

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 901

Short Title: Revise Auto Insurance Rate Filing Approval. (Public)

Sponsors: Senator Rand.

Referred to: Commerce, Small Business and Entrepreneurship.

March 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE AUTOMOBILE LIABILITY INSURANCE RATE
3 FILING REVIEW PROCESS TO INCLUDE THE USE OF A SPECIAL JUDGE
4 FOR RATE FILING CASES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 58-1-5 is amended by adding a new subdivision to read:

7 "**§ 58-1-5. Definitions.**

8 In this Chapter, unless the context clearly requires otherwise:

9 ...

10 (9g) "Special judge" means a judge appointed in accordance with
11 G.S. 58-36-15 or G.S. 58-36-20.

12"

13 **SECTION 2.** G.S. 58-2-50 reads as rewritten:

14 "**§ 58-2-50. Examinations, hearings, and investigations.**

15 All Except as otherwise provided in this Chapter, all examinations, hearings, and
16 investigations provided for by this Chapter may be conducted by the Commissioner
17 personally or by one or more deputies, investigators, actuaries, examiners or employees
18 designated for the purpose. If the Commissioner or any investigator appointed to
19 conduct the investigations is of the opinion that there is evidence to charge any person
20 or persons with a criminal violation of any provision of this Chapter, the Commissioner
21 may arrest with warrant or cause the person or persons to be arrested. All hearings shall,
22 unless otherwise specially provided, be held in accordance with this Article and Article
23 3A of Chapter 150B of the General Statutes and at a time and place designated in a
24 written notice given by the Commissioner to the person cited to appear. The notice shall
25 state the subject of inquiry and the specific charges, if any."

26 **SECTION 3.** G.S. 58-2-53 reads as rewritten:

27 "**§ 58-2-53. Filing approvals and disapprovals; clarification of law.**

28 Whenever Except as otherwise provided in this Chapter, whenever any provision of
29 this Chapter requires a person to file rates, forms, classification plans, rating plans,

1 plans of operation, the Safe Driver Incentive Plan, or any other item with the
2 Commissioner or Department for approval, the approval or disapproval of the filing is
3 an agency decision under Chapter 150B of the General Statutes only with respect to the
4 person making the filing or any person that intervenes in the filing."

5 **SECTION 4.** G.S. 58-2-80 reads as rewritten:

6 "**§ 58-2-80. Court review of rates and classification.**

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

18 **SECTION 5.** G.S. 58-2-85 reads as rewritten:

19 "**§ 58-2-85. Procedure on appeal under § 58-2-80.**

20 Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be
21 subject to the following provisions:

22 (1) No party to a proceeding before the Commissioner or special judge
23 may appeal from any final order or decision of the Commissioner or
24 special judge unless within 30 days after the entry of such final order
25 or decision, or within such time thereafter as may be fixed by the
26 Commissioner, by order made within 30 days, the party aggrieved by
27 such decision or order shall file with the Commissioner notice of
28 ~~appeal and exceptions which shall set forth specifically the ground or~~
29 ~~grounds on which the aggrieved party considers said decision or order~~
30 ~~to be unlawful, unjust, unreasonable or unwarranted, and including~~
31 ~~errors alleged to have been committed by the Commissioner.~~ appeal.

32 (2) Any party may appeal from all or any portion of any final order or
33 decision of the Commissioner or special judge in the manner herein
34 provided. Copy of the notice of appeal shall be mailed by the
35 appealing party at the time of filing with the Commissioner or special
36 judge, to each party to the proceeding to the addresses as they appear
37 in the files of the Commissioner in the proceeding. The failure of any
38 ~~party, other than the Commissioner,~~ party to be served with or to
39 receive a copy of the notice of appeal shall not affect the validity or
40 regularity of the appeal.

41 (3) ~~The Commissioner may on motion of any party to the proceeding or~~
42 ~~on its own motion set the exceptions to the final order upon which~~
43 ~~such appeal is based for further hearing before the Commissioner.~~

- 1 (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29.
 2 The procedure for the appeal shall be as provided by the rules of
 3 appellate procedure.
- 4 (5),(6) Repealed by Session Laws 1975, c. 391, s. 11.
- 5 (7) The Court of Appeals shall hear and determine all matters arising on
 6 such appeal, as in this Article provided, and may in the exercise of its
 7 discretion assign the hearing of said appeal to any panel of the Court of
 8 Appeals.
- 9 (8) Unless otherwise provided by the rules of appellate procedure, the
 10 cause on appeal from the Commissioner ~~of Insurance~~ or special judge
 11 shall be entitled "State of North Carolina ex rel. Commissioner of
 12 Insurance (here add any additional parties in support of the
 13 Commissioner's order and their capacity before the Commissioner).
 14 Appellee(s) v. (here insert name of appellant and his capacity before
 15 the Commissioner), Appellant." Appeals from the Insurance
 16 Commissioner pending in the superior courts on January 1, 1972, shall
 17 remain on the civil issue docket of such superior court and shall have
 18 priority over other civil actions. Appeals to the Court of Appeals under
 19 G.S. 7A-29 shall be docketed in accordance with the rules of appellate
 20 procedure.
- 21 (9) In any appeal to the Court of Appeals, the complainant in the original
 22 complaint before the Commissioner or special judge shall be a party to
 23 the record and each of the parties to the proceeding before the
 24 Commissioner or special judge shall have a right to appear and
 25 participate in said appeal.
- 26 (10) An appeal under this section shall operate as a stay of the
 27 Commissioner's or special judge's order or decision until said appeal
 28 has been dismissed or the questions raised by the appeal determined
 29 according to law."

30 **SECTION 6.** G.S. 58-2-90 reads as rewritten:

31 **"§ 58-2-90. Extent of review under § 58-2-80.**

32 (a) On appeal the court shall review the record and the exceptions and
 33 assignments of error in accordance with the rules of the Court of Appeals, and any
 34 alleged irregularities in procedures before the ~~Commissioner~~, Commissioner or special
 35 judge, not shown in the record, shall be considered under the rules of the Court of
 36 Appeals.

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

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

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

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

15 ~~(e) Upon any appeal, the rates fixed or any rule, regulation, finding,~~
16 ~~determination, or order made by the Commissioner under the provisions of Articles 1~~
17 ~~through 64 of this Chapter shall be prima facie correct."~~

18 **SECTION 7.** G.S. 58-36-15 reads as rewritten:

19 **"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of**
20 **filings.**

21 (a) The Bureau shall file with the Commissioner copies of the rates, loss costs,
22 classification plans, rating plans and rating systems used by its members. Each rate or
23 loss costs filing shall become effective on the date specified in the filing, but not earlier
24 than ~~210-90~~ days from the date the filing is received by the Commissioner. ~~Provided~~
25 ~~that (1) rate or loss costs filings for workers' compensation insurance and employers'~~
26 ~~liability insurance written in connection therewith shall not become effective earlier~~
27 ~~than 210 days from the date the filing is received by the Commissioner or on the date as~~
28 ~~provided in G.S. 58-36-100, whichever is earlier; and (2) Commissioner, provided that~~
29 any filing may become effective on a date earlier than that specified in this subsection
30 upon agreement between the Commissioner and the Bureau.

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

33 (c) The Bureau shall maintain reasonable records, of the type and kind
34 reasonably adapted to its method of operation, of the experience of its members and of
35 the data, statistics or information collected or used by it in connection with the rates,
36 rating plans, rating systems, loss costs and other data as specified in G.S. 58-36-100,
37 underwriting rules, policy or bond forms, surveys or inspections made or used by it.

38 ~~(d) With respect to the filing of rates for nonfleet private passenger motor vehicle~~
39 ~~insurance, the Bureau shall, on or before February 1 of each year, or later with the~~
40 ~~approval of the Commissioner, On or before February 1 of each year, or later with the~~
41 approval of the Commissioner, and at such other times as the Bureau deems such filings
42 to be necessary, the Bureau shall file with the Commissioner the experience, data,
43 statistics, and information referred to in subsection (c) of this section for nonfleet
44 private passenger motor vehicle insurance subject to the Bureau's jurisdiction and any

1 adjustments in the rates. On or before September 1 of each year, or later with the
2 approval of the Commissioner, and at such other times as the Bureau deems such filings
3 to be necessary, the Bureau shall file with the Commissioner the experience, data,
4 statistics, and information referred to in subsection (c) of this section for loss costs and
5 residual market rates for workers' compensation insurance and employers' liability
6 insurance written in connection therewith and any proposed adjustments in the rates for
7 all member companies of the Bureau or loss costs.

8 (d1) Any filing in which an adjustment in rates or loss costs is filed ~~The filing~~
9 ~~shall include, where deemed by the Commissioner to be necessary for proper review,~~
10 ~~the data specified in subsections (e), (e), (g) and (h) of this section. The Bureau shall file~~
11 ~~with and at the time of any such rate or loss costs filing testimony, exhibits, and other~~
12 ~~information explaining the adjustment in the rates and loss costs. Any filing that does not~~
13 ~~contain the data required by this subsection may be returned to the Bureau and not be~~
14 ~~deemed a proper filing. Provided, however, that if the Commissioner concludes that a~~
15 ~~filing does not constitute a proper filing he shall promptly notify the Bureau in writing~~
16 ~~to that effect, which notification shall state in reasonable detail the basis of the~~
17 ~~Commissioner's conclusion. The Bureau shall then have a reasonable time to remedy the~~
18 ~~defects so specified. An otherwise defective filing thus remedied shall be deemed to be~~
19 ~~a proper and timely filing, except that all periods of time specified in this Article will~~
20 ~~run from the date the Commissioner receives additional or amended documents~~
21 ~~necessary to remedy all material defects in the original filing.~~

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

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

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

39 ~~(f) On or before September 1 of each calendar year, or later with the approval of~~
40 ~~the Commissioner, the Bureau shall submit to the Commissioner the experience, data,~~
41 ~~statistics, and information referred to in subsection (e) of this section and required under~~
42 ~~G.S. 58-36-100 and a residual market rate or prospective loss costs review based on~~
43 ~~those data for workers' compensation insurance and employers' liability insurance~~
44 ~~written in connection therewith. Any rate or loss costs increase for that insurance that is~~

1 ~~implemented under this Article shall become effective solely to insurance with an~~
2 ~~inception date on or after the effective date of the rate or loss costs increase.~~

3 (g) The following information must be included in policy form, rule, and rate or
4 loss costs filings under this Article and under Article 37 of this Chapter:

- 5 (1) A detailed list of the rates, loss costs, rules, and policy forms filed,
6 accompanied by a list of those superseded; and
- 7 (2) A detailed description, properly referenced, of all changes in policy
8 forms, rules, prospective loss costs, and rates, including the effect of
9 each change.

10 (h) Except to the extent the Commissioner determines that this subsection is
11 inapplicable to filings made under G.S. 58-36-100 and except for filings made under
12 G.S. 58-36-30, all policy form, rule, prospective loss costs, and rate filings under this
13 Article and Article 37 of this Chapter that are based on statistical data must be
14 accompanied by the following properly identified information:

- 15 (1) North Carolina earned premiums at the actual and current rate level;
16 losses and loss adjustment expenses, each on paid and incurred bases
17 without trending or other modification for the experience period,
18 including the loss ratio anticipated at the time the rates were
19 promulgated for the experience period;
- 20 (2) Credibility factor development and application;
- 21 (3) Loss development factor derivation and application on both paid and
22 incurred bases and in both numbers and dollars of claims;
- 23 (4) Trending factor development and application;
- 24 (5) Changes in premium base resulting from rating exposure trends;
- 25 (6) Limiting factor development and application;
- 26 (7) Overhead expense development and application of commission and
27 brokerage, other acquisition expenses, general expenses, taxes,
28 licenses, and fees;
- 29 (8) Percent rate or prospective loss costs change;
- 30 (9) Final proposed rates;
- 31 (10) Investment earnings, consisting of investment income and realized
32 plus unrealized capital gains, from loss, loss expense, and unearned
33 premium reserves;
- 34 (11) Identification of applicable statistical plans and programs and a
35 certification of compliance with them;
- 36 (12) Investment earnings on capital and surplus;
- 37 (13) Level of capital and surplus needed to support premium writings
38 without endangering the solvency of member companies; and
- 39 (14) Such other information that may be required by any rule adopted by
40 the Commissioner.

41 Provided, however, that no filing may be returned or disapproved on the grounds that
42 such information has not been furnished if insurers have not been required to collect
43 such information pursuant to statistical plans or programs or to report such information
44 to the Bureau or to statistical agents, except where the Commissioner has given

1 reasonable prior notice to the insurers to begin collecting and reporting such
2 information, or except when the information is readily available to the insurers. If,
3 within 30 days following the date of any filing, the Commissioner concludes that a
4 filing does not constitute a proper filing because it does not contain the data required by
5 this subsection, the filing may be returned to the Bureau by the Commissioner with a
6 notification stating in detail the basis of the Commissioner's conclusion. The Bureau
7 shall then have 30 days to cure such defect or defects. If the Bureau disagrees with the
8 Commissioner's conclusion, the Bureau shall notify the Commissioner in writing, and
9 the Commissioner shall have 15 days from the date of the notification to request that the
10 Chief Justice of the Supreme Court, pursuant to the rules of practice and procedure as
11 authorized under G.S. 7A-34, appoint a special judge to hold hearings to determine
12 whether the filing constitutes a proper filing. The special judge so appointed shall also
13 conduct the hearing on the filing if a hearing is required. If the special judge determines
14 that the defect is material such that the filing does not constitute a proper filing, the
15 special judge shall order the Bureau to cure the defect or defects within 30 days from
16 the date of the special judge's order. An otherwise defective filing thus cured shall be
17 deemed to be a proper and timely filing, except that all periods of time specified in this
18 section shall run from the date the Commissioner receives the materials necessary to
19 remedy the material defects in the original filing.

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

30 **SECTION 8.** G.S. 58-36-20 reads as rewritten:

31 **"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.**

32 (a) ~~At any time within 50 days after the date of any filing, filing which includes~~
33 ~~an adjustment in rates or loss costs, or within 30 days following the Bureau's curing any~~
34 ~~defect or defects in the original filing as provided in G.S. 58-36-15(h), the~~
35 ~~Commissioner may give written notice of hearing to the Bureau specifying in what~~
36 ~~respect and to what extent the Commissioner contends the filing fails to comply with the~~
37 ~~requirements of this Article and fixing a date for hearing not less than 30 days from the~~
38 ~~date of mailing of such notice. At the hearing the factors specified in G.S. 58-36-10~~
39 ~~shall be considered. If the Commissioner after hearing finds that the filing does not~~
40 ~~comply with the provisions of this Article, he may issue his order determining wherein~~
41 ~~and to what extent such filing is deemed to be improper and fixing a date thereafter,~~
42 ~~within a reasonable time, after which the filing shall no longer be effective. Any order~~
43 ~~of disapproval under this section must be entered within 210 days after the date the~~
44 ~~filing is received by the Commissioner, and specifying the rates or loss costs the~~

1 Commissioner contends are appropriate and the method of calculation thereof.
2 Concurrent with the written notice, the Commissioner shall, unless a special judge has
3 been appointed pursuant to G.S. 58-36-15, request that the Chief Justice of the Supreme
4 Court, pursuant to the rules of practice and procedure as authorized by G.S. 7A-34,
5 designate a special judge to conduct a hearing to determine the issues raised by the
6 Commissioner's notice of hearing. If the Commissioner fails to comply with any of the
7 requirements of this section, the filing shall be deemed approved.

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

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

21 (d) Without limiting the special judge's authority and jurisdiction over the
22 conduct of the hearing, the special judge shall do all of the following:

23 (1) Set the date for a hearing on the issues raised in the Commissioner's
24 notice of hearing.

25 (2) Direct the parties to appear and confer to consider simplification of the
26 issues raised by the Commissioner in the Commissioner's notice of
27 hearing.

28 (3) Set a date for the filing of prefiled testimony, exhibits, and other
29 information upon which the Commissioner shall rely at the hearing on
30 the rate or loss cost filing, which date shall not be less than 60 days
31 prior to the date for the hearing.

32 (4) Establish a discovery schedule.

33 (5) Fix the time for filing briefs, proposals for decision, and other
34 documents as the special judge may require.

35 (f) Except as otherwise provided in this section, the provisions of G.S. 150B-27
36 through G.S. 150B-31 shall apply to all hearings. Unless otherwise agreed to by the
37 special judge and the parties, all hearings shall be conducted in the Superior Court of
38 Wake County.

39 (g) At the hearing, the factors specified in G.S. 58-36-10 that are relevant to the
40 issues raised in the notice of hearing shall be considered. The order of presentation of
41 evidence shall be as follows:

42 (1) By the Commissioner.

43 (2) Rebuttal by the Bureau.

1 (3) Additional evidence by the Commissioner regarding the Bureau's
2 rebuttal evidence.

3 (4) Additional evidence by the Bureau regarding the Commissioner's
4 rebuttal evidence.

5 (h) The Commissioner shall have the burden to prove, based on the issues
6 specifically raised in the Commissioner's notice of hearing, that the filing is excessive,
7 inadequate, or unfairly discriminatory. Following the hearing, the special judge shall
8 issue a final order which shall contain findings of fact and conclusions of law setting
9 forth the special judge's determination of the issues raised in the Commissioner's notice
10 of hearing. If the special judge finds and concludes, based on the issues raised in the
11 Commissioner's notice of hearing, that the rates or loss costs are excessive, inadequate,
12 or unfairly discriminatory, the special judge shall establish, where applicable to the
13 filing under review, the rates, loss costs, rating plans, and rating systems to become
14 effective in lieu of the filing at issue and fixing a date thereafter, within a reasonable
15 time, after which the filing shall no longer be effective. Nothing in the special judge's
16 order shall affect policies having an effective date prior to the effective date of the
17 special judge's order.

18 (i) If the Commissioner contends that the current rates or loss costs are
19 excessive, inadequate, or unfairly discriminatory, the Commissioner may issue a notice
20 of hearing to initiate hearings before a special judge in a manner provided for in this
21 section."

22 **SECTION 9.** G.S. 58-36-25 reads as rewritten:

23 "**§ 58-36-25. Appeal of ~~Commissioner's~~ special judge's order.**

24 (a) Any final order or decision of the ~~Commissioner~~ a special judge issued
25 pursuant to G.S. 58-36-20 may be appealed to the North Carolina Court of Appeals by
26 any party aggrieved by the order or decision and shall be subject to judicial review as
27 provided in Article 2 of this Chapter. The Bureau and the Commissioner shall be
28 deemed to be parties aggrieved.

29 (b) Whenever a Bureau rate or loss cost is held to be ~~unfairly discriminatory or~~
30 excessive and no longer effective by final order of the ~~Commissioner~~ a special judge
31 issued under G.S. 58-36-20, the members of the Bureau, in accordance with rules and
32 regulations established and adopted by the governing committee, shall have the option
33 to continue to use such rate for the interim period pending judicial review of such order,
34 provided each such member shall place in escrow account the purportedly unfairly
35 discriminatory or excessive portion of the premium collected during such interim
36 period. Upon a final determination by the Court, or upon a consent agreement or
37 consent order between the Bureau and the Commissioner, the ~~Commissioner~~ special
38 judge shall order the escrowed funds to be distributed appropriately. If refunds are to be
39 made to policyholders, the ~~Commissioner~~ special judge shall order that the members of
40 the Bureau refund the difference between the total premium per policy using the rate
41 levels finally determined and the total premium per policy collected during the interim
42 period pending judicial review, except that refund amounts that are five dollars (\$5.00)
43 or less per policy shall not be required. The ~~court~~ special judge may also require that
44 purportedly excess premiums resulting from an adjustment of premiums ordered

1 pursuant to ~~G.S. 58-36-20(b)~~G.S. 58-36-20(h) be placed in such escrow account
2 pending judicial review. If refunds made to policyholders are ordered under this
3 subsection, the amounts refunded shall bear interest at the rate determined under this
4 subsection. That rate, to be computed by the Bureau, shall be the average of the prime
5 rates on the effective date of the filing and each anniversary of that date occurring prior
6 to the date of the ~~Commissioner's special judge's~~ order requiring refunds, with the prime
7 rate on each of the dates being the average of the prime rates of the four largest banking
8 institutions domiciled in this State as of that date, ~~plus three percent (3%), date."~~

9 **SECTION 9.** Article 36 of Chapter 58 of the General Statutes is amended by
10 adding the following sections to read:

11 **"§ 58-36-26. Procedure on appeal.**

12 Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-36-25 shall be
13 subject to the following provisions:

- 14 (1) No party to a proceeding before a special judge may appeal from any
15 final order or decision of a special judge unless, within 30 days after
16 the entry of the final order or decision, the party aggrieved by the final
17 order shall file notice of appeal in Wake County Superior Court.
- 18 (2) Any party may appeal from all or any of a final order or decision of a
19 special judge in the manner provided in this section. A copy of a notice
20 of appeal shall be mailed or otherwise served by the appealing party at
21 the time of filing to each other party to the proceeding to the addresses
22 as they appear in the files of the special judge in the proceeding.
- 23 (3) The appeal shall lie to the Court of Appeals. The procedure for the
24 appeal shall be as provided by the rules of appellate procedure.
- 25 (4) An appeal under this section shall operate as a stay of the special
26 judge's order until the appeal has been dismissed or the questions
27 raised by the appeal have been determined according to law.

28 **"§ 58-36-27. Extent of review under G.S. 58-36-25(a).**

29 (a) On appeal, the Court shall review the record and any alleged irregularities in
30 procedures before the special judge under the Rules of the Court of Appeals.

31 (b) So far as necessary to the order and where presented, the Court shall decide
32 all relevant questions of law, interpret constitutional and statutory provisions, and
33 determine the meaning and applicability of the terms of any action of the special judge.
34 The Court may affirm or reverse the decision of the special judge, declare the decision
35 null and void, remand the case for further proceedings, or reverse or modify the order as
36 provided in this subsection. The decision may be reversed or modified by the Court if
37 the substantial rights of the appellants have been prejudiced because the special judge's
38 findings, inferences, conclusions, or order are any of the following:

- 39 (1) In violation of constitutional provisions.
- 40 (2) In excess of statutory authority or jurisdiction of the special judge.
- 41 (3) Made upon unlawful proceedings.
- 42 (4) Affected by other errors of law.
- 43 (5) Unsupported by material and substantial evidence in view of the entire
44 record as submitted.

1 (6) Arbitrary or capricious.

2 (c) In making determinations under subsection (b) of this section, the Court shall
3 review the whole record of such portions thereof as may be cited by any party and due
4 account shall be taken of the rule or prejudicial error. The Commissioner shall not be
5 permitted to rely upon any grounds for relief on appeal which were not set forth
6 specifically in the Commissioner's notice of hearing."

7 **SECTION 10.** G.S. 58-36-30(a) reads as rewritten:

8 "(a) Except as permitted by G.S. 58-36-100 for workers' compensation loss costs
9 filings, no insurer and no officer, agent, or representative of an insurer shall knowingly
10 issue or deliver or knowingly permit the issuance or delivery of any policy of insurance
11 in this State that does not conform to the rates, rating plans, classifications, schedules,
12 rules and standards made and filed by the Bureau. An insurer may ~~deviate~~ deviate,
13 upwards or downwards, from the rates promulgated by the Bureau otherwise effective
14 rates if the insurer has filed the proposed deviation with the Bureau and the
15 Commissioner, if the proposed deviation is based on sound actuarial principles, and if
16 the proposed deviation is approved by the Commissioner. Notwithstanding the
17 provisions of this section, insurers may file and use rates on coverages cedable to the
18 Reinsurance Facility up to the approved Reinsurance Facility rates, without prior
19 approval by the Commissioner. On filings by insurers for downward deviations, filings
20 may not be disapproved by the Commissioner unless the Commissioner finds that the
21 lower rate impairs the solvency of the insurer. The Commissioner shall have the burden
22 to prove that a downward deviation impairs the solvency of the insurer. Amendments to
23 deviations are subject to the same requirements as initial filings. An insurer may
24 terminate a deviation only if the deviation has been in effect for a period of six months
25 before the effective date of the ~~termination~~ termination, unless the effective rates are
26 changed during the period provided in this Article, and the insurer notifies the
27 Commissioner of the termination no later than 15 days before the effective date of the
28 termination."

29 **SECTION 11.** G.S. 58-36-70 is repealed.

30 **SECTION 12.** This act becomes effective October 1, 2007, and applies to
31 filings on or after that date.