

Article 36.

North Carolina Rate Bureau.

§ 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 connection with the sale of such property insurance; except as provided in G.S. 58-36-3(a)(6), for theft of and physical damage to nonfleet private passenger motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith except for insurance excluded from the Bureau's jurisdiction in G.S. 58-36-1(3).
- (2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate or loss costs made by it may be heard in person or by the person's authorized representative before the governing committee or other proper executive of the Bureau.
- (3) The Bureau shall promulgate and propose rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to nonfleet private passenger motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured and underinsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and, as provided in G.S. 58-36-100, for loss costs and residual market rate filings for workers' compensation and employers' liability insurance written in connection therewith. This subdivision does not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles.
- (4) Agreements may be made between or among members with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The members may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner.

- (5) a. It is the duty of every insurer that writes workers' compensation insurance in this State and is a member of the Bureau, as defined in this section and G.S. 58-36-5 to insure and accept any workers' compensation insurance risk that has been certified to be "difficult to place" by any fire and casualty insurance agent who is licensed in this State. When any such risk is called to the attention of the Bureau by receipt of an application with an estimated or deposit premium payment and it appears that the risk is in good faith entitled to such coverage, the Bureau will bind coverage for 30 days and will designate a member who must issue a standard workers' compensation policy of insurance that contains the usual and customary provisions found in those policies. Multiple coordinated policies, as defined by the Bureau and approved by the Commissioner, may be used for the issuance of coverage under this subdivision for risks involved in employee leasing arrangements. Coverage will be bound at 12:01 A.M. on the first day following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. on the date of receipt by the Bureau unless a later date is requested. Those applications hand delivered to the Bureau will be effective as of 12:01 A.M. of the date following receipt by the Bureau unless a later date is requested. The Bureau will make and adopt such rules as are necessary to carry this section into effect, subject to final approval of the Commissioner. As a prerequisite to the transaction of workers' compensation insurance in this State, every member of the Bureau that writes such insurance must file with the Bureau written authority permitting the Bureau to act in its behalf, as provided in this section, and an agreement to accept risks that are assigned to the member by the Bureau, as provided in this section.
- b. The Bureau shall maintain a compendium of employers refused voluntary coverage, which shall be made available by the Bureau to all insurers, licensed agents, and self-insureds' administrators doing business in this State. It shall be stored and indexed to allow access to information by industry, primary classifications of employees, geography, experience modification, and in any other manner the Bureau determines is commercially useful to facilitate voluntary coverage of listed employers. The Bureau shall be immune from civil liability for erroneous information released by the Bureau pursuant to this section, provided that the Bureau acted in good faith and without malicious or willful intent to harm in releasing the erroneous information.
- c. Failure or refusal by any assigned employer risk to make full disclosure to the Bureau, servicing carrier, or insurer writing a policy of information regarding the employer's true ownership, change of ownership, operations, or payroll, or any other failure to disclose fully

any records pertaining to workers' compensation insurance shall be sufficient grounds for the termination of the policy of that employer.

- (6) The Bureau shall maintain and furnish to the Commissioner on an annual basis the statistics on earnings derived by member companies from the investment of unearned premium, loss, and loss expense reserves on nonfleet private passenger motor vehicle insurance policies written in this State. Whenever the Bureau proposes rates under this Article, it shall prepare a separate exhibit for the experience years in question showing the combined earnings realized from the investment of such reserves on policies written in this State. The amount of earnings may in an equitable manner be included in the ratemaking formula to arrive at a fair and equitable rate. The Commissioner may require further information as to such earnings and may require calculations of the Bureau bearing on such earnings.
- (7) Member companies shall furnish, upon request of any person carrying nonfleet private passenger motor vehicle insurance in the State upon whose risk a rate has been promulgated, information as to rating, including the method of calculation. (1977, c. 828, s. 6; 1981, c. 888, ss. 1-3; 1983, c. 416, s. 5; 1985 (Reg. Sess., 1986), c. 1027, s. 5.1; 1991, c. 339, s. 1; 1993, c. 409, s. 27; 1993 (Reg. Sess., 1994), c. 679, s. 8.5; 1995, c. 505, s. 1; c. 517, s. 18; 1999-132, ss. 3.1, 3.2; 1999-219, s. 11; 2001-236, s. 2; 2001-389, ss. 1, 2; 2001-423, s. 3.)

§ 58-36-2. Private passenger motor vehicles; number of nonfleet policies.

Notwithstanding the definition of "nonfleet" in G.S. 58-40-10(2), the Bureau shall adopt rules, subject to the Commissioner's approval, that specify the circumstances under which more than four private passenger motor vehicles may be covered under a nonfleet private passenger motor vehicle policy that is subject to this Article. (1995 (Reg. Sess., 1996), c. 730, s. 2.)

§ 58-36-3. Limitation of scope; motorcycle and moped endorsements allowed; Department of Insurance report.

- (a) The Bureau has no jurisdiction over:
 - (1) Excess workers' compensation insurance for employers qualifying as self-insurers as provided in Article 47 of this Chapter or Article 5 of Chapter 97 of the General Statutes.
 - (2) Farm buildings, farm dwellings, and their appurtenant structures; farm personal property or other coverages written in connection with farm real or personal property.
 - (3) Travel or camper trailers designed to be pulled by private passenger motor vehicles, unless insured under policies covering nonfleet private passenger motor vehicles.
 - (4) Mechanical breakdown insurance covering nonfleet private passenger motor vehicles and other incidental coverages written in connection with this insurance, including emergency road service assistance, trip interruption reimbursement, rental car reimbursement, and tire coverage.
 - (5) Residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and

marine, general liability, burglary and theft, glass, and animal collision insurance, except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

- (6) Insurance against theft of or physical damage to motorcycles, as defined in G.S. 20-4.01(27)d.
- (7) Personal excess liability or personal "umbrella" insurance.
- (8) Insurance against theft of or physical damage to mopeds, as defined in G.S. 20-4.01(27)d1.

(b) Member companies writing motorcycle or moped liability insurance under this Article and writing insurance against theft of or physical damage to motorcycles or mopeds under Article 40 of this Chapter may incorporate motorcycle or moped theft and physical damage coverage as an endorsement to the liability policy issued under this Article.

(c) Repealed by Session Laws 2015-92, s. 3, effective June 19, 2015. (2001-389, ss. 3, 5.1; 2015-92, s. 3; 2015-125, s. 4; 2016-90, s. 12.6(a).)

§ 58-36-4. Statistical organizations; licensing; recording and reporting; examination; suspension of license; financial disclosure.

(a) For purposes of this Article:

- (1) "Statistical organization" means every person, other than an admitted insurer, whether located within or outside this State, who performs one or more of the following functions:
 - a. Prepares policy forms or makes underwriting rules incident to, but not including, the making of rates, rating plans, or rating systems.
 - b. Collects and furnishes to admitted insurers or statistical organizations loss or expense statistics or other statistical information and data and acts in an advisory rather than a rate-making capacity. No duly authorized attorney-at-law acting in the usual course of that person's profession shall be deemed to be a statistical organization.
 - c. Makes rates, rating plans or rating systems, or develops loss costs. Two or more insurers that act in concert for the purpose of making rates, rating plans or rating systems, or developing loss costs and that do not operate within the specific authorizations contained in this Article shall be deemed to be a statistical organization.
 - d. Collects data and statistics from insurers and provides reports from these statistics to the Commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.

"Statistical organization" shall not mean the North Carolina Rate Bureau, the North Carolina Motor Vehicle Reinsurance Facility, the North Carolina Insurance Underwriting Association, or the North Carolina Joint Underwriting Association.

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

(b) No statistical organization shall conduct its operations in this State, and no insurer shall utilize the service of that organization for any purpose enumerated in this Article unless the organization has obtained a license from the Commissioner. No statistical organization shall

refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services. A statistical organization applying for a license shall include with its application:

- (1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business, all duly certified by the custodian of the originals thereof;
- (2) A list of its members and subscribers;
- (3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;
- (4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and
- (5) Any other relevant information and documents that the Commissioner may require.

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

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

(d) The Commissioner shall adopt or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of those insurers may be made available to the Commissioner. The Commissioner may designate one or more statistical organizations to assist him or her in gathering and making compilations of the experience. All insurers, for lines of insurance that require data to be reported, shall report their data to one of the designated statistical organizations.

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

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

(g) A statistical organization is considered an insurance company for purposes of the applicability of G.S. 58-6-7. (2005-210, s. 18; 2006-264, s. 45(b).)

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

(a) Before the Commissioner shall grant permission to any stock, nonstock, or reciprocal insurance company or any other insurance organization to write in this State insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein or other insurance coverages written in connection with the sale of such property insurance; or insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; or liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage or other insurance coverage written in connection with the sale of such liability insurance; or workers' compensation and employers' liability insurance written in connection therewith; except for insurance excluded from the Bureau's jurisdiction in G.S. 58-36-1(3); it shall be a requisite that they shall subscribe to and become members of the Bureau.

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

(c) The Bureau, when created, shall adopt such rules and regulations for its orderly procedure as shall be necessary for its maintenance and operation. No such rules and regulations shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross

premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the necessary expense of the Bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee. The Bureau shall be empowered to subscribe for or purchase any necessary service, and employ and fix the salaries of such personnel and assistants as are necessary.

(d) The Commissioner is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the underwriting experience of lines of insurance referred to in this Article, and this information shall be available and for the use of the Bureau for the capitulation and promulgation of rates on lines of insurance as are subject to the ratemaking authority of the Bureau. (1977, c. 828, s. 6; 1981, c. 888, s. 4; 1985 (Reg. Sess., 1986), c. 1027, s. 6; 1991, c. 720, s. 4.)

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

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

- (1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which that information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State: Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) **(Effective until October 1, 2017)** In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization, except that fire alarms that are unintentional or the result of malfunction and result in no damage or fire shall not be considered in calculating minimum response requirements for initial rating or classification.

The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply.

- (3) **(Effective October 1, 2017, and applicable to filings submitted on or after that date)** In the case of property insurance rates under this Article, consideration may be given to the experience of property insurance business during the most recent five-year period for which that experience is available. In the case of property insurance rates under this Article, consideration shall be given to the insurance public protection classifications of fire districts established by the Commissioner. The Commissioner shall establish and modify from time to time insurance public protection districts for all rural areas of the State and for cities with populations of 100,000 or fewer, according to the most recent annual population estimates certified by the State Budget Officer. In establishing and modifying these districts, the Commissioner shall use standards at least equivalent to those used by the Insurance Services Office, Inc., or any successor organization, except that fire alarms that are unintentional or the result of malfunction and result in no damage or fire shall not be considered in calculating minimum response requirements for initial rating or classification. The standards developed by the Commissioner are subject to Article 2A of Chapter 150B of the General Statutes. The insurance public protection classifications established by the Commissioner issued pursuant to the provisions of this Article shall be subject to appeal as provided in G.S. 58-2-75, et seq. The exceptions stated in G.S. 58-2-75(a) do not apply. If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model. The Commissioner shall consider modeled hurricane losses presented by the Rate Bureau.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates, loss costs, and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions or both. Those standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau shall establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or gender of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence, and shall at least once every 10 years make a complete review of the territories for nonfleet private passenger motor vehicle insurance to determine whether they are proper and reasonable.

- (5) In the case of workers' compensation insurance and employers' liability insurance written in connection therewith, due consideration shall be given to the past and prospective effects of changes in compensation benefits and in legal and medical fees that are provided for in General Statutes Chapter 97.
- (6) To ensure that policyholders in the beach and coastal areas of the North Carolina Insurance Underwriting Association whose risks are of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss and premiums that are actuarially correct, the North Carolina Rate Bureau shall revise, monitor, and review the existing territorial boundaries used by the Bureau when appropriate to establish geographic territories in the beach and coastal areas of the Association for rating purposes. In revising these territories, the Bureau shall use statistical data sources available to define such territories to represent relative risk factors that are actuarially sound and not unfairly discriminatory. The new territories and any subsequent amendments proposed by the North Carolina Rate Bureau or Association shall be subject to the Commissioner's approval and shall appear on the Bureau's Web site, the Association's Web site, and the Department's Web site once approved.
- (7) Property insurance rates established under this Article may include a provision to reflect the cost of reinsurance to protect against catastrophic exposure within this State. Amounts to be paid to reinsurers, ceding commissions paid or to be paid to insurers by reinsurers, expected reinsurance recoveries, North Carolina exposure to catastrophic events relative to other states' exposure, and any other relevant information may be considered when determining the provision to reflect the cost of reinsurance. (1977, c. 828, s. 6; 1979, c. 824, s. 1; 1981, c. 521, s. 5; c. 790; 1987, c. 632, s. 1; 1991, c. 644, s. 39; 1999-132, s. 3.3; 2000-176, s. 1; 2004-203, s. 5(a); 2009-472, s. 2; 2012-162, s. 3; 2016-51, s. 7; 2016-78, s. 1.3(b).)

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

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

(b) A filing by the Rate Bureau shall be open to public inspection immediately upon submission to the Commissioner. All property insurance rate filings shall be open to the public except as provided in this Article where necessary to maintain the confidentiality of certain testimony. At least 30 days before a notice of hearing issues, the Department shall receive comments from the public regarding a property insurance rate filing. The comments may be provided to the Department by e-mail, mail, or in person at a time and place set by the Department. All public comments shall be shared with the Rate Bureau in a timely manner.

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

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

(d1) With respect to property insurance rates, the Bureau shall file no later than May 1, 2010, a schedule of credits for policyholders based on the presence of mitigation and construction features and on the condition of buildings that it insures in the beach and coastal areas of the State. The Bureau shall develop rules applicable to the operation of the schedule and the mitigation program with approval by the Commissioner. The schedule shall not be unfairly discriminatory and shall be reviewed by the Bureau annually, with the results reported annually to the Commissioner.

(d2) **(Effective October 1, 2017, and applicable to filings submitted on or after that date)** The following supporting data, at a minimum, shall be included in any property insurance rate filing where a catastrophe model is used:

- (1) Any simulated loss from a catastrophe model should include the following:
 - a. An event identifier.
 - b. The simulation year.
 - c. The State and county of first landfall, and the wind speed, based upon the Saffir-Simpson scale, at landfall.
 - d. The gross amount of North Carolina damages before application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.
 - e. The net amount of North Carolina insured loss after application of any deductible or other applicable policy provisions that impact the coverage, calculated with and without any applicable demand surge adjustments.
 - f. Any other information required by rules promulgated by the Commissioner.

- (2) Annual historical exposure and hurricane loss data by territory for 2003 and each subsequent year. The Bureau shall also provide annual historical exposure and hurricane loss data by territory for 1987 through 2002 to the extent this data is reasonably available.
- (3) If requested by the Department, a statistical analysis comparing the historic loss data required by subdivision (2) of this subsection with any simulated losses used to support the rate filing.
- (4) Trade secret information provided under this subsection is confidential and shall be handled in accordance with the provisions of G.S. 66-152 and G.S. 132-1.2.

(d3) **(Effective October 1, 2017, and applicable to filings submitted on or after that date)** In all residential property insurance rate filings, the Bureau shall set forth for each territory in the State (i) that portion of the rate based on all risks with the exception of wind and hail and (ii) that portion of the rate based on consideration of risks and the costs of reinsurance for wind and hail. The Department shall post both the filed rate and the final rate for each territory on its Web site, including that portion of the filed rate and the final rate for each territory based on all risks with the exception of wind and hail and that portion based on wind and hail.

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

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

(f) On or before September 1 of each calendar year, or later with the approval of the Commissioner, the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate or prospective loss costs review based on those data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate or loss costs increase for that insurance that is implemented under this Article shall become effective solely to insurance with an inception date on or after the effective date of the rate or loss costs increase.

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

- (1) A detailed list of the rates, loss costs, rules, and policy forms filed, accompanied by a list of those superseded; and

- (2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change.

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

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

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

(i) The Bureau shall file with and at the time of any rate or prospective loss costs filing all testimony, exhibits, and other information on which the Bureau will rely at the hearing on the rate filing. The Department shall file all testimony, exhibits, and other information on which the Department will rely at the hearing on the rate filing 20 days in advance of the convening date of the hearing. Upon the issuance of a notice of hearing the Commissioner shall hold a meeting of the parties to provide for the scheduling of any additional testimony, including written testimony, exhibits or other information, in response to the notice of hearing and any potential rebuttal

testimony, exhibits, or other information. This subsection also applies to rate filings made by the North Carolina Motor Vehicle Reinsurance Facility under Article 37 of this Chapter. (1977, c. 828, s. 6; 1979, c. 824, s. 2; 1981, c. 521, s. 1; 1985, c. 666, s. 3; 1985 (Reg. Sess., 1986), c. 1027, ss. 2, 3; 1993, c. 409, s. 10; 1995, c. 505, s. 2; 1999-132, ss. 3.4-3.6; 2002-187, s. 4.1; 2009-472, s. 3; 2012-162, s. 1; 2016-78, s. 1.3(c).)

§ 58-36-16. Bureau to share information with Department of Labor and North Carolina Industrial Commission.

The Bureau shall provide to the Department of Labor and the North Carolina Industrial Commission information from the Bureau's records indicating each employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information provided to the Department of Labor and the North Carolina Industrial Commission with respect to experience rate modifiers shall include the name of the employer and the employer's most current intrastate or interstate experience rate modifier. The information provided to the Department and the Commission under this section shall be confidential and not open for public inspection. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or wilful intent to harm in releasing the information. (1991 (Reg. Sess., 1992), c. 894, s. 4; 2012-135, s. 1(a).)

§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial Commission under this section shall be confidential and shall not be public records as that term is defined in G.S. 132-1. Notwithstanding the previous sentence, the North Carolina Industrial Commission may release data showing workers' compensation insurance policy information that includes only employer name and address, carrier name, address, and telephone number; policy number; policy effective dates; policy cancellation dates; and policy reinstatement dates. This data shall not be confidential data and shall be a public record as that term is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information. (2012-135, s. 1(b); 2012-194, s. 65.5; 2013-20, s. 1.)

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

(a) At any time within 50 days after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent the Commissioner contends the filing fails to comply with the requirements of this Article and fixing a date for

hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which the filing shall no longer be effective. In the event the Commissioner finds that the proposed rates are excessive, the Commissioner shall specify the overall rates, between the existing rates and the rates proposed by the Bureau filing, that may be used by the members of the Bureau instead of the rates proposed by the Bureau filing. In any such order, the Commissioner shall make findings of fact based on the evidence presented in the filing and at the hearing. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved.

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

(c) For workers' compensation insurance and employers' liability insurance written in connection therewith, the period between the date of any filing and the date the Commissioner may give written notice as described in subsection (a) of this section and the period between the date of any filing and the deadline for giving notice of hearing as described in subsection (b) of this section shall be 60 days. (1977, c. 828, s. 6; 1979, c. 824, s. 3; 1985, c. 666, s. 2; 1993, c. 409, s. 12; 2002-187, s. 4.2; 2009-472, s. 4; 2012-162, s. 2.)

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

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

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

policyholders are ordered under this subsection, the amounts refunded shall bear interest at the rate determined under this subsection. That rate, to be computed by the Bureau, shall be the average of the prime rates on the effective date of the filing and each anniversary of that date occurring prior to the date of the Commissioner's order requiring refunds, with the prime rate on each of the dates being the average of the prime rates of the four largest banking institutions domiciled in this State as of that date, plus three percent (3%). (1977, c. 828, s. 6; 1979, c. 824, s. 4; 1985 (Reg. Sess., 1986), c. 1027, ss. 3.1, 4; 1995, c. 517, s. 19.)

§ 58-36-30. Deviations.

(a) Except as permitted by G.S. 58-36-100 for workers' compensation loss costs filings, no insurer and no officer, agent, or representative of an insurer shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State that does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. An insurer may deviate from the rates promulgated by the Bureau if the insurer has filed the proposed deviation with the Bureau and the Commissioner, if the proposed deviation is based on sound actuarial principles, and if the proposed deviation is approved by the Commissioner. Amendments to deviations are subject to the same requirements as initial filings. An insurer may terminate a deviation only if the deviation has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination.

(b) A rate in excess of that promulgated by the Bureau may be charged by an insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the Commissioner and with the knowledge and written consent of the insured. The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates are greater than those rates that are applicable in the State of North Carolina. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner. This subsection may be used to provide motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of the General Statutes and above those cedable to the Facility under Article 37 of this Chapter to persons whose personal excess liability insurance policies require that they maintain specific higher liability coverage limits. Any data obtained by the Commissioner under this subsection is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100.

(b1) **(Effective October 1, 2017, and applicable to policies issued, renewed, or amended on or after that date)** This subsection applies only to insurance against loss to residential real property with not more than four housing units. A rate in excess of that promulgated by the Bureau may be charged by an insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the Commissioner and is charged with the knowledge and written consent of the insured. An insurer shall give reasonable notice to the insured by including the following language on the insured's written consent to rate form in at least 14 point type, bolded, and underlined:

NOTICE: THE PREMIUM USING NORTH CAROLINA RATE BUREAU'S APPROVED RATES FOR THE HOMEOWNER'S INSURANCE COVERAGE I APPLIED FOR IS \$_____. THE PREMIUM FOR THIS COVERAGE IS \$_____. THE TOTAL PERCENTAGE INCREASE ABOVE THE APPROVED RATES IS _____%.

The insurer shall provide the rate information on the disclosure statement above, as applicable, to the insured. The disclosure statement noted above in this subsection shall be included on any renewal of or endorsement to the policy for any subsequent increase above the manual rate following the initial written consent of an insured. However, once an initial written consent to rate is received, the insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy. The insurer shall give at least 30 days' notice to the insured for all written consents to rate and notices required under this subsection on all policy renewals and endorsements. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner. Any data obtained by the Commissioner under this subsection is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100.

(c) Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau.

(d) Notwithstanding any other provision of law prohibiting insurance rate differentials based on age, with respect to nonfleet private passenger motor vehicle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates for insureds who are 55 years of age or older. A member of the Bureau may condition a deviation under this subsection or a deviation under subsection (a) of this section on the successful completion of a motor vehicle accident prevention course that has been approved by the Commissioner of Motor Vehicles, as designated in the deviation. (1977, c. 828, s. 6; 1983, c. 162, ss. 1, 2; 1985, c. 666, s. 1; 1987, c. 869, s. 1; 1993, c. 409, s. 25; 1995, c. 517, ss. 20, 21; 1995 (Reg. Sess., 1996), c. 668, s. 1; 1999-132, ss. 3.7, 3.8; 2001-423, s. 1; 2016-78, s. 1.3(a).)

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

(a) Any member of the Bureau may appeal to the Commissioner from any decision of the Bureau, except for a decision made under G.S. 58-36-1(2). After a hearing held on not fewer than 10 days' written notice to the appellant and to the Bureau, the Commissioner shall issue an order approving the decision or directing the Bureau to reconsider the decision. If the Commissioner directs the Bureau to reconsider the decision and the Bureau fails to take action satisfactory to the Commissioner, the Commissioner shall make such order as the Commissioner may see fit.

(b) No later than 20 days before the hearing, the appellant shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellee a written statement of his case and any evidence the appellant intends to offer at the hearing. No later than five days before such hearing, the appellee shall file with the Commissioner or the Commissioner's designated hearing officer and shall serve on the appellant a written statement of the appellee's case and any evidence the appellee intends to offer at the hearing. Each such hearing shall be recorded and transcribed. The cost of the recording and transcribing shall be borne equally by the appellant and appellee; provided that upon any final adjudication the prevailing party shall be reimbursed for his share of such costs by the other party. Each party shall, on a date determined by the Commissioner or the Commissioner's designated hearing officer, but not sooner than 15 days after delivery of the completed transcript to the party, submit to the Commissioner or the Commissioner's designated hearing officer and serve on the other party, a proposed order. The Commissioner or the Commissioner's designated hearing officer

shall then issue an order. (1977, c. 828, s. 6; 1989, c. 485, s. 28; 1989 (Reg. Sess., 1990), c. 1069, s. 16; 2001-232, s. 3.)

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

Rates, rating systems, territories, classifications and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 6.)

§ 58-36-41. Development of policy endorsement for exclusive use of original equipment manufactured crash parts.

The Rate Bureau shall develop an optional policy endorsement to be filed with the Commissioner for approval that permits policyholders to elect nonfleet private passenger motor vehicle physical damage coverage specifying the exclusive use of original equipment manufactured crash parts. (2003-395, s. 3.)

§ 58-36-42. Development of policy form or endorsement for residential property insurance that does not include coverage for perils of windstorm or hail.

With respect to residential property insurance under its jurisdiction, the Bureau shall develop an optional policy form or endorsement to be filed with the Commissioner for approval that provides residential property insurance coverage in the coastal and beach areas defined in G.S. 58-45-5(2) and (2b) without coverage for the perils of windstorm or hail. Insurers that sell such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance shall be deemed to have given notice to all insured and persons claiming benefits under such policies that such policies do not include coverage for the perils of windstorm or hail. (2012-162, s. 4; 2013-199, s. 8.)

§ 58-36-43. Optional program enhancements authorized not altering coverage under Rate Bureau jurisdiction.

(a) Member companies writing private passenger automobile or homeowners' insurance under this Article may incorporate optional enhancements to their automobile and homeowners' programs as an endorsement to an automobile or homeowners' policy issued under this Article if the insurer has filed the proposed enhancement with the Commissioner and if the proposed enhancement is approved by the Commissioner. Any approved optional enhancements shall be considered outside the authority of the Rate Bureau. If the proposed enhancement will include an additional premium charge, the proposed premium charge shall be included with the proposed program enhancements filed with the Commissioner. The Commissioner shall review the proposed premium charges and approve them if the Commissioner finds that they are based on sound actuarial principles. Amendments to private passenger automobile or homeowners' program enhancements are subject to the same requirements as initial filings. Neither the acceptance, renewal of a policy, nor any underwriting rating criteria shall be conditioned by a company upon the acceptance by the policyholder of any optional automobile or homeowners' enhancements. A rate amendment authorized by this section is not a rate deviation and is not subject to the requirements for rate deviations set forth in G.S. 58-36-30(a).

(b) Insurers shall utilize statistical codes outlined by their statistical organization in reporting premiums and losses resulting from program enhancements filed under this section.

Those statistical codes shall be substantially different than the codes utilized for data collected for rate-making purposes in order to avoid commingling of the data. (2015-146, s. 5.)

§ 58-36-44. Development of policy form or endorsement for personal liability insurance for foster parents.

(a) The Rate Bureau shall develop an optional policy form or endorsement to be filed with the Commissioner for approval no later than May 1, 2016, that provides liability insurance for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide foster care in a family foster home or therapeutic foster home. The policy form or endorsement shall provide coverage for acts or omissions of the foster parent while the parent is acting in the foster parent's capacity as a foster parent in a licensed family foster home or therapeutic foster home licensed under Article 1A of Chapter 131D of the General Statutes.

(b) Nothing in this section is intended to require that the liability insurance policy or endorsement required by this section cover an act or omission that results from any action or inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing that results in injury to the child. (2015-135, s. 3.1.)

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

Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article except workers' compensation insurance and employers' liability insurance written in connection therewith. (1977, c. 828, s. 6; 1985, c. 666, s. 4.)

§ 58-36-50. Limitation.

Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 6; 1985 (Reg. Sess., 1986), c. 1013, s. 10.1; 1989, c. 485, s. 53.)

§ 58-36-55. Policy forms.

No policy form applying to insurance on risks or operations covered by this Article may be delivered or issued for delivery unless it has been filed with the Commissioner by the Bureau and either he has approved it, or 90 days have elapsed and he has not disapproved it. (1979, c. 824, s. 6.)

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

Nothing in this Article will be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. Individual policyholder loss experience may be considered as a factor in determining dividends for workers' compensation insurance and employers' liability insurance written in connection therewith. A plan for the payment of dividends, savings, or unabsorbed

premium deposits allowed or returned by insurers to their policyholders, members, or subscribers will not be deemed a rating plan or system. (1979, c. 824, s. 6; 1983, c. 374, s. 1.)

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

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

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

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

(c) The classifications and Plan filed by the Bureau shall be subject to the filing, hearing, modification, approval, disapproval, review, and appeal procedures provided by law; provided that the 210-day disapproval period in G.S. 58-36-20(a) and the 50-day deemer period in G.S. 58-36-20(b) do not apply to filings or modifications made under this section. The classifications or Plan filed by the Bureau and promulgated by the Commissioner shall of itself not be designed to bring about any increase or decrease in the overall rate level.

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

the insurer's reasons are based, unless the statement or furnishing of information is made with malice or in bad faith.

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

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

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

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

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

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

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

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

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

(m) Notwithstanding any other provision of law, with respect to motorcycle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates of insureds who show proof of satisfactory completion of the Motorcycle Safety Instruction Program or a comparable motorcycle safety program provided by federally certified instructors for members of the military. (1985 (Reg. Sess., 1986), c. 1027, s. 1; 1987, c. 864, ss. 28, 33; c. 869, s. 9; 1987 (Reg. Sess., 1988), c. 975, ss. 4, 5; 1989, c. 755, s. 3; 1993, c. 320, s. 5; 2002-187, s. 4.3; 2012-176, s. 1.)

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

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

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

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

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

(e) No person shall willfully withhold information required by this Article from or knowingly furnish false or misleading information to the Commissioner, any statistical agency designated by the Commissioner, any rating or advisory organization, the Bureau, the North Carolina Motor Vehicle Reinsurance Facility, or any insurer, which information affects the rates, rating plans, classifications, or policy forms subject to this Article or Article 37 of this Chapter. (1985 (Reg. Sess., 1986), c. 1027, s. 5; 1987, c. 864, s. 65; 1987 (Reg. Sess., 1988), c. 975, s. 6; 1989 (Reg. Sess., 1990), c. 1069, s. 23; 1995, c. 507, s. 11A(c).)

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

(a) **(Effective until October 1, 2017)** The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of three thousand eighty-five dollars (\$3,085) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than one thousand eight hundred fifty dollars (\$1,850) but less than three thousand eighty-five dollars (\$3,085). A "minor accident" is an at-fault accident that results in only property damage of one thousand eight hundred fifty dollars (\$1,850) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage.

(a) **(Effective October 1, 2017, and applicable to accidents on or after that date)** The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of three thousand eight hundred fifty dollars (\$3,850) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than two thousand three hundred dollars (\$2,300) but less than three thousand eight hundred fifty dollars (\$3,850). A "minor accident" is an at-fault accident that results in only property damage of two thousand three hundred dollars (\$2,300) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage.

(a1) The subclassification plan shall provide that there shall be no premium surcharge, increase in premium on account of cession to the Reinsurance Facility, or assessment of points against an insured where: (i) the insured is involved and is at fault in a "minor accident," as defined in subsection (a) of this section; (ii) the insured is not convicted of a moving traffic violation in connection with the accident; (iii) neither the vehicle owner, principal operator, nor any licensed operator in the owner's household has a driving record consisting of one or more convictions for a moving traffic violation or one or more at-fault accidents during the three-year period immediately preceding the date of the application for a policy or the date of the preparation of the renewal of a policy; and (iv) the insured has been covered by liability

insurance with the same company or company group continuously for at least the six months immediately preceding the accident. Notwithstanding (iv) of this subsection, if the insured has been covered by liability insurance with the same company or company group for at least six continuous months, some or all of which were after the accident, the insurance company shall remove any premium surcharge or assessment of points against the insured if requirements (i), (ii), and (iii) of this subsection are met. Also notwithstanding (iv) of this subsection, an insurance company may choose not to assess a premium surcharge or points against an insured who has been covered by liability insurance with that company or with the company's group for less than six months immediately preceding the accident, if requirements (i), (ii), and (iii) are met.

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

(b) Repealed by Session Laws 1999-294, s. 12(a), effective July 14, 1999.

(c) Repealed by Session Laws 1999-132, s. 8.1, effective June 4, 1999.

(d) There shall be no Safe Driver Incentive Plan surcharges under G.S. 58-36-65 for accidents occurring when only operating a firefighting, rescue squad, or law enforcement vehicle in accordance with G.S. 20-125(b) and in response to an emergency if the operator of the vehicle at the time of the accident was a paid or volunteer member of any fire department, rescue squad, or any law enforcement agency. This exception does not include an accident occurring after the vehicle ceases to be used in response to the emergency and the emergency ceases to exist.

(e) Repealed by Session Laws 1999-294, s. 12(a), effective July 14, 1999.

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

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

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

(h) The North Carolina Rate Bureau shall assign one insurance point under the Safe Driver Incentive Plan for persons who fail to yield to a pedestrian under G.S. 20-158(b)(2)b. (1987, c. 869, s. 6; 1991, c. 101, s. 1; c. 713, s. 1; c. 720, s. 90; 1991 (Reg. Sess., 1992), c. 837, s. 11; c. 997, s. 1; 1993, c. 285, s. 11; 1995 (Reg. Sess., 1996), c. 730, s. 3; 1997-332, s. 1; 1997-443, s. 19.26(d); 1999-132, s. 8.1; 1999-294, s. 12(a), (b); 2003-137, s. 1; 2004-172, s. 4; 2015-241, s. 20.3(a); 2015-268, s. 7.1; 2016-78, s. 1.1.)

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

As used in this section, "property damage" means damage or loss to a rented vehicle in excess of two hundred fifty dollars (\$250.00), including loss of use and any costs or expenses incident to the damage or loss, for which the renter is legally obligated to pay; and "rented" means rented on a daily rate basis for a period of 21 consecutive days or less. The Bureau is authorized to promulgate rates and policy forms for insurance against property damage to rented private passenger motor vehicles. Such coverage may be offered at the option of the individual member companies of the Bureau. (1989, c. 631, s. 1; 1989 (Reg. Sess., 1990), c. 1021, s. 10.)

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

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

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

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

(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in G.S. 58-2-164(g), 58-36-65(g), or 58-37-50. A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

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

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

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

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

(c) Contents of Notice. – The form of a written termination notice used by an insurer must be approved by the Commissioner before it is used. A written termination notice must state the reason for the termination and the date the termination is effective. If the policy is terminated for nonpayment of the premium, the effective date may be 15 days from the date the notice is mailed. If the policy is terminated for any other reason, the effective date must be at least 60 days

after the notice is mailed. A written termination notice must include or be accompanied by a statement that advises the insured of the penalty for driving a vehicle without complying with Article 13 of Chapter 20 of the General Statutes and that the insured has the right to request the Department to review the termination.

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

(e) Administrative Review. – When the Department receives a written request to review a termination, it must investigate and determine the reason for the termination. The Department shall issue a letter requiring one of the following upon completing its review:

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

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

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

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

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

(i) Records. – An insurer shall keep a record of a termination for three years. (1993 (Reg. Sess., 1994), c. 761, s. 30; 1995, c. 517, s. 22; 2008-124, s. 4.2.)

§ 58-36-87. Affiliate transfer of policies.

Delivery by an insurer of a policy superseding a policy previously issued by the insurer at the end of the previously issued policy period is not a refusal to renew when it is delivered by:

- (1) The same insurer; or
- (2) An affiliate or subsidiary, as those terms are defined in G.S. 58-19-5, that has a financial strength rating, issued by an industry-recognized independent insurance rating company, which financial strength rating is at least as good as the insurer issuing the superseded policy. The provisions of G.S. 58-36-110

and G.S. 58-36-85 apply to the affiliate or subsidiary as if it were the same insurer issuing the policy. (2015-264, s. 44.5(a); 2016-78, s. 6.2.)

§ 58-36-90. Prohibitions on using credit scoring to rate noncommercial private passenger motor vehicle and residential property insurance; exceptions.

(a) Definitions. – As used in this section:

- (1) "Adverse action" has the same meaning as in section 1681a(k) of the federal Fair Credit Reporting Act and includes a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of insurance.
- (2) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.
- (3) "Credit score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.
- (4) "Noncommercial private passenger motor vehicle" means a "private passenger motor vehicle," as defined by G.S. 58-40-10, that is neither insured under a commercial policy nor used for commercial purposes.
- (5) "Private passenger motor vehicle" has the same meaning as set forth in G.S. 58-40-10.
- (6) "Residential property" means real property with not more than four housing units located in this State, the contents thereof and valuable interest therein, and insurance coverage written in connection with the sale of that property. It also includes mobile homes, modular homes, townhomes, condominiums, and insurance on contents of apartments and rental property used for residential purposes.

(b) Prohibitions; Exceptions. – In the rating and underwriting of noncommercial private passenger motor vehicle and residential property insurance coverage, insurers shall not use credit scoring as the sole basis for terminating an existing policy or any coverage in an existing policy or subjecting a policy to consent to rate as specified in G.S. 58-36-30(b) without consideration of any other risk factors, but insurers may use credit scoring as the sole basis for discounting rates. For purposes of this subsection only, "existing policy" means a policy that has been in effect for more than 60 days.

(c) Notification. – If a credit report is used in conjunction with other criteria to take an adverse action, the insurer shall provide the applicant or policyholder with written notice of the action taken, in a form approved by the Commissioner. The notification shall include, in easily understandable language:

- (1) The specific reason for the adverse action and, if the adverse action was based upon a credit score, a description of the factors that were the primary influence on the score.
- (2) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information.
- (3) The fact that the consumer has the right to obtain a free copy of the consumer's credit report from the appropriate credit bureau.
- (4) The fact that the consumer has the right to challenge information contained in the consumer's credit report.

(d) **Disputed Credit Report Information.** – If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite or re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting guidelines. If an insurer determines the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(e) **Indemnification.** – An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or credit scores for an insurer, provided the agent follows the instructions or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this subsection shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

(f) **Filing.** – Insurers that use credit scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes credit scoring may include loss experience justifying the applicable surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly. (2003-216, s. 1; 2004-199, ss. 20(f), 20(g).)

§ 58-36-95. Use of nonoriginal crash repair parts.

(a) As used in this section, the following definitions apply:

- (1) "Insurer" includes any person authorized to represent an insurer with respect to a claim.
- (2) "Nonoriginal crash repair part" refers to sheet metal and/or plastic parts – generally components of the exterior of a motor vehicle – that are not manufactured by or for the original equipment manufacturer of the vehicle.

(b) An insurer shall disclose to a claimant in writing, either on the estimate or on a separate document attached to the estimate, the following in no smaller than ten point type: "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE MADE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUIVALENT IN TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING."

(c) It is a violation of G.S. 58-3-180 for an automobile repair facility or parts person to place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair part.

(d) Any insurer or other person who has reason to believe that fraud has occurred under this section shall report that fraud to the Commissioner for further action pursuant to G.S. 58-2-160. (2003-395, s. 2; 2006-105, s. 1.6.)

§ 58-36-100. Prospective loss costs filings and final rate filings for workers' compensation and employers' liability insurance.

(a) Except as provided in subsections (k) and (m) of this section, the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium formulas or expense constants, it must file the minimum premium rules, formulas, or amounts it proposes to use. A copy of each filing submitted to the Commissioner under subsections (e) and (g) of this section shall also be sent to the Bureau.

(b) Definitions. As used in this section, the following terms have the following meanings:

- (1) "Expenses". – That portion of a rate attributable to acquisition, field supervision, collection expenses, any tax levied by the State or by any political subdivision of the State, licensing costs, fees, and general expenses, as determined by the insurer.
- (2) "Developed losses". – Losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, 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.
- (3) "Insurer". – A member insurer or group.
- (4) "Loss trending". – Any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.
- (5) "Multiplier". – An insurer's determination of the expenses, other than loss expense and loss adjustment expense, associated with writing workers' compensation and employers' liability insurance, which shall be expressed as a single nonintegral number to be applied equally and uniformly to the prospective loss costs approved by the Commissioner in making rates for each classification of risks utilized by that insurer.
- (6) "Prospective loss costs". – That portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit; and that are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
- (7) "Rate". – The cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and variations in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.
- (8) "Supplementary rating information". – Includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule,

rate-related underwriting rule, experience rating plan, statistical plan and any other similar information needed to determine the applicable rate in effect or to be in effect.

(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based assessments will be included in prospective loss costs.

(d) After a reference filing has been filed with the Commissioner and approved, the Bureau shall provide its member insurers with a copy of the approved reference filing. The Bureau may print and distribute manuals of prospective loss costs as well as rules and other supplementary rating information described in subsection (k) of this section.

(e) Each insurer shall independently and individually determine the final rates it will file and the effective date of any rate changes. If an insurer decides to use the prospective loss costs in the approved reference filing in support of its own filing, the insurer shall make a filing using the reference filing adoption form. The insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form. Insurers may file modifications of the prospective loss costs in the approved reference filing based on their own anticipated experience. Supporting documentation is required for any upward or downward modifications of the prospective loss costs in the approved reference filing.

(f) The summary of supporting information form shall contain a reference to examples of how to apply an insurer's loss cost modification factor to the Bureau's prospective loss costs. Insurers may vary expense loads by individual classification or grouping. Insurers may use variable or fixed expense loads or a combination of these to establish their expense loadings. Each filing that varies the expense load by class shall specify the expense factor applicable to each class and shall include information supporting the justification for the variation. However, insurers shall file data in accordance with the uniform statistical plan approved by the Commissioner. Insurers may offer premium discount plans.

(g) An insurer may request to have its loss multiplier remain on file and reference all subsequent prospective loss costs reference filings. Upon receipt of subsequent approved Bureau reference filings, the insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form on file with the Commissioner, and will be effective on or after the effective date of the prospective loss costs. The insurer need not file anything further with the Commissioner. If an insurer that has filed to have its loss multiplier remain on file with the Department intends to delay, modify, or not adopt a particular Bureau reference filing, the insurer must make an appropriate filing with the Commissioner. The insurer's filed loss multiplier shall remain in effect until the insurer withdraws it or files a revised reference filing adoption form. The provisions of G.S. 58-40-20, 58-40-30, 58-40-35, and 58-40-45 apply to filings made by insurers under this section.

(h) An insurer may file such other information that the insurer considers relevant and shall provide such other information as may be requested by the Commissioner. When a filing is not accompanied by the information required under this section, the Commissioner shall inform the filer within 30 days after the initial filing that the filing is incomplete and describe what

additional information is required. A filing is complete when the required information is furnished or when the filer certifies to the Commissioner that the additional information required by the Commissioner is not maintained or cannot be provided.

(i) To the extent that an insurer's final rates are determined solely by applying its loss multiplier, as presented in the reference filing adoption form, to the prospective loss costs contained in the Bureau's reference filing and printed in the Bureau's rating manual, the insurer need not develop or file its final rate pages with the Commissioner. If an insurer chooses to print and distribute final rate pages for its own use, based solely upon the application of its filed loss costs, the insurer need not file those pages with the Commissioner. If the Bureau does not print the loss costs in its manual, the insurer must submit its rates to the Commissioner.

(j) For reference filings filed by the Bureau:

(1) If the insurer has filed to have its loss multiplier remain on file, applicable to subsequent reference filings, and a new reference filing is filed and approved and if:

- a. The insurer decides to use the revision of the prospective loss costs and effective date as filed, then the insurer does not file anything with the Commissioner. Rates are the combination of the prospective loss costs and the on-file loss multiplier and become effective on the effective date of the loss costs.
- b. The insurer decides to use the prospective loss costs as filed but with a different effective date, then the insurer must notify the Commissioner of its effective date before the effective date of the loss costs.
- c. The insurer decides to use the revision of the prospective loss costs, but wishes to change its loss multiplier, then the insurer must file a revised reference filing adoption form before the effective date of the reference filing.
- d. The insurer decides not to revise its rates using the prospective loss costs, then the insurer must notify the Commissioner before the effective date of the loss costs.

(2) If an insurer has not elected to have its loss multiplier remain on file, applicable to future prospective loss costs reference filings, and a new reference filing is filed and approved, and if:

- a. The insurer decides to use the prospective loss costs to revise its rates, then the insurer must file a reference filing adoption form including its effective date.
- b. The insurer decides not to use the revisions, then the insurer does not file anything with the Commissioner.
- c. The insurer decides to change its multiplier, then the insurer must file a reference filing adoption form referencing the current approved prospective loss costs, including its effective date and, if applicable, its loss costs modification factor and supporting documentation. The insurer shall not make a change to its loss costs multiplier based on any reference filing other than the current approved reference filing.

(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as

increased limits factors and related minimum premiums classification relativities, or similar factors. The Bureau may print and distribute manuals of rules and supplementary rating information.

(1) If a new filing of rules, relativities, and supplementary rating information is filed by the Bureau and approved and if:

- (1) The insurer decides to use the revisions and effective date as filed together with the loss multiplier on file with the Commissioner, then the insurer shall not file anything with the Commissioner.
- (2) The insurer decides to use the revisions as filed but with a different effective date, then the insurer must notify the Commissioner of its effective date before the approved Bureau filing's effective date.
- (3) The insurer decides not to use the revision, then the insurer must notify the Commissioner before the Bureau filing's effective date.
- (4) The insurer decides to use the revision with modifications, then the insurer must file the modification with the Commissioner, specifying the basis for the modification and the insurer's proposed effective date if different than the Bureau filing's effective date.

(m) The Bureau shall file all of the following with the Commissioner:

- (1) Final workers' compensation rates and rating plans for the residual market.
- (2) The uniform classification plan and rules.
- (3) The uniform experience rating plan and rules.
- (4) A uniform policy form to be used by member insurers for voluntary and residual market business.
- (5) Advisory manual workers' compensation rates to be used for the sole purpose of computing the premium tax liability of self-insurers under G.S. 105-228.5.

(n) The rates filed under subdivision (m)(1) of this section shall be set at levels to self-fund the residual market, provide adequate premiums to pay losses and expenses, establish appropriate reserves, and provide a reasonable margin for underwriting profit and contingencies.

(o) Every insurer shall adhere to the uniform classification plan, experience rating plan, and policy form filed by the Bureau. (1995, c. 505, ss. 3-8; 1999-132, ss. 3.9-3.12; 2001-232, s. 2.)

§ 58-36-105. Certain workers' compensation insurance policy cancellations prohibited.

(a) No policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance shall be cancelled by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons:

- (1) Nonpayment of premium in accordance with the policy terms.
- (2) An act or omission by the insured or the insured's representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy, continuing the policy, or presenting a claim under the policy.
- (3) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time of assumption of the risk.

- (4) Substantial breach of contractual duties, conditions, or warranties that materially affects the insurability of the risk.
- (5) A fraudulent act against the company by the insured or the insured's representative that materially affects the insurability of the risk.
- (6) Willful failure by the insured or the insured's representative to institute reasonable loss control measures that materially affect the insurability of the risk after written notice by the insurer.
- (7) Loss of facultative reinsurance or loss of or substantial changes in applicable reinsurance as provided in G.S. 58-41-30.
- (8) Conviction of the insured of a crime arising out of acts that materially affect the insurability of the risk.
- (9) A determination by the Commissioner that the continuation of the policy would place the insurer in violation of the laws of this State.
- (10) The named insured fails to meet the requirements contained in the corporate charter, articles of incorporation, or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance coverage in this State.

(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given to the insured not less than 15 days before the proposed effective date of cancellation. The notice may be given by registered or certified mail, return receipt requested, to the insured and any other person designated in the policy to receive notice of cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is employed and completed. Notice of cancellation, termination, or nonrenewal may also be given by any method permitted for service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Failure to send this notice, as provided in this section, to any other person designated in the policy to receive notice of cancellation invalidates the cancellation only as to that other person's interest.

(c) This section does not apply to any policy that has been in effect for fewer than 60 days and is not a renewal of a policy. That policy may be cancelled for any reason by giving at least 30 days' prior written notice of and reasons for cancellation to the insured by registered or certified mail, return receipt requested.

(d) Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date set forth in the notice of cancellation.

(e) Copies of the notice required by this section shall also be sent to the agent or broker of record though failure to send copies of the notice to those persons shall not invalidate the cancellation. Mailing copies of the notice by regular first-class mail to the agent or broker of record satisfies the requirements of this subsection. (2001-241, s. 2; 2013-413, s. 13(a).)

§ 58-36-110. Notice of nonrenewal, premium rate increase, or change in workers' compensation insurance coverage required.

(a) No insurer shall refuse to renew a policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance except in accordance with the provisions of this section, and any nonrenewal attempted or made that is not in compliance with this section is not effective. This section does not apply if

the policyholder has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

(b) An insurer may refuse to renew a policy that has been written for a term of one year or less at the policy's expiration date by mailing written notice of nonrenewal to the insured not less than 45 days prior to the expiration date of the policy.

(c) An insurer may refuse to renew a policy that has been written for a term of more than one year or for an indefinite term at the policy anniversary date by mailing written notice of nonrenewal to the insured not less than 45 days prior to the anniversary date of the policy.

(d) Whenever an insurer lowers coverage limits, raises deductibles, or raises premium rates for reasons within the exclusive control of the insurer or other than at the request of the policyholder, the insurer shall mail to the policyholder written notice of the change at least 30 days in advance of the effective date of the change. As used in this subsection, the phrase, "reasons within the exclusive control of the insurer" does not mean experience modification changes, exposure changes, or loss cost rate changes.

(e) The notice required by this section shall be given by mail to the insured and any other person designated in the policy to receive this notice at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice of nonrenewal shall state the precise reason for nonrenewal. Failure to send this notice, as provided in this section, to any other person designated in the policy to receive this notice invalidates the nonrenewal only as to that other person's interest.

(f) Copies of the notice required by this section shall also be sent to the agent or broker of record, though failure to send copies of the notice to such persons shall not invalidate the nonrenewal.

(g) Mailing copies of the notice by regular first-class mail satisfies the notice requirements of this section. (2001-241, s. 2.)

§ 58-36-115. Prohibitions on using inquiries to terminate a policy, refuse to issue or renew a policy, or to subject a policy to consent to rate.

An insurer writing residential real property insurance subject to this Article shall not terminate an existing policy or any coverage under an existing policy, refuse to write a policy, refuse to renew a policy, or subject a policy to consent to rate as specified in G.S. 58-36-30(b) based solely on either of the following:

- (1) An inquiry about policy provisions that does not result in a claim; or
- (2) A claim that was closed without payment, provided the notice of loss that was the subject of the claim was only an inquiry regarding policy provisions, and no claim for payment was requested by the insured or a third party. (2004-111, s. 1.)

§ 58-36-120. Public notice of certain filings.

Whenever the North Carolina Rate Bureau files for an increase in insurance rates for residential property insurance, the Bureau shall give public notice in at least two newspapers with statewide distribution and in the North Carolina Register, within 10 business days after the filing, which notice shall state that the Commissioner may or may not schedule and conduct a hearing with respect to the filing. The same information shall be posted on the Web site for the North Carolina Rate Bureau and the North Carolina Department of Insurance Web site within three days after the filing. The requirements of this section shall not apply to filings proposing

changes as to forms, relativities, and classifications that are filed at no increase in the overall rate level. (2009-472, s. 5.)