

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

3

HOUSE BILL 918
Committee Substitute Favorable 5/9/91
Senate Insurance Committee Substitute Adopted 6/27/91

Short Title: Ins. Emplees./Des. Agts.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

**AN ACT TO AMEND THE INSURANCE LAWS TO CLARIFY THE PERMISSIBLE
ACTIVITIES OF INSURANCE AGENCY OFFICE EMPLOYEES, AND TO
PROVIDE FOR TRANSFER BY DESIGNATED AGENTS UNDER THE
REINSURANCE FACILITY OF THEIR DESIGNATIONS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

- (1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
- (2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.
- (3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation

1 of any program of employee benefits for their own employees or the
2 employees of their subsidiaries or affiliates involving the use of
3 insurance issued by a licensed insurance company; provided that such
4 employers, officers, employees, or trustees are not in any manner
5 compensated, directly or indirectly, by the insurance company issuing
6 such insurance.

7 (4) Agency office employees acting within the confines of the agent's
8 office, under the direction and personal supervision of the duly
9 licensed agent and within the scope of ~~such the~~ agent's license, in the
10 acceptance of ~~requests for insurance and applications,~~ personally
11 underwritten by the agent, payment of ~~premiums~~ premiums, and the
12 performance of clerical, stenographic, and similar office ~~duties~~ duties;
13 provided that the activity does not amount to the interpretation of
14 insurance policies, provisions or coverage, to sales or negotiation of
15 insurance policies, to any underwriting function, or to the signing or
16 verification of applications for insurance.

17 (5) Licensed insurers authorized to write the kinds of insurance described
18 in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without
19 the involvement of a licensed agent."

20 Sec. 2. G.S. 58-37-35(g) reads as rewritten:

21 "(g) Except as may be delegated specifically to others in the plan of operation or
22 reserved to the members, power and responsibility for the establishment and operation
23 of the Facility is vested in the Board of Governors, which power and responsibility
24 include but is not limited to the following:

- 25 (1) To sue and be sued in the name of the Facility. No judgment against
26 the Facility shall create any direct liability in the individual member
27 companies of the Facility.
- 28 (2) To receive and record cessions.
- 29 (3) To assess members on the basis of participation ratios established in
30 the plan of operation to cover anticipated or incurred costs of operation
31 and administration of the Facility at such intervals as are established in
32 the plan of operation.
- 33 (4) To contract for goods and services from others to assure the efficient
34 operation of the Facility.
- 35 (5) To hear and determine complaints of any company, agent or other
36 interested party concerning the operation of the Facility.
- 37 (6) Upon the request of any licensed fire and casualty agent meeting any
38 two of the standards set forth below as determined by the
39 Commissioner of Insurance within 10 days of the receipt of the
40 application, the Facility shall contract with one or more members
41 within 20 days of receipt of the determination to appoint such licensed
42 fire and casualty agent as designated agents in accordance with
43 reasonable rules as are established by the plan of operation. ~~Such~~
44 ~~standard~~ The standards shall be:

- 1 a. Whether the agent's evidence establishes that he has been
2 conducting his business in a community for a period of at least
3 one year;
- 4 b. Whether the agent's evidence establishes that he had a gross
5 premium volume during the 13 months next preceding the date
6 of his application of at least twenty thousand dollars (\$20,000)
7 from motor vehicle insurance;
- 8 c. Whether the agent's evidence establishes that the number of
9 eligible risks served by him during the 13 months next
10 preceding the date of application was 200 or more;
- 11 d. Whether the agent's evidence establishes a growth in eligible
12 risks served and premium volume during his years of service as
13 an agent;
- 14 e. Whether the agent's evidence establishes that he made available
15 to eligible risks premium financing or any other plan for
16 deferred payment of premiums.

17 With respect to business produced by designated agents, adequate
18 provision shall be made by the Facility to assure that such business is
19 rated using Facility rates. All business produced by designated agents
20 may be ceded to the Facility, except designated agents appointed ~~prior~~
21 ~~to~~ before September 1, 1987, may place liability insurance policies
22 with a voluntary carrier, provided that all policies written by the
23 voluntary carrier are retained by the voluntary carrier unless ceded to
24 the Facility using Facility rates. Designated agents must provide the
25 Facility with a list of such policies written by the voluntary carrier at
26 least annually, or as requested by the Facility, on a form approved by
27 the Facility. If no insurer is willing to contract with any such agent on
28 terms acceptable to the Board, the Facility shall license such agent to
29 write directly on behalf of the Facility. However, for this purpose the
30 Facility does not act as an insurer, but acts only as the statutory agent
31 of all of the members of the Facility, which shall be bound on risks
32 written by the Facility's appointed agent. The Facility may contract
33 with one or more servicing carriers and shall promulgate fair and
34 reasonable underwriting procedures to require that business produced
35 by Facility agents and written through ~~said~~ those servicing carriers
36 shall be rated using Facility rates. All business produced by Facility
37 agents may be ceded to the Facility. Any designated agent who is
38 disabled or retiring or the estate of any deceased designated agent may
39 transfer the designation and the book of business to some other
40 licensed fire and casualty agent meeting the requirements of this
41 section and under rules established by the Facility, and a transfer from
42 a designated agent appointed before September 1, 1987, shall entitle
43 the transferee designated agent to place liability insurance policies
44 with a voluntary carrier.

1 The Commissioner shall require, as a condition precedent to the
2 issuance, renewal, or continuation of a resident agent's license to any
3 designated agent to act for the company appointing such designated
4 agent under contract with the Facility, that the designated agent file
5 and thereafter maintain in force while so licensed a bond in favor of
6 the State of North Carolina executed by an unauthorized corporate
7 surety approved by the Commissioner, cash, mortgage on real
8 property, or other securities approved by the Commissioner, in the
9 amount of ten thousand dollars (\$10,000) for the use of aggrieved
10 persons. Such bond, cash, mortgage, or other securities shall be
11 conditioned on the accounting by the designated agent (i) to any
12 person requesting the designated agent to obtain motor vehicle
13 insurance for moneys or premiums collected in connection therewith,
14 and (ii) to the company providing coverage with respect to any such
15 moneys or premiums under contract with the Facility. Any such bond
16 shall remain in force until the surety is released from liability by the
17 Commissioner, or until the bond is cancelled by the surety. Without
18 prejudice to any liability accrued prior to such cancellation, the surety
19 may cancel the bond upon 30 days' advance notice in writing filed with
20 the Commissioner.

21 No agent may be designated under this subdivision to any insurer
22 that does not actively write voluntary market business.

- 23 (7) To maintain all loss, expense, and premium data relative to all risks
24 reinsured in the Facility, and to require each member to furnish such
25 statistics relative to insurance reinsured by the Facility at such times
26 and in such form and detail as may be required.
- 27 (8) To establish fair and reasonable procedures for the sharing among
28 members of any loss on Facility business which cannot be recouped
29 pursuant to G.S. 58-37-40(f) or which cannot be recouped or allocated
30 under G.S. 58-37-75, and other costs, charges, expenses, liabilities,
31 income, property and other assets of the Facility and for assessing or
32 distributing to members their appropriate shares. Such shares may be
33 based on the member's premiums for voluntary business for the
34 appropriate category of motor vehicle insurance or by any other fair
35 and reasonable method.
- 36 (9) To receive or distribute all sums required by the operation of the
37 Facility.
- 38 (10) To accept all risks submitted in accordance with this Article.
- 39 (11) To establish procedures for reviewing claims practices of member
40 companies to the end that claims to the account of the Facility will be
41 handled fairly and efficiently.
- 42 (12) To adopt and enforce all rules and to do anything else where the Board
43 is not elsewhere herein specifically empowered which is otherwise

1 necessary to accomplish the purpose of the Facility and is not in
2 conflict with the other provisions of this Article."
3 Sec. 3. This act is effective upon ratification.