

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 973

Pensions and Retirement/Insurance/State Personnel Committee Substitute Adopted 6/14/95

Short Title: Workers' Compensation Rating Law.

(Public)

Sponsors: Appropriations

Referred to:

May 3, 1995

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 36.

"NORTH CAROLINA RATE BUREAU.

"PART 1. RATE BUREAU MEMBERSHIP.

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

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

- (1) To assume the functions formerly performed by the North Carolina Fire Insurance Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in

1 connection with the sale of such property insurance; for theft of and
2 physical damage to private passenger (nonfleet) motor vehicles as the
3 same are defined under Article 40 of this Chapter; for liability insurance
4 for such motor vehicles, automobile medical payments insurance,
5 uninsured motorists coverage and other insurance coverages written in
6 connection with the sale of such liability insurance; and ~~for workers'~~
7 ~~compensation and employers' liability insurance written in connection~~
8 ~~therewith except for insurance excluded from the Bureau's jurisdiction in G.S.~~
9 ~~58-36-1(3).~~ to perform the duties required under Part 3 of this Article.

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

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

1 (4) Agreements may be made between or among members with respect to
2 equitable apportionment among them of insurance which may be
3 afforded applicants who are in good faith entitled to but who are unable
4 to procure such insurance through ordinary methods. The members may
5 agree between or among themselves on the use of reasonable rate
6 modifications for such insurance, agreements, and rate modifications to
7 be subject to the approval of the Commissioner.

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

40 b. ~~Upon notice of cancellation or the decision to decline to write or~~
41 ~~renew a policy of workers' compensation insurance for an~~
42 ~~employer, the carrier or its agents shall supply the employer with~~
43 ~~a form, supplied by the Bureau, by which the employer may~~

1 request the Bureau to list the employer and pertinent information
2 about it among a compendium of such information on employers
3 refused voluntary coverage, which shall be made available by the
4 Bureau to all insurers and self-insureds' administrators doing
5 business in this State. It shall be stored and indexed to allow
6 access to information by industry, primary classifications of
7 employees, geography, experience modification, and in any other
8 manner the Bureau determines is commercially useful to
9 facilitate voluntary coverage of listed employers.

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

17 ~~(6)~~(5) The Bureau shall maintain and furnish to the
18 Commissioner on an annual basis the statistics on earnings
19 derived by member companies from the investment of
20 unearned premium, loss, and loss expense reserves on nonfleet
21 private passenger motor vehicle insurance policies written in
22 this State. Whenever the Bureau proposes rates under Part 2 of
23 this Article, it shall prepare a separate exhibit for the
24 experience years in question showing the combined earnings
25 realized from the investment of such reserves on policies
26 written in this State. The amount of earnings may in an
27 equitable manner be included in the ratemaking formula to
28 arrive at a fair and equitable rate. The Commissioner may
29 require further information as to such earnings and may require
30 calculations of the Bureau bearing on such earnings.

31 ~~(7)~~(6) Member companies shall furnish, upon request of any person carrying
32 nonfleet private passenger motor vehicle insurance in the State upon
33 whose risk a rate has been promulgated, information as to rating,
34 including the method of calculation.

35 **"§ 58-36-5. Membership as a prerequisite for writing insurance; governing**
36 **committee; rules and regulations; expenses.**

37 (a) Before the Commissioner shall grant permission to any stock, nonstock, or
38 reciprocal insurance company or any other insurance organization to write in this State
39 insurance against loss to residential real property with not more than four housing units
40 located in this State or any contents thereof or valuable interest therein or other insurance
41 coverages written in connection with the sale of such property insurance; or insurance
42 against theft of or physical damage to private passenger (nonfleet) motor vehicles; or
43 liability insurance for such motor vehicles, automobile medical payments insurance,

1 uninsured motorists coverage or other insurance coverage written in connection with the
2 sale of such liability insurance; or workers' compensation and employers' liability
3 insurance written in connection therewith; except for insurance excluded from the Bureau's
4 jurisdiction in G.S. 58-36-1(3); under G.S. 58-36-100; it shall be a requisite that they shall
5 subscribe to and become members of the Bureau.

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

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

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

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

36 **"§ 58-36-9. Applicability.**

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

1 coverage, and other insurance coverages written in connection with the sale of such
2 liability insurance.

3 **"§ 58-36-10. Method of rate making; factors considered.**

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

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

1 shall at least once every three years make a complete review of the filed
2 classification rates to determine whether they are proper and supported
3 by statistical evidence, and shall at least once every 10 years make a
4 complete review of the territories for nonfleet private passenger motor
5 vehicle insurance to determine whether they are proper and reasonable.

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

11 **"§ 58-36-15. Filing rates, plans with Commissioner; public inspection of filings.**

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

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

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

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

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

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

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

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

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

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

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

- 33 (1) North Carolina earned premiums at the actual and current rate level;
- 34 losses and loss adjustment expenses, each on paid and incurred bases
- 35 without trending or other modification for the experience period,
- 36 including the loss ratio anticipated at the time the rates were
- 37 promulgated for the experience period;
- 38 (2) Credibility factor development and application;
- 39 (3) Loss development factor derivation and application on both paid and
- 40 incurred bases and in both numbers and dollars of claims;
- 41 (4) Trending factor development and application;
- 42 (5) Changes in premium base resulting from rating exposure trends;
- 43 (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 Part 2 of this Article, he may issue his order determining wherein and to what extent such
11 filing is deemed to be improper and fixing a date thereafter, within a reasonable time,
12 after which such filing shall no longer be effective. Any order of disapproval under this
13 section must be entered within 105 days of the date the filing is received by the
14 Commissioner: ~~Provided that any order of disapproval under this section with respect to workers'~~
15 ~~compensation insurance and employers' liability insurance written in connection therewith shall~~
16 ~~be entered within 150 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 Court,~~
40 ~~the Commissioner shall order the escrowed funds to be distributed appropriately, except that~~
41 ~~individual refunds that are five dollars (\$5.00) or less shall not be required. The court may also~~
42 ~~require that purportedly excess premiums resulting from an adjustment of premiums ordered~~
43 ~~pursuant to G.S. 58-36-20(b) be placed in such escrow account pending judicial review. If~~

1 ~~refunds made to policyholders are ordered under this subsection, the amounts refunded shall bear~~
2 ~~interest at the rate determined under this subsection. That rate shall be the average of the prime~~
3 ~~rates of the four largest banking institutions domiciled in this State, plus three percent (3%), as of~~
4 ~~the effective date of the filing, to be computed by the Commissioner. — Upon a final~~
5 ~~determination by the court, the Commissioner shall order the escrowed funds to be~~
6 ~~distributed appropriately. If it is appropriate to order refunds to policyholders, the~~
7 ~~Commissioner shall order that the members of the Bureau refund the difference between~~
8 ~~the total premium per policy using the premium levels finally determined and the total~~
9 ~~premium per policy collected during the interim period pending judicial review, except~~
10 ~~that refund amounts that are five dollars (\$5.00) or less per policy shall not be required.~~
11 ~~The court may also require that purportedly excess premiums resulting from an~~
12 ~~adjustment of premiums ordered pursuant to G.S. 58-36-20(b) be placed in such escrow~~
13 ~~account pending judicial review. If refunds made to policyholders are ordered under this~~
14 ~~subsection, the amounts refunded shall bear interest at the rate determined under this~~
15 ~~subsection. That rate, to be computed by the Bureau, shall be the average of the prime~~
16 ~~rates on the effective date of the filing and each anniversary of that date occurring prior to~~
17 ~~the date of the Commissioner's order requiring refunds, with the prime rate on each of the~~
18 ~~dates being the average of the prime rates of the four largest banking institutions~~
19 ~~domiciled in this State as of that date, plus three percent (3%).~~

20 **"§ 58-36-30. Deviations.**

21 (a) No insurer, officer, agent or representative thereof shall knowingly issue or
22 deliver or knowingly permit the issuance or delivery of any policy of insurance in this
23 State which does not conform to the rates, rating plans, classifications, schedules, rules
24 and standards made and filed by the Bureau. However, an insurer may deviate under this
25 Part from the rates promulgated by the Bureau provided the insurer has filed the deviation
26 to be applied both with the Bureau and the Commissioner, and provided the said
27 deviation is uniform in its application to all risks in the State of the class to which such
28 deviation is to apply; and provided such deviation is approved by the Commissioner. The
29 Commissioner shall approve proposed deviations if the same do not render the rates
30 excessive, inadequate or unfairly discriminatory. If approved, the deviation may
31 thereafter be amended, subject to the provisions of this subsection. The deviation may be
32 terminated only if the deviation will have been in effect for a period of six months before
33 the effective date of the termination and the insurer notifies the Commissioner of the
34 termination no later than 15 days before the effective date of the termination.

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

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

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

6 **"§ 58-36-35. Appeal to Commissioner from decision of Bureau.**

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

13 No later than 20 days before each hearing, the appellant shall file with the
14 Commissioner or his designated hearing officer and shall serve on the appellee a written
15 statement of his case and any evidence he intends to offer at the hearing. No later than
16 five days before such hearing, the appellee shall file with the Commissioner or his
17 designated hearing officer and shall serve on the appellant a written statement of his case
18 and any evidence he intends to offer at the hearing. Each such hearing shall be recorded
19 and transcribed. The cost of such recording and transcribing shall be borne equally by
20 the appellant and appellee; provided that upon any final adjudication the prevailing party
21 shall be reimbursed for his share of such costs by the other party. Each party shall, on a
22 date determined by the Commissioner or his designated hearing officer, but not sooner
23 than 15 days after delivery of the completed transcript to the party, submit to the
24 Commissioner or his designated hearing officer and serve on the other party, a proposed
25 order. The Commissioner or his designated hearing officer shall then issue an order.

26 **"§ 58-36-40. Existing rates, rating systems, territories, classifications and policy
27 forms.**

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

31 **"§ 58-36-45. Notice of coverage or rate change.**

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

38 **"§ 58-36-50. Limitation.**

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

43 **"§ 58-36-55. Policy forms.**

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

5 **"§ 58-36-60. Payment of dividends not prohibited or regulated; plan for payment**
6 **into rating system.**

7 Nothing in this ~~Article~~ Part will be construed to prohibit or regulate the payment of
8 dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to
9 their policyholders, members, or subscribers. ~~Individual policyholder loss experience may~~
10 ~~be considered as a factor in determining dividends for workers' compensation insurance and~~
11 ~~employers' liability insurance written in connection therewith.~~—A plan for the payment of
12 dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to
13 their policyholders, members, or subscribers will not be deemed a rating plan or system.

14 **"§ 58-36-65. Classifications and Safe Driver Incentive Plan for nonfleet private**
15 **passenger motor vehicle insurance.**

16 (a) The Bureau shall file, subject to review, modification, and promulgation by the
17 Commissioner, such rate classifications, schedules, or rules that the Commissioner deems
18 to be desirable and equitable to classify drivers of nonfleet private passenger motor
19 vehicles for insurance purposes. Subsequently, the Commissioner may require the Bureau
20 to file modifications of the classifications, schedules, or rules. If the Bureau does not file
21 the modifications within a reasonable time, the Commissioner may promulgate the
22 modifications. In promulgating or modifying these classifications, schedules, or rules, the
23 Commissioner may give consideration to the following:

- 24 (1) Uses of vehicles, including without limitation to farm use, pleasure use,
25 driving to and from work, and business use;
- 26 (2) Principal and occasional operation of vehicles;
- 27 (3) Years of driving experience of insureds as licensed drivers;
- 28 (4) The characteristics of vehicles; or
- 29 (5) Any other factors, not in conflict with any law, deemed by the
30 Commissioner to be appropriate.

31 (b) The Bureau shall file, subject to review, modification, and promulgation by the
32 Commissioner, a Safe Driver Incentive Plan ('Plan') that adequately and factually
33 distinguishes among various classes of drivers that have safe driving records and various
34 classes of drivers that have a record of at-fault accidents; a record of convictions of major
35 moving traffic violations; a record of convictions of minor moving traffic violations; or a
36 combination thereof; and that provides for premium differentials among those classes of
37 drivers. Subsequently, the Commissioner may require the Bureau to file modifications of
38 the Plan. If the Bureau does not file the modifications within a reasonable time, the
39 Commissioner may promulgate the modifications. The Commissioner is authorized to
40 structure the Plan to provide for surcharges above and discounts below the rate otherwise
41 charged.

42 (c) The classifications and Plan filed by the Bureau shall be subject to the filing,
43 hearing, modification, approval, disapproval, review, and appeal procedures provided by

1 law; provided that the 105-day disapproval period in G.S. 58-36-20(a) and the 50-day
2 deemer period in G.S. 58-36-20(b) do not apply to filings or modifications made under
3 this section. The classifications or Plan filed by the Bureau and promulgated by the
4 Commissioner shall of itself not be designed to bring about any increase or decrease in
5 the overall rate level.

6 (d) Whenever any policy loses any safe driver discount provided by the Plan or is
7 surcharged due to an accumulation of points under the Plan, the insurer shall, pursuant to
8 rules adopted by the Commissioner, prior to or simultaneously with the billing for
9 additional premium, inform the named insured of the surcharge or loss of discount by
10 mailing to such insured a notice that states the basis for the surcharge or loss of discount,
11 and that advises that upon receipt of a written request from the named insured it will
12 promptly mail to the named insured a statement of the amount of increased premium
13 attributable to the surcharge or loss of discount. The statement of the basis of the
14 surcharge or loss of discount is privileged, and does not constitute grounds for any cause
15 of action for defamation or invasion of privacy against the insurer or its representatives,
16 or against any person who furnishes to the insurer the information upon which the
17 insurer's reasons are based, unless the statement or furnishing of information is made
18 with malice or in bad faith.

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

23 (f) The Bureau is authorized to establish reasonable rules providing for the
24 exchange of information among its member companies as to chargeable accidents and
25 similar information involving persons to be insured under policies. Neither the Bureau,
26 any employee of the Bureau, nor any company or individual serving on any committee of
27 the Bureau has any liability for defamation or invasion of privacy to any person arising
28 out of the adoption, implementation, or enforcement of any such rule. No insurer or
29 individual requesting, furnishing, or otherwise using any information that such insurer or
30 person reasonably believes to be for purposes authorized by this section has any liability
31 for defamation or invasion of privacy to any person on account of any such requesting,
32 furnishing, or use. The immunity provided by this subsection does not apply to any acts
33 made with malice or in bad faith.

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

- 39 (1) Cancel or refuse to renew the policy;
- 40 (2) Surcharge the policy in accordance with rules to be adopted by the
41 Bureau and approved by the Commissioner; or

1 (3) Recover from the applicant the appropriate amount of premium or
2 surcharge that would have been collected by the insurer had the
3 applicant furnished the correct information.

4 (h) If an insured disputes his insurer's determination that the operator of an insured
5 vehicle was at fault in an accident, such dispute shall be resolved pursuant to G.S. 58-36-
6 1(2), unless there has been an adjudication or admission of negligence of such operator.

7 (i) As used in this section, 'conviction' means a conviction as defined in G.S. 20-
8 279.1 and means an infraction as defined in G.S. 14-3.1.

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

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

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

16 (m) Notwithstanding any other provision of law, with respect to motorcycle
17 insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for
18 and use in this State, subject to the Commissioner's approval, a downward deviation in
19 the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety
20 Instruction Program.

21 **"§ 58-36-70. Rate filings and hearings for motor vehicle insurance.**

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

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

41 (c) Once begun, hearings must proceed without undue delay. At the hearing the
42 burden of proving that the proposed rates are not excessive, inadequate, or unfairly
43 discriminatory is on the Bureau. The Commissioner may disregard at the hearing any

1 exhibits, judgments, or conclusions offered as evidence by the Bureau that were
2 developed by or available to or could reasonably have been obtained or developed by the
3 Bureau at or before the time the Bureau made its proper filing and which exhibits,
4 judgments, or conclusions were not included and supported in the filing; unless the
5 evidence is offered in response to inquiries made at the hearing by the Department, the
6 notice of hearing, or as rebuttal to the Department's evidence. If relevant data becomes
7 available after the filing has been properly made, the Commissioner may consider such
8 data as evidence in the hearing. The order of presenting evidence shall be (1) by the
9 Bureau; (2) by the Department; (3) any rebuttal evidence by the Bureau regarding the
10 Department's evidence; and (4) any rebuttal evidence by the Department regarding the
11 Bureau's rebuttal evidence. Neither the Bureau nor the Department shall present
12 repetitious testimony or evidence relating to the same issues.

13 (d) If the Commissioner finds that a filing complies with the provisions of this
14 ~~Article, Part~~, either after the hearing or at any other time after the filing has been properly
15 made, he may issue an order approving the filing. If the Commissioner after the hearing
16 finds that the filing does not comply with the provisions of this ~~Article, Part~~, he may issue
17 an order disapproving the filing, determining in what respect the filing is improper, and
18 specifying the appropriate rate level or levels that may be used by the members of the
19 Bureau instead of the rate level or levels proposed by the Bureau filing, unless there has
20 not been data admitted into evidence in the hearing that is sufficiently credible for
21 arriving at the appropriate rate level or levels. Any order issued after a hearing shall be
22 issued within 45 days after the completion of the hearing. If no order is issued within 45
23 days after the completion of the hearing, the filing shall be deemed to be approved. The
24 Commissioner may thereafter review any filing in the manner provided; but if so
25 reviewed, no adjustment of any premium on any policy then in force may be ordered.
26 The escrow provisions of G.S. 58-36-25(b) apply to any order of the Commissioner under
27 this subsection.

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

34 **"§ 58-36-75. At-fault accidents and certain moving traffic violations under the Safe**
35 **Driver Incentive Plan.**

36 (a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may
37 provide for separate surcharges for major, intermediate, and minor accidents. A 'major
38 accident' is an at-fault accident that results in either (i) bodily injury or death or (ii) only
39 property damage of two thousand dollars (\$2,000) or more. An 'intermediate accident' is
40 an at-fault accident that results in only property damage of more than one thousand
41 dollars (\$1,000) but less than two thousand dollars (\$2,000). A 'minor accident' is an at-
42 fault accident that results in only property damage of one thousand dollars (\$1,000) or

1 less. The subclassification plan may also exempt certain minor accidents from the
2 Facility recoupment surcharge.

3 (a1) The subclassification plan shall provide that there shall be no premium
4 surcharge, increase in premium on account of cession to the Reinsurance Facility, or
5 assessment of points against an insured where: (i) the insured is involved and is at fault
6 in a 'minor accident,' as defined in subsection (a) of this section; (ii) the insured is not
7 convicted of a moving traffic violation in connection with the accident; (iii) neither the
8 vehicle owner, principal operator, nor any licensed operator in the owner's household has
9 a driving record consisting of one or more convictions for a moving traffic violation or
10 one or more at-fault accidents during the three-year period immediately preceding the
11 date of the application for a policy or the date of the preparation of the renewal of a
12 policy; and (iv) the insured has been covered by liability insurance with the same
13 company or company group continuously for at least the six months immediately
14 preceding the accident. Notwithstanding (iv) of this subsection, if the insured has been
15 covered by liability insurance with the same company or company group for at least six
16 continuous months, some or all of which were after the accident, the insurance company
17 shall remove any premium surcharge or assessment of points against the insured if
18 requirements (i), (ii), and (iii) of this subsection are met. Also notwithstanding (iv) of
19 this subsection, an insurance company may choose not to assess a premium surcharge or
20 points against an insured who has been covered by liability insurance with that company
21 or with the company's group for less than six months immediately preceding the accident,
22 if requirements (i), (ii), and (iii) are met.

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

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

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

<font=26>

General Statute

Description of Offense

20-12.1

Being impaired while accompanying a permittee who is learning to drive

20-28

Driving while license is suspended or revoked

20-138.1

Driving a vehicle while impaired

20-138.2

Driving a commercial vehicle while impaired

20-138.3

Driving by provisional licensee after consuming alcohol or drugs

20-140(a)

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

20-140(b)

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

20-141(a)

Only driving at least 11 miles per hour over the posted speed limit

20-141(j)

Driving in excess of 55 mph and at least 15 mph over legal limit, while fleeing or attempting to elude arrest by a law enforcement officer

20-141(j1)

Driving more than 15 mph over legal limit

20-141.1

Speeding in a school zone

20-141.3(a)

Engaging in prearranged speed competition with another motor vehicle

20-141.3(b)

Willfully engaging in speed competition with another motor vehicle (not prearranged)

20-141.3(c)

Allowing or authorizing others to use one's motor vehicle in prearranged speed competition or placing or receiving a bet or wager on a prearranged speed competition

20-141.4(a1)

Death by vehicle (unintentionally causing death of another while engaged in impaired driving)

20-141.4(a2)

Death by vehicle (unintentionally causing death of another as a result of a violation of motor vehicle law intended to regulate traffic or used to control operation of a vehicle)

20-166(a)

Failure to stop by driver who knew or should have known he was involved in accident and that accident caused death or injury to any person

20-166(c)

Failure of driver involved in accident causing property damage or personal injury or death (if

1		driver did not know of injury or death) to stop at
2		scene of accident
3	20-175.2	Failure to yield right-of-way to blind person at
4		crossings, intersections, and traffic control signal
5		points
6	20-217	Failure to stop and remain stopped when
7		approaching a stopped school bus engaged in
8		receiving or discharging passengers and while
9		bus has mechanical stop signal displayed
10	14-18	Voluntary manslaughter
11	14-18	Involuntary manslaughter

12 <font=16>

13 (d) There shall be no Facility recoupment surcharge under G.S. 58-37-40(f) or
 14 Safe Driver Incentive Plan surcharges under G.S. 58-36-65 for accidents occurring when
 15 only operating a firefighting, rescue squad, or law enforcement vehicle in response to an
 16 emergency if the operator of the vehicle at the time of the accident was a paid or
 17 volunteer member of any fire department, rescue squad, or any law enforcement agency.
 18 This exception does not include an accident occurring after the vehicle ceases to be used
 19 in response to the emergency and the emergency ceases to exist.

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

28 (f) The subclassification plan shall provide that with respect to a conviction for a
 29 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no
 30 premium surcharge nor any assessment of points unless there is a driving record
 31 consisting of a conviction or convictions for a moving traffic violation or violations,
 32 except for a prayer for judgment continued for any moving traffic violation, during the
 33 three years immediately preceding the date of application or the preparation of the
 34 renewal. The subclassification plan shall also provide that with respect to a prayer for
 35 judgment continued for any moving traffic violation, there shall be no premium surcharge
 36 nor any assessment of points unless the vehicle owner, principal operator, or any licensed
 37 operator in the owner's household has a driving record consisting of a prayer or prayers
 38 for judgment continued for any moving traffic violation or violations during the three
 39 years immediately preceding the date of application or the preparation of the renewal.
 40 For the purpose of this subsection, a 'prayer for judgment continued' means a
 41 determination of guilt by a jury or a court though no sentence has been imposed. For the
 42 purpose of this subsection, a 'violation of speeding 10 miles per hour or less over the

1 speed limit' does not include the offense of speeding in a school zone in excess of the
2 posted school zone speed limit.

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

7 (g) As used in this section 'conviction' means a conviction as defined in G.S. 20-
8 279.1 and means an infraction as defined in G.S. 14-3.1.

9 **"§ 58-36-80. Coverage for damage to rental vehicles authorized.**

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

17 **"§ 58-36-85. Termination of a nonfleet private passenger motor vehicle insurance
18 policy.**

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

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

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

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

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

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

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

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

1 (c) Contents of Notice. – The form of a written termination notice used by an
2 insurer must be approved by the Commissioner before it is used. A written termination
3 notice must state the reason for the termination and the date the termination is effective.
4 If the policy is terminated for nonpayment of the premium, the effective date may be 15
5 days from the date the notice is mailed. If the policy is terminated for any other reason,
6 the effective date must be at least 60 days after the notice is mailed. A written termination
7 notice must include or be accompanied by a statement that advises the insured of the
8 penalty for driving a vehicle without complying with Article 13 of Chapter 20 of the
9 General Statutes and that the insured has the right to request the Department to review the
10 termination.

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

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

- 19 (1) Approval of the termination, if it finds the termination complies with the
20 law.
- 21 (2) Renewal or reinstatement of the policy, if it finds the termination does
22 not comply with the law.
- 23 (3) Renewal or reinstatement of the policy and payment by the insurer of
24 the costs of the Department's review, not to exceed one thousand dollars
25 (\$1,000), if it finds the termination does not comply with the law and
26 the insurer willfully violated this section.

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

32 (f) Delegation. – The Commissioner shall designate an employee or a deputy to
33 conduct the departmental review of a termination. The Commissioner may designate a
34 deputy to conduct a contested case hearing concerning a termination. The Commissioner
35 may not designate a deputy who conducted the departmental review of a termination to
36 conduct a contested case hearing concerning the same termination.

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

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

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

"PART 3. WORKERS' COMPENSATION LOSS COSTS AND RATES.**"§ 58-36-100. Applicability.**

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

"§ 58-36-105. Definitions.

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

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

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

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

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

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

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

(h) 'Market' means the statewide interaction between buyers and sellers of the line of workers' compensation insurance under this Part.

(i) 'Prospective loss costs' means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based, projected through development to their ultimate value and through trending to a future point in time, and adjusted to give due consideration to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in Chapter 97 of the General Statutes, as ascertained by accepted actuarial standards. Prospective loss costs do not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

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

(k) 'Rate' or 'rates' shall mean rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with an insurance policy under this

1 Part prior to application of individual risk variations based on loss or expense
2 considerations. 'Rate' or 'rates' do not include minimum premiums.

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

5 (m) 'Supplementary rate information' means any manual or plan of rates, statistical
6 plan, classification system, minimum premium, policy fee, rating rule, rate-related
7 underwriting rule, and any other information needed to determine the applicable premium
8 for an individual insured and not otherwise inconsistent with the purposes of this Part.

9 (n) 'Supporting information' means the experience and judgment of the filer and
10 the experience or data of other insurers or advisory organizations relied on by the filer,
11 the interpretation of any statistical data relied on by the filer, descriptions of methods
12 used in making the rates and any other similar information required to be filed by the
13 Commissioner.

14 (o) 'Party in interest' means an insurer, insured, and the North Carolina Rate
15 Bureau.

16 **"§ 58-36-110. Competitive market for workers' compensation and employers'**
17 **liability; hearing.**

18 (a) A competitive market for workers' compensation and employers' liability
19 insurance is presumed to exist unless the Commissioner, after a hearing, issues an order
20 finding that a reasonable degree of competition for workers' compensation and
21 employers' liability insurance does not exist in the State as a whole. The order shall
22 expire no later than one year after issuance.

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

25 a. The number of insurers actively engaged in this State in
26 providing workers' compensation and employers' liability
27 coverage.

28 b. Market shares and changes in market shares.

29 c. Ease of entry.

30 d. Market concentration in the State as measured by the Herfindahl-
31 Hirschman Index.

32 e. Generally accepted and relevant tests relating to competitive
33 market structure, market performance, and market conduct.

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

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

40 **"§ 58-36-115. Rate-making standards.**

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

42 (1) A rate is not excessive in a competitive market. A rate is not excessive
43 in a noncompetitive market unless it is likely to produce a long-run

1 profit that is unreasonably high in relation to the benefits provided and
2 services rendered.

3 (2) A rate is not inadequate unless:

- 4 a. It is unreasonably low, it is clearly insufficient to sustain
5 projected losses and expenses, and the use or continued use of
6 the rate by the insurer has had or, if continued, will have the
7 effect of creating a monopoly in the market; or
8 b. Funds less than the full, ultimate cost of anticipated losses and
9 loss adjustment expenses are not produced when prospective loss
10 costs are applied to anticipated payrolls.

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

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

- 18 (1) Past and prospective loss experience within and outside this State, in
19 accordance with accepted actuarial standards.
20 (2) Catastrophe hazards and contingencies.
21 (3) Past and prospective expenses, within and outside North Carolina.
22 (4) To dividends, savings, or unabsorbed premium deposits allowed or
23 returned by insurers to their policyholders, members, or subscribers.
24 (5) A reasonable margin for underwriting profit.
25 (6) All other relevant facts within and outside North Carolina.

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

29 (d) The rate may contain provisions for contingencies and an allowance permitting
30 a reasonable profit. In determining the reasonableness of a profit, consideration shall be
31 given to all investment income attributable to unearned premium and loss and loss
32 expense reserves.

33 **"§ 58-36-120. Review by Commissioner.**

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

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

37 Individual policyholder loss experience may be considered as a factor in determining
38 dividends for workers' compensation insurance and employers' liability insurance written
39 in connection therewith. The North Carolina Rate Bureau shall not adopt any rule that
40 prohibits or regulates the payment of dividends, savings, or unabsorbed premium deposits
41 allowed or returned by insurers to their policyholders, members, or subscribers. A plan
42 for the payment of dividends, savings, or unabsorbed premium deposits allowed or
43 returned by insurers to their policyholders is not a rating plan or system. It is an unfair

1 trade practice to condition the payment of a dividend or any portion thereof upon renewal
2 of a policy.

3 **"§ 58-36-130. Classification, experience rating, and policy forms.**

4 (a) The North Carolina Rate Bureau shall gather, compile, and report relevant
5 statistical information to the Commissioner. Every insurer shall report its loss and
6 expense experience to the Bureau as set forth in the uniform statistical plan submitted by
7 the Bureau to and approved by the Commissioner.

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

12 (c) Each insurer shall adhere to the uniform classification system and uniform
13 experience rating plan approved under subsection (b) of this section. An insurer shall
14 adhere to the policy forms filed by the North Carolina Rate Bureau for residual market
15 policies.

16 **"§ 58-36-135. Interchange of rating plan data; consultation; cooperative action in**
17 **rate making.**

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

20 (b) The provisions of G.S. 58-40-50, 58-40-55, 58-40-60, 58-40-65, 58-40-70, 58-
21 40-80, and 58-40-90 apply to this Part.

22 **"§ 58-36-140. Filings.**

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

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

28 (2) Each workers' compensation policy form to be used by its members for
29 residual market policy.

30 (3) The uniform classification plan and rules.

31 (4) The uniform experience rating plan and rules.

32 (5) Any other information that the Commissioner requests and is otherwise
33 entitled to receive under this Article.

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

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

41 (d) The North Carolina Rate Bureau shall not file rates or supporting information
42 on behalf of an insurer.

1 (e) An insurer may file with the Commissioner and use its own form for voluntary
2 market policies.

3 **"§ 58-36-145. Effective dates of rates.**

4 (a) Each filing shall become effective on the date specified in the filing, provided
5 that the effective date may not be earlier than 30 days after the date the filing is received
6 by the Commissioner or the date of receipt of the supporting information required by the
7 Commissioner.

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

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

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

18 (e) Notwithstanding the provisions of this Part, if each rate in a schedule of rates
19 for specific classifications of risks filed by an insurer is not lower than the prospective
20 loss costs contained in the schedule for those classifications filed by the North Carolina
21 Rate Bureau under this Part and approved by the Commissioner, then the schedule of
22 rates filed by the insurer becomes effective upon filing for the purposes of G.S. 58-36-
23 140.

24 **"§ 58-36-150. Improper rates; hearing.**

25 (a) If the Commissioner finds that a rate is not in compliance with G.S. 58-36-115,
26 or that a rate has been set in violation of G.S. 58-36-180, the Commissioner shall order
27 that its use be discontinued for any policy issued or renewed after the date of the order
28 and the order may provide for prospective premium adjustment of any such policy then in
29 force. The order shall be issued within 30 days after the close of hearing, if one is
30 required by the insurer, or within a reasonable time as fixed by the Commissioner. The
31 order shall expire one year after its effective date unless rescinded earlier by the
32 Commissioner.

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

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

40 (d) Whenever an insurer has no legally effective rates pursuant to subsection (a) of
41 this section, the Commissioner shall, on the insurer's request, specify interim rates for the
42 insurer that are adequate to protect the interests of all parties. When new rates become
43 legally effective, the Commissioner shall order the reserved funds or any overcharge in

1 the interim rates to be distributed appropriately, except that minimal adjustments may not
2 be required if the new approved rate is higher than the interim rate, and the insurer shall
3 collect the difference from the policyholder.

4 **"§ 58-36-155. Delay of rates in noncompetitive market.**

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

7 (1) After finding that the market is not competitive, under G.S. 58-36-110,
8 the Commissioner may adopt a rule requiring that any subsequent
9 changes in rates be filed with the Commissioner at least 30 days before
10 they become effective.

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

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

18 (4) The filing shall be approved or disapproved during the waiting period
19 and, if not disapproved before the expiration of the waiting period, shall
20 be deemed to meet the requirements of this section.

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

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

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

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

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

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

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

39 **"§ 58-36-160. Challenge and review of application of rating system.**

40 (a) The North Carolina Rate Bureau and each insurer subject to this Part which
41 makes its own rates shall provide within this State reasonable means whereby any person
42 aggrieved by the application of a rating system may, upon written request, be heard in

1 person or by the person's authorized representative to review the application of the rating
2 system to the person's insurance.

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

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

13 **"§ 58-36-165. Consent to rate.**

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

17 **"§ 58-36-170. Acts reducing competition prohibited.**

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

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

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

27 (2) Agree with any other insurer or the North Carolina Rate Bureau to
28 charge or adhere to any rate or rating plan other than the uniform
29 experience rating plan or rating rule except as needed to comply with
30 the requirements of G.S. 58-36-130.

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

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

38 (c) The fact that two or more insurers use consistently or intermittently the same
39 rules, rating plans, rating schedules, rating rules, policy forms, rate classifications,
40 underwriting rules, surveys, inspections, or similar materials is not sufficient in itself to
41 support a finding that an agreement exists.

1 (d) The North Carolina Rate Bureau and any member thereof may not interfere
2 with the right of an insurer to make its rates independently of the North Carolina Rate
3 Bureau.

4 (e) Except as required by G.S. 58-36-130 and G.S. 58-36-180, the North Carolina
5 Rate Bureau may not adopt any rule or exact any agreement or formulate or engage in
6 any program (i) requiring any member or other insurer to utilize some or all of its
7 services or adhere to its rates, rating plan, rating systems, or underwriting rules, or (ii)
8 prohibiting any member or other insurer from acting independently.

9 **"§ 58-36-175. Permitted activity.**

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

12 (1) Develop statistical plans including class definitions;

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

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

19 (4) Prepare and distribute manuals of rating schedules on other than
20 residual market rates;

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

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

25 (7) Prepare and file policy forms and endorsements and consult with
26 members and others relative to their use and application;

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

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

31 (10) Prepare and distribute rules and rating values for the uniform experience
32 rating plan; and

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

34 (b) The Bureau shall provide to the Department of Labor information from the
35 Bureau's records indicating each employer's experience rate modifier and the name and
36 business address of each employer whose workers' compensation coverage is provided
37 through a residual market mechanism established under G.S. 58-36-180. Information
38 provided to the Department of Labor with respect to experience rate modifiers shall
39 include the name of the employer and the employer's most current intrastate or interstate
40 experience rate modifier. The information provided to the Department under this section
41 shall be confidential and not open for public inspection. The Bureau shall be immune
42 from civil liability for erroneous information released by the Bureau pursuant to this

1 section, provided that the Bureau acted in good faith and without malicious or willful
2 intent to harm in releasing the erroneous information.

3 **"§ 58-36-180. Residual market mechanisms.**

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

28 The Bureau shall maintain a compendium of employers refused voluntary coverage,
29 which shall be made available by the Bureau to all insurers, licensed agents, and self-
30 insureds' administrators doing business in this State. It shall be stored and indexed to
31 allow access to information by industry, primary classifications of employees, geography,
32 experience modification, and in any other manner the Bureau determines is commercially
33 useful to facilitate voluntary coverage of listed employers. The Bureau shall be immune
34 from civil liability for erroneous information released by the Bureau pursuant to this
35 section, provided that the Bureau acted in good faith and without malicious or willful
36 intent to harm in releasing the erroneous information. Rates for the residual market shall
37 be filed by the North Carolina Rate Bureau and shall be set at levels to self-fund the
38 residual market, to provide adequate premiums to pay loss and expenses, establish
39 appropriate reserves, and to provide a reasonable margin for underwriting profit and for
40 contingencies.

41 (b) The North Carolina Rate Bureau shall adopt, subject to the approval of the
42 Commissioner, retrospective rating plans for any employers insured through the residual
43 market.

1 (c) The Commissioner shall disapprove any filing that does not meet the
2 requirements of G.S. 58-36-115. A filing shall be deemed to meet such requirements
3 unless disapproved by the Commissioner within 30 days after the filing is made. In
4 reviewing a filing made pursuant to this section, the Commissioner shall have the same
5 authority and follow the same procedures described in G.S. 58-36-150, 58-36-155, and
6 58-36-160. The North Carolina Rate Bureau shall make and file the plan of operation,
7 rates, rating plans, rules, and policy forms under this section.

8 **"§ 58-36-185. Appeals from Commissioner.**

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

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

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

16 **"§ 58-2-52. Appeals and rate-making hearings before the Commissioner.**

17 (a) The Commissioner may adopt rules for the hearing of appeals by the
18 Commissioner or the Commissioner's designated hearing officer under G.S. 58-36-35,
19 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-
20 92. These rules may provide for prefiled evidence and testimony of the parties,
21 prehearing statements and conferences, settlement conferences, discovery, subpoenas,
22 sanctions, motions, intervention, consolidation of cases, continuances, rights and
23 responsibilities of parties, witnesses, and evidence.

24 (b) Notwithstanding G.S. 150B-38(h), hearing procedures for rate filings made by
25 the North Carolina Rate Bureau shall be governed by the provisions of Part 2 of Article
26 36 of this Chapter and G.S. 150B-39 through G.S. 150B-41. The Commissioner may
27 adopt rules for those hearings.

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

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

31 "(l) The classifications, rules, rates, rating plans and policy forms used on motor
32 vehicle insurance policies reinsured by the Facility may be made by the Facility or by any
33 licensed or statutory rating organization or bureau on its behalf and shall be filed with the
34 Commissioner. The Board of Governors shall establish a separate subclassification
35 within the Facility for 'clean risks' as herein defined. For the purpose of this Article, a
36 'clean risk' shall be any owner of a nonfleet private passenger motor vehicle as defined in
37 G.S. 58-40-10, if the owner, principal operator, and each licensed operator in the owner's
38 household have two years' driving experience as licensed drivers and if none of the
39 persons has been assigned any Safe Driver Incentive Plan points under Part 2 of Article
40 36 of this Chapter during the three-year period immediately preceding either (i) the date
41 of application for a motor vehicle insurance policy or (ii) the date of preparation of a
42 renewal of a motor vehicle insurance policy. Such filings may incorporate by reference
43 any other material on file with the Commissioner. Rates shall be neither excessive,

1 inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a
2 rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order
3 specifying in what respect it is deficient and stating when, within a reasonable period
4 thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial
5 review as set out in Article 2 of this Chapter. Pending judicial review of said order, the
6 filed classification plan and the filed rates may be used, charged and collected in the same
7 manner as set out in G.S. 58-40-45 of this Chapter. Said order shall not affect any
8 contract or policy made or issued prior to the expiration of the period set forth in the
9 order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as
10 is possible, to produce neither a profit nor a loss. However, the rates made by or on
11 behalf of the Facility with respect to 'clean risks', as defined above, shall not exceed the
12 rates charged 'clean risks' who are not reinsured in the Facility. The difference between
13 the actual rate charged and the actuarially sound and self-supporting rates for 'clean risks'
14 reinsured in the Facility may be recouped in similar manner as assessments pursuant to
15 G.S. 58-37-40(f) or allocated pursuant to G.S. 58-37-75. Rates shall not include any
16 factor for underwriting profit on Facility business, but shall provide an allowance for
17 contingencies. There shall be a strong presumption that the rates and premiums for the
18 business of the Facility are neither unreasonable nor excessive."

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

20 **"§ 58-38-35. Application to policies; dates; duties of the Commissioner.**

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

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

30 (2) To all policies of life insurance as described in Article 58 of this
31 Chapter, to all benefit certificates issued by fraternal orders and
32 societies as described in Articles 24 and 25 of this Chapter, to all
33 policies of accident and health insurance as described in Articles 50
34 through 55 of this Chapter, to all subscribers' contracts of hospital,
35 medical, and dental service corporations as described in Articles 65 and
36 66 of this Chapter, and to all health maintenance organization evidences
37 of coverage as described in Article 67 of this Chapter, that are made,
38 issued, amended, or renewed after July 1, 1983.

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

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

41 "(a) Except as otherwise provided, this Article applies to all kinds of insurance
42 authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all
43 insurance companies licensed by the Commissioner to write those kinds of insurance.

1 This Article does not apply to insurance written under Articles 21, ~~36~~, 37, 45 or 46 of this
2 Chapter; insurance written under Article 36 of this Chapter, except as provided in G.S.
3 58-36-100; insurance written for residential risks in conjunction with insurance written
4 under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to
5 personal inland marine insurance; to aviation insurance; to policies issued in this State
6 covering risks with multistate locations, except with respect to coverages applicable to
7 locations within this State; to any town or county farmers mutual fire insurance
8 association restricting its operations to not more than six adjacent counties in this State;
9 nor to domestic insurance companies, associations, orders, or fraternal benefit societies
10 doing business in this State on the assessment plan."

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

12 **"§ 58-44-25. Optional provisions as to loss or damage from nuclear reaction, nuclear**
13 **radiation or radioactive contamination.**

14 Insurers issuing the standard fire insurance policy pursuant to G.S. 58-44-15, or any
15 permissible variation thereof, and policies issued pursuant to G.S. 58-44-20 and Part 2 of
16 Article 36 of this Chapter, are hereby authorized to affix thereto or include therein a
17 written statement that the policy does not cover loss or damage caused by nuclear
18 reaction or nuclear radiation or radioactive contamination, all whether directly or
19 indirectly resulting from an insured peril under said policy; provided, however, that
20 nothing herein contained shall be construed to prohibit the attachment to any such policy
21 of an endorsement or endorsements specifically assuming coverage for loss or damage
22 caused by nuclear reaction or nuclear radiation or radioactive contamination."

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

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

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

35 "(c) The Commissioner may designate the kinds of property insurance policies on
36 principal residences to be offered by the association, including insurance policies under
37 Part 2 of Article 36 of this Chapter, and the commission rates to be paid to agents or
38 brokers for these policies, if he finds, after a hearing held in accordance with G.S. 58-2-
39 50, that the public interest requires the designation. The provisions of Chapter 150B do
40 not apply to any procedure under this subsection, except that G.S. 150B-39 and G.S.
41 150B-41 shall apply to a hearing under this subsection. Within 30 days after the receipt of
42 notification from the Commissioner of a change in designation pursuant to this

1 subsection, the association shall submit a revised plan and articles of association for
2 approval in accordance with subsection (b) of this section."

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

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

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

12 "(8) 'Rural Fire Department' means, for the purpose of Articles 4A or 14 of
13 this Chapter, a bona fide department which, as determined by the
14 Commissioner of Insurance, is classified as not less than class '9' in
15 accordance with rating methods, schedules, classifications, underwriting
16 rules, bylaws or regulations effective or applied with respect to the
17 establishment of rates or premiums used or charged pursuant to Part 2 of
18 Article 36 or Article 40 of Chapter 58 of the General Statutes, and
19 which operates fire apparatus and equipment of the value of five
20 thousand dollars (\$5,000) or more; but it does not include a municipal
21 fire department."

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

23 **"§ 95-250. Definitions.**

24 The following definitions shall apply in this Article:

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

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

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

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

40 Sec. 13. This act becomes effective July 1, 1995, provided that an insurer may
41 continue using approved rates filed by the North Carolina Rate Bureau and approved
42 deviations until the insurer makes its own filing to change its rates, either by making an

- 1 independent filing or by filing and adopting the Rate Bureau's approved prospective loss
- 2 costs, or modification thereof.