers are paid by the party that picked them and the umpire is paid by both parties equally.

The NC case law and the pattern jury instructions that judges give juries assume there is a right to assert a claim for diminished value in third party claims. The law says that you have a right to recover the difference in the fair market value of your vehicle before the accident versus the value of your car after the accident.

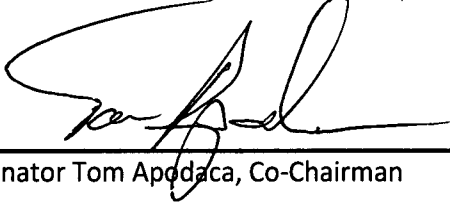
The NC Administrative Code does have one brief reference to diminution in value for third party claims. It says a person is not barred from making a claim for diminished value even if a release or full payment of claim is executed by the third party claimant as long as the diminished value was directly caused by the accident and it could not have been known or determined until after the repair. The claim must be brought within 30 days after the repair or attempted repair of the vehicle.

The right to make a claim against your own insurance company, a "first party claim", does not exist clearly in contracts of insurance. In North Carolina companies contract with their own policy holders to pay for actual cash value of the stolen or damaged property or the amount necessary to repair or replace the property with other property of like kind and quality. This is what is in the statutes and the rules of NC.

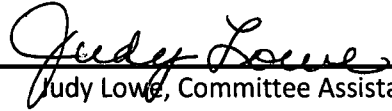
Ms. Vaughn Williams stated that Senator Apodaca asked her to look at what other states do. She acknowledged that many of the companies here do business in lots of other states and know how they operate. The Department started a new survey in early March and had already gotten 23 responses. Of the 23 who responded only Louisiana had a written law governing diminished value claims. Its law applies to third party claims. It says that whenever a vehicle is damaged through the negligence of a third party without being destroyed, and if the owner can prove by a preponderance of the evidence that, if the vehicle were repaired to its pre-loss condition, its fair market value would be less than its value before it was damaged, the owner shall be entitled to recover as additional damages an amount equal to the diminution in the value of the vehicle. Many states are like North Carolina in that their law on diminished value claims or third party claims is in the common law, not in statute, and there is no clearly recognized claim for diminished value in first party claims.

Chairman Apodaca thanked Ms. Vaughn Williams and stated the committee looked forward to working with her in the future on looking at this issue. He announced there would be one more meeting to tie up everything and get the report out.

The Chairman adjourned the meeting at 3:10 PM.



Senator Tom Apodaca, Co-Chairman



Judy Lowe, Committee Assistant

ATTACHMENTS:

A-Agenda

B-List of Visitors

C-Tim Hovis, Brief Overview of Current Law

Comparison of FAIR NC Bill and HB834/SB477 and

Overview of Issues from the January 25th meeting

D-Amy Jo Johnson, Technology to Catch Uninsured Motorists Bill Draft

**E-Brian Weibel, Automotive Financial Responsibility/Enhancing Identification of Uninsured
Vehicles Operating on Public Roads**

F-Rose Vaughn Williams, Diminished Value in North Carolina

VISITOR REGISTRATION SHEETLRC Joint Study Committee on Automobile Insurance ModernizationTuesday, March 6th 2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
David Sollen	State Farm
Bob Hatto	McGuire Woods
Dan Grayson	NCPA
Joe Lanier	NELSON MULLINS
Peter Van Kirk	Insight
Sue Taylor	NC Rate Bureau
Greg Spray	AAA/Universal
RAY EVANS	NCRB
Rose Williams	NCDOT
Bryan Heckle	NCDOT
Tim Lucas	NC Rate Bureau
Jon Hannah	State Farm
Kim Conyers	State Farm
Kathy Feinberg	MWC
Liz Reynolds	NAMIC
Erin Ende	State Farm
B. NOLLY JR	WM

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

Tuesday, March 6th 2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Fred Fuller	NCDOT
John A. Bode	
STUART Powell	~~ITPAK~~
Winston Morris	Nationwide Ins.
Dana Simpson	Smith Anderson
Frank Folger	Nationwide
Heather Barnett	Williams Mullen
Dave Horne	Smith Anderson
Robert Mack	NCDOT
Allison Walker	Nelson Mullins
Brian Weibel	FDI GROUP/Williams Mullen
Mike Strickland	Young Moore & Henderson
Edith Davis	NC Reinsurance Facility
Mickey Spivey	Young Moore and Henderson
JONATHAN MILLER	NATIONAL PUBLIC SAFETY CONS.
Sara Fender	IFNC
John McMillan	MFTS

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

Tuesday, March 6th 2012

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Johanna Reese	DMV
JANICE Turner	DMV
Paula Windley	DMV
Brenda Freeman	DMV
Bill Slobin	TSE
Robert PASCHAL	Young Men
Amy Powell	Nationwide
Diane Boyer	Insurance House
Stuart Lindley	Discovery Insurance
DEAN KRUBER	GREENVILLE CASUALTY
Kelley Erstine	Independent Insurance Agents
CSX611.5	TSS
MART EDWARDS	NC DOI
Tenacy Broha	NC DOI
RONALD DECKER	SECURE HIGHWAYS, WILMINGTON, NC
WAYNE THOMAS	SECURE Highways, Wilmington, NC

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

Tuesday, March 6th 2012
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
BILL GILKESON	BAILEY & DIXON LLP
JULIAN PHILPOT	NC FARM BUREAU
SM Team	NMRS
Roger Batdorff	NC Farm Bureau
MARK JENNINGS	NMRS
MIKAEL GROSS	NC Dept. of Public Safety
CHRIS BROOKS	DOJ/DOH ✓
Aubrey Incorvaia	NC DOC
Kristen Laster	Fetzer Strategic
Tom Pearson	capstrax
Douglas Holbrook	NC DPS
Matthew Easley	Smith Anderson

Brief Overview of Current Law

Article 36 of Chapter 58 requires the N.C. Rate Bureau to file rates and rating plans for nonfleet private passenger motor vehicle insurance jointly for all insurers with the Commissioner for approval. Current law allows individual insurers to deviate from the approved base rate if the deviation is also approved by the Commissioner. Companies can deviate downward from the base rate, but upward deviations are not allowed.

An insurer cannot deny auto insurance coverage to eligible risks. However, Insurers may cede to the North Carolina Reinsurance Facility any eligible risk it chooses for liability and other required coverages. The Facility is required to establish a separate classification for owners and operators who are "clean risks." Basically, a clean risk is someone who has at least two years of driving experience and does not have a violation for which insurance points may be charged in the preceding three years.

The rates for clean risks may not exceed the maximum rate approved by the Commissioner for clean risks outside of the Facility. The difference in an actuarially sound rate for clean risks in the Facility and the rate actually charged to these clean risks is recouped by a surcharge on all policies in the State, known as the "**recoupment surcharge.**"

For drivers other than clean risks (i.e. drivers with insurance points) who are ceded to the Facility, the Facility files with the Commissioner a "Facility rate." The Facility rate serves as the base rate for these drivers ceded to the Facility and is approximately 20 to 30% higher than the base rate approved by the Commissioner for clean risks.

Comparison of FAIR NC Bill and H834/S477

	FAIR NC	H834/S477
Rate Bureau	Gives insurers the option of remaining under the jurisdiction of the Rate Bureau or opting out of the current system and filing rates directly with the Commissioner through a new "Flex Rating" band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward deviations with the Commissioner from the approved base rate
Flex Rating versus Deviations	Flex Rating - Rate filings by individual insurers increasing or decreasing rates no more than 12%, aggregated for all insureds, are deemed to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - May be used upon filing or as specified by the <u>insurer</u> ?? - Allows a filing, or combination of filings, up to 12% in a 12 month period - Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is excessive, inadequate or unfairly discriminatory - Order is prospective only - Filing(s) greater than 12% are subject to Commissioner's disapproval and refund to insureds (Article 40)	Deviations - Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are presumed to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - Currently, the Facility rate is approximately 20% to 30% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. - Deviation takes effect upon filing - Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective - Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Eliminates the Facility surcharge at the end of the 5 year period

Overview of Issues From January 25th Meeting

Arguments Supporting Proposed Changes (Steve Pociask, ACI; John McMillan, IFNC; Liz Reynolds, NAMIC; David Stoller, State Farm and FAIR NC Coalition)

- Drivers ceded to the Facility in NC represent 80% of the residual market in the country-- 1,392,804 drivers of 1,727,895 drivers nationally.
- The recoupment surcharge is currently 4.3% of liability coverage, but has been as high as 10%.
- The recoupment surcharge is a hidden subsidy paid for by safer drivers. By subsidizing riskier drivers and making it less expensive for these drivers to obtain insurance and drive, the recoupment surcharge contributes to speeding, accidents and insurance claims.
- The current Rate Bureau system is antiquated, allows for sharing of information between insurers and leads to collusive price-setting that protects the market share of insurers. It does not allow for maximum competition. Changes in the system would allow for increased competition resulting in lower prices for consumers.
- N.C.'s rates are low, but not the lowest in the South or the 8th lowest in the country. The base rate approved by the Commissioner serves as the maximum rate or a cap on rates. The average rate paid by consumers is not related to the maximum approved rate. The average rate is a reflection of the losses, costs and expenses of insurers and is directly related to other factors such as the State's tort system, safe roads, and cost-of-living.
- Points Related Specifically to FAIR Coalition Proposal (See chart summarizing legislation):
 - Eliminates the need for the surcharge by depopulating the Facility
 - Allows for greater competition between companies and more premium discounts to drivers
 - Allowing companies to opt out of the Rate Bureau and file individually leads to more innovative products
 - Reduces administrative costs and expenses of filings under the current system
 - Increases the number of companies competing in the State
- Points Related Specifically to S477/H834 (See chart summarizing legislation):
 - Eliminates need for Recoupment surcharge by depopulating the Facility
 - Allows for greater competition between companies and lower premiums for most drivers
 - Rate Bureau continues to file rates with the Commissioner and Commissioner retains ability to approve rates under current law

Arguments Opposing Proposed Changes (R. Lee Morton, Nationwide; Steve Carroll, Farm Bureau; Glenn Jernigan, GMAC; Jeff Butler, Able Auto/Cycle Ins. Co. and Alliance of Agents)

- Automobile liability insurance coverage is required under state law for all drivers for the protection of the public. The Facility was created to encourage all drivers to comply with state law and acquire liability coverage. There are approximately one million clean risks in the Facility who will see an increase in premiums if the current system is changed. As a result of this

increase, the number of uninsured drivers will increase which will ultimately increase costs for everyone.

- Current market is strong and competitive as evidenced by the large number of auto insurers in the State and the number of available discounts. Insurers are free to discount rates under current law if they choose to do so.
- NC has the lowest rates in the Southeast, the 8th lowest in the country, and the lowest rates among the 10 most populated states.
- If the current system for automobile insurance is dismantled, rates in the automobile insurance market will no longer be stable but will change on both ends, high and low.
- If companies file individually, each filing will be different and consumers will no longer be able to compare rates and coverages between companies. In addition, policies and forms will no longer be filed by the Rate Bureau and approved by the Department, but will vary between insurers leading to increased confusion by the consumer.
- Dismantling the current system for auto insurance could have an unintended impact on other lines of insurance.
- Savings to consumer from the discontinuance of the recoupment surcharge is small compared to the potential rate increases under a flex rating system.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U

D

BILL DRAFT 2011-TK-8 [v.1] (02/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

2/17/2012 2:04:34 PM

Short Title: Technology to Catch Uninsured Motorists.

(Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW LAW ENFORCEMENT AGENCIES AND OFFICERS TO USE
ADVANCED ELECTRONIC VERIFICATION TECHNOLOGY TO IDENTIFY MOTOR
VEHICLES BEING OPERATED ON THE PUBLIC STREETS AND HIGHWAYS AND
PUBLIC VEHICULAR AREAS WITHOUT THE REQUIRED FINANCIAL
RESPONSIBILITY.

Whereas, a significant number of motor vehicles are operating on the public
highways of North Carolina without financial responsibility as defined by Chapter 20 of the
North Carolina General Statutes; and

Whereas, the operation of motor vehicles without financial responsibility
substantially increases the risk of harm to the motoring public; and

Whereas, there is currently technology which would enable law enforcement
quickly and accurately to identify motor vehicles operating on the public highways of North
Carolina without financial responsibility, thereby significantly reducing the risk of harm to the
motoring public; and

Whereas, the General Assembly of North Carolina finds that as a matter of public
policy that the implementation of electronic verification technology is in the best interests of
public safety on the public highways of North Carolina; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-309 is amended by adding a new subsection to read:

"(a2) Consistent with Article 1A of this Chapter, a motor vehicle registered or required to
be registered in another state shall not be operated in this state unless the owner has obtained
and has in full force and effect financial responsibility as required by the state where a vehicle
is registered or is required to be registered."

SECTION 2. Article 13 of Chapter 20 of the General Statutes is amended by
adding a new section to read:

"§ 20-309.3. Use of electronic verification systems to verify financial responsibility.

(a) Authorization. – Electronic verification systems may be used by law enforcement
agencies and officers to electronically identify motor vehicles operating on the public streets
and highways and public vehicular areas without financial responsibility as required pursuant to
G.S. 20-309.

(b) Definition. – As used in this section, an electronic verification system is a mobile or
fixed device (i) consisting of an electronically automated camera and sensor and (ii) capable of



1 producing one or more digital photographs of the registration plate of a motor vehicle violating
2 the financial responsibility laws established pursuant to G.S. 20-309.

3 (c) Minimum Standards. – An electronic verification system authorized for use by this
4 section shall produce at least one photograph that clearly shows a recorded image of the vehicle
5 registration number and state of issuance and the date, time, and location of the violation.

6 (d) Signage. – The Department of Transportation may provide notice of the presence of
7 electronic verification systems by posting conspicuous warning signs along State-maintained
8 highways. All warning signs shall be consistent with a statewide standard adopted by the
9 Department of Transportation.

10 (e) Use. – An electronic verification system authorized for use by this section shall be
11 approved by the Department of Public Safety. "

12 **SECTION 3.** Article 13 of Chapter 20 of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 20-309.4. Results of electronic verification systems.**

15 (a) Admissibility. – The results of the use of an electronic verification system satisfying
16 the requirements of subsection (b) of this section and authorized by G.S. 20-309.3 shall be
17 admissible as prima facie evidence for the purpose of establishing that the operator of the
18 vehicle failed to maintain in full force and effect a policy of financial responsibility as required
19 by G.S. 20-309.

20 (b) Judicial Notice. – In every proceeding in which the results of an electronic
21 verification system are sought to be admitted for the purpose of enforcement of G.S. 20-309,
22 notice shall be taken of the rules approving the electronic verification system and the
23 procedures for calibration or testing for accuracy of the system."

24 **SECTION 4.** G.S. 20-311 reads as rewritten:

25 **"§ 20-311. Action by the Division when notified of a lapse in financial responsibility.**

26 (a) Action. – When the Division receives evidence, ~~by a notice of termination of a~~
27 ~~motor vehicle liability policy or otherwise, evidence~~ that the owner of a motor vehicle registered
28 ~~or required to be registered in this State~~ does not have financial responsibility for the operation
29 ~~of the vehicle, as required by G.S. 20-309,~~ the Division shall send the owner a letter notice of
30 violation to be delivered by first-class United States mail at the address on the current
31 registration of the vehicle's owner. The notice of violation shall contain (i) the vehicle
32 registration number and state of issuance (ii) the date, time and location of the violation if an
33 electronic verification system was used to identify the violation, and (iii) the process for paying
34 the civil penalty or contesting the violation. The letter shall notify the owner of the evidence
35 and inform the owner that the owner shall respond by sworn affidavit to the letter within
36 ~~10~~thirty days of the date on the letter and explain how the owner has met the duty to have
37 continuous financial responsibility for the vehicle. Based on the owner's response, the Division
38 shall take the appropriate action listed:

39 (1) Division correction. – If the owner responds within the required time and the
40 response establishes that the owner has not had a lapse in financial
41 responsibility, the Division shall correct its records.

42 (2) Penalty only. – If the owner responds within the required time and the
43 response establishes all of the following, the Division shall assess the owner
44 a penalty in the amount set in subsection (b) of this section:

45 a. The owner had a lapse in financial responsibility, but the owner now
46 has financial responsibility.

47 b. The vehicle was not involved in an accident during the lapse in
48 financial responsibility.

49 c. The owner did not operate the vehicle or allow the vehicle to be
50 operated during the lapse with knowledge that the owner had no
51 financial responsibility for the vehicle.

(3) Penalty and revocation. – If the owner responds within the required time and the response establishes any of the following, the Division immediately shall assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle and the owner's drivers license for the period set in subsection (c) of this section:

- a. The owner had a lapse in financial responsibility and still does not have financial responsibility.
- b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle or allowed the vehicle to be operated during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.

(4) Revocation pending response. – If the owner does not respond within ~~the required time, thirty days,~~ the owner waives the right to contest responsibility for the violation and the Division shall assess the owner a penalty in the amount set in subsection (b) of this section and revoke the registration of the owner's vehicle and the owner's drivers license for the period set in subsection (c) of this section. ~~When the owner responds, the Division shall take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.~~

(b) Penalty Amount. – ~~The following table determines the~~ The amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility shall be three hundred dollars (\$300.00). ~~responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three year period before the date the owner's current lapse began.~~

~~Number of Lapses in Previous Three Years~~	~~Penalty Amount~~
~~None~~	~~\$50.00~~
~~One~~	~~\$100.00~~
~~Two or More~~	~~\$150.00~~

(c) Period of Revocation Period of Drivers License and Registration. – The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner pays all assessed fines, penalties, and restoration fees and obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility. The minimum revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner ~~responds~~ responds and pays all assessed fines, penalties, and restoration fees and obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility.

(d) Notice of Revocation Notice of Drivers License and Registration. – When the Division revokes the registration of an owner's vehicle, it shall notify the owner of the revocation. The notice shall inform the owner of the following:

- (1) That the owner shall return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.
- (2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.
- (3) That the registration of the vehicle cannot be renewed while the registration is revoked.

(4) That the owner shall pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(5) That the owner's drivers license is revoked until the owner pays all assessed fines, penalties, and restoration fees and obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility.

(e) Registration After Revocation. – A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner shall pay any penalty assessed, a restoration fee of fifty dollars (\$50.00), and the fee for a registration plate.

(f) Clear Proceeds of Penalties. – The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by the Department of Transportation pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(g) Deployed Members of United States Armed Forces. – Notwithstanding the penalty and restoration fee provisions of this section, any monetary penalty or restoration fee shall be waived for any person who, at the time of notification of a lapse in coverage, was deployed as a member of the United States Armed Forces outside of the continental United States for a total of 45 or more days. In addition, no insurance points under the Safe Driver Incentive Plan shall be assessed for any violation for which a monetary penalty or restoration fee is waived pursuant to this subsection. Any person qualifying under this subsection shall:

(1) Have an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to the Division;

(2) Upon reregistration, receive without cost from the Division all necessary registration cards or plates; and

(3) Upon notice of revocation, be permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child, notwithstanding the provisions of subsection (e) of this section."

SECTION 5. G.S. 20-313 reads as rewritten:

"§ 20-313. ~~Operation of motor vehicle without financial responsibility a misdemeanor.~~
responsibility.

(a) ~~On or after July 1, 1963, any~~ Any owner of a motor vehicle ~~registered or required to be registered in this State~~ who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this Article shall be ~~guilty of a Class 1 misdemeanor~~ subject to a civil penalty in the amount of three hundred dollars (\$300.00).

(b) Evidence that the owner of a motor vehicle ~~registered or required to be registered in this State~~ has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Division of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this Article.

(c) If a law enforcement officer stops a vehicle for any lawful reason and discovers the vehicle is being operated in violation of G.S. 20-309, the officer shall notify the Division of Motor Vehicles, in accordance with procedures established by the Division, within 48 hours of the time the violation is detected. Upon receipt of the notification, the Division shall send a notice of violation to the registered owner of the motor vehicle pursuant to G.S. 20-311."

1 **SECTION 6.** G.S. 20-315 reads as rewritten:

2 **"§ 20-315. Commissioner to administer Article; rules and regulations.**

3 The Commissioner of Motor Vehicles shall administer and enforce the provisions of this
4 Article relating to registration of motor vehicles and ~~may~~shall make necessary rules and
5 regulations for its administration."

6 **SECTION 7.** G.S. 20-316 reads as rewritten:

7 **"§ 20-316. Divisional hearings upon lapse of liability insurance coverage.**

8 Any person whose registration plate has been revoked on or before December 1, 2012,
9 under G.S. 20-311 may request a hearing. Upon receipt of such request, the Division shall, as
10 early as practical, afford an opportunity for hearing. At the hearing the duly authorized agents
11 of the Division may administer oaths and issue subpoenas for the attendance of witnesses and
12 the production of relevant books and documents. If it appears that continuous financial
13 responsibility existed for the vehicle involved, or if it appears the lapse of financial
14 responsibility is not reasonably attributable to the neglect or fault of the person whose
15 registration plate was revoked, the Division shall withdraw its order of revocation and such
16 person may retain the registration plate. Otherwise, the order of revocation shall be affirmed
17 and the registration plate surrendered. "

18 **SECTION 8.** Chapter 20 of the General Statutes is amended to add a new section
19 to read:

20 **"§ 20-316.2 Appeals after decision of Division.**

21 A person dissatisfied with the decision of the Division may appeal the decision to the
22 district court of Wake County, or the county in which the violation occurred, by filing a notice
23 of the appeal with the Clerk of Superior Court in Wake County or the county where the
24 violation occurred within 30 days of notification of a final decision by the Division. An appeal
25 under this section is for a trial de novo before the district court."

26 **SECTION 9.** G.S. 17C-6 is amended by adding a new subdivision to read:

27 **"§ 17C-6. Powers of Commission.**

28 (a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the
29 Commission shall have the following powers, which shall be enforceable through its rules and
30 regulations, certification procedures, or the provisions of G.S. 17C-10:

31 ...

32 (17) In conjunction with the Secretary of Public Safety, approve use of
33 specific models and types of electronic verification systems and
34 establish the procedures for operation of each approved instrument
35 and standards for calibration and testing for accuracy of each
36 approved instrument.

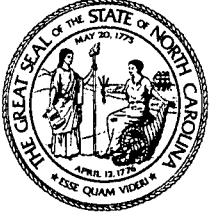
37 ..."

38 **SECTION 10.** The Department of Public Safety shall implement the use of
39 electronic verification technology no later than 120 days from the enactment date of this
40 section. The Department of Public Safety shall request proposals for contracts to provide
41 electronic verification system services from private service providers offering electronic
42 verification technology. The contract shall include the following provisions:

- 43 (1) The private service provider shall provide a sufficient number of electronic
44 control devices with the capacity to identify at least eighty percent (80%) of
45 the motor vehicles being operated on public streets and highways and public
46 vehicular areas without financial responsibility during a 12-month cycle.
- 47 (2) The private service provider shall provide to law enforcement agencies and
48 officers technological equipment that has the capacity to identify motor
49 vehicles being operated without financial responsibility within five seconds
50 from the time the motor vehicles are identified.

- 1 (3) The private service provider shall provide technological capability and
2 resources, which would enable the Division of Motor Vehicles to take the
3 appropriate action as provided in G.S. 20-309.3, in real time, after a motor
4 vehicle is identified as operating on the public streets and highways and
5 public vehicular areas without financial responsibility.
- 6 (4) The private service provider shall provide technological capability and
7 resources that would enable the Division of Motor Vehicles to notify the
8 owner within a reasonable amount of time that the motor vehicle was
9 operating on the public highways of North Carolina without financial
10 responsibility.
- 11 (5) The private service provider shall provide the technological capability and
12 resources described in in this section to the Department Public Safety for a
13 duration of no less than five years.
- 14 (6) The private service provider shall not receive any public funding for
15 providing the Department of Public Safety technological capability and
16 resources until the technology is implemented and operational.

17 **SECTION 11.** Sections 1, 2, 3, 4, 5 and 8 of this act are effective December 1,
18 2012, and apply to violations occurring on or after that date. Sections 6, 7, 9, and 10 of this act
19 are effective when it becomes law. The remainder of this act is effective when it becomes law.
20 Prosecutions for offenses committed before the effective date of this act are not abated or
21 affected by this act, and the statutes that would be applicable but for this act remain applicable
22 to those prosecutions.
23
24



Bill Draft 2011-TK-8: Technology to Catch Uninsured Motorists.

2011-2012 General Assembly

Committee: Automobile Insurance Modernization
Committee (LRC)

Date: March 5, 2012

Introduced by:

Prepared by: Amy Jo Johnson
Staff Attorney

Analysis of: 2011-TK-8

SUMMARY: *This bill would direct the use of electronic verification systems as a means for identifying vehicles without financial responsibility and make other adjustments to Article 13 of Chapter 20: The Financial Responsibility Act. In doing so, the bill would: 1) modify the process of notifying individuals when the Division of Motor Vehicles is made aware of a potential lapse, 2) increase the civil penalty for a lapse of financial responsibility to \$300.00, 3) direct a revocation of the vehicle's driver license in addition to the current penalty of title revocation, 4) remove the misdemeanor criminal penalty for lack of financial responsibility, and 5) modify the appeals process.*

CURRENT LAW:

Currently, under the Financial Responsibility Act, no motor vehicle may be registered in North Carolina unless the owner provides proof of financial responsibility for the operation of the motor vehicle. The owner must maintain the financial responsibility continuously throughout the period of registration. Insurers must notify the Division of Motor Vehicles (DMV) when the insurer issues a new or replacement policy, terminates a policy, or reinstates a policy.

When the DMV learns of a lapse in financial responsibility, it must notify the owner via letter. The owner has 10 days to respond. Based on the response, the DMV is required to take one of the following actions:

- Correct its records if the owner is able to establish there has not been a lapse.
- Assess a monetary penalty if all of the following apply:
 - The owner had a lapse, but has now established financial responsibility.
 - The vehicle was not involved in an accident.
 - The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.
- Assess a monetary penalty and revoke the registration of the owner's vehicle for a specified time period if any of the following apply:
 - The owner had a lapse and continues to have a lapse.
 - The vehicle was involved in an accident during the lapse.
 - The owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility.

The penalty assessed by DMV is based up on the number of lapses in the previous three years:

Number of Lapses in Previous Three Years	Penalty
None	\$50.00
One	\$100.00
Two or More	\$150.00

Draft

Page 2

The periods of registration revocation vary based upon the circumstance. The period for revocation for a vehicle owner who does not have financial responsibility or who does not respond to DMV notification is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who does. The revocation period for a vehicle involved in an accident or operated while the owner knew that the owner had a lapse is thirty days.

All of the following are Class 1 misdemeanors: 1) operating a vehicle without financial responsibility, 2) making a false certification of concerning the owner's financial responsibility for the operation of the motor vehicle, and 3) giving false information to DMV concerning another's financial responsibility status.

Anyone whose registration has been revoked under Article 13 of Chapter 20 may request a hearing from the DMV.

BILL ANALYSIS:

Section 2 of the bill allows for the use of electronic verification systems by law enforcement agencies and officers as a means for identifying vehicles without financial responsibility. An electronic verification system is defined as either a mobile or fixed device consisting of an electronically automated camera and sensor and capable of producing digital photographs of the registration plate of a motor vehicle. The system must also indicate the date, time and location of the violation and be approved by the Department of Public Safety (DPS).

Section 4 modifies how DMV must respond when notified of a lapse, either by electronic means, by law enforcement or by insurer notification in Section 4. The letter DMV sends the vehicle owner must include the date, time and location of the violation if an electronic notification system was used to identify the violation. The owner must respond within 30 days by sworn affidavit.

The DMV's actions in response to the affidavit remain the same unless the owner does not respond, the owner continues to have a lapse, the vehicle was involved in an accident during the lapse, or the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility. Under those situations, the DMV would continue to assess a financial penalty and revoke the registration of the owner's vehicle for a specified time period. In addition, the DMV would also revoke the owner's drivers license for the same specified time as the revocation period for the registration. Those time periods do not change under this bill.

Sections 4 and 5 of this bill increases the penalty amount assessed by DMV. Rather than require the penalty to be based upon the number of lapses in the past three years, this bill would assess a three hundred dollar (\$300) civil penalty. The bill would remove the misdemeanor for operating a motor vehicle without financial responsibility and require that any law enforcement officer who discovers a vehicle does not have financial responsibility to report that lapse to the DMV within 48 hours in order to initiate DMV's notification letter.

Under section 7 of this bill, anyone whose registration is revoked for failure to maintain financial responsibility before December 1, 2012 would remain entitled to request a hearing from DMV. Registration and drivers license revocations occurring on or after December 1, 2012, may be appealed to the district court of Wake County or the county in which the violation occurred within 30 days of notification of DMV's decision. The appeal will be for a trial de novo before the district court, as indicated in Section 8 of the bill.

Draft

Page 3

Section 1 of the bill applies the Financial Responsibility Act, not only to vehicles registered or required to be registered in the state of North Carolina, but also to vehicles registered or required to be registered in other states if that states requires the owner to have financial responsibility.

Section 3 of the bill addresses the results of an electronic verification system, which would be admissible as prima facie evidence for the purpose of establishing the operator of a vehicle did not have financial responsibility. Judicial notice would be taken of the rules for approving electronic verification systems and the procedures for calibration and testing for accuracy of the system, as determined by the North Carolina Criminal Justice Education and Training Standards Commission in conjunction with the Secretary of Public Safety, as directed by Section 9 of the bill.

Section 10 of the bill directs the Department of Public Safety to request proposals for contracts to provide electronic verification systems. Any resulting contracts must contain the following provisions:

- The vendor will provide enough devices with the capacity to identify at least 80% of the vehicles operated on public streets, highways, and public vehicular areas during a 12 month period.
- The technology will be able to identify vehicles being operated without financial responsibility within 5 seconds from the time the vehicle is identified.
- The vendor will provide technology and resources that enable DMV to take appropriate action in real time after a vehicle is identified as being without financial responsibility.
- The contract will be for a duration of 5 years.
- The vendor will not receive any public funds until the technology is implemented and operational.

DPS must implement the use of electronic verification technology no less than 120 days from enactment of the bill.

EFFECTIVE DATE: Sections 1, 2, 3, 4, 5 and 8 of this act are effective December 1, 2012, and apply to violations occurring on or after that date. Sections 6, 7, 9, and 10 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

2011-TK-8-SMTK-59 v7



Bill Draft 2011-TK-8: Technology to Catch Uninsured Motorists.

2011-2012 General Assembly

Committee: Automobile Insurance Modernization
Committee (LRC)

Date: March 5, 2012

Introduced by:

Prepared by: Amy Jo Johnson

Analysis of: 2011-TK-8

Staff Attorney

SUMMARY: *This bill would direct the use of electronic verification systems as a means for identifying vehicles without financial responsibility and make other adjustments to Article 13 of Chapter 20: The Financial Responsibility Act. In doing so, the bill would: 1) modify the process of notifying individuals when the Division of Motor Vehicles is made aware of a potential lapse, 2) increase the civil penalty for a lapse of financial responsibility to \$300.00, 3) direct a revocation of the vehicle's driver license in addition to the current penalty of title revocation, 4) remove the misdemeanor criminal penalty for lack of financial responsibility, and 5) modify the appeals process.*

CURRENT LAW:

Currently, under the Financial Responsibility Act, no motor vehicle may be registered in North Carolina unless the owner provides proof of financial responsibility for the operation of the motor vehicle. The owner must maintain the financial responsibility continuously throughout the period of registration. Insurers must notify the Division of Motor Vehicles (DMV) when the insurer issues a new or replacement policy, terminates a policy, or reinstates a policy.

When the DMV learns of a lapse in financial responsibility, it must notify the owner via letter. The owner has 10 days to respond. Based on the response, the DMV is required to take one of the following actions:

- Correct its records if the owner is able to establish there has not been a lapse.
- Assess a monetary penalty if all of the following apply:
 - The owner had a lapse, but has now established financial responsibility.
 - The vehicle was not involved in an accident.
 - The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.
- Assess a monetary penalty and revoke the registration of the owner's vehicle for a specified time period if any of the following apply:
 - The owner had a lapse and continues to have a lapse.
 - The vehicle was involved in an accident during the lapse.
 - The owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility.

The penalty assessed by DMV is based up on the number of lapses in the previous three years:

Number of Lapses in Previous Three Years	Penalty
None	\$50.00
One	\$100.00
Two or More	\$150.00

Draft

Page 2

The periods of registration revocation vary based upon the circumstance. The period for revocation for a vehicle owner who does not have financial responsibility or who does not respond to DMV notification is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who does. The revocation period for a vehicle involved in an accident or operated while the owner knew that the owner had a lapse is thirty days.

All of the following are Class 1 misdemeanors: 1) operating a vehicle without financial responsibility, 2) making a false certification of concerning the owner's financial responsibility for the operation of the motor vehicle, and 3) giving false information to DMV concerning another's financial responsibility status.

Anyone whose registration has been revoked under Article 13 of Chapter 20 may request a hearing from the DMV.

BILL ANALYSIS:

Section 2 of the bill allows for the use of electronic verification systems by law enforcement agencies and officers as a means for identifying vehicles without financial responsibility. An electronic verification system is defined as either a mobile or fixed device consisting of an electronically automated camera and sensor and capable of producing digital photographs of the registration plate of a motor vehicle. The system must also indicate the date, time and location of the violation and be approved by the Department of Public Safety (DPS).

Section 4 modifies how DMV must respond when notified of a lapse, either by electronic means, by law enforcement or by insurer notification in Section 4. The letter DMV sends the vehicle owner must include the date, time and location of the violation if an electronic notification system was used to identify the violation. The owner must respond within 30 days by sworn affidavit.

The DMV's actions in response to the affidavit remain the same unless the owner does not respond, the owner continues to have a lapse, the vehicle was involved in an accident during the lapse, or the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility. Under those situations, the DMV would continue to assess a financial penalty and revoke the registration of the owner's vehicle for a specified time period. In addition, the DMV would also revoke the owner's drivers license for the same specified time as the revocation period for the registration. Those time periods do not change under this bill.

Sections 4 and 5 of this bill increases the penalty amount assessed by DMV. Rather than require the penalty to be based upon the number of lapses in the past three years, this bill would assess a three hundred dollar (\$300) civil penalty. The bill would remove the misdemeanor for operating a motor vehicle without financial responsibility and require that any law enforcement officer who discovers a vehicle does not have financial responsibility to report that lapse to the DMV within 48 hours in order to initiate DMV's notification letter.

Under section 7 of this bill, anyone whose registration is revoked for failure to maintain financial responsibility before December 1, 2012 would remain entitled to request a hearing from DMV. Registration and drivers license revocations occurring on or after December 1, 2012, may be appealed to the district court of Wake County or the county in which the violation occurred within 30 days of notification of DMV's decision. The appeal will be for a trial de novo before the district court, as indicated in Section 8 of the bill.

Draft

Page 3

Section 1 of the bill applies the Financial Responsibility Act, not only to vehicles registered or required to be registered in the state of North Carolina, but also to vehicles registered or required to be registered in other states if that states requires the owner to have financial responsibility.

Section 3 of the bill addresses the results of an electronic verification system, which would be admissible as prima facie evidence for the purpose of establishing the operator of a vehicle did not have financial responsibility. Judicial notice would be taken of the rules for approving electronic verification systems and the procedures for calibration and testing for accuracy of the system, as determined by the North Carolina Criminal Justice Education and Training Standards Commission in conjunction with the Secretary of Public Safety, as directed by Section 9 of the bill.

Section 10 of the bill directs the Department of Public Safety to request proposals for contracts to provide electronic verification systems. Any resulting contracts must contain the following provisions:

- The vendor will provide enough devices with the capacity to identify at least 80% of the vehicles operated on public streets, highways, and public vehicular areas during a 12 month period.
- The technology will be able to identify vehicles being operated without financial responsibility within 5 seconds from the time the vehicle is identified.
- The vendor will provide technology and resources that enable DMV to take appropriate action in real time after a vehicle is identified as being without financial responsibility.
- The contract will be for a duration of 5 years.
- The vendor will not receive any public funds until the technology is implemented and operational.

DPS must implement the use of electronic verification technology no less than 120 days from enactment of the bill.

EFFECTIVE DATE: Sections 1, 2, 3, 4, 5 and 8 of this act are effective December 1, 2012, and apply to violations occurring on or after that date. Sections 6, 7, 9, and 10 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

2011-TK-8-SMTK-59 v7

Automotive Financial Responsibility

Enhancing Identification of Uninsured Vehicles Operating on Public Roads

Brian Weibel, C.N.A., G.S.E.C.

FDI Group

- Privilege of owning a vehicle comes with well-known responsibilities
- All states require vehicle owners to assume some form of minimum insurance coverage (since 1957 in NC)
 - Financial protection for the motoring public
 - Safety risks associated with uninsured drivers
- Recognized among vehicle owners and motorists as a necessary safety measure
- Estimated 14% -16% * of NC motorists uninsured, higher than national estimate

*Insurance Research Council. (2011), ** Difference between vehicles in use and reported as insured, (NADA, USDOT and III – Insurance Information Institute)

- Enforcement and identification remain a challenge for law enforcement
- Reactive Discovery
 - Secondary component to traffic stop
 - Reported to the state by insurers
- Higher premiums are passed to the financially responsible

Solutions

- Giving law enforcement the best tools to protect the public
- Tremendous advancements in electronic verification systems and equipment
- Technology exists now to proactively identify uninsured vehicles

Solutions:

Technical Overview

- Devices use Automated License Plate Recognition (ALPR) technology while officer's vehicle in motion
- If vehicle identified as non-compliant, data sent to NLETS hosted server (only information necessary to verify insurance **no name or address**), status is then determined in seconds by sworn officer
- Compliant vehicles = **INVISIBLE** to the system and the identity of the driver is never known

Solutions

- Best data available: NLETS, International Justice & Public Safety Network

from www.nlets.org

NLETS is the premiere interstate justice and public safety network in the nation for the exchange of law enforcement, criminal justice, and public safety-related information.

NLETS, which is owned by the States, is a 501(c)(3) nonprofit organization that was created over 40 years ago by the principal law enforcement agencies of the States.

The user population is composed of all of the United States and territories, all Federal agencies with a justice component, selected international agencies, and a variety of strategic partners that serve the law enforcement community—all cooperatively exchanging data.

Solutions

- Sound proven process, practical application
- Protecting NC citizens at no net cost to taxpayers
- Initial increase in revenue
- Increase in compliance

Questions?

Brian Weibel

bweibel@fdigroup.com

Diminished Value in North Carolina

North Carolina General Statutes

§ 20-279.21. "Motor vehicle liability policy" defined.

(d1) Such motor vehicle liability policy shall provide an alternative method of determining the amount of property damage to a motor vehicle when liability for coverage for the claim is not in dispute. For a claim for property damage to a motor vehicle against an insurer, the policy shall provide that if:

- (1) The claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
- (2) The difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less, then on the written demand of either the claimant or the insurer, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall then appraise the loss. Should the appraisers fail to agree, they shall then select a competent and disinterested appraiser to serve as an umpire. If the appraisers cannot agree upon an umpire within 15 days, either the claimant or the insurer may request that a magistrate resident in the county where the insured motor vehicle is registered or the county where the accident occurred select the umpire. The appraisers shall then submit their differences to the umpire. The umpire then shall prepare a report determining the amount of the loss and shall file the report with the insurer and the claimant. The agreement of the two appraisers or the report of the umpire, when filed with the insurer and the claimant, shall determine the amount of the damages. In preparing the report, the umpire shall not award damages that are higher or lower than the determinations of the appraisers. In no event shall appraisers or the umpire make any determination as to liability for damages or as to whether the policy provides coverage for claims asserted. The claimant or the insurer shall have 15 days from the filing of the report to reject the report and notify the other party of such rejection. If the report is not rejected within 15 days from the filing of the report, the report shall be binding upon both the claimant and the insurer. Each appraiser shall be paid by the party selecting the appraiser, and the expenses of appraisal and umpire shall be paid by the parties equally. For purposes of this section, "appraiser" and "umpire" shall mean a person who as a part of his or her regular employment is in the business of advising relative to the nature and amount of

motor vehicle damage and the fair market value of damaged and undamaged motor vehicles.

North Carolina Pattern Instructions-Civil 106.62 Property Damages-Diminution in Market Value

The plaintiff's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged. The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

(If evidence is introduced regarding the actual or estimated cost of repair, the following paragraph should be used: Evidence of [estimates of the cost to repair] (and) [the actual cost of repairing] the damage to the plaintiff's property may be considered by you in determining the difference in fair market value immediately before and immediately after the damage occurred.) N.C.P.I. - Civil 106.62 Property Damages - Diminution in Market Value.

North Carolina Administrative Code

11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

- (1) Loss and claim payments shall be mailed or otherwise delivered within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.

- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by a claimant, involving a repair to a motor vehicle, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle, which damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted.
- (5) If a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-63-65;

Eff. December 15, 1979;

Amended Eff. February 1, 1996; April 1, 1993; April 1, 1989; July 1, 1986.

Law regarding Diminished Value Claims in North Carolina

Presentation by DOI to the Auto Insurance Modernization Committee

March 6, 2012

When a car is damaged in an accident and then repaired, the resale value may be less than if it had not been damaged. In other words, the damage results in a reduction or "diminution" in the resale value of the automobile.

*- San Thelw was
one note -*

THIRD PARTY CLAIMS

In North Carolina, there is no statute that sets out that individuals have a claim for diminution in value when their car is damaged by the negligence of someone else, a "third party claim". The right to exert a claim for diminution in value in third party claims may not be in statute, but it does exist in the "common law". Common law is the case law developed through the court system rather than through statutes or rules.

The North Carolina statutes, however, do require liability policies to include a method for how certain claims for diminution in value can be resolved if who is at fault for the collision is not an issue.

That statute is found in the DMV statutes, Chapter 20. ^{-279.21}

Under this statute if the claimant and the insurer fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident AND

The difference in the claimant's and the insurer's estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or 25% of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book, or other publications approved by the Commissioner, whichever is less, then, either side can make a written demand for a determination under this statute.

Within 20 days of the written demand, each side selects an appraiser and notifies the other side. The appraisers then appraise the loss. If they don't agree, the appraisers then select a competent and disinterested appraiser to serve as an umpire.

If the appraisers cannot agree on an umpire within 15 days, either side can request that a magistrate resident in the county where the car is registered or where the accident occurred select the umpire. The umpire makes the decision between the two appraisers and files the report with both sides.

The umpire's report determines the amount of the damages.

Both sides have 15 days to reject the report. If it is not rejected in 15 days it is final and binding.

The appraisers are paid by the party that picked him. The umpire is paid by both parties equally.

North Carolina case law and the Pattern Jury Instructions that judges give juries assume there is a right to assert a claim for diminished value in third party claims. The law says that you have a right to recover the difference in the fair market value of your vehicle before the accident versus the value of your car after the accident

The North Carolina Administrative Code does have one brief reference to diminution in value for third party claims. The Administrative Code says a person is not barred from making a claim for diminished value even if a release or full payment of claim is executed by the third party claimant as long as the diminished value was

directly caused by the accident and the diminished value could not have been known or determined until after the repair as long as the claim is brought within 30 days after the repair or attempted repair of the vehicle.

FIRST PARTY CLAIMS

The right to make a claim for diminished value against your own insurance company, a "first party claim" does not exist clearly in contracts of insurance. In North Carolina companies contract with their policyholders to pay for:

"Actual cash value of the stolen or damaged property; or

Amount necessary to repair or replace the property with other property of like kind and quality."

There is an old North Carolina Supreme Court case involving a diminished value claim against a policyholder's own insurance company. In that case, however, it has been argued that the policyholder recovered because the repairs were so woefully inadequate it had actually not been repaired.

CONCLUSION

So that is all that exists as far as statutes & rules

So, as for what is in the statutes and the rules, there are just the two I mentioned.

Diminution of Value Claims in Other States

Most auto insurance companies who do business in North Carolina also do business in other states and they are familiar with how diminution of value issues are handled in other states.

The Department posted a survey online last week to ask other states if they have statutes that address the diminution of value. Of the 23 states who responded, only one, Louisiana, had a written law in their statutes governing diminution of value claims.

Louisiana's law applies to third party claims. It says that whenever a vehicle is damaged through the negligence of a third party without being destroyed, and if the owner can prove by a preponderance of the evidence that, if the vehicle were repaired to its preloss condition, its fair market value would be less than its value before it was damaged, the owner shall be entitled to recover as additional damages an amount equal to the diminution in the value of the vehicle.

So, what we're seeing is that many states are like North Carolina, in that their law on diminution in value claims for third party claims is in the common law, not in statute and there is no clearly recognized claim for diminution in value in first party claims.

I have information on:

Maine, Oregon, Nevada, Nebraska, Missouri, Michigan, District of Columbia, Virginia, Louisiana, Georgia, Oregon, Oklahoma, Kansas, South Dakota, West Virginia, New Jersey, Iowa, Alaska, Utah, Washington, Montana, Vermont, Kentucky

Committee Sergeants at Arms

NAME OF COMMITTEE LRC Joint Study Common Automobile Insurance
Modernization

DATE: March 6, 2012 Room: 1228

House Sgt-At Arms:

1. Name: Bob Rossi
2. Name: Garland Shepherd
3. Name: _____
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: Steve Wilson
2. Name: Robert Young
3. Name: _____
4. Name: _____
5. Name: _____

Judy Lowe (Rep. McComas)

From: Nicole McGuinness Hines (Sen. Apodaca)
Sent: Tuesday, March 27, 2012 11:21 AM
To: @InterimCommitteeNotice; Andrew Tripp (Senate); Bill Patterson (Research); Carolyn Gooden (Sen. Apodaca); Chris Floyd (Rep. Steen); Dina Long (Rep. Burr); Helen Long (Sen. Rucho); Jeff Cherry (Bill Drafting); Judy Lowe (Rep. McComas); Karen Johns/Gayle Gunn (Sen. Gunn); Kathie Young (Sen. Kinnaird); Kory Goldsmith (Research); Nicole McGuinness Hines (Sen. Apodaca); Regina Irwin (Rep. Dockham); Rep. Fred Steen; Rep. Harry Warren; Rep. Jerry Dockham; Rep. Justin P. Burr; Rep. Susi Hamilton; Ruth Merkle (Rep. Hamilton); Sen. Bob Rucho; Sen. Ellie Kinnaird; Sen. Rick Gunn; Sen. Tom Apodaca; Shara Graham (Rep. Harry Warren); Tim Hovis (Research)
Subject: <NCGA> Automobile Insurance Modernization Committee [LRC][2011]

NORTH CAROLINA GENERAL ASSEMBLY

Raleigh, North Carolina 27601

Tuesday, April 10th

MEMORANDUM

TO: Members- Senator Rucho, Senator Kinnaird, Senator Gunn, Representative Burr, Representative H. Warren, Representative Hamilton, Representative Dockham

FROM: Chairman Apodaca and Chairman Steen

SUBJECT: Meeting Notice for LRC Committee on Automobile Insurance Modernization

DAY	DATE	TIME	ROOM
Tuesday	April 10th	1:00 pm	1228 LB

Parking for non-legislative members of the committee/commission is available in the visitor parking deck #75 located on Salisbury Street across from the Legislative Office Building. Parking is also available in the parking lot across Jones Street from the State Library/Archives. You can

view a map of downtown by visiting <http://www.ncleg.net/graphics/downtownmap.pdf>.

If you are unable to attend or have any questions concerning this meeting, please contact Nicole McGuinness Hines at 715-4647.

cc: Committee Record ☒

Interested Parties ☒



**Legislative Research Commission
Joint Study Committee
Automobile Insurance Modernization**

AGENDA

April 10th, 2012
Room 1228, Legislative Building
1:00 PM

WELCOME AND INTRODUCTORY REMARKS

Chairman Tom Apodaca
Chairman Fred Steen

- I. **Overview of 2012 Session Report**
Tim Hovis, Research Staff
- II. **Discussion and Approval of the 2012 Session Report**
- III. **Adjournment**

MINUTES

JOINT LEGISLATIVE RESEARCH AUTO INSURANCE MODERNIZATION COMMITTEE

Tuesday, April 10, 2012

1:00 PM

Room 1228, Legislative Building

The Joint Legislative Research Auto Insurance Modernization Committee held its fourth and last meeting on Tuesday, April 10, 2012 at 1:00 PM in Room 1228 of the Legislative Building. Senators Apodaca, Co-Chairman, Gunn and Kinnaird and Representatives Steen, Presiding Co-Chairman, Burr, and Dockham were in attendance. Senator Rucho and Representatives Hamilton and Warren had excused absences.

Co-Chairman Steen called the meeting to order at 1:05 PM and thanked everyone for attending. He introduced the Sergeants-at-Arms from the Senate Jim Blackburn, Charles Marsallis and Billy Fritcher and from the House Reggie Sills and Wayne Davis. He then recognized staff members present including Tim Hovis, Kory Goldsmith and Jeff Cherry and thanked them for always doing a good job for the Committee. Nicole McGuinness-Hines and Judy Lowe served as Committee Assistants.

Co-Chairman Steen reviewed the meeting agenda and then noted the minutes from the meeting of March 6, 2012 were before the members and he asked for a motion to approve the minutes of the previous meeting. Representative Burr moved to approve and Representative Dockham seconded the motion which passed unanimously. He also reminded committee members to fill out reimbursement forms and pass them back.

The Chairman noted that the committee would hear the overview of the final report for the committee to be reviewed by Tim Hovis and he stated that there was an amendment to be represented by Representative Burr.

Mr. Hovis stated that all members should have a copy of the report and he referred them to page 5, the Table of Contents; the Committee Proceedings on page 11 serve as a complete record of the Committee meetings. The full minutes will be available in the Legislative Library. The Findings and Recommendation are on page 19. In the Appendices the Supporting documentation is listed on page 26. Only the Legislative Proposals and the Overview of Issues handouts are attached to the actual report but all the handouts are available with the minutes at the Library.

Beginning on page 19 of the report, in the Findings and Recommendations section is again an overview of the current law which is a complex issue. In the background section, the major arguments in support of reform and also opposing reform are noted. The actual findings and recommendations are on page 21.

Recommendation I pertains to rate regulation, the issue the Committee spent most of its time on. The findings are in the first paragraph and the recommendation itself is in the second paragraph. Understanding that this is a complex issue, the Committee recommends that the General Assembly build upon the information and proposals discuss in these meetings and the continue the study of automobile insurance reform. As the Chairman noted, there is an amendment that will likely be proposed in this section. A copy had been passed out to the members.

Recommendation II. The first one deals with technology to check uninsured motorists. This was the issue taken up by the Committee at the last meeting. The next paragraph is a very brief overview of the

issues and the second paragraph is the actual findings and recommendations. The Committee finds that emerging technology to detect uninsured drivers may prove beneficial in addressing this problem and recommends that the General Assembly continue to monitor the development of technology to detect uninsured motorists.

Recommendation III. The first paragraph is again an overview of the issue and the second paragraph contains the actual findings and recommendation. The Committee finds that legislative action may be needed to improve the efficient and reasonable administration, payment, and processing of claims of diminished value and recommends that the General Assembly continue to study this issue, including the possible implementation of statutory provisions recognizing a claim of diminished value.

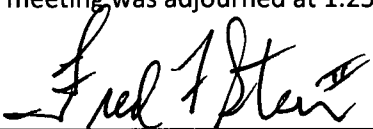
Following the completion of Mr. Hovis' report, Chairman Steen asked for recommendations and discussions from the Committee. Hearing none, he asked if Representative Burr had an amendment. The amendment moves to amend the report on page 21 by rewriting the last sentence of paragraph 3 to read: "However, the Committee finds that reform of the current system should not create confusion among consumers or increase the number of uninsured drivers." The second part of the amendment on page 21, paragraph by rewriting the paragraph to read: "Understanding that this is a complex issue, the Committee recommends that the 2013 General Assembly build upon the information and proposals discussed in these meetings and enact legislation providing for a smooth and measured transition from the current bureaucratic system for automobile insurance rate regulation to a system more reliant on free market principles that reduces the population of the Facility, eliminates the need for the hidden recoupment surcharge, encourages competition, and also allows for more innovative products and benefits for the consumer". Representative Burr stated that he would not take credit for the amendment because it actually comes from Representative Warren who could not attend today's meeting and asked Representative Burr to run it for him. Representative Burr stated that the committee had heard from Tim exactly what the amendment will do and that is to beef up the findings and recommendations being considered. Based on Representative Burr's discussion with Representative Warren, the amendment covers the two areas that he felt needed to be restated as the obvious and make sure they were clarified and hopefully, sometime in the near future action will be taken. It is important to do what is right and make sure the taxpayers are not subsidizing high risk drivers.

The Chairman then asked for questions and discussion from the Committee. Senator Kinnaird stated that she wanted to make a perfecting amendment. She stated that she was against the amendment as proposed and felt the original incorporated all of the discussions at the meeting.

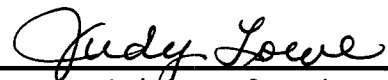
Chairman Steen asked if there was a motion for approval of the report as amended. Representative Burr made the motion which was seconded by Representative Dockham. Five members voted in favor with one dissenting vote.

Senator Apodaca stated that the General Assembly needs to address this issue in future Sessions, possibly January or February of 2013.

The meeting was adjourned at 1:25 PM.



Representative Fred Steen,
Chairman



Judy Lowe, Committee
Assistant

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

4.10.12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
John Peter	Capistrano
Barbara Candler	DEER
Ashley Gne	Campbell Law School
Bill Tibbens	Farmers Group, Inc.
David Soden	STATE FARM
Liz Reynolds	NAMIC
Bryan Heckle	NC DOI
Bob Mack	NC DOI
Rose V. Williams	↓
Sheree Hubbard	↓
Dave Hume	GA
Susan Valaur	Nationwide
Frank Folger	Nationwide
Winston Morris	Nationwide
BILL GILKESON	BAILEY & DIXON LLP
Harry Lyle	mwc
Gary Robertson	AP

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

4.10.12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Dea 1 KRUGER	GREENVILLE CASOARD SC ^{GREEN}
Louis Belo	NCDOT
Fred Fuller	NCDOT
MARK EDWARDS	NC DOI
Sue Taylor	NCRB
PATRICK HANNAH	LIBERTY
Mike Strickland	Young Mason & Associates
DAVID SINK	N.C. RATE BUREAU
Tim Lucas	N.C. Rate Bureau
DAVID RICE	MANNING FULTON
Sara Fender	IFNC
DANIEL BAUM	TROUTMAN SANDERS
BO Healy	McGuire Woods
Kathy Feinberg	" "
Robert PASCHAL	Young Mason
John V Brade	BCS
Fred Ban	Don : ASSO

VISITOR REGISTRATION SHEET

LRC Joint Study Committee on Automobile Insurance Modernization

4.10.12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

[illegible]



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

Bill _____

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

_____ ARG-24 [v.2]

Page 1 of 1

Comm. Sub. [NO]
Amends Title [NO]

Date 4/10/2012

Rep. Burr

1 moves to amend the report on page 21,
2 by rewriting the last sentence of paragraph 3 to read:
3 "However, the Committee finds that reform of the current system should not create confusion
4 among consumers or increase the number of uninsured drivers."
5
6

7 and on page 21, paragraph 4,
8 by rewriting the paragraph to read:

9 "Understanding that this is a complex issue, the Committee recommends that the 2013 General
10 Assembly build upon the information and proposals discussed in these meetings and enact
11 legislation providing for a smooth and measured transition from the current ~~bureaucratic~~ system
12 for automobile insurance rate regulation to a system more reliant on free market principles that
13 reduces the population of the Facility, eliminates the need for the hidden recoupment surcharge,
14 encourages competition, and also allows for more innovative products and benefits for the
15 consumer."
16
17

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* U N K N O W N - A R G - 2 4 - V - 2 *

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



April 10, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Automobile Insurance Modernization, pursuant to G.S. 120-30.17(1).

Senator Thomas Apodaca
Co-Chair

Representative Fred Steen
Co-Chair

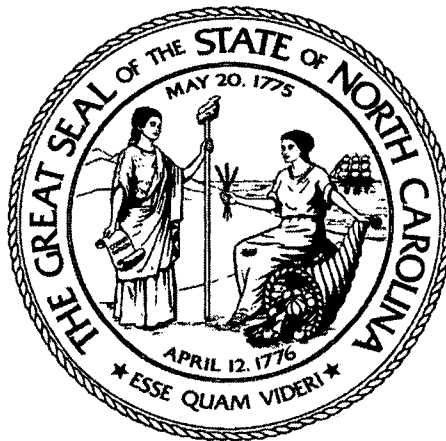
Co-Chairs
Committee on Automobile Insurance Modernization
Legislative Research Commission

This page intentionally left blank

LEGISLATIVE RESEARCH COMMISSION

**AUTOMOBILE INSURANCE
MODERNIZATION COMMITTEE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA**

MAY 8, 2012

A LIMITED NUMBER OF COPIES OF THIS REPORT ARE AVAILABLE FOR
DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	7
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP	9
PREFACE	10
COMMITTEE PROCEEDINGS	11
FINDING AND RECOMMENDATIONS	19
APPENDICES	
<u>APPENDIX A</u>	
MEMBERSHIP OF THE LRC COMMITTEE ON AUTOMOBILE INSURANCE MODERNIZATION	23
<u>APPENDIX B</u>	
COMMITTEE CHARGE	24
<u>APPENDIX C</u>	
STATUTORY AUTHORITY	25
<u>APPENDIX D</u>	
SUPPORTING DOCUMENTATION	26

This page intentionally left blank

TRANSMITTAL LETTER

May 8, 2012

[\[Back to Top\]](#)

TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Automobile Insurance Modernization, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

Senator Philip E. Berger
President Pro Tempore of the Senate

Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

This page intentionally left blank

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

[\[Back to Top\]](#)

2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

[\[Back to Top\]](#)

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Automobile Insurance Modernization, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Thomas Apodaca and Representative Fred Steen, Co-Chairs of the Committee. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

[\[Back to Top\]](#)

The Legislative Research Commission's (LRC) Committee on Automobile Insurance Modernization met 4 times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief overview of the Committee's proceedings. Detailed minutes and information, including handouts and written remarks from each Committee meeting, are available in the Legislative Library.

For a brief overview of the current law governing the automobile insurance rate-making process, please see the Findings and Recommendations Section of this report.

Tuesday, December 6, 2011

The first meeting of the LRC Automobile Insurance Modernization Committee took place on Tuesday, December 6, 2011 at 9:00 AM in Room 1228 of the Legislative Building. The Committee heard the following presentations:

- **Ms. Rose Vaughan Williams, Legislative Counsel, N.C. Department of Insurance**, maintained that under the current system, the State has rates among the lowest in the nation. Ms. Williams also noted the stability of the current market, appropriate market concentrations, and the relatively low number of uninsured drivers in the State. Moreover, competition among insurers is plentiful as exemplified by the large number of companies writing in the State.
- **Mr. Raymond Evans, General Manager, N. C. Rate Bureau and the N.C. Reinsurance Facility** gave an overview of the North Carolina Rate Bureau, the Safe Driver Insurance Program, the Reinsurance Facility and the clean risk subclassification within the Facility.
- **Ms. Sue Taylor, Director of Insurance Operations, N.C. Rate Bureau**, discussed the automobile ratemaking process. In her presentation, Ms. Taylor noted that the Bureau has the responsibility to analyze and propose fair and adequate rates for automobile policy holders in the State and must submit a filing to the Department of Insurance for auto insurance rates by February 1st of each year. The Department of Insurance reviews the filing and the Commissioner of Insurance approves or disapproves the filing. Insurers then take the approved rate and apply their underwriting criteria and possible downward deviations for discounts from the approved rate. Upward deviations from the approved rate are not allowed.
- **Mr. Evans** discussed the Safe Driver Incentive Plan. Mr. Evans noted the Plan, which is required by statute, attempts to apportion losses among all drivers by requiring those drivers with losses to pay higher premiums. Mr. Evans also provided background information on the N.C. Reinsurance Facility. He noted that, like the Rate Bureau, the Facility is not a state agency and does not lobby. The Facility was created because N.C. is a mandatory liability state, meaning that all drivers in NC must have liability insurance and insurers must provide liability

insurance and other required coverages to all eligible risks in the State who seek insurance from them. Insurers are able to cede those risks which they would prefer not to insure to the Facility.

- **Ms. Edith Davis, Director of Operations, N.C. Reinsurance Facility**, provided the Committee an overview of the Facility. With regard to the size of the Facility, Ms. Davis indicated that twenty-one percent of all N.C. exposures are reinsured by the Facility. There are three distinct populations in the Reinsurance Facility. The smallest one is Commercial, including trucks, vans and vehicles. The next is "other-than-clean risks". The State allows the Facility to file rates for that population. This rate is known as the Facility rate. The third population in the Facility is known as "clean risks." Clean risks in the Facility pay rates equal to voluntary rates filed by the Rate Bureau and approved by the Commissioner. The Facility is authorized to receive the proceeds of a "clean risk surcharge," which is the difference between the actual rate charged and the actuarially sound and self-supporting rate for clean risks in the Facility. The surcharge, which averages approximately \$17 per car annually, is collected from all insured in the State by insurers.
- **Mr. Tim Hovis, Staff Attorney, Research Division** gave an overview of legislation considered during the 2011 Session on this issue. Mr. Hovis noted two proposals filed during the 2011 Session: (1) SB490, Automobile Insurance Regulatory Modernization, which would implement a "flex band" rating system in which rate filings submitted by individual insurers increasing or decreasing rates no more than set percentage are deemed to meet the required standard necessary for approval; and (2) HB834/SB 477, Reduce Overpopulation of the Reinsurance Facility, in which upward deviations filed by insurers up to the approved Facility rate are allowed and are presumed to meet the required standard necessary for approval. Mr. Hovis reviewed and compared the two bills. **See Appendix D, Attachment 1, Comparison of SB490 and HB834/S477.**
- **Ms. Williams** was recognized for closing comments. Ms. Williams reiterated the Departments' opposition to changes in the current automobile insurance system. She pointed out that, while some out-of-state auto insurance companies support reform, not all insurers are in favor of these proposals. The Department believes these reforms to the current system are being promoted to allow auto insurance companies to charge higher premiums to drivers. As noted by Ms. Williams, the law already allows downward deviations from the approved rate. Moreover, savings to drivers from the elimination of the recoupment surcharge would be small compared to the increased rates all drivers would be required to pay under the proposed reforms.

Wednesday, January 25, 2012

The second meeting of the LRC Automobile Insurance Modernization Committee was held on Wednesday, January 25, 2012 at 9:00 am in Room 1228 of the Legislative Building. At this meeting, the Committee heard several presentations given by insurance industry representatives and others. Speaking in favor of reform to the current system were the following:

- **Mr. Steve Pociask, President, American Consumer Institute**, referenced two primary factors related to the current system: (1) hidden fees brought on because of the residual market (the Reinsurance Facility); (2) the lack of competition in the industry due to the rate approval process centered around the Rate Bureau. Mr. Pociask argued that both factors lead to higher cost for consumers. He indicated that current regulations are anti-consumer because they protect the current market instead of encouraging price competition. Changing the current Rate Bureau system would encourage price competition by giving insurers increased rate flexibility.
- **Mr. John McMillan, Insurance Federation of North Carolina**, noted that every state has some sort of residual or shared market with respect to automobile private passenger liability insurance. This residual market was created to protect other drivers, not just the insured. North Carolina's residual market, the Reinsurance Facility is very large compared to other states and is listed in the Insurance Fact Book as having 80% of the entire residual market for the country. Mr. McMillan pointed out that North Carolina is the only state with a Rate Bureau that proposes a base rate for all the drivers in the state. Because companies do not have the opportunity to deviate upwards, the only alternative a company has is to cede insureds to the Reinsurance Facility if the Bureau approved rate is insufficient. Senate Bill 477/HB834 would allow companies to file deviations up to the Facility approved rate. With this change, many policies that would have been ceded to the Facility would be retained by the companies. In addition, because "clean risks" ceded to the Facility can only be charged the Bureau approved rate, the bill would eliminate the clean risk subclassification in the Facility. Doing so would allow those drivers to be charged an actuarially sound rate and eliminate the need for the clean risk surcharge. Mr. McMillan agreed that N.C. does have good liability rates, but these rates are due primarily to the cost of living, tort laws and other factors unique to North Carolina.
- **Ms. Liz Reynolds, State Affairs Manager, National Association of Mutual Insurance Companies (NAMIC)**, referenced the work done following the 2011 Session by NAMIC and the Property Casualty Insurance Association of America (PCI) to bring together a coalition of insurers (FAIR NC Coalition) to find an approach to improve an outdated, inefficient, and unfair auto insurance system.
- **Mr. Dave Stoller, State Farm and FAIR NC Coalition**, presented the FAIR NC proposal. Mr. Stoller stressed that the proposal would not change the State's regulation of market conduct, financial solvency, licensing, or other regulatory systems. It also would not eliminate the Rate Bureau or the Reinsurance Facility or the Commissioner's ability to approve rates. Noting the size of the State's residual market and the clean risk classification within the Facility, Mr. Stoller indicated that the Coalition's proposal would do three things: (1) eliminate the clean risk classification and the recoupment surcharge over five years by moving these drivers gradually to a fair rate; (2) allow companies the option of staying within the Rate Bureau system or, in the alternative, moving to a "flex band" rating system; and (3) implements a "flex band" system that presumes that rate filings within a certain limit set by statute are acceptable. This would allow rates to be adjusted quickly and in small increments as market forces change. Mr.

Stoller concluded by saying that, while N.C.'s rates are relatively low, they are not among the lowest. He stressed that there was no casual connection between the approved maximum rate or rate cap set by the Commissioner and the average rate paid by consumers. N.C.'s low average rates are a function of the State's tort system, safe roads, and other factors. Finally a flex band system would allow reduce costs, allow larger discounts, lead to more innovative products, and increase the number of insurers, leading to more competition among insurers.

The following speakers made remarks in opposition to changes proposed to the General Assembly and the Committee:

- **Mr. R. Lee Morton, Regional Vice President/N.C. Operations, Nationwide Insurance**, began his remarks by stating that if SB 490 or similar legislation implementing a flex band system were enacted in N.C. approximately 992,000 clean risks presently assigned to the Reinsurance Facility would see an increase in their automobile insurance premium by an average of \$150/policy. Moreover, the Commissioner of Insurance will lose his authority to prevent automatic rate hikes for consumers who by state law are required to buy automobile liability insurance. Additional unintended consequences include the following: (1) rate stability would no longer exist; (2) common policies and forms submitted by the Rate Bureau and approved by the Department would be replaced by individual company policies and forms; (3) the number of uninsured motorist would rise because of higher insurance premiums, resulting in increased premiums and costs for all; and (4) markets for other lines of insurance, such as property insurance, may be affected by these changes. Mr. Morton concluded by noting that, under current law, insurers can already discount rates and the State already has among the lowest rates in the country.
- **Steve Carroll, Executive Vice President and General Manager, N.C. Farm Bureau Mutual Insurance Company** noted that automobile liability insurance is a statutorily mandated coverage as much, if not more, for the protection of the public as for the insured driver. With this in mind, the N. C. Reinsurance Facility was created to enable all drivers to purchase liability insurance. Mr. Carroll made the following points concerning the current Rate Bureau system: (1) the current system provides a large data pool which facilitates accurate and predictable rates; (2) appeals of rate making decisions are pursued by one entity rather than a multitude of individual companies; (3) forms under the current system are uniform leading to less consumer confusion in the purchase of auto insurance; (4) current rates are competitive nationally as exemplified by the number of companies in the State and the number of discounts offered to consumers; (5) the current system emphasizes good underwriting and risk selection which is particularly important for small companies and state insurers competing with large national carriers.
- **Glenn Jernigan, Registered Lobbyist, GMAC Insurance** noted that while N.C.'s system may be unique, it works. This is evidenced by the fact that it currently produces the 8th lowest rates in the nation. Mr. Jernigan asked if the potential savings of approximately \$17.00 per year through elimination of the

recoupment surcharge be worth the risk of allowing insurance companies to increase their overall rates by as much as 15% every 365 days, with little or no ability to block these rate increases. Changes to the current system could translate into significant increases in premiums for drivers who need vehicles to get to work, to transport their children and for other uses. In conclusion, Mr. Jernigan maintained that neither consumers nor the Commissioner were asking for changes in the current automobile system. Rather, changes were motivated by a desire for higher rates.

- **Jeff Butler, President Able Auto/Cycle Insurance Inc., Vice President of Alliance of Agents of N.C.** began by recounting his conversations with consumers who, when told the rationale for the recoupment surcharge, did not object to the surcharge. He believed the current system to be a good one that allows companies to look at the risk posed by applicants and to decide whether to write the risk or cede it to the Facility. Clean risks are ceded to the facility because the company does not believe it will be able to make a profit providing insurance to that applicant. Mr. Butler noted that a clean risk is not someone who does not have any violations, but is someone who does not have any violations for which insurance points can be charged. If the clean risk classification is eliminated then almost 1 million people will see rate increases. Mr. Butler noted that, under a flex rating system, rate increases by insurers are limited to a set percentage annually in the aggregate. This means that some individual insureds will see increases much larger than the set percentage. Mr. Butler concluded by noting that competition has never been stronger in the State than it is today and any changes in the current system will only raise the rates in N.C.

Following the presentations in favor of and opposing reforms, **Mr. Eli Lehrer, Vice President of the Heartland Institute**, addressed the Committee. A short summary of his remarks is provided below:

- Mr. Lehrer began by explaining that he did not speak for any company or individual, but was a proponent of a free market system. He made the following points: (1) in his opinion, rates are average in N.C. and no reform is going to greatly raise or lower rates; (2) the Facility is a way of assuring that companies cannot lose money writing auto insurance in N.C.; (3) because of the current Rate Bureau process, the more innovative and interesting products offered by the auto insurance industry are not sold in the State; and (4) the residual market (the Reinsurance Facility) in N.C. is enormous, with seventy-eight percent of all drivers in the country who are in a residual market, and serves as a subsidy for insurance companies. Mr. Lehrer concluded with the following: (1) the Rate Bureau is expensive and anachronistic and insurers should have to take responsibility for their own rates; (2) Second, the range of rating factors allowed should be expanded and sex, for example, should be allowed as a rating factor; (3) insurers will offer innovative and new products if allowed to file their own rates; and (4) abolishing the Facility may be disruptive in the short term, but it should be phased out and profit guarantees eliminated.

March 6, 2012

At the third meeting of the LRC Automobile Insurance Modernization Committee, the Committee began with a presentation by **Mr. Tim Hovis, Staff Attorney, Research Division**. Mr. Hovis discussed a chart comparing the FAIR NC Bill and SB 477/HB 834, and gave an overview of issues presented at the January 25th meeting of the Committee. **See Appendix D, Attachment 2**. In the chart comparing the two legislative proposals, Mr. Hovis noted that the FAIR NC proposal gives insurers the option of remaining under the jurisdiction of the Rate Bureau or opting out of the current system and filing rates directly with the Commissioner through a new "Flex Rating" band system. Under this system, rate filings by individual insurers increasing or decreasing rates no more than 12% aggregated for all insurers are deemed to meet the necessary standard and are approved upon filing.

Mr. Hovis next referred to that portion of the chart addressing SB477/HB834. As noted in previous meetings, this proposal leaves the Rate Bureau jurisdiction intact and allows individual insurers to file upward deviations with the Commissioner. Deviations filed by individual insurers up to the rate charged by the Reinsurance Facility are presumed to meet the necessary standard. Currently, the Facility rate is approximately 20 to 30% higher than the Rate Bureau base rate. **See Appendix D, Attachment 2, Comparison of FAIR NC Bill and SB 477/HB 834**.

The final page of Mr. Hovis' report is an "Overview of Issues" from the January 25th meeting. He reminded the Committee that the list is not an exhaustive list, but is a compilation of the major points made by presenters. **See, Appendix D, Attachment 2**.

After discussion and debate on the issue of reform, the Committee agreed not to recommend specific legislation but to note areas in which there was agreement and recommend further study of this complicated issue.

Technology to Detect Uninsured Motorists

The Committee then turned to the issue of uninsured motorists. Chairman Apodaca noted that he had received several complaints from constituents about the statutory requirement for uninsured motorist coverage and the premium charged for this coverage. Specifically, he wanted the Committee to hear about the use of technology to detect uninsured drivers.

Ms. Amy Jo Johnson, Staff Attorney, Research Division, presented draft legislation, Technology to Catch Uninsured Motorists. She described the current system in place for identifying drivers who have a lapse in financial responsibility. Ms. Johnson then explained that the draft proposal would direct the use of electronic verification systems as a means for identifying vehicles without financial responsibility and make other adjustments to Article 13 of Chapter 20: The Financial Responsibility Act. In doing so, the process of notifying individuals when the Division of Motor Vehicles is made aware of a potential lapse would be modified and the civil penalty for a lapse of financial

responsibility would be increased to \$300.00. The bill draft would direct a revocation of the vehicle's driver license in addition to the current penalty of title revocation and remove the misdemeanor criminal penalty for lack of financial responsibility. The draft proposal would also modify the appeals process.

Brian Weibel, C.N.A. G.S.E.C., FDI Group, made a presentation on the technology associated with electronic verification systems. He explained Automatic License Plate Recognition (ALPR) technology as well as the National Law Enforcement Technology System (NLETS), both of which are currently in use and combine with the electronic verification system implemented in the draft proposal.

Following discussion of the developing technology in this area and the draft proposal, Chairman Apodaca stated that the Committee would continue to discuss the issue and monitor the development of technology to detect uninsured motorists.

Diminished Value

Chairman Apodaca introduced Ms. Rose Vaughn Williams, Legislative Counsel, Department of Insurance to review the law on diminished value. Ms. Williams explained that the term "diminished value" refers to those situations in which a car has been damaged in an accident and then repaired. Often, even after repair, the resale value of the vehicle may be less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car. In North Carolina, there is no statute that sets out that there is right to a third party diminished value claim when a car is damaged by the negligence of a third party. The right to assert a claim is not in statute, but exists in the "common law." In Chapter 20, the North Carolina statutes do require liability policies to include a process for how certain claims for diminution in value can be resolved if who is at fault for the accident is not an issue. Ms. Williams then explained this process. Ms. Williams also noted that both the case law and the pattern jury instructions given by judges in N.C. assumes there is a right to assert a claim for diminished value in third party claims. The N.C. Administrative Code does have one brief reference to diminution in value for third party claims.

The right to make a claim against your own insurance company, a "first party claim" does not exist clearly in contracts of insurance, however. When looking at other state's laws on this issue, Ms. Vaughn Williams of the 23 states who responded to the Department's survey on this issue, only Louisiana had a written law governing diminished value claims and it applied only to third party claims. Many states are like North Carolina in that their law on diminished value claims is in the common law, not in statute, and there is no clearly recognized claim for diminished value in first party claims.

April 10, 2012

At its fourth and final meeting prior to the 2012 Short Session, the Committee voted to approve its report and forward the report to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

[\[Back to Top\]](#)

BRIEF OVERVIEW OF CURRENT LAW

Article 36 of Chapter 58 requires the N.C. Rate Bureau to file rates and rating plans for nonfleet private passenger motor vehicle insurance jointly for all insurers with the Commissioner for approval. Current law allows individual insurers to deviate from the approved base rate if the deviation is also approved by the Commissioner. Companies can deviate downward from the base rate, but upward deviations are not allowed.

An insurer cannot deny auto insurance coverage to eligible risks. However, insurers may cede to the N.C. Reinsurance Facility any eligible risk it chooses for liability and other required coverages. The Facility is required to establish a separate classification for owners and operators who are "clean risks." Basically, a clean risk is someone who has at least two years of driving experience and does not have a violation for which insurance points may be charged in the preceding three years.

The rates for clean risks may not exceed the maximum rate approved by the Commissioner for clean risks outside of the Facility. The difference in an actuarially sound rate for clean risks in the Facility and the rate actually charged to these clean risks is recouped by a surcharge on all policies in the State, known as the "recoupment surcharge."

For drivers other than clean risks (i.e. drivers with insurance points) who are ceded to the Facility, the Facility files with the Commissioner a "Facility rate." The Facility rate serves as the base rate for these drivers ceded to the Facility and is approximately 20 to 30% higher than the base rate approved by the Commissioner for clean risks.

BACKGROUND

Over the course of four meetings, the Committee heard from a number of speakers concerning reform of the current system. Reform proposals submitted to the Committee included the following: (1) a proposal to give insurers the option of using a "flex band" rating system in which rate filings submitted by individual insurers increasing or decreasing rates no more than set percentage are deemed to meet the required standard necessary for approval; and (2) a proposal in which upward deviations filed by insurers up to the approved Facility rate are allowed and are presumed to meet the required standard necessary for approval. **See Appendix D, Attachment 2, Comparison of FAIR NC Bill and HB834/S477.**

Arguments raised by these presenters in favor of and in opposition to these proposals are discussed below.

Arguments Supporting Reform

Of concern to many in support of change was the size of the N.C. Reinsurance Facility which was cited as representing 80% of the residual market in the country with a population of almost 1.4 million. Because of the Facility's size and the fact that rates for clean risks in the Facility cannot exceed the approved Bureau rate, all drivers in the State must pay a "recoupment surcharge." As argued by many in favor of reform, this surcharge is a hidden subsidy of riskier drivers paid for by safe drivers. Elimination of the surcharge is cited as a major reason for reducing the population of the Facility.

In addition, as an argument for change, many presenters pointed to the current Rate Bureau system as antiquated and providing a mechanism for information sharing and collusive price setting by insurers. Because upward deviations from the base rate are not allowed, the base rate approved under the current system operates as a cap on rates. Moreover, the current system of group filing through the Rate Bureau does not encourage individual insurers to offer the most innovative products. In short, in their opinion, the current system protects the market share of insurers and does not allow for maximum competition.

Many supporting change acknowledged that the State's current rates are relatively low. However, those supporting reform attribute these lower rates to other factors such as State's cost-of living, tort laws, and safe roads.

In short, reform of the current system would eliminate the need for the surcharge, allow for greater competition and reduced rates, and lead to more innovative products.

Arguments Opposing Change

With regard to the Reinsurance Facility, many opposing reform of the current system pointed out that, under current law, automobile liability coverage is required for all drivers in the State. The purpose of the Facility is to encourage all drivers to comply with current law and acquire liability coverage. If the current system were changed and the Facility depopulated by elimination of the clean risk classification, approximately one million clean risks currently in the Facility will see an increase in premiums. According to those opposed to reform, because of this increase, fewer drivers will purchase insurance leading to an increase in the number of uninsured drivers and, ultimately, an increase in costs for all drivers.

On the issue of increased competition, those opposed to reform pointed to the large number of insurers in the State and the availability of discounts as evidence of a strong and competitive auto insurance market. Insurers are free under the current system to discount rates if they choose to do so. Moreover, those opposed to reform believe rates approved under the current system are among the lowest in the country and are particularly low when compared to other populated states.

Moreover, opponents maintain that if the current system were changed to allow for individual filings by companies, common policies and forms would no longer be used and consumers would no longer be able to compare rates and coverages between companies, leading to increased confusion on the part of consumers.

Other reasons cited by those opposed to change included the following: (1) rates in the automobile insurance market would no longer be stable and could have an unintended impact on other lines of insurance; and (2) any savings to consumers from the elimination of the clean risk classification and discontinuance of the surcharge would be small compared to potential rate increases if the current system were reformed.

FINDINGS AND RECOMMENDATIONS

Recommendation I: The Committee finds that proposals to reduce the population of the Reinsurance Facility and thereby reduce or eliminate the recoupment surcharge should be considered. Moreover, the Committee agrees that price competition between insurers benefits consumers and should be promoted. However, the Committee finds that reform of the current system should not create confusion among consumers or increase the number of uninsured drivers.

Understanding that this is a complex issue, the Committee recommends that the 2013 General Assembly build upon the information and proposals discussed in these meetings and enact legislation providing for a smooth and measured transition from the current system for automobile insurance rate regulation to a system more reliant on free market principles that reduces the population of the Facility, eliminates the need for the hidden recoupment surcharge, encourages competition, and also allows for more innovative products and benefits for the consumer.

Recommendation II: As noted in the Proceedings section of this report, at its meeting on March 6, 2012, the Committee heard presentations concerning the use of electronic verification systems as a means of identifying vehicles without the financial responsibility required pursuant to G.S. 20-309. It was explained in these presentations that technology currently in place in North Carolina, such as Automatic License Plate Recognition (ALPR) and the National Law Enforcement Technology System (NLETS), has the ability to combine with cutting-edge electronic verification technology and equipment for law enforcement agencies to enhance the detection of these uninsured motorists efficiently.

As reflected in the Committee's discussion of reforms to the automobile insurance system noted in Recommendation I of this report, uninsured motorists increase costs for all drivers in our State. The Committee finds that emerging technology to detect uninsured drivers may prove beneficial in addressing this problem and recommends that the General Assembly continue to monitor the development of technology to detect uninsured motorists.

Recommendation III: The Committee also discussed the issue of diminished value at its meeting on March 6, 2012. As explained at that meeting, the term “diminished value” refers to those situations in which a car has been damaged in an accident and then, after repair, the resale value of the vehicle is still less than if it had not been damaged. The damage results in a reduction or diminution in the resale value of the car.

The right to assert a third party claim of diminished value against another driver is recognized in North Carolina’s common law, but does not exist in statute. For this reason, the Committee considered whether some insurers have been reluctant to compensate drivers for diminished value in third party claims. In such instances, often, drivers must aggressively pursue such claims to obtain relief.

The Committee finds that legislative action may be needed to improve the efficient and reasonable administration, payment, and processing of claims of diminished value and recommends that the General Assembly continue to study this issue, including the possible implementation of statutory provisions recognizing a claim of diminished value.

COMMITTEE MEMBERSHIP

[\[Back to Top\]](#)

2011-2012

President Pro Tempore of the Senate
Appointments:

Senator Thomas Apodaca, Co-Chair

Senator Richard Gunn
Senator Eleanor Kinnaird
Senator Robert Rucho

Speaker of the House of Representatives
Appointments:

Representative Fred Steen, Co-Chair

Representative Justin Burr
Representative Susi Hamilton
Representative Harry Warren
Representative Jerry Dockham

COMMITTEE CHARGE

[\[Back to Top\]](#)

Automobile Insurance Modernization – (a) Study issues relating to the method and manner of establishing automobile insurance rates in North Carolina, to ensure consumers are receiving the fullest possible benefit from marketplace competition among insurers on pricing, product, and coverage options. The study may include, but is not limited to, review of the insurance regulatory systems in other states; model laws and recommendations of the National Association of Insurance Commissioners and the National Conference of Insurance Legislators, the North Carolina Rate Bureau, the North Carolina Reinsurance Facility, and the Safe Driver Incentive Program; current and proposed restrictions and regulations on automobile insurance pricing, underwriting, and related issues; the method and effectiveness of assuring voluntary and involuntary automobile insurance markets; and the effect of modernizing the automobile insurance regulatory system upon the revenues, expenses, and operations of the Department of Insurance and the State of North Carolina; and the use of electronic verification systems by law enforcement agencies and officers to electronically identify motor vehicles operating on the public streets and public vehicular areas without financial responsibility as required pursuant to G.S. 20-309.

(b) Study issues related to enforcement and administration of safety and emissions inspection requirements set forth G.S. 20-183.2, et seq. The study may include, but is not limited to, review of current penalties assessed against motor vehicle owners, safety inspection station licensees and emission inspection licensees; review of new technologies available to increase the efficiency and effectiveness of the Department of Motor Vehicles' enforcement of inspection requirements; and review of the appeals processes governing the issuance, suspension and revocation of any of safety and/or emissions licenses issued by the Division and any fines assessed thereby.

STATUTORY AUTHORITY

[\[Back to Top\]](#)

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

SUPPORTING DOCUMENTATION

[\[Back to Top\]](#)

ATTACHMENT 1

Comparison of S490 and H834/S477

	S490	H834/S477
Rate Bureau	Removes private passenger automobile insurance from Rate Bureau's jurisdiction; Allows individual insurers to file rates with the Commissioner through a new " Flex Rating " band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward deviations with the Commissioner from the approved base rate
Flex Rating versus Deviations	Flex Rating - Rate filings by individual insurers increasing or decreasing rates no more than 15%, aggregated for all insureds, are deemed to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - May be used upon filing or as specified by the insurer - Allows a filing, or combination of filings, up to 15% in a 12 month period - Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is inadequate or unfairly discriminatory - Order is prospective only - Filing(s) greater than 15% are subject to Commissioner's disapproval and refund to insureds (Article 40)	Deviations - Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are presumed to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - Currently, the Facility rate is approximately 20% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. - Deviation takes effect upon filing - Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective - Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 4 year period Moves the SDIP and corresponding insurance points system from the Rate Bureau to the Facility (anticipates that	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Leaves the SDIP in the Rate Bureau applicable to all drivers to all drivers

Appendix D

	the need for the point system will be reduced with Flex Rating) Requires the Facility surcharge to be set out separately on premium statements	Eliminates the Facility surcharge at the end of the 5 year period
--	---	---

ATTACHMENT 2

Comparison of FAIR NC Bill and H834/S477

	FAIR NC	H834/S477
Rate Bureau	Gives insurers the option of remaining under the jurisdiction of the Rate Bureau or opting out of the current system and filing rates directly with the Commissioner through a new " Flex Rating " band system	Leaves Rate Bureau jurisdiction over base rates intact; Allows individual insurers to file upward deviations with the Commissioner from the approved base rate
Flex Rating versus Deviations	Flex Rating - Rate filings by individual insurers increasing or decreasing rates no more than 12%, aggregated for all insureds, are deemed to meet the standard and are approved upon filing (New Art. 37A) (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - May be used upon filing or as specified by the insurer - Allows a filing, or combination of filings, up to 12% in a 12 month period - Commissioner may disapprove filing by written order specifying a reasonable future date the filing is not effective, if rate is excessive, inadequate or unfairly discriminatory - Order is prospective only - Filing(s) greater than 12% are subject to Commissioner's disapproval and refund to insureds (Article 40)	Deviations - Deviations filed by individual insurers above the Rate Bureau base rate up to the rate charged by the Reinsurance Facility for other than clean risks are presumed to meet the standard (Standard under current law is not excessive, inadequate, or unfairly discriminatory) - Currently, the Facility rate is approximately 20% to 30% higher than the Rate Bureau base rate and is filed by the Facility with the Commissioner. - Deviation takes effect upon filing - Commissioner may disapprove the deviation by written order specifying a reasonable future date the filing is not effective - Order is prospective only
NC Reinsurance Facility Changes	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period	Eliminates "clean risk" subclassification to an actuarially sound rate over a 5 year period Eliminates the Facility surcharge at the end of the 5 year period

Overview of Issues From January 25th Meeting

Arguments Supporting Proposed Changes (Steve Pociask, ACI; John McMillan, IFNC; Liz Reynolds, NAMIC; David Stoller, State Farm and FAIR NC Coalition)

- Drivers ceded to the Facility in NC represent 80% of the residual market in the country-- 1, 392,804 drivers of 1,727,895 drivers nationally.
- The recoupment surcharge is currently 4.3% of liability coverage, but has been as high as 10%.
- The recoupment surcharge is a hidden subsidy paid for by safer drivers. By subsidizing riskier drivers and making it less expensive for these drivers to obtain insurance and drive, the recoupment surcharge contributes to speeding, accidents and insurance claims.
- The current Rate Bureau system is antiquated, allows for sharing of information between insurers and leads to collusive price-setting that protects the market share of insurers. It does not allow for maximum competition. Changes in the system would allow for increased competition resulting in lower prices for consumers.
- N.C.'s rates are low, but not the lowest in the South or the 8th lowest in the country. The base rate approved by the Commissioner serves as the maximum rate or a cap on rates. The average rate paid by consumers is not related to the maximum approved rate. The average rate is a reflection of the losses, costs and expenses of insurers and is directly related to other factors such as the State's tort system, safe roads, and cost-of-living.
- Points Related Specifically to FAIR Coalition Proposal (See chart summarizing legislation):
 - Eliminates the need for the surcharge by depopulating the Facility
 - Allows for greater competition between companies and more premium discounts to drivers
 - Allowing companies to opt out of the Rate Bureau and file individually leads to more innovative products
 - Reduces administrative costs and expenses of filings under the current system
 - Increases the number of companies competing in the State
- Points Related Specifically to S477/H834 (See chart summarizing legislation):
 - Eliminates need for Recoupment surcharge by depopulating the Facility
 - Allows for greater competition between companies and lower premiums for most drivers
 - Rate Bureau continues to file rates with the Commissioner and Commissioner retains ability to approve rates under current law

Arguments Opposing Proposed Changes (R. Lee Morton, Nationwide; Steve Carroll, Farm Bureau; Glenn Jernigan, GMAC; Jeff Butler, Able Auto/Cycle Ins. Co. and Alliance of Agents)

- Automobile liability insurance coverage is required under state law for all drivers for the protection of the public. The Facility was created to encourage all drivers to comply with state law and acquire liability coverage. There are approximately one million clean risks in the Facility who will see an increase in premiums if the current system is changed. As a result of this increase, the number of uninsured drivers will increase which will ultimately increase costs for everyone.
- Current market is strong and competitive as evidenced by the large number of auto insurers in the State and the number of available discounts. Insurers are free to discount rates under current law if they choose to do so.
- NC has the lowest rates in the Southeast, the 8th lowest in the country, and the lowest rates among the 10 most populated states.
- If the current system for automobile insurance is dismantled, rates in the automobile insurance market will no longer be stable but will change on both ends, high and low.
- If companies file individually, each filing will be different and consumers will no longer be able to compare rates and coverages between companies. In addition, policies and forms will no longer be filed by the Rate Bureau and approved by the Department, but will vary between insurers leading to increased confusion by the consumer.
- Dismantling the current system for auto insurance could have an unintended impact on other lines of insurance.
- Savings to consumer from the discontinuance of the recoupment surcharge is small compared to the potential rate increases under a flex rating system.

Committee Sergeants at Arms

NAME OF COMMITTEE LRC Automobile Ins. Med. Comm.

DATE: 4-10-2012 Room: 1228

House Sgt-At Arms:

1. Name: Reggie Sills
2. Name: Wayne Davis
3. Name: _____
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: Jim Blackburn
2. Name: Charles Marsallis
3. Name: Billy Fritcher
4. Name: _____
5. Name: _____