

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 973

Short Title: Workers' Compensation Rating Law.

(Public)

Sponsors: Senator Kincaid.

Referred to: Pensions and Retirement/Insurance/State Personnel

May 3, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA WORKERS' COMPENSATION
3 LOSS COSTS RATING LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 36 of Chapter 58 of the General Statutes reads as rewritten:

6 "ARTICLE 36.

7 "NORTH CAROLINA RATE BUREAU.

8 "PART 1. RATE BUREAU MEMBERSHIP.

9 "§ 58-36-1. North Carolina Rate Bureau created.

10 There is hereby created a Bureau to be known as the 'North Carolina Rate Bureau,'
11 with the following objects and functions:

- 12 (1) To assume the functions formerly performed by the North Carolina Fire
13 Insurance Rating Bureau, the North Carolina Automobile Rate
14 Administrative Office, and the Compensation Rating and Inspection
15 Bureau of North Carolina, with regard to the promulgation of rates, for
16 insurance against loss to residential real property with not more than
17 four housing units located in this State and any contents thereof and
18 valuable interest therein and other insurance coverages written in
19 connection with the sale of such property insurance; for theft of and
20 physical damage to private passenger (nonfleet) motor vehicles as the

1 same are defined under Article 40 of this Chapter; for liability insurance
2 for such motor vehicles, automobile medical payments insurance,
3 uninsured motorists coverage and other insurance coverages written in
4 connection with the sale of such liability insurance; and ~~for workers'~~
5 ~~compensation and employers' liability insurance written in connection~~
6 ~~therewith except for insurance excluded from the Bureau's jurisdiction in G.S.~~
7 ~~58-36-1(3).~~ to perform the duties required under Part 3 of this Article.

8 (2) The Bureau shall provide reasonable means to be approved by the
9 Commissioner whereby any person affected by a rate made by it may be
10 heard in person or by his authorized representative before the governing
11 committee or other proper executive of the Bureau.

12 (3) The Bureau shall have the duty and responsibility of promulgating and
13 proposing rates for insurance against loss to residential real property
14 with not more than four housing units located in this State and any
15 contents thereof or valuable interest therein and other insurance
16 coverages written in connection with the sale of such property
17 insurance; for insurance against theft of or physical damage to private
18 passenger (nonfleet) motor vehicles; and for liability insurance for such
19 motor vehicles, automobile medical payments insurance, uninsured
20 motorists coverage and other insurance coverages written in connection
21 with the sale of such liability insurance; ~~and for workers' compensation and~~
22 ~~employers' liability insurance written in connection therewith.~~ insurance. The
23 provisions of this subdivision shall not apply to motor vehicles operated
24 under certificates of authority from the Utilities Commission, the
25 Interstate Commerce Commission, or their successor agencies, where
26 insurance or other proof of financial responsibility is required by law or
27 by regulations specifically applicable to such certificated vehicles. The
28 Bureau shall have no jurisdiction over ~~excess workers' compensation~~
29 ~~insurance for employers qualifying as self-insurers as provided in G.S. 97-93;~~
30 ~~nor shall the Bureau's jurisdiction include~~ farm buildings, farm dwellings
31 and their appurtenant structures, farm personal property or other
32 coverages written in connection with farm real or personal property;
33 travel or camper trailers designed to be pulled by private passenger
34 motor vehicles, unless insured under policies covering nonfleet private
35 passenger motor vehicles; residential real and personal property insured
36 in multiple line insurance policies covering business activities as the
37 primary insurable interest; and marine, general liability, burglary and
38 theft, glass, and animal collision insurance, except when such coverages
39 are written as an integral part of a multiple line insurance policy for
40 which there is an indivisible premium.

41 (4) Agreements may be made between or among members with respect to
42 equitable apportionment among them of insurance which may be
43 afforded applicants who are in good faith entitled to but who are unable

1 to procure such insurance through ordinary methods. The members may
2 agree between or among themselves on the use of reasonable rate
3 modifications for such insurance, agreements, and rate modifications to
4 be subject to the approval of the Commissioner.

5 (5) a. ~~It is the duty of every insurer that writes workers' compensation~~
6 ~~insurance in this State and is a member of the Bureau, as defined in this~~
7 ~~section and G.S. 58-36-5 to insure and accept any workers'~~
8 ~~compensation insurance risk that has been certified to be "difficult to~~
9 ~~place" by any fire and casualty insurance agent who is licensed in this~~
10 ~~State. When any such risk is called to the attention of the Bureau by~~
11 ~~receipt of an application with an estimated or deposit premium payment~~
12 ~~and it appears that the risk is in good faith entitled to such coverage, the~~
13 ~~Bureau will bind coverage for 30 days and will designate a member who~~
14 ~~must issue a standard workers' compensation policy of insurance that~~
15 ~~contains the usual and customary provisions found in those policies.~~
16 ~~Coverage will be bound at 12:01 A.M. on the first day following the~~
17 ~~postmark time and date on the envelope in which the application is~~
18 ~~mailed including the estimated annual or deposit premium, or the~~
19 ~~expiration of existing coverage, whichever is later. If there should be no~~
20 ~~postmark, coverage will be effective 12:01 A.M. on the date of receipt~~
21 ~~by the Bureau unless a later date is requested. Those applications hand~~
22 ~~delivered to the Bureau will be effective as of 12:01 A.M. of the date~~
23 ~~following receipt by the Bureau unless a later date is requested. The~~
24 ~~designated carrier may request of the Bureau certification of the State~~
25 ~~Department of Labor that the insured is complying with the laws, rules,~~
26 ~~and regulations of that Department. The certification must be finished~~
27 ~~within 30 days by the State Department of Labor unless extension of~~
28 ~~time is granted by agreement between the Bureau and the State~~
29 ~~Department of Labor. The Bureau will make and adopt such rules as are~~
30 ~~necessary to carry this section into effect, subject to final approval of the~~
31 ~~Commissioner. As a prerequisite to the transaction of workers'~~
32 ~~compensation insurance in this State, every member of the Bureau that~~
33 ~~writes such insurance must file with the Bureau written authority~~
34 ~~permitting the Bureau to act in its behalf, as provided in this section, and~~
35 ~~an agreement to accept risks that are assigned to the member by the~~
36 ~~Bureau, as provided in this section.~~

37 b. ~~Upon notice of cancellation or the decision to decline to write or~~
38 ~~renew a policy of workers' compensation insurance for an~~
39 ~~employer, the carrier or its agents shall supply the employer with~~
40 ~~a form, supplied by the Bureau, by which the employer may~~
41 ~~request the Bureau to list the employer and pertinent information~~
42 ~~about it among a compendium of such information on employers~~
43 ~~refused voluntary coverage, which shall be made available by the~~

1 Bureau to all insurers and self insureds' administrators doing
2 business in this State. It shall be stored and indexed to allow
3 access to information by industry, primary classifications of
4 employees, geography, experience modification, and in any other
5 manner the Bureau determines is commercially useful to
6 facilitate voluntary coverage of listed employers.

7 e. Failure or refusal by any assigned employer risk to make full
8 disclosure to the Bureau, servicing carrier, or insurer writing a
9 policy of information regarding the employer's true ownership,
10 change of ownership, operations, or payroll, or any other failure
11 to disclose fully any records pertaining to workers' compensation
12 insurance shall be sufficient grounds for the Bureau to authorize
13 the termination of the policy of that employer.

14 (6) The Bureau shall maintain and furnish to the Commissioner
15 on an annual basis the statistics on earnings derived by member
16 companies from the investment of unearned premium, loss, and loss
17 expense reserves on nonfleet private passenger motor vehicle
18 insurance policies written in this State. Whenever the Bureau
19 proposes rates under this Article, it shall prepare a separate exhibit for
20 the experience years in question showing the combined earnings
21 realized from the investment of such reserves on policies written in
22 this State. The amount of earnings may in an equitable manner be
23 included in the ratemaking formula to arrive at a fair and equitable
24 rate. The Commissioner may require further information as to such
25 earnings and may require calculations of the Bureau bearing on such
26 earnings.

27 (7) Member companies shall furnish, upon request of any person carrying
28 nonfleet private passenger motor vehicle insurance in the State upon
29 whose risk a rate has been promulgated, information as to rating,
30 including the method of calculation.

31 **"§ 58-36-5. Membership as a prerequisite for writing insurance; governing**
32 **committee; rules and regulations; expenses.**

33 (a) Before the Commissioner shall grant permission to any stock, nonstock, or
34 reciprocal insurance company or any other insurance organization to write in this State
35 insurance against loss to residential real property with not more than four housing units
36 located in this State or any contents thereof or valuable interest therein or other insurance
37 coverages written in connection with the sale of such property insurance; or insurance
38 against theft of or physical damage to private passenger (nonfleet) motor vehicles; or
39 liability insurance for such motor vehicles, automobile medical payments insurance,
40 uninsured motorists coverage or other insurance coverage written in connection with the
41 sale of such liability insurance; or workers' compensation and employers' liability
42 insurance written in connection therewith; except for insurance excluded from the Bureau's

1 ~~jurisdiction in G.S. 58-36-1(3); under G.S. 58-36-100;~~ it shall be a requisite that they shall
2 subscribe to and become members of the Bureau.

3 (b) Each member of the Bureau writing any one or more of the above lines of
4 insurance in North Carolina shall, as a requisite thereto, be represented in the Bureau and
5 shall be entitled to one representative and one vote in the administration of the affairs of
6 the Bureau. They shall, upon organization, elect a governing committee which governing
7 committee shall be composed of equal representation by stock and nonstock members.
8 The governing committee of the Bureau shall also have as nonvoting members two
9 persons who are not employed by or affiliated with any insurance company or the
10 Department and who are appointed by the Governor to serve at his pleasure.

11 (c) The Bureau, when created, shall adopt such rules and regulations for its orderly
12 procedure as shall be necessary for its maintenance and operation. No such rules and
13 regulations shall discriminate against any type of insurer because of its plan of operation,
14 nor shall any insurer be prevented from returning any unused or unabsorbed premium,
15 deposit, savings or earnings to its policyholders or subscribers. The expense of such
16 Bureau shall be borne by its members by quarterly contributions to be made in advance,
17 such contributions to be made in advance by prorating such expense among the members
18 in accordance with the amount of gross premiums derived from the above lines of
19 insurance in North Carolina during the preceding year and members entering the Bureau
20 since that date to advance an amount to be fixed by the governing committee. After the
21 first fiscal year of operation of the Bureau the necessary expense of the Bureau shall be
22 advanced by the members in accordance with rules and regulations to be established and
23 adopted by the governing committee. The Bureau shall be empowered to subscribe for or
24 purchase any necessary service, and employ and fix the salaries of such personnel and
25 assistants as are necessary.

26 (d) The Commissioner is hereby authorized to compel the production of all books,
27 data, papers and records and any other data necessary to compile statistics for the purpose
28 of determining the underwriting experience of lines of insurance referred to in this
29 Article, and this information shall be available and for the use of the Bureau for the
30 capitulation and promulgation of rates on lines of insurance as are subject to the
31 ratemaking authority of the Bureau.

32 **"PART 2. RATES AND CLASSIFICATIONS.**

33 **"§ 58-36-9. Applicability.**

34 This Part applies to insurance against loss to residential real property with not more
35 than four housing units located in this State and any contents thereof and valuable interest
36 therein and other insurance coverages written in connection with the sale of such property
37 insurance; for theft of and physical damage to private passenger (nonfleet) motor
38 vehicles as the same are defined under Article 40 of this Chapter; for liability insurance
39 for such motor vehicles, automobile medical payments insurance, uninsured motorists
40 coverage, and other insurance coverages written in connection with the sale of such
41 liability insurance.

42 **"§ 58-36-10. Method of rate making; factors considered.**

43 The following standards shall apply to the making and use of rates:

- 1 (1) Rates shall not be excessive, inadequate or unfairly discriminatory.
- 2 (2) Due consideration shall be given to actual loss and expense experience
3 within this State for the most recent three-year period for which such
4 information is available; to prospective loss and expense experience
5 within this State; to the hazards of conflagration and catastrophe; to a
6 reasonable margin for underwriting profit and to contingencies; to
7 dividends, savings, or unabsorbed premium deposits allowed or returned
8 by insurers to their policyholders, members, or subscribers; to
9 investment income earned or realized by insurers from their unearned
10 premium, loss, and loss expense reserve funds generated from business
11 within this State; to past and prospective expenses specially applicable
12 to this State; and to all other relevant factors within this State: Provided,
13 however, that countrywide expense and loss experience and other
14 countrywide data may be considered only where credible North
15 Carolina experience or data is not available.
- 16 (3) In the case of fire insurance rates, as are subject to the ratemaking
17 authority of the Bureau, consideration may be given to the experience of
18 such fire insurance business during the most recent five-year period for
19 which such experience is available. In the case of fire insurance rates
20 that are subject to the ratemaking authority of the Bureau, consideration
21 shall be given to the insurance public protection classifications of rural
22 fire districts based upon standards established by the Commissioner. To
23 the extent credits are provided for proximity to fire hydrants, the Bureau
24 may also provide appropriate credits in public protection classifications
25 for optional water sources, such as ponds, lakes, or other bodies of
26 water, in accordance with standards and procedures filed with and
27 approved by the Commissioner.
- 28 (4) Risks may be grouped by classifications and lines of insurance for
29 establishment of rates and base premiums. Classification rates may be
30 modified to produce rates for individual risks in accordance with rating
31 plans which establish standards for measuring variations in hazards or
32 expense provisions or both. Such standards may measure any
33 differences among risks that can be demonstrated to have a probable
34 effect upon losses or expenses. The Bureau is directed to establish and
35 implement a comprehensive classification rating plan for motor vehicle
36 insurance under its jurisdiction within 90 days of September 1, 1977.
37 No such classification plans shall base any standard or rating plan for
38 private passenger (nonfleet) motor vehicles, in whole or in part, directly
39 or indirectly, upon the age or sex of the persons insured. The Bureau
40 shall at least once every three years make a complete review of the filed
41 classification rates to determine whether they are proper and supported
42 by statistical evidence, and shall at least once every 10 years make a

1 complete review of the territories for nonfleet private passenger motor
2 vehicle insurance to determine whether they are proper and reasonable.

3 (5) ~~In the case of workers' compensation insurance and employers' liability~~
4 ~~insurance written in connection therewith, due consideration shall be~~
5 ~~given to the past and prospective effects of changes in compensation~~
6 ~~benefits and in legal and medical fees that are provided for in General~~
7 ~~Statutes Chapter 97.~~

8 **"§ 58-36-15. Filing rates, plans with Commissioner; public inspection of filings.**

9 (a) The Bureau shall file with the Commissioner copies of the rates, classification
10 plans, rating plans and rating systems used by its members. Each rate filing shall become
11 effective on the date specified in the filing, but not earlier than 105 days from the date the
12 filing is received by the Commissioner: ~~Provided that (1) rate filings for workers'~~
13 ~~compensation insurance and employers' liability insurance written in connection therewith shall~~
14 ~~not become effective earlier than 120 days from the date the filing is received by the~~
15 ~~Commissioner; and (2) any filing may become effective on a date earlier than that specified~~
16 ~~in this subsection upon agreement between the Commissioner and the Bureau.~~

17 (b) A filing shall be open to public inspection immediately upon submission to the
18 Commissioner.

19 (c) The Bureau shall maintain reasonable records, of the type and kind reasonably
20 adapted to its method of operation, of the experience of its members and of the data,
21 statistics or information collected or used by it in connection with the rates, rating plans,
22 rating systems, underwriting rules, policy or bond forms, surveys or inspections made or
23 used by it.

24 (d) With respect to the filing of rates for nonfleet private passenger motor vehicle
25 insurance, the Bureau shall, on or before February 1 of each year, or later with the
26 approval of the Commissioner, file with the Commissioner the experience, data, statistics,
27 and information referred to in subsection (c) of this section and any proposed adjustments
28 in the rates for all member companies of the Bureau. The filing shall include, where
29 deemed by the Commissioner to be necessary for proper review, the data specified in
30 subsections (c), (e), (g) and (h) of this section. Any filing that does not contain the data
31 required by this subsection may be returned to the Bureau and not be deemed a proper
32 filing. Provided, however, that if the Commissioner concludes that a filing does not
33 constitute a proper filing he shall promptly notify the Bureau in writing to that effect,
34 which notification shall state in reasonable detail the basis of the Commissioner's
35 conclusion. The Bureau shall then have a reasonable time to remedy the defects so
36 specified. An otherwise defective filing thus remedied shall be deemed to be a proper
37 and timely filing, except that all periods of time specified in this Article will run from the
38 date the Commissioner receives additional or amended documents necessary to remedy
39 all material defects in the original filing.

40 (e) The Commissioner may require the filing of supporting data including:

- 41 (1) The Bureau's interpretation of any statistical data relied upon;
42 (2) Descriptions of the methods employed in setting the rates;

- 1 (3) Analysis of the incurred losses submitted on an accident year or policy
- 2 year basis into their component parts; to wit, paid losses, reserves for
- 3 losses and loss expenses, and reserves for losses incurred but not
- 4 reported;
- 5 (4) The total number and dollar amount of paid claims;
- 6 (5) The total number and dollar amount of case basis reserve claims;
- 7 (6) Earned and written premiums at current rates by rating territory;
- 8 (7) Earned premiums and incurred losses according to classification plan
- 9 categories; and
- 10 (8) Income from investment of unearned premiums and loss and loss
- 11 expense reserves generated by business within this State.

12 Provided, however, that with respect to business written prior to January 1, 1980, the
13 Commissioner shall not require the filing of such supporting data which has not been
14 required to be recorded under statistical plans approved by the Commissioner.

15 (f) On or before September 1 of each calendar year the Bureau shall submit to the
16 Commissioner the experience, data, statistics, and information referred to in subsection
17 (c) of this section and a rate review based on such data for workers' compensation
18 insurance and employers' liability insurance written in connection therewith. Any rate
19 increase for such insurance that is implemented pursuant to this ~~Article-Part~~ shall become
20 effective solely to such insurance as is written having an inception date on or after the
21 effective date of the rate increase.

22 (g) The following information must be included in policy form, rule, and rate
23 filings under this ~~Article-Part~~ and under Article 37 of this Chapter:

- 24 (1) A detailed list of the rates, rules, and policy forms filed, accompanied
- 25 by a list of those superseded; and
- 26 (2) A detailed description, properly referenced, of all changes in policy
- 27 forms, rules, and rates, including the effect of each change.

28 (h) Except for filings made under G.S. 58-36-30, all policy form, rule, and rate
29 filings under this ~~Article-Part~~ and Article 37 of this Chapter that are based on statistical
30 data must be accompanied by the following properly identified information:

- 31 (1) North Carolina earned premiums at the actual and current rate level;
- 32 losses and loss adjustment expenses, each on paid and incurred bases
- 33 without trending or other modification for the experience period,
- 34 including the loss ratio anticipated at the time the rates were
- 35 promulgated for the experience period;
- 36 (2) Credibility factor development and application;
- 37 (3) Loss development factor derivation and application on both paid and
- 38 incurred bases and in both numbers and dollars of claims;
- 39 (4) Trending factor development and application;
- 40 (5) Changes in premium base resulting from rating exposure trends;
- 41 (6) Limiting factor development and application;

- 1 (7) Overhead expense development and application of commission and
2 brokerage, other acquisition expenses, general expenses, taxes, licenses,
3 and fees;
- 4 (8) Percent rate change;
- 5 (9) Final proposed rates;
- 6 (10) Investment earnings, consisting of investment income and realized plus
7 unrealized capital gains, from loss, loss expense, and unearned premium
8 reserves;
- 9 (11) Identification of applicable statistical plans and programs and a
10 certification of compliance with them;
- 11 (12) Investment earnings on capital and surplus;
- 12 (13) Level of capital and surplus needed to support premium writings
13 without endangering the solvency of member companies; and
- 14 (14) Such other information that may be required by any rule adopted by the
15 Commissioner.

16 Provided, however, that no filing may be returned or disapproved on the grounds that
17 such information has not been furnished if insurers have not been required to collect such
18 information pursuant to statistical plans or programs or to report such information to the
19 Bureau or to statistical agents, except where the Commissioner has given reasonable prior
20 notice to the insurers to begin collecting and reporting such information, or except when
21 the information is readily available to the insurers.

22 (i) The Bureau shall file with and at the time of any rate filing all testimony, exhibits,
23 and other information on which the Bureau will rely at the hearing on the rate filing. The
24 Department shall file all testimony, exhibits, and other information on which the
25 Department will rely at the hearing on the rate filing 20 days in advance of the convening
26 date of the hearing. Upon the issuance of a notice of hearing the Commissioner shall
27 hold a meeting of the parties to provide for the scheduling of any additional testimony,
28 including written testimony, exhibits or other information, in response to the notice of
29 hearing and any potential rebuttal testimony, exhibits, or other information. This
30 subsection also applies to rate filings made by the North Carolina Motor Vehicle
31 Reinsurance Facility under Article 37 of this Chapter.

32 **~~§ 58-36-16. Bureau to share information with Department of Labor.~~**

33 ~~The Bureau shall provide to the Department of Labor information from the Bureau's~~
34 ~~records indicating each employer's experience rate modifier established for the purpose of~~
35 ~~setting premium rates for workers' compensation insurance and the name and business~~
36 ~~address of each employer whose workers' compensation coverage is provided through the~~
37 ~~assigned risk pool pursuant to G.S. 58-36-1. Information provided to the Department of~~
38 ~~Labor with respect to experience rate modifiers shall include the name of the employer~~
39 ~~and the employer's most current intrastate or interstate experience rate modifier. The~~
40 ~~information provided to the Department under this section shall be confidential and not~~
41 ~~open for public inspection. The Bureau shall be immune from civil liability for erroneous~~
42 ~~information released by the Bureau pursuant to this section, provided that the Bureau~~

1 acted in good faith and without malicious or wilful intent to harm in releasing the
2 erroneous information.

3 **"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.**

4 (a) At any time within 50 days from and after the date of any filing, the
5 Commissioner may give written notice to the Bureau specifying in what respect and to
6 what extent he contends such filing fails to comply with the requirements of this Article
7 and fixing a date for hearing not less than 30 days from the date of mailing of such
8 notice. At such hearing the factors specified in G.S. 58-36-10 shall be considered. If the
9 Commissioner after hearing finds that the filing does not comply with the provisions of
10 this Article, he may issue his order determining wherein and to what extent such filing is
11 deemed to be improper and fixing a date thereafter, within a reasonable time, after which
12 such filing shall no longer be effective. Any order of disapproval under this section must
13 be entered within 105 days of the date the filing is received by the Commissioner. ~~Provided~~
14 ~~that any order of disapproval under this section with respect to workers' compensation insurance~~
15 ~~and employers' liability insurance written in connection therewith shall be entered within 150~~
16 ~~days of the date the filing is received by the Commissioner.~~

17 (b) In the event that no notice of hearing shall be issued within 50 days from the
18 date of any such filing, the filing shall be deemed to be approved. If the Commissioner
19 disapproves such filing pursuant to subsection (a) as not being in compliance with G.S.
20 58-36-10, he may order an adjustment of the premium to be made with the policyholder
21 either by collection of an additional premium or by refund, if the amount exceeds five
22 dollars (\$5.00). The Commissioner may thereafter review any filing in the manner
23 provided; but if so reviewed, no adjustment of any premium on any policy then in force
24 may be ordered.

25 ~~(c) For workers' compensation insurance and employers' liability insurance written~~
26 ~~in connection therewith, the period between the date of any filing and the date the~~
27 ~~Commissioner may give written notice as described in subsection (a) of this section and~~
28 ~~the period between the date of any filing and the deadline for giving notice of hearing as~~
29 ~~described in subsection (b) of this section shall be 60 days.~~

30 **"§ 58-36-25. Appeal of Commissioner's order.**

31 (a) Any order or decision of the Commissioner shall be subject to judicial review
32 as provided in Article 2 of this Chapter.

33 (b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and
34 no longer effective by order of the Commissioner issued under G.S. 58-36-20, the
35 members of the Bureau, in accordance with rules and regulations established and adopted
36 by the governing committee, shall have the option to continue to use such rate for the
37 interim period pending judicial review of such order, provided each such member shall
38 place in escrow account the purportedly unfairly discriminatory or excessive portion of
39 the premium collected during such interim period. Upon a final determination by the
40 Court, the Commissioner shall order the escrowed funds to be distributed appropriately,
41 except that individual refunds that are five dollars (\$5.00) or less shall not be required.
42 The court may also require that purportedly excess premiums resulting from an
43 adjustment of premiums ordered pursuant to G.S. 58-36-20(b) be placed in such escrow

1 account pending judicial review. If refunds made to policyholders are ordered under this
2 subsection, the amounts refunded shall bear interest at the rate determined under this
3 subsection. That rate shall be the average of the prime rates of the four largest banking
4 institutions domiciled in this State, plus three percent (3%), as of the effective date of the
5 filing, to be computed by the Commissioner.

6 **"§ 58-36-30. Deviations.**

7 (a) No insurer, officer, agent or representative thereof shall knowingly issue or
8 deliver or knowingly permit the issuance or delivery of any policy of insurance in this
9 State which does not conform to the rates, rating plans, classifications, schedules, rules
10 and standards made and filed by the Bureau. However, an insurer may deviate from the
11 rates promulgated by the Bureau provided the insurer has filed the deviation to be applied
12 both with the Bureau and the Commissioner, and provided the said deviation is uniform
13 in its application to all risks in the State of the class to which such deviation is to apply;
14 and provided such deviation is approved by the Commissioner. The Commissioner shall
15 approve proposed deviations if the same do not render the rates excessive, inadequate or
16 unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to
17 the provisions of this subsection. The deviation may be terminated only if the deviation
18 will have been in effect for a period of six months before the effective date of the
19 termination and the insurer notifies the Commissioner of the termination no later than 15
20 days before the effective date of the termination.

21 (b) A rate in excess of that promulgated by the Bureau may be charged on any
22 specific risk provided such higher rate is charged with the approval of the Commissioner
23 and with the knowledge and written consent of the insured. All data filed with the
24 Commissioner under this subsection are proprietary and confidential and are not public
25 records under G.S. 132-1 or G.S. 58-2-100.

26 ~~(c) Any deviation with respect to workers' compensation and employers' liability~~
27 ~~insurance written in connection therewith as filed under subsection (a) of this section~~
28 ~~shall apply uniformly to all classifications.~~

29 (d) Notwithstanding any other provision of law prohibiting insurance rate
30 differentials based on age, with respect to nonfleet private passenger motor vehicle
31 insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for
32 and use in this State, subject to the Commissioner's approval, a downward deviation in
33 the rates for insureds who are 55 years of age or older.

34 **"§ 58-36-35. Appeal to Commissioner from decision of Bureau.**

35 Any member of the Bureau may appeal to the Commissioner from any decision of the
36 Bureau. After a hearing held on not less than 10 days' written notice to the appellant and
37 to the Bureau, the Commissioner shall issue an order approving the decision or directing
38 the Bureau to reconsider the decision. In the event the Commissioner directs the Bureau
39 to reconsider the decision and the Bureau fails to take action satisfactory to the
40 Commissioner, the Commissioner shall make such order as he may see fit.

41 No later than 20 days before each hearing, the appellant shall file with the
42 Commissioner or his designated hearing officer and shall serve on the appellee a written
43 statement of his case and any evidence he intends to offer at the hearing. No later than

1 five days before such hearing, the appellee shall file with the Commissioner or his
2 designated hearing officer and shall serve on the appellant a written statement of his case
3 and any evidence he intends to offer at the hearing. Each such hearing shall be recorded
4 and transcribed. The cost of such recording and transcribing shall be borne equally by
5 the appellant and appellee; provided that upon any final adjudication the prevailing party
6 shall be reimbursed for his share of such costs by the other party. Each party shall, on a
7 date determined by the Commissioner or his designated hearing officer, but not sooner
8 than 15 days after delivery of the completed transcript to the party, submit to the
9 Commissioner or his designated hearing officer and serve on the other party, a proposed
10 order. The Commissioner or his designated hearing officer shall then issue an order.

11 **"§ 58-36-40. Existing rates, rating systems, territories, classifications and policy**
12 **forms.**

13 Rates, rating systems, territories, classifications and policy forms lawfully in use on
14 September 1, 1977, may continue to be used thereafter, notwithstanding any provision of
15 this ~~Article-Part~~.

16 **"§ 58-36-45. Notice of coverage or rate change.**

17 Whenever an insurer changes the coverage other than at the request of the insured or
18 changes the premium rate, it shall give the insured written notice of such coverage
19 change or premium rate change at least 15 days in advance of the effective date of such
20 change or changes with a copy of such notice to the agent. ~~This section shall apply to all~~
21 ~~policies and coverages subject to the provisions of this Article except workers' compensation~~
22 ~~insurance and employers' liability insurance written in connection therewith.~~

23 **"§ 58-36-50. Limitation.**

24 Nothing in this ~~Article-Part~~ shall apply to any town or county farmers mutual fire
25 insurance association restricting its operations to not more than six adjacent counties in
26 this State, or to domestic insurance companies, associations, orders or fraternal benefit
27 societies now doing business in this State on the assessment plan.

28 **"§ 58-36-55. Policy forms.**

29 No policy form applying to insurance on risks or operations covered by this ~~Article~~
30 ~~Part~~ may be delivered or issued for delivery unless it has been filed with the
31 Commissioner by the Bureau and either he has approved it, or 90 days have elapsed and
32 he has not disapproved it.

33 **"§ 58-36-60. Payment of dividends not prohibited or regulated; plan for payment**
34 **into rating system.**

35 Nothing in this ~~Article-Part~~ will be construed to prohibit or regulate the payment of
36 dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to
37 their policyholders, members, or subscribers. ~~Individual policyholder loss experience may~~
38 ~~be considered as a factor in determining dividends for workers' compensation insurance and~~
39 ~~employers' liability insurance written in connection therewith.~~—A plan for the payment of
40 dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to
41 their policyholders, members, or subscribers will not be deemed a rating plan or system.

42 **"§ 58-36-65. Classifications and Safe Driver Incentive Plan for nonfleet private**
43 **passenger motor vehicle insurance.**

1 (a) The Bureau shall file, subject to review, modification, and promulgation by the
2 Commissioner, such rate classifications, schedules, or rules that the Commissioner deems
3 to be desirable and equitable to classify drivers of nonfleet private passenger motor
4 vehicles for insurance purposes. Subsequently, the Commissioner may require the Bureau
5 to file modifications of the classifications, schedules, or rules. If the Bureau does not file
6 the modifications within a reasonable time, the Commissioner may promulgate the
7 modifications. In promulgating or modifying these classifications, schedules, or rules, the
8 Commissioner may give consideration to the following:

- 9 (1) Uses of vehicles, including without limitation to farm use, pleasure use,
10 driving to and from work, and business use;
11 (2) Principal and occasional operation of vehicles;
12 (3) Years of driving experience of insureds as licensed drivers;
13 (4) The characteristics of vehicles; or
14 (5) Any other factors, not in conflict with any law, deemed by the
15 Commissioner to be appropriate.

16 (b) The Bureau shall file, subject to review, modification, and promulgation by the
17 Commissioner, a Safe Driver Incentive Plan ('Plan') that adequately and factually
18 distinguishes among various classes of drivers that have safe driving records and various
19 classes of drivers that have a record of at-fault accidents; a record of convictions of major
20 moving traffic violations; a record of convictions of minor moving traffic violations; or a
21 combination thereof; and that provides for premium differentials among those classes of
22 drivers. Subsequently, the Commissioner may require the Bureau to file modifications of
23 the Plan. If the Bureau does not file the modifications within a reasonable time, the
24 Commissioner may promulgate the modifications. The Commissioner is authorized to
25 structure the Plan to provide for surcharges above and discounts below the rate otherwise
26 charged.

27 (c) The classifications and Plan filed by the Bureau shall be subject to the filing,
28 hearing, modification, approval, disapproval, review, and appeal procedures provided by
29 law; provided that the 105-day disapproval period in G.S. 58-36-20(a) and the 50-day
30 deemer period in G.S. 58-36-20(b) do not apply to filings or modifications made under
31 this section. The classifications or Plan filed by the Bureau and promulgated by the
32 Commissioner shall of itself not be designed to bring about any increase or decrease in
33 the overall rate level.

34 (d) Whenever any policy loses any safe driver discount provided by the Plan or is
35 surcharged due to an accumulation of points under the Plan, the insurer shall, pursuant to
36 rules adopted by the Commissioner, prior to or simultaneously with the billing for
37 additional premium, inform the named insured of the surcharge or loss of discount by
38 mailing to such insured a notice that states the basis for the surcharge or loss of discount,
39 and that advises that upon receipt of a written request from the named insured it will
40 promptly mail to the named insured a statement of the amount of increased premium
41 attributable to the surcharge or loss of discount. The statement of the basis of the
42 surcharge or loss of discount is privileged, and does not constitute grounds for any cause
43 of action for defamation or invasion of privacy against the insurer or its representatives,

1 or against any person who furnishes to the insurer the information upon which the
2 insurer's reasons are based, unless the statement or furnishing of information is made
3 with malice or in bad faith.

4 (e) Records of convictions for moving traffic violations to be considered under
5 this section shall be obtained at least annually from the Division of Motor Vehicles and
6 applied by the Bureau's member companies in accordance with rules to be established by
7 the Bureau.

8 (f) The Bureau is authorized to establish reasonable rules providing for the
9 exchange of information among its member companies as to chargeable accidents and
10 similar information involving persons to be insured under policies. Neither the Bureau,
11 any employee of the Bureau, nor any company or individual serving on any committee of
12 the Bureau has any liability for defamation or invasion of privacy to any person arising
13 out of the adoption, implementation, or enforcement of any such rule. No insurer or
14 individual requesting, furnishing, or otherwise using any information that such insurer or
15 person reasonably believes to be for purposes authorized by this section has any liability
16 for defamation or invasion of privacy to any person on account of any such requesting,
17 furnishing, or use. The immunity provided by this subsection does not apply to any acts
18 made with malice or in bad faith.

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

- 24 (1) Cancel or refuse to renew the policy;
- 25 (2) Surcharge the policy in accordance with rules to be adopted by the
26 Bureau and approved by the Commissioner; or
- 27 (3) Recover from the applicant the appropriate amount of premium or
28 surcharge that would have been collected by the insurer had the
29 applicant furnished the correct information.

30 (h) If an insured disputes his insurer's determination that the operator of an insured
31 vehicle was at fault in an accident, such dispute shall be resolved pursuant to G.S. 58-36-
32 1(2), unless there has been an adjudication or admission of negligence of such operator.

33 (i) As used in this section, 'conviction' means a conviction as defined in G.S. 20-
34 279.1 and means an infraction as defined in G.S. 14-3.1.

35 (j) Subclassification plan surcharges shall be applied to a policy for a period of
36 not less nor more than three policy years.

37 (k) The subclassification plan may provide for premium surcharges for insureds
38 having less than three years' driving experience as licensed drivers.

39 (l) Except as provided in G.S. 58-36-30(d), no classification or subclassification
40 plan for nonfleet private passenger motor vehicle insurance shall be based, in whole or in
41 part, directly or indirectly, upon the age or gender of insureds.

42 (m) Notwithstanding any other provision of law, with respect to motorcycle
43 insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for

1 and use in this State, subject to the Commissioner's approval, a downward deviation in
2 the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety
3 Instruction Program.

4 **"§ 58-36-70. Rate filings and hearings for motor vehicle insurance.**

5 (a) With respect to nonfleet private passenger motor vehicle insurance, except as
6 provided in G.S. 58-36-25, a filing made by the Bureau under G.S. 58-36-15(d) is not
7 effective until approved by the Commissioner or unless 60 days have elapsed since the
8 making of a proper filing under that subsection and the Commissioner has not called for a
9 hearing on the filing. If the Commissioner calls for a hearing, he must give written notice
10 to the Bureau, specify in the notice in what respect the filing fails to comply with this
11 ~~Article, Part,~~ and fix a date for the hearing that is not less than 30 days from the date the
12 notice is mailed.

13 (b) At least 15 days before the date set for the convening of the hearing the
14 respective staffs and consultants of the Bureau and Commissioner shall meet at a
15 prehearing conference to review the filing and discuss any points of disagreement that are
16 likely to be in issue at the hearing. At the prehearing conference, the parties shall list the
17 names of potential witnesses and, where possible, stipulate to their qualifications as
18 expert witnesses, stipulate to the sequence of appearances of witnesses, and stipulate to
19 the relevance of proposed exhibits to be offered by the parties. Minutes of the prehearing
20 conference shall be made and reduced to writing and become part of the hearing record.
21 Any agreements reached as to preliminary matters shall be set forth in writing and
22 consented to by the Bureau and the Commissioner. The purpose of this subsection is to
23 avoid unnecessary delay in the rate hearings.

24 (c) Once begun, hearings must proceed without undue delay. At the hearing the
25 burden of proving that the proposed rates are not excessive, inadequate, or unfairly
26 discriminatory is on the Bureau. The Commissioner may disregard at the hearing any
27 exhibits, judgments, or conclusions offered as evidence by the Bureau that were
28 developed by or available to or could reasonably have been obtained or developed by the
29 Bureau at or before the time the Bureau made its proper filing and which exhibits,
30 judgments, or conclusions were not included and supported in the filing; unless the
31 evidence is offered in response to inquiries made at the hearing by the Department, the
32 notice of hearing, or as rebuttal to the Department's evidence. If relevant data becomes
33 available after the filing has been properly made, the Commissioner may consider such
34 data as evidence in the hearing. The order of presenting evidence shall be (1) by the
35 Bureau; (2) by the Department; (3) any rebuttal evidence by the Bureau regarding the
36 Department's evidence; and (4) any rebuttal evidence by the Department regarding the
37 Bureau's rebuttal evidence. Neither the Bureau nor the Department shall present
38 repetitious testimony or evidence relating to the same issues.

39 (d) If the Commissioner finds that a filing complies with the provisions of this
40 ~~Article, Part,~~ either after the hearing or at any other time after the filing has been properly
41 made, he may issue an order approving the filing. If the Commissioner after the hearing
42 finds that the filing does not comply with the provisions of this ~~Article, Part,~~ he may issue
43 an order disapproving the filing, determining in what respect the filing is improper, and

1 specifying the appropriate rate level or levels that may be used by the members of the
2 Bureau instead of the rate level or levels proposed by the Bureau filing, unless there has
3 not been data admitted into evidence in the hearing that is sufficiently credible for
4 arriving at the appropriate rate level or levels. Any order issued after a hearing shall be
5 issued within 45 days after the completion of the hearing. If no order is issued within 45
6 days after the completion of the hearing, the filing shall be deemed to be approved. The
7 Commissioner may thereafter review any filing in the manner provided; but if so
8 reviewed, no adjustment of any premium on any policy then in force may be ordered.
9 The escrow provisions of G.S. 58-36-25(b) apply to any order of the Commissioner under
10 this subsection.

11 (e) No person shall willfully withhold information required by this ~~Article-Part~~
12 from or knowingly furnish false or misleading information to the Commissioner, any
13 statistical agency designated by the Commissioner, any rating or advisory organization,
14 the Bureau, the North Carolina Motor Vehicle Reinsurance Facility, or any insurer, which
15 information affects the rates, rating plans, classifications, or policy forms subject to this
16 ~~Article-Part~~ or Article 37 of this Chapter.

17 **"§ 58-36-75. At-fault accidents and certain moving traffic violations under the Safe**
18 **Driver Incentive Plan.**

19 (a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may
20 provide for separate surcharges for major, intermediate, and minor accidents. A 'major
21 accident' is an at-fault accident that results in either (i) bodily injury or death or (ii) only
22 property damage of two thousand dollars (\$2,000) or more. An 'intermediate accident' is
23 an at-fault accident that results in only property damage of more than one thousand
24 dollars (\$1,000) but less than two thousand dollars (\$2,000). A 'minor accident' is an at-
25 fault accident that results in only property damage of one thousand dollars (\$1,000) or
26 less. The subclassification plan may also exempt certain minor accidents from the
27 Facility recoupment surcharge.

28 (a1) The subclassification plan shall provide that there shall be no premium
29 surcharge, increase in premium on account of cession to the Reinsurance Facility, or
30 assessment of points against an insured where: (i) the insured is involved and is at fault
31 in a 'minor accident,' as defined in subsection (a) of this section; (ii) the insured is not
32 convicted of a moving traffic violation in connection with the accident; (iii) neither the
33 vehicle owner, principal operator, nor any licensed operator in the owner's household has
34 a driving record consisting of one or more convictions for a moving traffic violation or
35 one or more at-fault accidents during the three-year period immediately preceding the
36 date of the application for a policy or the date of the preparation of the renewal of a
37 policy; and (iv) the insured has been covered by liability insurance with the same
38 company or company group continuously for at least the six months immediately
39 preceding the accident. Notwithstanding (iv) of this subsection, if the insured has been
40 covered by liability insurance with the same company or company group for at least six
41 continuous months, some or all of which were after the accident, the insurance company
42 shall remove any premium surcharge or assessment of points against the insured if
43 requirements (i), (ii), and (iii) of this subsection are met. Also notwithstanding (iv) of

1 this subsection, an insurance company may choose not to assess a premium surcharge or
 2 points against an insured who has been covered by liability insurance with that company
 3 or with the company's group for less than six months immediately preceding the accident,
 4 if requirements (i), (ii), and (iii) are met.

5 (a2) The subclassification plan shall provide that there shall be no premium
 6 surcharge or assessment of points against an insured where (i) the insured's driver's
 7 license has been revoked under G.S. 20-16.5; and (ii) the insured is subsequently
 8 acquitted of the offense involving impaired driving, as defined in G.S. 20-4.01(24a), that
 9 is related to the revocation, or the charge for that offense is dismissed. In addition, no
 10 insurer shall use, for rating, underwriting, or classification purposes, including ceding any
 11 risk to the Facility or writing any kind of coverage subject to this ~~Article, Part,~~ any license
 12 revocation under G.S. 20-16.5 if the insured is acquitted or the charge is dismissed as
 13 described in this subsection.

14 (b) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) shall
 15 provide that with respect to a conviction for any moving traffic violation that is not listed
 16 in subsection (c) of this section, there shall be no Motor Vehicle Reinsurance Facility
 17 recoupment surcharge pursuant to G.S. 58-37-40(f) unless (i) the vehicle owner, principal
 18 operator, or any licensed operator in the owner's household has a driving record
 19 consisting of one or more convictions for a moving traffic violation, other than the
 20 conviction for the exempt violation, or one or more at-fault accidents during the three-
 21 year period immediately preceding the date of the application for a policy or the date of
 22 the preparation of the renewal of a policy, or (ii) the moving traffic violation for which
 23 the operator has been convicted occurred at the time of an accident for which he was at
 24 fault. Nothing in this section affects any provisions in the subclassification plan for
 25 premium surcharges for moving traffic violations or at-fault accidents.

26 (c) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) shall
 27 provide for facility recoupment surcharges pursuant to G.S. 58-37-40(f) and G.S. 58-37-
 28 75, in addition to premium surcharges, for convictions for the following moving traffic
 29 violations:

30 <font=26>

31 General Statute

Description of Offense

32 20-12.1

Being impaired while accompanying a permittee
 who is learning to drive

34 20-28

Driving while license is suspended or revoked

35 20-138.1

Driving a vehicle while impaired

36 20-138.2

Driving a commercial vehicle while impaired

37 20-138.3

Driving by provisional licensee after consuming
 alcohol or drugs

39 20-140(a)

Driving carelessly and heedlessly in willful or
 wanton disregard of the rights of others

41 20-140(b)

Driving without due caution in a manner so as to
 endanger other people or property

1	20-141(a)	Only driving at least 11 miles per hour over the
2		posted speed limit
3	20-141(j)	Driving in excess of 55 mph and at least 15 mph
4		over legal limit, while fleeing or attempting to
5		elude arrest by a law enforcement officer
6	20-141(j1)	Driving more than 15 mph over legal limit
7	20-141.1	Speeding in a school zone
8	20-141.3(a)	Engaging in prearranged speed competition with
9		another motor vehicle
10	20-141.3(b)	Willfully engaging in speed competition with
11		another motor vehicle (not prearranged)
12	20-141.3(c)	Allowing or authorizing others to use one's motor
13		vehicle in prearranged speed competition or
14		placing or receiving a bet or wager on a
15		prearranged speed competition
16	20-141.4(a1)	Death by vehicle (unintentionally causing death
17		of another while engaged in impaired driving)
18	20-141.4(a2)	Death by vehicle (unintentionally causing death
19		of another as a result of a violation of motor
20		vehicle law intended to regulate traffic or used to
21		control operation of a vehicle)
22	20-166(a)	Failure to stop by driver who knew or should
23		have known he was involved in accident and that
24		accident caused death or injury to any person
25	20-166(c)	Failure of driver involved in accident causing
26		property damage or personal injury or death (if
27		driver did not know of injury or death) to stop at
28		scene of accident
29	20-175.2	Failure to yield right-of-way to blind person at
30		crossings, intersections, and traffic control signal
31		points
32	20-217	Failure to stop and remain stopped when
33		approaching a stopped school bus engaged in
34		receiving or discharging passengers and while
35		bus has mechanical stop signal displayed
36	14-18	Voluntary manslaughter
37	14-18	Involuntary manslaughter

38 <font=16>

39 (d) There shall be no Facility recoupment surcharge under G.S. 58-37-40(f) or
40 Safe Driver Incentive Plan surcharges under G.S. 58-36-65 for accidents occurring when
41 only operating a firefighting, rescue squad, or law enforcement vehicle in response to an
42 emergency if the operator of the vehicle at the time of the accident was a paid or
43 volunteer member of any fire department, rescue squad, or any law enforcement agency.

1 This exception does not include an accident occurring after the vehicle ceases to be used
2 in response to the emergency and the emergency ceases to exist.

3 (e) There shall be no Facility recoupment surcharge under G.S. 58-37-40(f) for
4 any accident involving only damage to the operator's vehicle or to the property of another
5 for which full payment or compensation has been made by the operator at fault; and when
6 the motor vehicle insurer of the operator has not made any payment under any kind of
7 insurance policy for such property damage to or on behalf of such operator.
8 Notwithstanding the provision of this subsection, an insured still has a duty to report such
9 accident to his insurer and to law enforcement authorities if such duty is required by the
10 insurance contract or by law.

11 (f) The subclassification plan shall provide that with respect to a conviction for a
12 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no
13 premium surcharge nor any assessment of points unless there is a driving record
14 consisting of a conviction or convictions for a moving traffic violation or violations,
15 except for a prayer for judgment continued for any moving traffic violation, during the
16 three years immediately preceding the date of application or the preparation of the
17 renewal. The subclassification plan shall also provide that with respect to a prayer for
18 judgment continued for any moving traffic violation, there shall be no premium surcharge
19 nor any assessment of points unless the vehicle owner, principal operator, or any licensed
20 operator in the owner's household has a driving record consisting of a prayer or prayers
21 for judgment continued for any moving traffic violation or violations during the three
22 years immediately preceding the date of application or the preparation of the renewal.
23 For the purpose of this subsection, a 'prayer for judgment continued' means a
24 determination of guilt by a jury or a court though no sentence has been imposed. For the
25 purpose of this subsection, a 'violation of speeding 10 miles per hour or less over the
26 speed limit' does not include the offense of speeding in a school zone in excess of the
27 posted school zone speed limit.

28 (f1) The subclassification plan shall provide that in the event an insured is at fault
29 in an accident and is convicted of a moving traffic violation in connection with the
30 accident, only the higher plan premium surcharge between the accident and the
31 conviction shall be assessed on the policy.

32 (g) As used in this section 'conviction' means a conviction as defined in G.S. 20-
33 279.1 and means an infraction as defined in G.S. 14-3.1.

34 **"§ 58-36-80. Coverage for damage to rental vehicles authorized.**

35 As used in this section, 'property damage' means damage or loss to a rented vehicle in
36 excess of two hundred fifty dollars (\$250.00), including loss of use and any costs or
37 expenses incident to the damage or loss, for which the renter is legally obligated to pay;
38 and 'rented' means rented on a daily rate basis for a period of 21 consecutive days or less.
39 The Bureau is authorized to promulgate rates and policy forms for insurance against
40 property damage to rented private passenger motor vehicles. Such coverage may be
41 offered at the option of the individual member companies of the Bureau.

42 **"§ 58-36-85. Termination of a nonfleet private passenger motor vehicle insurance**
43 **policy.**

1 (a) Definitions. – The following definitions apply in this section:

2 (1) Policy. – A nonfleet private passenger motor vehicle liability insurance
3 policy, including a policy that provides medical payments, uninsured
4 motorist, or underinsured motorist coverage, whose named insured is
5 one individual or two or more individuals who reside in the same
6 household.

7 (2) Terminate. – To cancel or refuse to renew a policy.

8 (b) Termination Restrictions. – An insurer shall not terminate a policy for a reason
9 that is not specified in G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g). A termination
10 of a policy is not effective unless the insurer either has notified a named insured of the
11 termination by sending a written termination notice by first class mail to the insured's last
12 known address or is not required by this subsection to send a written termination notice.
13 Proof of mailing of a written termination notice is proof that the notice was sent.

14 An insurer is not required to send a written termination notice if any of the following
15 applies:

16 (1) The insurer has manifested its willingness to renew the policy by
17 issuing or offering to issue a renewal policy, a certificate, or other
18 evidence of renewal.

19 (2) The insurer has manifested its willingness to renew the policy by any
20 means not described in subdivision (1) of this subsection, including
21 mailing a premium notice or expiration notice by first class mail to the
22 named insured and the failure of the insured to pay the required
23 premium on or before the premium due date.

24 (3) A named insured has given written notification to the insurer or its agent
25 that the named insured wants the policy to be terminated.

26 (c) Contents of Notice. – The form of a written termination notice used by an
27 insurer must be approved by the Commissioner before it is used. A written termination
28 notice must state the reason for the termination and the date the termination is effective.
29 If the policy is terminated for nonpayment of the premium, the effective date may be 15
30 days from the date the notice is mailed. If the policy is terminated for any other reason,
31 the effective date must be at least 60 days after the notice is mailed. A written termination
32 notice must include or be accompanied by a statement that advises the insured of the
33 penalty for driving a vehicle without complying with Article 13 of Chapter 20 of the
34 General Statutes and that the insured has the right to request the Department to review the
35 termination.

36 (d) Request for Review. – An insured who receives from an insurer a written
37 termination notice may obtain review of the termination by filing with the Department a
38 written request for review within 10 days after receiving a termination notice that
39 complies with subsection (c) of this section. An insured who does not file a request
40 within the required time waives the right to a review.

41 (e) Administrative Review. – When the Department receives a written request to
42 review a termination, it must investigate and determine the reason for the termination.
43 The Department shall enter an order for one of the following upon completing its review:

- 1 (1) Approval of the termination, if it finds the termination complies with the
2 law.
- 3 (2) Renewal or reinstatement of the policy, if it finds the termination does
4 not comply with the law.
- 5 (3) Renewal or reinstatement of the policy and payment by the insurer of
6 the costs of the Department's review, not to exceed one thousand dollars
7 (\$1,000), if it finds the termination does not comply with the law and
8 the insurer willfully violated this section.

9 The Department shall mail a copy of the order to the insured and the insurer. An
10 insured or an insurer who disagrees with the determination of the Department may file a
11 petition for a contested case under Article 3A of Chapter 150B of the General Statutes
12 and the rules adopted by the Commissioner to implement that Article. The petition must
13 be filed within 30 days after receiving the copy of the order.

14 (f) Delegation. – The Commissioner shall designate an employee or a deputy to
15 conduct the departmental review of a termination. The Commissioner may designate a
16 deputy to conduct a contested case hearing concerning a termination. The Commissioner
17 may not designate a deputy who conducted the departmental review of a termination to
18 conduct a contested case hearing concerning the same termination.

19 (g) Effect of Review on Policy. – A policy shall remain in effect during
20 administrative and judicial review of an insurer's action to terminate the policy.

21 (h) Liability Limit. – There is no liability on the part of and no cause of action for
22 defamation or invasion of privacy arises against an insurer, an insurer's authorized
23 representatives, agents, or employees, or a licensed insurance agent or broker for a
24 communication or statement made concerning a written notice of termination.

25 (i) Records. – An insurer shall keep a record of a termination for three years.

26 **"PART 3. WORKERS' COMPENSATION LOSS COSTS AND RATES.**

27 **"§ 58-36-100. Applicability.**

28 This Part applies to workers' compensation and related employer's liability insurance
29 but does not apply to reinsurance or to self-insurance under G.S. 97-93, G.S. 97-7, or
30 Article 23 of this Chapter.

31 **"§ 58-36-105. Definitions.**

32 (a) 'Accepted actuarial standards' means the standards adopted by the Casualty
33 Actuarial Society in its Statement of Principles Regarding Property and Casualty
34 Insurance Ratemaking, and the Standards of Practice adopted by the Actuarial Standards
35 Board.

36 (b) 'Classification system' means the plan, system, or arrangement for recognizing
37 differences in exposure to hazards among industries, occupations, or operations of
38 policyholders.

39 (c) 'Developed losses' means adjusted losses (including loss adjustment expenses),
40 using accepted actuarial standards, to eliminate the effect of differences between current
41 payment or reserve estimates and those needed to provide actual ultimate loss (including
42 loss adjustment expense) payments.

1 (d) 'Expense' means expenses, other than loss expenses and loss adjustment
2 expenses associated with writing workers' compensation and employer's liability
3 insurance, as determined by the insurer.

4 (e) 'Experience rating' means a rating procedure that measures the policyholder's
5 loss experience against the loss experience of policyholders in the same classification in
6 order to produce a premium credit, debit, or unity modification that reflects expected
7 future losses.

8 (f) 'Insurer' means any person writing coverage under this Part.

9 (g) 'Loss trending' means any procedure for projecting developed losses to the
10 average date of loss for the period during which the policies are to be effective, including
11 loss ratio trending.

12 (h) 'Market' means the interaction in this State between buyers and sellers of
13 insurance under this Part.

14 (i) 'Prospective loss costs' means historical aggregate losses and loss adjustment
15 expenses, including all assessments that are loss-based, projected through development to
16 their ultimate value and through trending to a future point in time, ascertained by
17 accepted actuarial standards. Prospective loss costs do not include provisions for profit
18 or expenses other than loss adjustment expenses and assessments that are loss-based.

19 (j) 'Pure premium rate' means that portion of the rate which represents the loss
20 cost per unit of exposure including loss adjustment expense.

21 (k) 'Rate' or 'rates' shall mean rate of premium, policy and membership fee, or any
22 other charge made by an insurer for or in connection with an insurance policy under this
23 Part prior to application of individual risk variations based on loss or expense
24 considerations. 'Rate' or 'rates' do not include minimum premiums.

25 (l) 'Statistical plan' means the plan, system, or arrangement used in collecting
26 data.

27 (m) 'Supplementary rate information' means any manual or plan of rates, statistical
28 plan, classification system, minimum premium, policy fee, rating rule, rate-related
29 underwriting rule, and any other information needed to determine the applicable premium
30 for an individual insured and not otherwise inconsistent with the purposes of this Part, as
31 prescribed by rule of the Commissioner.

32 (n) 'Supporting information' means the experience and judgment of the filer and
33 the experience or data of other insurers or advisory organizations relied on by the filer,
34 the interpretation of any statistical data relied on by the filer, descriptions of methods
35 used in making the rates and any other similar information required to be filed by the
36 Commissioner.

37 (o) 'Party in interest' means an insurer, insured, the North Carolina Rate Bureau,
38 and an advisory rating organization.

39 **"§ 58-36-110. Competitive market; hearing.**

40 (a) A competitive market is presumed to exist unless the Commissioner, after a
41 hearing, issues an order stating that a reasonable degree of competition does not exist in
42 the market. The order shall expire no later than one year after issuance.

1 (b) (1) In determining whether a reasonable degree of competition
2 exists, the Commissioner shall consider all of the following factors:

- 3 a. The number of insurers actively engaged in providing coverage.
4 b. Market shares and changes in market shares.
5 c. Ease of entry.
6 d. Market concentration as measured by the Herfindahl-Hirschman
7 Index.
8 e. Generally accepted and relevant tests relating to competitive
9 market structure, market performance, and market conduct.

10 (2) Notwithstanding subdivision (1) of this subsection, the market is
11 competitive if the market concentration of the 50 largest insurers
12 satisfies the United States Department of Justice's merger guidelines for
13 an unconcentrated market.

14 (c) All determinations by the Commissioner shall be supported by written findings
15 of fact and conclusions of law.

16 **§ 58-36-115. Rate-making standards.**

17 (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

18 (1) A rate is not excessive in a competitive market. A rate is not excessive
19 in a noncompetitive market unless it is likely to produce a long-run
20 profit that is unreasonably high in relation to the benefits provided and
21 services rendered.

22 (2) A rate is not inadequate unless:

- 23 a. It is unreasonably low, it is clearly insufficient to sustain project
24 losses and expenses, and the use or continued use of the rate by
25 the insurer has had or, if continued, will have the effect of
26 creating a monopoly in the market; or
27 b. Funds equal to the full, ultimate cost of anticipated losses and
28 loss adjustment expenses are not produced when prospective loss
29 costs are applied to anticipated payrolls.

30 (3) A rate is not unfairly discriminatory unless, after allowing for practical
31 limitations, price differentials fail to reflect equitably the differences in
32 expected losses and expenses. A rate is not unfairly discriminatory
33 because different premiums result for policyholders with different loss
34 exposure or expense levels.

35 (b) In determining whether rates comply with subsection (a) of this section, due
36 consideration shall be given to each of the following:

37 (1) Past and prospective loss experience within and outside this State, in
38 accordance with accepted actuarial principles.

39 (2) Catastrophe hazards and contingencies.

40 (3) Past and prospective expenses, within and outside North Carolina.

41 (4) Loadings for leveling premium rates over time for dividends, savings, or
42 unabsorbed premium deposits allowed or returned by insurers to their
43 policyholders, members, or subscribers.

1 (5) A reasonable margin for underwriting profit.

2 (6) All other relevant facts within and outside North Carolina.

3 (c) The systems of expense provisions included in the rates for use by an insurer or
4 group of insurers may differ from those of any other insurers or groups of insurers to
5 reflect the requirements of the operating methods of the insurer or group of insurers.

6 (d) The rate may contain provisions for contingencies and an allowance permitting
7 a reasonable profit. In determining the reasonableness of a profit, consideration shall be
8 given to all investment income attributable to premiums and the reserves associated with
9 those premiums.

10 **"§ 58-36-120. Review by Commissioner.**

11 The Commissioner may investigate and determine whether rates in this State are
12 excessive, inadequate, or unfairly discriminatory under G.S. 58-36-115.

13 **"§ 58-36-125. Rules not to affect dividends.**

14 The North Carolina Rate Bureau shall not adopt any rule that prohibits or regulates
15 the payment of dividends, savings, or unabsorbed premium deposits allowed or returned
16 by insurers to their policyholders, members, or subscribers. A plan for the payment of
17 dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to
18 their policyholders is not a rating plan or system. It is an unfair trade practice to
19 condition the payment of a dividend or any portion thereof upon renewal of a policy.

20 **"§ 58-36-130. Classification, experience rating, and policy forms.**

21 (a) The North Carolina Rate Bureau shall assist the Commissioner in
22 gathering, compiling, and reporting relevant statistical information. Every insurer shall
23 report its loss and expense experience to the Bureau as set forth in the uniform statistical
24 plan submitted by the Bureau to and approved by the Commissioner.

25 (b) Subject to the approval of the Commissioner, the North Carolina Rate Bureau
26 shall develop and file rules reasonably related to the recording and reporting of data
27 pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform
28 classification system.

29 (c) Each insurer shall adhere to the uniform classification system and uniform
30 experience rating plan approved under subsection (b) of this section. An insurer may
31 adhere to the policy forms filed by the North Carolina Rate Bureau.

32 **"§ 58-36-135. Interchange of rating plan data; consultation; cooperative action in**
33 **rate making.**

34 (a) The Commissioner may adopt reasonable rules and plans for the interchange of
35 data necessary for the application of rating plans.

36 (b) The provisions of G.S. 58-40-50, 58-40-55, 58-40-60, 58-40-65, 58-40-70, 58-
37 40-80, and 58-40-90 apply to this Part.

38 **"§ 58-36-140. Filings.**

39 (a) The North Carolina Rate Bureau shall file all of the following with the
40 Commissioner:

41 (1) Workers' compensation rates and rating plans for the voluntary market
42 that are limited to prospective loss costs and final workers'
43 compensation rates and rating plans for the residual market.

- 1 (2) Each workers' compensation policy form to be used by its members.
2 (3) The uniform classification plan and rules.
3 (4) The uniform experience rating plan and rules.
4 (5) Any other information that the Commissioner requests and is otherwise
5 entitled to receive under this Article.

6 (b) Each authorized insurer shall file with the Commissioner all rates,
7 supplementary rate information, and any changes and amendments made by it for use in
8 this State as required in G.S. 58-36-145. An insurer may establish rates and
9 supplementary rate information based upon the facts in G.S. 58-36-115. An insurer may
10 adopt by reference, with or without deviation, the prospective loss costs filed by the
11 North Carolina Rate Bureau or the rates and supplementary rate information filed by
12 another insurer.

13 (c) A policy of insurance issued by an insurer under this Part shall conform to the
14 filing in effect for the insurer.

15 (d) The North Carolina Rate Bureau shall not file rates, supplementary rate
16 information, or supporting information on behalf of an insurer.

17 **"§ 58-36-145. Effective dates of rates.**

18 (a) Each insurance filing shall become effective on the date specified in the filing,
19 provided that the effective date may not be earlier than 30 days after the date the filing is
20 received by the Commissioner or the date of receipt of the supporting information
21 required by the Commissioner.

22 (b) Upon written application of the insurer or the North Carolina Rate Bureau, the
23 Commissioner may authorize a filing, which the Commissioner has reviewed, to become
24 effective before the expiration of the period described in subsection (a) of this section.

25 (c) A filing meets the requirements of this Part unless disapproved by the
26 Commissioner within the period provided for pursuant to this section.

27 (d) When a filing is not accompanied by the information required under this
28 section, the Commissioner shall inform the filer within 10 days of the initial filing that
29 the filing is incomplete. A filing is complete when the required information is furnished
30 or when the filer certifies to the Commissioner that the additional information required by
31 the Commissioner is not maintained or cannot be provided.

32 (e) Notwithstanding the provisions of this Part, if each rate in a schedule of rates
33 for specific classifications of risks filed by an insurer is not lower than the prospective
34 loss costs contained in the schedule of rates for those classifications filed by the North
35 Carolina Rate Bureau under this Part and approved by the Commissioner, then the
36 schedule of rates filed by the insurer becomes effective upon filing for the purposes of
37 G.S. 58-36-140.

38 **"§ 58-36-150. Improper rates; hearing.**

39 (a) If the Commissioner finds that a rate is not in compliance with G.S. 58-36-115,
40 or that a rate has been set in violation of G.S. 58-36-180, the Commissioner shall order
41 that its use be discontinued for any policy issued or renewed after the date of the order
42 and the order may prospectively provide for premium adjustment of any such policy then
43 in force. The order shall be issued within 30 days after the close of hearing, if one is

1 required by the insurer, or within a reasonable time as fixed by the Commissioner. The
2 order shall expire one year after its effective date unless rescinded earlier by the
3 Commissioner.

4 (b) An order of the Commissioner disapproving a rate under subsection (a) of this
5 section shall take effect no less than 15 days after the order is issued, and the last
6 previous rate in effect for the insurer shall be reimposed for a period of one year unless
7 the Commissioner approves a rate under subsection (d) of this section.

8 (c) All determinations made by the Commissioner under this section shall be in
9 accordance with accepted actuarial standards and supported by written findings of fact
10 and conclusions of law.

11 (d) Whenever an insurer has no legally effective rates pursuant to subsection (a) of
12 this section, the Commissioner shall, on the insurer's request, specify interim rates for the
13 insurer that are adequate to protect the interests of all parties. When new rates become
14 legally effective, the Commissioner shall order the reserved funds or any overcharge in
15 the interim rates to be distributed appropriately, except that minimal adjustments may not
16 be required if the new approved rate is higher than the interim rate, and the insurer shall
17 collect the difference from the policyholder.

18 **"§ 58-36-155. Delay of rates in noncompetitive market.**

19 (a) A 30-day waiting period may be implemented or extended under the following
20 circumstances:

21 (1) After finding that the market is not competitive, under G.S. 58-36-110,
22 the Commissioner may adopt a rule requiring that any subsequent
23 changes in rates or supplementary information be filed with the
24 Commissioner at least 30 days before they become effective.

25 (2) The Commissioner may extend the waiting period under this section for
26 a period not exceeding 30 additional days by written notice to the filer
27 before the first 30-day period expires.

28 (3) Upon written application by an insurer or the North Carolina Rate
29 Bureau, the Commissioner may authorize a filing, which the
30 Commissioner has reviewed to become effective before the expiration
31 of the period described in subdivision (1) or (2) of this subsection.

32 (4) The filing shall be approved or disapproved during the waiting period
33 and if not disapproved before the expiration of the waiting period shall
34 be deemed to meet the requirements of this section.

35 (b) If a rule is adopted under subsection (a) of this section, the Commissioner may
36 require the filing of supporting data as to classes of risks or combinations thereof as the
37 Commissioner deems necessary for the proper functioning of the rate monitoring and
38 regulating process. The supporting data shall include the following:

39 (1) The experience and judgment of the filer and, to the extent the filer
40 wishes or the Commissioner requires, the experience and judgment of
41 other insurers of the North Carolina Rate Bureau.

42 (2) The filer's interpretation of any statistical data relied upon.

1 (3) A description of the actuarial and statistical methods employed in
2 setting the rate.

3 (4) Any other relevant matters required by the Commissioner.

4 (c) A rule adopted under this section shall expire not more than one year after
5 issuance. The Commissioner may renew it after hearings and appropriate findings under
6 this section.

7 (d) Whenever a filing is not accompanied by the information required by the
8 Commissioner under subsection (b) of this section, the Commissioner shall so inform the
9 insurer within 10 days of the initial filing. The filing is made when the required
10 information is furnished.

11 **"§ 58-36-160. Challenge and review of application of rating system.**

12 (a) The North Carolina Rate Bureau and each insurer subject to this Part which
13 makes its own rates shall provide within this State reasonable means whereby any person
14 aggrieved by the application of a rating system may, upon written request, be heard in
15 person or by the person's authorized representative to review the application of the rating
16 system to the person's insurance.

17 (b) Any party affected by the action of the North Carolina Rate Bureau or the
18 insurer may, within 30 days after written notice of that action, make application, in
19 writing, for an appeal to the Commissioner, setting forth the basis for the appeal and the
20 grounds to be relied upon by the applicant.

21 (c) The Commissioner shall review the application and, if the Commissioner finds
22 that the application is made in good faith and that it sets forth on its face grounds which
23 reasonably justify holding a hearing, the Commissioner shall conduct a hearing held not
24 less than 10 days after written notice to the applicant and to the North Carolina Rate
25 Bureau or insurer. The Commissioner, after a hearing, shall affirm or reverse the action
26 of the North Carolina Rate Bureau or insurer.

27 **"§ 58-36-165. Consent to rate.**

28 Notwithstanding any other provision of this Part, upon the written consent of the
29 insured, filed with the Commissioner, a rate in excess of that determined in accordance
30 with the other provisions of this Part may be used on any specific risk.

31 **"§ 58-36-170. Acts reducing competition prohibited.**

32 (a) In this section, the word 'insurer' includes two or more affiliated insurers under
33 (i) common management or (ii) common controlling ownership or under other common
34 effective legal control and in fact engaged in joint or cooperative underwriting,
35 investment management, marketing, servicing or administration of their business and
36 affairs as insurers.

37 (b) Neither the North Carolina Rate Bureau nor any insurer may:

38 (1) Monopolize or attempt to monopolize, or combine or conspire with any
39 other person or persons, or monopolize the business of insurance of any
40 kind, subdivision or class thereof.

41 (2) Agree with any other insurer or the North Carolina Rate Bureau to
42 charge or adhere to any rate or rating plan other than the uniform

1 experience rating plan or rating rule except as needed to comply with
2 the requirements of G.S. 58-36-130.

3 (3) Make an agreement with any other insurer, the North Carolina Rate
4 Bureau, or other person to unreasonably restrain trade or substantially
5 lessen competition in the business of insurance of any kind, subdivision,
6 or class.

7 (4) Make any agreement with any other insurer or the North Carolina Rate
8 Bureau to refuse to deal with any person in connection with the sale of
9 insurance.

10 (c) The fact that two or more insurers, whether or not members or subscribers to
11 the North Carolina Rate Bureau, use consistently or intermittently the same rules, rating
12 plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules,
13 surveys, inspections, or similar materials is not sufficient in itself to support a finding that
14 an agreement exists.

15 (d) The North Carolina Rate Bureau and any member or subscriber thereof may
16 not interfere with the right of an insurer to make its rates independently of the North
17 Carolina Rate Bureau.

18 (e) Except as required by G.S. 58-36-130, the North Carolina Rate Bureau may
19 not adopt any rule or exact any agreement or formulate or engage in any program (i)
20 requiring any member, subscriber, or other insurer to utilize some or all of its services or
21 adhere to its rates, rating plan, rating systems, or underwriting rules, or (ii) prohibiting
22 any member, subscriber, or other insurer from acting independently.

23 **"§ 58-36-175. Permitted activity.**

24 (a) The North Carolina Rate Bureau, in addition to other activities not prohibited,
25 is authorized to:

26 (1) Develop statistical plans including class definitions;

27 (2) Collect statistical data from members, subscribers, or any other source;

28 (3) Prepare and distribute pure premium rate data, adjusted for loss
29 development and loss trending, in accordance with its statistical plan.
30 Such data and adjustments should be in sufficient detail so as to permit
31 insurers to modify such pure premiums based upon their own rating
32 methods or interpretations of underlying data;

33 (4) Prepare and distribute manuals of rating rules and rating schedules that
34 do not contain any rules or schedules including final rates without
35 information outside the manuals;

36 (5) Distribute information that is filed with the Commissioner and open to
37 the public inspection;

38 (6) Conduct research and collect statistics in order to discover, identify, and
39 classify information relating to causes or prevention of losses;

40 (7) Prepare and file policy forms and endorsements and consult with
41 members, subscribers, and others relative to their use and application;

42 (8) Collect, compile, and distribute past and current prices of individual
43 insurers if such information is made available to the general public;

1 (9) Conduct research and collect information to determine the impact of
2 benefit level changes on pure premium rates;

3 (10) Prepare and distribute rules and rating values for the uniform experience
4 rating plan; and

5 (11) Calculate and disseminate individual risk premium modification factors.

6 (b) The Bureau shall provide to the Department of Labor information from the
7 Bureau's records indicating each employer's experience rate modifier and the name and
8 business address of each employer whose workers' compensation coverage is provided
9 through a residual market mechanism established under G.S. 58-36-180. Information
10 provided to the Department of Labor with respect to experience rate modifiers shall
11 include the name of the employer and the employer's most current intrastate or interstate
12 experience rate modifier. The information provided to the Department under this section
13 shall be confidential and not open for public inspection. The Bureau shall be immune
14 from civil liability for erroneous information released by the Bureau pursuant to this
15 section, provided that the Bureau acted in good faith and without malicious or willful
16 intent to harm in releasing the erroneous information.

17 **"§ 58-36-180. Residual market mechanisms.**

18 (a) All insurers authorized to write insurance covered by this Part shall participate
19 in a self-funded mechanism providing for the equitable apportionment among them of
20 insurance which may be afforded applicants who are in good faith entitled to but who are
21 unable to procure such insurance through ordinary methods. Rates for the residual
22 market shall be filed by the North Carolina Rate Bureau and shall be set at levels to
23 provide adequate premiums to pay loss and expenses and to establish appropriate
24 reserves.

25 (b) The Commissioner may adopt retrospective rating plans for any employers
26 insured through residual market.

27 (c) The Commissioner shall disapprove any filing that does not meet the
28 requirements of G.S. 58-36-115. A filing shall be deemed to meet such requirements
29 unless disapproved by the Commissioner within 30 days after the filing is made. In
30 reviewing a filing made pursuant to this section, the Commissioner shall have the same
31 authority and follow the same procedures described in G.S. 58-36-150, 58-36-155, and
32 58-36-160. The North Carolina Rate Bureau shall make and file the plan of operation,
33 rates, rating plans, rules, and policy forms under this section.

34 **"§ 58-36-185. Appeals from Commissioner.**

35 (a) Any party in interest who is aggrieved by an order or decision of the
36 Commissioner may, within 30 days after receiving the Commissioner's notice, make
37 written request for a hearing.

38 (b) Any order, decision, or act of the Commissioner under this Part is subject to
39 judicial review upon petition of any person aggrieved. The appeal shall be in accordance
40 with the Administrative Procedures Act."

41 Sec. 2. G.S. 58-2-52 reads as rewritten:

42 **"§ 58-2-52. Appeals and rate-making hearings before the Commissioner.**

1 (a) The Commissioner may adopt rules for the hearing of appeals by the
2 Commissioner or the Commissioner's designated hearing officer under G.S. 58-36-35,
3 58-37-65, 58-45-50, 58-46-30, 58-48-40(c)(7), 58-48-42, 58-62-51(c), and G.S. 58-62-
4 92. These rules may provide for prefiled evidence and testimony of the parties,
5 prehearing statements and conferences, settlement conferences, discovery, subpoenas,
6 sanctions, motions, intervention, consolidation of cases, continuances, rights and
7 responsibilities of parties, witnesses, and evidence.

8 (b) Notwithstanding G.S. 150B-38(h), hearing procedures for rate filings made by
9 the North Carolina Rate Bureau shall be governed by the provisions of Part 2 of Article
10 36 of this Chapter and G.S. 150B-39 through G.S. 150B-41. The Commissioner may
11 adopt rules for those hearings.

12 (c) Appeals under the statutes cited in subsection (a) of this section are not
13 contested cases within the meaning of G.S. 150B-2(2)."

14 Sec. 3. G.S. 58-37-35(l) reads as rewritten:

15 "(l) The classifications, rules, rates, rating plans and policy forms used on motor
16 vehicle insurance policies reinsured by the Facility may be made by the Facility or by any
17 licensed or statutory rating organization or bureau on its behalf and shall be filed with the
18 Commissioner. The Board of Governors shall establish a separate subclassification
19 within the Facility for 'clean risks' as herein defined. For the purpose of this Article, a
20 'clean risk' shall be any owner of a nonfleet private passenger motor vehicle as defined in
21 G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's
22 household have two years' driving experience as licensed drivers and if none of the
23 persons has been assigned any Safe Driver Incentive Plan points under Part 2 of Article
24 36 of this Chapter during the three-year period immediately preceding either (i) the date
25 of application for a motor vehicle insurance policy or (ii) the date of preparation of a
26 renewal of a motor vehicle insurance policy. Such filings may incorporate by reference
27 any other material on file with the Commissioner. Rates shall be neither excessive,
28 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a
29 rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order
30 specifying in what respect it is deficient and stating when, within a reasonable period
31 thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial
32 review as set out in Article 2 of this Chapter. Pending judicial review of said order, the
33 filed classification plan and the filed rates may be used, charged and collected in the same
34 manner as set out in G.S. 58-40-45 of this Chapter. Said order shall not affect any
35 contract or policy made or issued prior to the expiration of the period set forth in the
36 order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as
37 is possible, to produce neither a profit nor a loss. However, the rates made by or on
38 behalf of the Facility with respect to 'clean risks', as defined above, shall not exceed the
39 rates charged 'clean risks' who are not reinsured in the Facility. The difference between
40 the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks'
41 reinsured in the Facility may be recouped in similar manner as assessments pursuant to
42 G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75. Rates shall not include any
43 factor for underwriting profit on Facility business, but shall provide an allowance for

1 contingencies. There shall be a strong presumption that the rates and premiums for the
2 business of the Facility are neither unreasonable nor excessive."

3 Sec. 4. G.S. 58-38-35 reads as rewritten:

4 **"§ 58-38-35. Application to policies; dates; duties of the Commissioner.**

5 (a) The filing requirements of G.S. 58-38-30 apply as follows:

6 (1) As described in Part 2 of Article 36 of this Chapter, to all policies of
7 private passenger nonfleet motor vehicle insurance except as excluded
8 by G.S. 58-38-10(b)(7), to all policies of insurance against loss to
9 residential real property with not more than four housing units located in
10 this State and any contents thereof and valuable interest therein, and
11 other insurance coverages written in connection with the sale of such
12 property insurance except as excluded in G.S. 58-38-10(b)(7), that are
13 made, issued, amended, or renewed after March 1, 1981; and

14 (2) To all policies of life insurance as described in Article 58 of this
15 Chapter, to all benefit certificates issued by fraternal orders and
16 societies as described in Articles 24 and 25 of this Chapter, to all
17 policies of accident and health insurance as described in Articles 50
18 through 55 of this Chapter, to all subscribers' contracts of hospital,
19 medical, and dental service corporations as described in Articles 65 and
20 66 of this Chapter, and to all health maintenance organization evidences
21 of coverage as described in Article 67 of this Chapter, that are made,
22 issued, amended, or renewed after July 1, 1983.

23 (b) Repealed by Session Laws 1991, c. 720, s. 6, effective July 16, 1991."

24 Sec. 5. G.S. 58-41-10(a) reads as rewritten:

25 "(a) Except as otherwise provided, this Article applies to all kinds of insurance
26 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all
27 insurance companies licensed by the Commissioner to write those kinds of insurance.
28 This Article does not apply to insurance written under Articles 21, ~~36~~, 37, 45 or 46 of this
29 Chapter; insurance written under Article 36 of this Chapter, except as provided in G.S.
30 58-36-100; insurance written for residential risks in conjunction with insurance written
31 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to
32 personal inland marine insurance; to aviation insurance; to policies issued in this State
33 covering risks with multistate locations, except with respect to coverages applicable to
34 locations within this State; to any town or county farmers mutual fire insurance
35 association restricting its operations to not more than six adjacent counties in this State;
36 nor to domestic insurance companies, associations, orders, or fraternal benefit societies
37 doing business in this State on the assessment plan."

38 Sec. 6. G.S. 58-44-25 reads as rewritten:

39 **"§ 58-44-25. Optional provisions as to loss or damage from nuclear reaction, nuclear
40 radiation or radioactive contamination.**

41 Insurers issuing the standard fire insurance policy pursuant to G.S. 58-44-15, or any
42 permissible variation thereof, and policies issued pursuant to G.S. 58-44-20 and Part 2 of
43 Article 36 of this Chapter, are hereby authorized to affix thereto or include therein a

1 written statement that the policy does not cover loss or damage caused by nuclear
2 reaction or nuclear radiation or radioactive contamination, all whether directly or
3 indirectly resulting from an insured peril under said policy; provided, however, that
4 nothing herein contained shall be construed to prohibit the attachment to any such policy
5 of an endorsement or endorsements specifically assuming coverage for loss or damage
6 caused by nuclear reaction or nuclear radiation or radioactive contamination."

7 Sec. 7. G.S. 58-45-30(d) reads as rewritten:

8 "(d) The Commissioner may designate the kinds of property insurance policies on
9 principal residences to be offered by the association, including insurance policies under
10 Part 2 of Article 36 of this Chapter, and the commission rates to be paid to agents or
11 brokers for these policies, if the Commissioner finds, after a hearing held in accordance
12 with G.S. 58-2-50, that the public interest requires the designation. The provisions of
13 Chapter 150B do not apply to any procedure under this paragraph, except that G.S. 150B-
14 39 and G.S. 150B-41 shall apply to a hearing under this paragraph. Within 30 days after
15 the receipt of notification from the Commissioner of a change in designation pursuant to
16 this paragraph, the association shall submit a revised plan and articles of association for
17 approval in accordance with this section."

18 Sec. 8. G.S. 58-46-20(c) reads as rewritten:

19 "(c) The Commissioner may designate the kinds of property insurance policies on
20 principal residences to be offered by the association, including insurance policies under
21 Part 2 of Article 36 of this Chapter, and the commission rates to be paid to agents or
22 brokers for these policies, if he finds, after a hearing held in accordance with G.S. 58-2-
23 50, that the public interest requires the designation. The provisions of Chapter 150B do
24 not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S.
25 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of
26 notification from the Commissioner of a change in designation pursuant to this
27 subsection, the association shall submit a revised plan and articles of association for
28 approval in accordance with subsection (b) of this section."

29 Sec. 9. G.S. 58-82-5(a) reads as rewritten:

30 "(a) For the purpose of this section, a 'rural fire department' means a bona fide fire
31 department incorporated as a nonprofit corporation which under schedules filed with or
32 approved by the Commissioner of Insurance, is classified as not less than Class '9' in
33 accordance with rating methods, schedules, classifications, underwriting rules, bylaws, or
34 regulations effective or applied with respect to the establishment of rates or premiums
35 used or charged pursuant to Part 2 of Article 36 or Article 40 of this Chapter and which
36 operates fire apparatus of the value of five thousand dollars (\$5,000) or more."

37 Sec. 10. G.S. 160A-1(8) reads as rewritten:

38 "(8) 'Rural Fire Department' means, for the purpose of Articles 4A or 14 of
39 this Chapter, a bona fide department which, as determined by the
40 Commissioner of Insurance, is classified as not less than class '9' in
41 accordance with rating methods, schedules, classifications, underwriting
42 rules, bylaws or regulations effective or applied with respect to the
43 establishment of rates or premiums used or charged pursuant to Part 2 of

1 Article 36 or Article 40 of Chapter 58 of the General Statutes, and
2 which operates fire apparatus and equipment of the value of five
3 thousand dollars (\$5,000) or more; but it does not include a municipal
4 fire department."

5 Sec. 11. G.S. 95-250 reads as rewritten:

6 **"§ 95-250. Definitions.**

7 The following definitions shall apply in this Article:

8 (1) 'Experience rate modifier' means ~~the numerical modification applied by~~
9 ~~the Rate Bureau to an experience rating for use in determining workers'~~
10 ~~compensation premiums. a modifier developed under an experience~~
11 rating plan under G.S. 58-36-130.

12 (2) 'Worksite' means a single physical location where business is conducted
13 or where operations are performed by employees of an employer.

14 The definitions of Article 16 of this Chapter shall also apply to this Article, except
15 that 'employee' for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256
16 means an employee employed for some portion of a working day in each of 20 or more
17 calendar weeks in the current or preceding calendar year."

18 Sec. 12. There is appropriated from the Department of Insurance Fund under
19 G.S. 58-6-25 the sum of one hundred thousand dollars (\$100,000) for fiscal year 1995-96
20 and the sum of one hundred thousand dollars (\$100,000) for fiscal year 1996-97 to defray
21 the Department's costs in reviewing the filings under and otherwise implementing the
22 provisions of this act.

23 Sec. 13. This act becomes effective July 1, 1995, provided that an insurer may
24 continue using approved rates filed by the North Carolina Rate Bureau and approved
25 deviations until the insurer makes its own filing to change its rates, either by making an
26 independent filing or by filing and adopting the Rate Bureau's approved prospective loss
27 costs, or modification thereof.