

1 that tend to bring about monopoly or to lessen or destroy competition;
2 and

3 (5) To encourage the most efficient and economic marketing practices."

4 **SECTION 3.** G.S. 58-40-5 reads as rewritten:

5 **"§ 58-40-5. Definitions.**

6 As used in this Article:

7 (1) ~~"Advisory organization" means every person, other than an admitted~~
8 ~~insurer, whether located within or outside this State, who prepares~~
9 ~~policy forms or makes underwriting rules incident to but not including~~
10 ~~the making of rates, or rating plans or rating systems, or which collects~~
11 ~~and furnishes to admitted insurers or rating organizations loss or~~
12 ~~expense statistics or other statistical information and data and acts in~~
13 ~~an advisory, as distinguished from a rate-making, capacity. No duly~~
14 ~~authorized attorney at law acting in the usual course of his profession~~
15 ~~shall be deemed to be an advisory organization.~~

16 (2) Repealed by Session Laws 1991, c. 720, s. 6.

17 (3) "Inland marine insurance" shall be deemed to include insurance now
18 or hereafter defined by statute, or by interpretation thereof, or if not so
19 defined or interpreted, by ruling of the Commissioner or as established
20 by general custom of the business, as inland marine insurance.

21 (4) "Member," unless otherwise apparent from the context, means an
22 insurer who participates in or is entitled to participate in the
23 management of a rating, advisory or other statistical organization.

24 (5) ~~"Rating organization" means every person, other than an admitted~~
25 ~~insurer, whether located within or outside this State, who has as his~~
26 ~~object or purpose the making of rates, rating plans, or rating systems.~~
27 ~~Two or more insurers which act in concert for the purpose of making~~
28 ~~rates, rating plans, or rating systems, and which do not operate within~~
29 ~~the specific authorizations contained in G.S. 58 40 60, 58 40 65,~~
30 ~~58 40 70 and 58 40 75, shall be deemed to be a rating organization.~~
31 ~~No single insurer shall be deemed to be a rating organization.~~

32 (5a) "Statistical organization" means every person, other than an admitted
33 insurer, whether located within or outside this State, who performs one
34 or more of the following functions:

35 a. Prepares policy forms or makes underwriting rules incident to,
36 but not including, the marking of rates, or rating plans or rating
37 systems.

38 b. Collects and furnishes to admitted insurers or statistical
39 organizations loss or expense statistics or other statistical
40 information and data and acts in an advisory rather than a
41 rate-making capacity. No duly authorized attorney-at-law acting
42 in the usual course of his profession shall be deemed to be an
43 advisory organization.

- 1 c. Makes rates, rating plans, or rating systems or develops loss
2 costs. Two or more insurers that act in concert for the purpose
3 of making rates, rating plans, or rating systems or developing
4 loss costs and that do not operate within the specific
5 authorizations contained in G.S. 58-40-60, 58-40-65, 58-40-70,
6 and 58-40-75 shall be deemed to be a statistical organization.
7 d. Collects data and statistics from insurers and provides reports
8 from these statistics to the Commissioner for the purpose of
9 fulfilling the statistical reporting obligations of those insurers.

10 (5b) "Statistical plan" means the document used by a statistical organization
11 to set forth which data elements are to be reported to the statistical
12 organization and to describe the format in which the data must be
13 reported.

14 (6) "Subscriber," unless otherwise apparent from the context, means an
15 insurer which is furnished at its request (i) with rates and rating
16 manuals by a ~~rating~~-statistical organization of which it is not a
17 member, or (ii) with advisory services by ~~an advisory~~-a statistical
18 organization of which it is not a member.

19 (7) "Willful" means in relation to an act or omission which constitutes a
20 violation of this Article with actual knowledge or belief that such act
21 or omission constitutes such violation and with specific intent to
22 commit such violation.

23 (8), (9) Repealed by Session Laws 1987, c. 864, s. 66."

24 **SECTION 4.** G.S. 58-40-30(a) reads as rewritten:

25 "(a) With the exception of inland marine insurance that is not written according to
26 manual rates and rating plans, every admitted insurer and every licensed ~~rating~~
27 statistical organization, which has been designated by any insurer for the filing of rates
28 under G.S. 58-40-40, shall file with the Commissioner all rates and all changes and
29 amendments thereto made by it for use in this State prior to the time they become
30 effective."

31 **SECTION 5.** G.S. 58-40-40 reads as rewritten:

32 "**§ 58-40-40. Delegation of rate making and rate filing obligation.**

33 (a) An insurer may itself establish rates based on the factors in G.S. 58-40-25 or
34 it may use rates prepared by a ~~rating~~-statistical organization, with average expense
35 factors determined by the ~~rating~~-statistical organization or with such modification for
36 its own expense and loss experience as the credibility of that experience allows.

37 (b) An insurer may discharge its obligation under G.S. 58-40-30 by giving notice
38 to the Commissioner that it uses rates prepared by a designated ~~rating~~-statistical
39 organization, with such information about modifications thereof as are necessary to
40 fully inform the Commissioner. The insurer's rates shall be those filed from time to time
41 by the ~~rating~~-statistical organization, including any amendments thereto as filed, subject,
42 however, to the modifications filed by the insurer."

43 **SECTION 6.** G.S. 58-40-45(c) reads as rewritten:

1 "(c) No person shall willfully withhold information required by this Article from
2 or knowingly furnish false or misleading information to the Commissioner, any
3 statistical ~~agency-organization~~ designated by the Commissioner, ~~any rating or advisory~~
4 ~~organization~~, or any insurer, which information will affect the rates, rating plans, loss
5 costs, classifications, or policy forms subject to this Article."

6 **SECTION 7.** G.S. 58-40-50 reads as rewritten:

7 "**§ 58-40-50. Rating-Statistical organizations.**

8 (a) No ~~rating-organization~~ shall ~~provide any service relating to rates subject to~~
9 ~~this Article~~ conduct its operations in this State, and no insurer shall utilize the service of
10 such organization for ~~such~~ any purpose enumerated in G.S. 58-40-5 unless the
11 organization has obtained a license from the Commissioner.

12 (b) No ~~rating-statistical~~ organization shall refuse to supply any services for which
13 it is licensed in this State to any insurer admitted to do business in this State and
14 offering to pay the fair and usual compensation for the services.

15 (c) A ~~rating-statistical~~ organization applying for a license shall include with its
16 application:

17 (1) A copy of its constitution, charter, articles of organization, agreement,
18 association, or incorporation, and a copy of its bylaws, plan of
19 operation, and any other rules or regulations governing the conduct of
20 its ~~business;~~business, all duly certified by the custodian of the originals
21 thereof.

22 (2) A list of its members and subscribers;

23 (3) The name and address of one or more residents of this State upon
24 whom notices, process affecting it, or orders of the Commissioner may
25 be served;

26 (4) A statement showing its technical qualifications for acting in the
27 capacity for which it seeks a license; and

28 (5) Any other relevant information and documents that the Commissioner
29 may require.

30 (d) If the Commissioner ~~finds~~ determines that the applicant and the natural
31 persons through whom it acts are qualified to provide the services proposed, and that all
32 requirements of law are met, he shall issue a license specifying the authorized activity
33 of the applicant. He shall not issue a license if the proposed activity would tend to create
34 a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this
35 section shall remain in effect until the licensee withdraws from the State or until the
36 license is suspended or revoked.

37 (e) Any change in or amendment to any document required to be filed under this
38 section shall be promptly filed with the Commissioner.

39 ~~(f) Every rating organization providing services in this State on September 1,~~
40 ~~1977, may continue to provide services thereafter as a rating organization, subject to the~~
41 ~~provisions of this Article and pending its application to the Commissioner for a license~~
42 ~~to provide services as a rating organization, which application shall be made within 30~~
43 ~~days after September 1, 1977.~~

1 (g) Every statistical organization shall file a statistical plan with the
2 Commissioner for approval for each line of insurance for which the organization
3 requests to be licensed. The Commissioner may, in the Commissioner's discretion,
4 modify the plan to collect additional types of data.

5 (h) No statistical organization shall engage in any unfair or unreasonable practice
6 with respect to its activities."

7 **SECTION 8.** G.S. 58-40-55 is repealed.

8 **SECTION 9.** G.S. 58-40-65 reads as rewritten:

9 **"§ 58-40-65. Insurers authorized to act in concert.**

10 Subject to and in compliance with the provisions of Articles 1 through 64 of this
11 Chapter authorizing insurers to be members or subscribers of ~~rating or advisory~~
12 ~~organizations—~~statistical organizations or to engage in joint underwriting or joint
13 reinsurance, two or more insurers may act in concert with each other and with others
14 with respect to any matters pertaining to the making of rates or rating systems, the
15 preparation or making of insurance policy or bond forms, underwriting rules, surveys,
16 inspections and investigations, the furnishing of loss or expense statistics or other
17 information and data, the creation, administration, or termination of a market assistance
18 program, or carrying on of research."

19 **SECTION 10.** G.S. 58-40-75 reads as rewritten:

20 **"§ 58-40-75. Agreements to adhere.**

21 No insurer shall assume any obligation to any person, other than a policyholder or
22 other insurers with which it is under common control or management or is a member of
23 a market assistance program or of a joint underwriting or joint reinsurance organization,
24 to use or adhere to certain rates or rules; and no other person shall impose any penalty
25 or other adverse consequence for failure of an insurer to adhere to certain rates or rules.
26 This section does not apply to mandatory or voluntary risk sharing plans established
27 under Article 42 of this Chapter or apportionment agreements among insurers approved
28 by the Commissioner pursuant to G.S. 58-40-95. Provided, however, that members and
29 subscribers of ~~rating or advisory—~~statistical organizations may use the rates, rating
30 systems, underwriting rules, or policy or bond forms of such organizations either
31 consistently or intermittently. The fact that two or more admitted insurers, whether or
32 not members or subscribers of a ~~rating or advisory—~~statistical organization, consistently
33 or intermittently use the rates or rating systems made or adopted by a ~~rating—~~statistical
34 organization, or the underwriting rules or policy or bond forms prepared by a ~~rating or~~
35 ~~advisory—~~statistical organization, shall not be sufficient in itself to support a finding that
36 an agreement to so adhere exists, and it may be used only for the purpose of
37 supplementing or explaining direct evidence of the existence of any such agreement."

38 **SECTION 11.** G.S. 58-40-80 reads as rewritten:

39 **"§ 58-40-80. Exchange of information or experience data; consultation with ~~rating~~**
40 **statistical organizations and insurers.**

41 ~~Rating—~~Statistical organizations licensed pursuant to G.S. 58-40-50 and admitted
42 insurers are authorized to exchange information and experience data between and
43 among themselves in this State and with ~~rating—~~statistical organizations and insurers in

1 other states and may consult with them with respect to rate making and the application
2 of rating systems."

3 **SECTION 12.** G.S. 58-40-85 reads as rewritten:

4 **"§ 58-40-85. Recording and reporting of experience.**

5 The Commissioner shall promulgate or approve reasonable rules, including rules
6 providing statistical plans, for use thereafter by all insurers in the recording and
7 reporting of loss and expense experience, in order that the experience of such insurers
8 may be made available to him. ~~No insurer shall be required to record or report its~~
9 ~~experience on a classification basis inconsistent with its own rating system.~~ The
10 Commissioner may designate one or more rating-statistical organizations to assist him in
11 gathering and making compilations of such experience. All insurers, for lines of
12 insurance that require data to be reported, shall report their data to one of these
13 designated statistical organizations."

14 **SECTION 13.** G.S. 58-40-90 reads as rewritten:

15 **"§ 58-40-90. Examination of rating, joint underwriting, and joint reinsurance**
16 **organizations.**

17 The Commissioner shall, at least once every three years, make or cause to be made
18 an examination of each rating-statistical organization licensed pursuant to ~~G.S. 58-40-50~~
19 ~~and each advisory organization licensed pursuant to G.S. 58-40-55.~~ G.S. 58-40-50. The
20 Commissioner may, as often as deemed expedient, make or cause to be made, an
21 examination of each group, association, or other organization referred to in
22 G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to
23 this Article and to the organizations licensed under this Article. The officers, manager,
24 agents and employees of any such organization may be examined at any time under oath
25 and shall exhibit all books, records, accounts, documents or agreements governing its
26 method of operation. In lieu of any such examination, the Commissioner may accept the
27 report of an examination made by the insurance advisory official of another state,
28 pursuant to the laws of that state."

29 **SECTION 14.** G.S. 58-40-100 reads as rewritten:

30 **"§ 58-40-100. Request for review of rate, rating plan, rating system or**
31 **underwriting rule.**

32 (a) Any person aggrieved by any rate charged, rating plan, rating system, or
33 underwriting rule followed or adopted by an insurer or rating-statistical organization
34 may request the insurer or rating organization to review the manner in which the rate,
35 plan, system, or rule has been applied with respect to insurance afforded him. Such
36 request may be made by his authorized representative, and shall be in writing. If the
37 request is not granted within 30 days after it is made, the requestor may treat it as
38 rejected. Any person aggrieved by the action of an insurer or rating-statistical
39 organization in refusing the review requested or in failing or refusing to grant all or part
40 of the relief requested, may file a written complaint and request for hearing with the
41 Commissioner, and shall specify the grounds relied upon. If the Commissioner has
42 information concerning a similar complaint he may deny the hearing. If the
43 Commissioner believes that probable cause for the complaint does not exist or that the
44 complaint is not made in good faith, he shall deny the hearing. If the Commissioner

1 finds that the complaint charges a violation of this Article and that the complainant
2 would be aggrieved if the violation is proven, he shall proceed as provided in
3 G.S. 58-2-50 or 58-2-70.

4 (b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1027, s. 15."

5 **SECTION 15.** G.S. 58-40-110 reads as rewritten:

6 "**§ 58-40-110. Suspension of license.**

7 (a) Repealed by Session Laws 1985, c. 666, s. 36.

8 (b) ~~The Subject to the requirements of this Article and of G.S. 58-2-70, the~~
9 Commissioner may suspend or revoke the license of any ~~rating-statistical~~ organization
10 or insurer ~~that~~ or impose a monetary penalty against any statistical organization or
11 insurer where (i) the Commissioner has reason to believe that any statistical
12 organization or insurer has violated any provision of this Chapter, or (ii) the statistical
13 agent fails to comply with an order of the Commissioner within the time limited by such
14 order, or within any extension thereof that the Commissioner may grant. The
15 Commissioner shall not suspend the license of any ~~rating- statistical~~ organization or
16 insurer for failure to comply with an order until the time prescribed for an appeal there
17 from has expired or, if an appeal has been taken, until ~~such-the~~ order has been affirmed.
18 The Commissioner may determine when a suspension of a license shall become
19 effective, and ~~such-the~~ suspension shall remain in effect for the period fixed by him
20 unless he modifies or rescinds ~~such-the~~ suspension, or until the order upon which ~~such~~
21 the suspension is based is modified, rescinded, or reversed.

22 (c) No license shall be suspended or revoked, and no monetary penalty shall be
23 imposed except upon a written order of the Commissioner stating his findings, made
24 after a hearing held upon not less than 10 days' written notice to ~~such-the~~ person or
25 organization, and specifying the alleged violation."

26 **SECTION 16.** G.S. 58-40-130 reads as rewritten:

27 "**§ 58-40-130. Financial disclosure; rate modifications; reporting requirements.**

28 (a) The Commissioner may require each insurer subject to this Article to report,
29 on a form prescribed by the Commissioner, its loss and expense experience, investment
30 income, administrative expenses, and other data that he may require, for kinds of
31 insurance or classes of risks that he designates. These reports are in addition to financial
32 or other statements required by Articles 1 through 64 of this Chapter.

33 (b) The Commissioner may designate one or more ~~rating organizations or~~
34 ~~advisory-statistical~~ organizations to gather and compile the experience and data referred
35 to in subsection (a) of this section for their member companies.

36 (c) Whereas the provisions enacted by the General Assembly in 1986 regarding
37 modifications in North Carolina civil law may have a prospective effect upon the loss
38 experience of insurers subject to this Article, the Commissioner is authorized to review
39 each company's rates by type of insurance that are in effect on and after January 1,
40 1987, and, when and where appropriate, require modification of ~~such-those~~ rates.

41 (d) Each insurer subject to this Article shall record the experience and data
42 referred to in subsection (a) of this ~~section arising from causes of action arising against~~
43 ~~its insureds on and after January 1, 1987, section.~~ Such experience and data shall be
44 reported to the Commissioner by ~~March 31, 1988, which report shall be on a form~~

1 prescribed by the Commissioner ~~reflecting such experience and data for the one year~~
2 ~~period beginning on January 1, 1987. Subsequently, such experience and data shall be~~
3 ~~reported to the Commissioner~~ by March 31 of each year for each one-year period ending
4 on December 31 of the previous year.

5 (e) On or before July 1, 1988, and annually thereafter, the Commissioner shall
6 report to the General Assembly the effects, if any, of changes in North Carolina civil
7 law statutes on the experience of insurers subject to this section."

8 **SECTION 17.** G.S. 143B-472.96(b) reads as rewritten:

9 "(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set
10 by the Authority under this section. The Authority may also use the forms and rates of
11 rating or advisory organizations licensed under ~~G.S. 58-40-50 or G.S. 58-40-55.~~
12 G.S. 58-40-50. The Authority may vary from these rates in order to broaden
13 participation by small businesses that are unable to obtain adequate financing and
14 bonding assistance in connection with contracts. The premiums set and forms developed
15 by the Authority under this section must be approved by the Commissioner of Insurance
16 before they may be used."

17 **SECTION 18.** Article 36 of Chapter 58 of the General Statutes is amended
18 by adding a new section to read:

19 **"§ 58-36.4. Statistical organizations; licensing; recording and reporting;**
20 **examination; suspension of license; financial disclosure.**

21 (a) For purposes of this Article:

22 (1) "Statistical organization" means every person, other than an admitted
23 insurer, whether located within or outside this State, who performs
24 one or more of the following functions:

25 a. Prepares policy forms or makes underwriting rules incident
26 to, but not including, the marking of rates, rating plans, or
27 rating systems.

28 b. Collects and furnishes to admitted insurers or statistical
29 organizations loss or expense statistics or other statistical
30 information and data and acts in an advisory rather than a
31 rate-making capacity. No duly authorized attorney-at-law
32 acting in the usual course of that person's profession shall be
33 deemed to be an advisory organization.

34 c. Makes rates, rating plans, or rating systems or develops loss
35 costs. Two or more insurers that act in concert for the
36 purpose of making rates, rating plans, or rating systems or
37 developing loss costs and that do not operate within the
38 specific authorizations contained in this Article shall be
39 deemed to be a statistical organization.

40 d. Collects data and statistics from insurers and provides
41 reports from these statistics to the Commissioner for the
42 purpose of fulfilling the statistical reporting obligations of
43 those insurers.

44

1 (2) "Statistical plan" means the document used by a statistical
2 organization to set forth which data elements are to be reported to the
3 statistical organization and to describe the format in which the data
4 must be reported.

5 (b) No organization shall conduct its operations in this State and no insurer shall
6 utilize the service of that organization for any purpose enumerated in this Article unless
7 the organization has obtained a license from the Commissioner. No statistical
8 organization shall refuse to supply any services for which it is licensed in this State to
9 any insurer admitted to do business in this State and offering to pay the fair and usual
10 compensation for the services. A statistical organization applying for a license shall
11 include with its application:

12 (1) A copy of its constitution, charter, articles of organization, agreement,
13 association, or incorporation, and a copy of its bylaws, plan of
14 operation, and any other rules or regulations governing the conduct of
15 its business, all duly certified by the custodian of the originals thereof;

16 (2) A list of its members and subscribers;

17 (3) The name and address of one or more residents of this State upon
18 whom notices, process affecting it, or orders of the Commissioner may
19 be served;

20 (4) A statement showing its technical qualifications for acting in the
21 capacity for which it seeks a license; and

22 (5) Any other relevant information and documents that the Commissioner
23 may require.

24 If the Commissioner determines that the applicant and the natural persons through
25 whom it acts are qualified to provide the services proposed, and that all requirements of
26 law are met, the Commissioner shall issue a license specifying the authorized activity of
27 the applicant. The Commissioner shall not issue a license if the proposed activity would
28 tend to create a monopoly or to lessen or to destroy price competition. Licenses issued
29 pursuant to this section shall remain in effect until the licensee withdraws from the State
30 or until the license is suspended or revoked. Any change in or amendment to any
31 document required to be filed under this section shall be promptly filed with the
32 Commissioner. Every statistical organization shall file a statistical plan with the
33 Commissioner for approval for each line of insurance for which the organization
34 requests to be licensed. The Commissioner may, in the Commissioner's discretion,
35 modify the plan to collect additional types of data. No statistical organization shall
36 engage in any unfair or unreasonable practice with respect to its activities.

37 (c) Statistical organizations licensed pursuant to subsection (b) of this section and
38 admitted insurers are authorized to exchange information and experience data between
39 and among themselves in this State and with statistical organizations and insurers in
40 other states and may consult with them with respect to rate making and the application
41 of rating systems.

42 (d) The Commissioner shall adopt or approve reasonable rules, including rules
43 providing statistical plans, for use thereafter by all insurers in the recording and
44 reporting of loss and expense experience, in order that the experience of those insurers

1 may be made available to him. The Commissioner may designate one or more
2 statistical organizations to assist him in gathering and making compilations of the
3 experience. All insurers, for lines of insurance that require data to be reported, shall
4 report their data to one of the designated statistical organizations.

5 (e) The Commissioner shall, at least once every three years, make or cause to be
6 made an examination of each statistical organization licensed pursuant to subsection (b)
7 of this section. This examination shall relate only to the activities conducted pursuant to
8 this Article and to the organizations licensed under this Article. The officers, manager,
9 agents, and employees of any statistical organization may be examined at any time
10 under oath and shall exhibit all books, records, accounts, documents, or agreements
11 governing its method of operation. In lieu of any examination, the Commissioner may
12 accept the report of an examination made by the insurance advisory official of another
13 state, pursuant to the laws of that state.

14 (f) Subject to the requirements of this Article and of G.S. 58-2-70, the
15 Commissioner may suspend or revoke the license of any statistical organization or
16 impose a monetary penalty against any statistical organization where (i) the
17 Commissioner has reason to believe that any statistical organization has violated any
18 provision of this Chapter, or (ii) the statistical agent fails to comply with an order of the
19 Commissioner within the time limited by the order, or within any extension thereof that
20 the Commissioner may grant. The Commissioner shall not suspend the license of any
21 statistical organization for failure to comply with an order until the time prescribed for
22 an appeal from the order has expired or, if an appeal has been taken, until the order has
23 been affirmed. The Commissioner may determine when a suspension of a license shall
24 become effective, and the suspension shall remain in effect for the period fixed by the
25 Commissioner unless the Commissioner modifies or rescinds the suspension, or until
26 the order upon which the suspension is based is modified, rescinded, or reversed. No
27 license shall be suspended or revoked and no monetary penalty shall be imposed except
28 upon a written order of the Commissioner stating the Commissioner's findings, made
29 after a hearing held upon not less than 10 days' written notice to the person or
30 organization, and specifying the alleged violation.

31 (g) The Commissioner may require each insurer subject to this Article to report,
32 on a form prescribed by the Commissioner, its loss and expense experience, investment
33 income, administrative expenses, and other data that the Commissioner may require, for
34 kinds of insurance or classes of risks that the Commissioner designates. These reports
35 are in addition to financial or other statements required by Articles 1 through 64 of this
36 Chapter.

37 The Commissioner may designate one or more statistical organizations to gather and
38 compile the experience and data referred to in subsection (a) of this section for their
39 member companies.

40 Each insurer subject to this Article shall record the experience and data referred to in
41 subsection (a) of this section and shall report the experience and data to the
42 Commissioner on a form prescribed by the Commissioner by March 31 of each year for
43 each one-year period ending on December 31 of the previous year."

44 **SECTION 19.** This act becomes effective October 1, 2005.