

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 703
HOUSE BILL 908

AN ACT TO AMEND ARTICLE 2 OF SUBCHAPTER I OF CHAPTER 58 AND ARTICLE 4 OF CHAPTER 7A OF THE GENERAL STATUTES OF NORTH CAROLINA TO PROVIDE FOR APPEAL FROM INSURANCE RATE ORDERS DIRECTLY TO THE COURT OF APPEALS.

The General Assembly of North Carolina do enact:

Section 1. G.S. 58-9.3 is hereby amended to read as follows:

"§ 58-9.3. **Court review of orders and decisions.** — (a) Any order or decision made, issued or executed by the Commissioner, except an order to make good an impairment of capital or surplus or a deficiency in the amount of admitted assets and except an order or decision that the premium rates charged or filed on all or any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are otherwise not in the public interest or that a classification assignment is unwarranted, unreasonable, improper, unfairly discriminatory, or not in the public interest, shall be subject to review in the Superior Court of Wake County on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the Commissioner upon such person. A copy of such petition for review as filed with and certified to by the clerk of said court shall be served upon the Commissioner or in his absence upon someone in active charge of the Department within five days after the filing thereof. If such petition for review is not filed within the said 30 days, the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.

(b) The Commissioner shall within 30 days, unless the time be extended by order of court, after the service of the copy of the petition for review as provided in subsection (a) of this section, prepare and file with the clerk of the Superior Court of Wake County a complete transcript of the record of the hearing, if any, had before him, and a true copy of the order or decision duly certified. The order or decision of the Commissioner if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing,

- (1) Upon consent of the parties; or
- (2) When the convenience of witnesses and the ends of justice would be promoted by the change; or
- (3) When the judge has at any time been interested as a party or counsel.

The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine such petition with all convenient speed and to this end the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If on the hearing before the trial judge it shall appear that the record filed by the Commissioner is incomplete, he may by appropriate order direct the Commissioner to certify any or all parts of the record so omitted.

(c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the Commissioner and to restrain the enforcement thereof.

(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Commissioner may be taken to the Appellate Division of the General Court of Justice by any party to the action as in other civil cases.

(e) The commencement of proceedings under this section shall not operate as a stay of the Commissioner's order or decision, unless otherwise ordered by the court.

Sec. 2. Article 2 of Subchapter 1 of Chapter 58 of the General Statutes of North Carolina is hereby amended by adding a new section thereto to be designated G.S. 58-9.4 and reading as follows:

"§ 58-9.4. **Court review of rates and classification.** — Any order or decision of the Commissioner that the premium rates charged or filed on all or any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are otherwise not in the public interest or that a classification or classification assignment is unwarranted, unreasonable, improper, unfairly discriminatory or not in the public interest may be appealed to the North Carolina Court of Appeals by any party aggrieved thereby. Any such order shall be based on findings of fact, and if applicable, findings as to trends related to the matter under investigation, and conclusions of law based thereon. Any order or decision of the Commissioner, if supported by substantial evidence, shall be presumed to be correct and proper. For the purposes of the appeal the Insurance Commissioner, who shall be represented by his general counsel, shall be deemed an aggrieved party."

Sec. 3. Article 2 of Subchapter 1 of Chapter 58 of the General Statutes of North Carolina is hereby amended by adding a new section thereto to be designated G.S. 58-9.5 and reading as follows:

"§ 58-9.5. **Right of appeal; filing of exceptions.** . — (a) Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-9.4 shall be subject to the following provisions:

- (1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decision or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commissioner.
- (2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.
- (3) The Commissioner may on motion of any party to the proceeding or on its own motion set the exceptions to the final order upon which such appeal is based for further hearing before the Commissioner.
- (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the Commissioner and all other parties, as appellees, within 45 days from the entry of the appeal taken; within 20 days after such service, the appellee shall return the copy with its approval or specified amendments endorsed or

- attached; if the case be approved- by the appellee it shall be filed by the appellant with the Clerk of the Court of Appeals as part of the record; if not returned with objection within the time prescribed, it shall be deemed approved. The Commissioner shall have the power, in the exercise of its discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.
- (5) If the case on appeal is returned by appellee with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the Commissioner to fix a time and place for meeting to agree on the case on appeal. If the appellant delays longer than 15 days after the appellee serves its countercase or exceptions to request the Commissioner to set a meeting to agree on the case on appeal, then the exceptions filed by the appellee shall be allowed, or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.
 - (6) The Commissioner shall forthwith notify the attorneys of the parties to meet before it for the purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the Commissioner shall determine if all parties have agreed on a case on appeal. If they have, the appellant shall within five days thereafter file it with the Clerk of the Court of Appeals, and if he fails to do so the appellee may file its copy. If the case on appeal is not agreed upon by all parties to the appeal at said meeting, the Commissioner shall immediately file with the Court of Appeals a request for appointment of a referee to settle the case on appeal, whereupon the chief judge of the Court of Appeals shall appoint a referee to settle and sign the case on appeal under such rules as may be set forth in his appointment.
 - (7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.
 - (8) Unless otherwise provided by the rules of the Court of Appeals, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of the Court of Appeals.
 - (9) In any appeal to the Court of Appeals, the Complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.
 - (10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law.

Sec. 4. Article 2 of Subchapter 1 of Chapter 58 of the General Statutes of North Carolina is hereby amended by adding a new section to be designated G.S. 58-9.6 and reading as follows:

"§ 58-9.6. **Record on appeal; extent of review.** — (a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any action of the Commissioner. The court may affirm or reverse the decision of the Commissioner, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commissioner's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
- (2) In excess of statutory authority or jurisdiction of the Commissioner, or
- (3) Made upon unlawful proceedings, or
- (4) Affected by other errors of law, or
- (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (6) Arbitrary or capricious.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal which were not set forth specifically in his notice of appeal filed with the Commissioner.

(d) The court shall also compel action of the Commissioner unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commissioner under the provisions of this chapter shall be prima facie correct.

Sec. 5. G.S. 7A-29 is hereby amended to read as follows:

"§ 7A-29. **Appeals of right from certain administrative agencies.** — From any final order or decision of the North Carolina Utilities Commission, the North Carolina Industrial Commission or an appeal from the Commissioner of Insurance pursuant to G.S. 58-9.4 appeal lies of right directly to the Court of Appeals.

Sec. 6. This act shall become effective on January 1, 1972.

In the General Assembly read three times and ratified, this the 30th day of June, 1971.