

## Session 109 - (1991-1992)

### H 4687 General Bill, By J.G. Felder

A Bill to amend Section 38-77-10, Code of Laws of South Carolina, 1976, relating to the declaration of purpose under the State's Automobile Insurance Law, so as to delete provisions, including reference to the South Carolina Reinsurance Facility, provide reference to an underwriting association, and to make changes to the declaration; to amend Section 38-77-30, as amended, relating to definitions under the Automobile Insurance Law, so as to delete the definition of "facility" and to define "underwriting association", delete the definition of "quota share reinsurance" and to define "shared risk pooling", provide a definition for "weighted bureau rate", change the definition of "specialized insurer", and provide a definition for "allocation fee" and "allocation credit"; to change the title of Article 3, Chapter 77, Title 38 from "Mandate To Write and Insurance Coverage" to "Certain Requirements To Insure and Insurance Coverage"; to change the title of Section 38-77-110 from "Insurers Required to Insure; Exceptions" to "Prohibition Against Discriminatory Underwriting Practices", delete provisions of that Code Section, as amended, and add new provisions, including the provision that a refusal to write an automobile insurance policy must be in writing stating the cause of the refusal if requested by the applicant; to amend Section 38-77-112, as amended, relating to the requirement that an applicant for automobile insurance or a policyholder is required to have a driver's license and exceptions, so as to delete the reference to Section 38-77-280; to amend Section 38-77-115, relating to automobile insurance and the provision that signs are required in an agent's place of business, so as to delete the provisions of that Section, require that authorized agents for every insurer covered by Section 38-77-110 shall post a sign which is to be titled "Prohibition Against Discriminatory Underwriting Practices", and provide for the contents of the sign; to amend Section 38-77-140, relating to the bodily injury and property damage limits under the Automobile Insurance Law, so as to change the amounts of certain of the limits; to amend Section 38-77-280, as amended, relating to automobile collision coverage and comprehensive coverage, so as to delete certain provisions and provide that no policy of insurance which provides automobile physical damage coverage only may be transferred to the underwriting association for shared risk pooling; to amend Section 38-77-285, as amended, relating to the requirement that all automobile coverages be in one insurance policy, so as to delete certain language and provide that this Code Section applies only to insurance policies covering private passenger vehicles; to change the title of Article 5, Chapter 77, Title 38 from "Reinsurance Facility and Designated Producers" to "Underwriting Association; Servicing Carriers and Producers"; to amend the 1976 Code by adding Section 38-77-511 so as to create the nonprofit, unincorporated legal entity known as the South Carolina Automobile Underwriters Association and provide for related matters; to amend Section 38-77-520, relating to the requirement that automobile insurers must become members of the Reinsurance Facility, so as to replace the references to the Facility with references to the Underwriting Association; to amend Section 38-77-530, relating to the plan of operation by the Reinsurance Facility and approval by the Chief Insurance Commissioner, so as to delete the existing provisions of the Code Section and provide instead for the plan of operation of the Underwriting Association; to amend Section 38-77-540, relating to the duties of the ceding insurer under the automobile insurance laws, so as to delete the existing provisions of the Code Section, provide that the Underwriting Association shall accept the transfer of risk on any policy of automobile insurance at the option of any insurer but only at the rate or premium charge as determined under the rating plans established by the governing board and approved by the Commissioner, subject to certain provisions of law, and provide for related matters; to amend Section 38-77-550, relating to automobile insurance and the provision that legal rights of the insured and the insurer are not affected by reinsurance, so as to delete the existing provisions of the Code Section and provide for the effect of the transfer of risk under a policy of automobile insurance to the Underwriting Association for shared risk pooling; to amend Section 38-77-560, relating to deductions to a ceding insurer under the automobile insurance laws, so as to delete the existing provisions of the Code Section and provide that an insurer transferring risks on automobile insurance policies to the Underwriting Association shall receive credit by way of deduction from its unearned premium liability as calculated in accordance with Section 38-9-170; to amend Section 38-77-570, relating to investment and distribution of funds of the Reinsurance Facility, so as to delete the existing provisions of the Code Section and provide for the investment and distribution of the funds and reserves of the Underwriting Association; to amend Section 38-77-580, as amended, relating to the governing board of the Reinsurance Facility, so as to delete references to the Facility and replace them with references to the Underwriting Association, and delete references to "designated agents" and replace them with references to "servicing agents"; to amend Section 38-77-585, as amended, relating to additional board members of the Reinsurance Facility, so as to, among other things, delete references to the Reinsurance Facility and designated insurers and provide references to Underwriting Association contracted insurers; to amend Section 38-77-590, as amended, relating to designated producers under the automobile insurance laws, so as to delete certain provisions, add provisions, including the requirement that the governing board of the Underwriting Association contract with domestic insurers meeting eligibility requirements promulgated by the board to act as servicing carriers for the writing of automobile insurance through producers assigned to the servicing carrier by the board, change the qualifications for an applicant for assignment to a servicing carrier and provide for related

matters; to amend Section 38-77-630, as amended, relating to policies ceded to the Reinsurance Facility, so as to delete reference to the Reinsurance Facility and replace it with reference to the Underwriting Association, delete certain provisions, and provide that a risk, other than at renewal, may be transferred to the Underwriting Association only when the application is accompanied by either a renewal notice from another insurer or a motor vehicle report (MVR) issued at the point of sale, together with the full premium correctly reflecting the facts shown on the MVR or consistent with the premium quoted in the renewal notice; to amend Section 38-77-910, relating to the automobile insurance laws and unlawful distinctions between policyholders or applicants, so as to provide that any violation of this Code Section or the prohibition against discriminatory underwriting practices as described under Section 38-77-110 may be cause for revocation or suspension of the insurer's or agent's license by the Chief Insurance Commissioner; to amend Section 38-77-920, as amended, relating to the provision that automobile insurers and agents may not refuse acceptance of insurance, the property rights of certain agents, and the restriction of mailings to certain areas, so as to delete certain provisions and add provisions, including the provision that no insurer may agree, collude, or conspire with an agent or give, offer, or promise an agent anything of value to place any risk or any class or type of risk in another insurer; to amend Section 38-77-940, relating to the automobile insurance laws, avoiding certain classes or types of risks, exceptions, and canceling an agent's representation, so as to, among other things, delete certain language and provisions and replace the references to the Reinsurance Facility with references to the Underwriting Association; to amend Section 38-77-950, as amended, relating to unreasonable or excessive use of the Reinsurance Facility by an insurer and notice to a policyholder that his policy is in the Facility, so as to delete certain provisions, replace references to the Facility with references to the Underwriting Association instead, and add provisions, including the provision for making a *prima facie* case of excessive or unreasonable utilization; to amend Section 38-77-960, relating to automobile insurance agent's business, so as to delete the existing provisions of that Code Section and add provisions, including the provision that when dealing with the agents of the company, who are licensed to sell automobile insurance, the company may not use any business transferred to the Underwriting Association in determining the profitability of that agent's business; to amend Section 38-73-10, as amended, relating to the declaration of purpose and construction of Chapter 73 of Title 38, dealing with property, casualty, inland marine, and surety rates and ratemaking organizations, so as to delete reference to the Reinsurance Facility and replace it with reference to the South Carolina Automobile Underwriters Association; to amend Section 38-73-455, as amended, relating to automobile insurance rates, so as to delete the existing provisions of that Code Section, and add provisions, including a provision that an automobile insurer shall file and offer for automobile insurance a rate as defined in Section 38-73-457, which rate is subject to all surcharges or discounts, if any, applicable under any approved merit rating plan, credit or discount plan promulgated or approved by the Chief Insurance Commissioner and a provision that no policy may be endorsed during a policy period to reflect factors or conditions occurring during that policy period; to amend Section 38-73-457, relating to insurance casualty and surety rates, filing information on base rates, and the effective date of rates, so as to, among other things, delete certain provisions and add provisions, including a provision that every automobile insurer and rating organization shall file with the Chief Insurance Commissioner a rate for automobile insurance by coverage calculated solely upon the experience generated by the insurer in its book of business and which must not include experience generated by risks transferred to the Underwriting Association for shared risk pooling, and including a provision that effective October 1, 1992, the Commissioner shall disallow the further use of the objective standards rate previously filed in accordance with this Section; to amend Section 38-73-460, relating to insurance casualty and surety rates and the effect of gains and losses incurred by members on rates, so as to delete the reference to the Reinsurance Facility and replace it with reference to the Automobile Underwriters Association, and provide that it is the intent of the plan of operation of the Underwriters Association pursuant to Section 38-77-530 that the allocation fee or credit be utilized to recover or disburse the allocated net losses or gains of the Underwriters Association distinctly and separately from the rate filings of individual insurers or rating organizations; to amend Section 38-73-520, relating to insurance casualty and surety rates and the requirement of rate filings, so as to provide for the exception of an insurer's use of the rate plans of the Automobile Underwriters Association pursuant to Section 38-77-455; to amend Section 38-73-735, as amended, relating to the State Rating and Statistical Division and the plan for credits and discounts, so as to delete the provision that if an insurance credit or discount plan is given to an insured pursuant to this Section, the policy may be ceded to the Reinsurance Facility in accordance with the Facility's plan of operation; to amend Section 38-73-750, as amended, relating to the State Rating and Statistical Division, the requirement that plans must be filed by insurers, the provision that certain plans may not be filed or approved, and the disapproval of plans by the Chief Insurance Commissioner, so as to delete certain language, including the reference to the South Carolina Reinsurance Facility; to amend Section 38-73-760, as amended, relating to the State Rating and Statistical Division and Uniform Statistical Plans, so as to delete certain language, including reference to the Reinsurance Facility; to amend Section 38-73-920, relating to insurance rates, rate making, rate filing, and the provision that no insurance may be issued except on rates filed, so as to delete certain provisions and add certain language and provisions, including the provision that this Section does not apply to

contracts or policies for inland marine risks and to the apportionment of gains or losses of the Underwriting Association in the form of allocation fees or credits as to which filings are not required; to amend Section 38-73-1420, relating to insurance rating organizations, the requirement that the Board of Governors of the Reinsurance Facility shall file the expense component, and use of the component after approval, so as to delete the existing provisions of that Code Section and add provisions, including a provision requiring the Board of Governors of the South Carolina Automobile Underwriters Association to file an expense component for rate or premium charges developed under rate plans approved by the Chief Insurance Commissioner, and including a provision that automobile insurers contracted to the South Carolina Automobile Underwriters Association pursuant to Section 38-77-590(a) and all insurers on policies of automobile insurance transferred to the Underwriting Association for shared risk pooling shall utilize the final rate or premium charges under the applicable rate plan approved by the Chief Insurance Commissioner for the Underwriting Association comprising these filed rates; to require the Chief Insurance Commissioner to conduct a study to determine whether there are more equitable territories in this State, where private passenger automobile insurers compete, than now exist which would allow a greater degree of open-market competition; to provide that any person who shall operate or allow an uninsured motor vehicle to be operated shall suffer the immediate impoundment of such vehicle until such time as he posts liability insurance in the amount required by Chapter 77, Title 38, and pays any storage and impoundment fees, together with any other fines or fees imposed for the operation of an uninsured motor vehicle; provide that no newly licensed driver who has obtained his driver's license after successfully completing a duly licensed course in driver training shall be deprived of the benefit of a safe driver discount for automobile insurance purposes, and provide that no student who successfully completes a recognized and approved course in driver education in the school he attends and obtains his driver's license following such completion of the course shall have his policy of automobile insurance ceded to the Reinsurance Facility or be deprived of any discount he receives or is entitled to receive as a result of the successful completion of such course; and to repeal Sections 38-73-1410, relating to insurance rating organizations and the provision that the refiling of final rates or premium charges previously approved is not required, 38-73-1425, relating to insurance rating organizations and the provisions regarding the final rate or premium charge for private passenger automobile insurance risk ceded to the Reinsurance Facility, 38-77-111, relating to automobile insurance policies which may be ceded to the Reinsurance Facility, 38-77-510, relating to the Reinsurance Facility, 38-77-595, relating to the Reinsurance Facility and conditions for designation of otherwise ineligible applicants for designation, 38-77-600, relating to the Reinsurance Facility recoupment charge, 38-77-605, relating to the requirement that the Facility recoupment charge be displayed, 38-77-610, relating to automobile insurance and the filing of recoupment charges, 38-77-620, relating to the inclusion of recoupment charges in automobile insurance rates, 38-77-625, relating to automobile insurance and the provision that there shall be no increase in the recoupment charge under certain conditions, and 38-77-930, relating to the provision that no automobile insurer which is a member of a group of affiliated automobile insurance insurers may make or adopt certain rules.

**04/07/92 House Introduced and read first time HJ-17**  
**04/07/92 House Referred to Committee on Labor, Commerce and Industry HJ-25**  
**05/12/92 House Recalled from Committee on Labor, Commerce and Industry HJ-31**  
**05/21/92 House Objection by Rep. Felder, McAbee, J. Bailey, Cato, Marchbanks, HJ-81**  
**05/21/92 House Objection by Rep. TC Alexander, Cobb-Hunter, Fulmer, Hallman, HJ-81**  
**05/21/92 House Objection by Rep. McGinnis & Rama HJ-81**