

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH60190-LT-54\* (3/9)

Short Title: DOI Hearing/Unauth. Ins. Summary C&D Order.-AB (Public)

Sponsors: Representative Holliman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AN UNAUTHORIZED INSURER AGAINST WHICH A SUMMARY CEASE AND DESIST ORDER HAS BEEN ISSUED TO PETITION THE DEPARTMENT OF INSURANCE FOR A HEARING ON THE MATTER BEFORE PETITIONING THE SUPERIOR COURT OF WAKE COUNTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-28-25 reads as rewritten:

"§ 58-28-25. Judicial review of cease and desist orders; administrative review of summary cease and desist orders.

Any person required by an order of the Commissioner under G.S. 58-28-20(a) to cease and desist may seek judicial review pursuant to G.S. 58-2-75. If the Commissioner issues a summary cease and desist order pursuant to G.S. 58-28-20(d), the Commissioner shall promptly commence proceedings in accordance with G.S. 150B-3(c).

~~(a) Any person required by an order of the Commissioner under G.S. 58-28-20 to cease and desist may obtain a review of such order by filing in the Superior Court of Wake County, within 30 days from the date of the service of such order, a written petition praying that the order of the Commissioner be set aside. A copy of such petition shall be immediately served upon the Commissioner, and the Commissioner shall then immediately certify and file in the Court a transcript of the entire record in the proceeding, including all the evidence taken, and the order of the Commissioner. Upon such filing of the petition and transcript the Court has jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the Commissioner, and has the power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming, or reversing the order of the Commissioner, in whole or in~~

1 part. The findings of the Commissioner as to the facts, if supported by substantial  
2 evidence, shall be conclusive.

3 (b) To the extent that the order of the Commissioner is affirmed, the Court shall  
4 thereupon issue its own order commanding obedience to the terms of such order of the  
5 Commissioner. If either party applies to the Court for leave to adduce additional  
6 evidence, and satisfies the Court that such additional evidence is material and that there  
7 were reasonable grounds for the failure to adduce such evidence in the proceeding  
8 before the Commissioner, the Court may order such additional evidence to be taken  
9 before the Commissioner and to be adduced upon the hearing in such manner and upon  
10 such terms and conditions as the Court considers proper. The Commissioner may  
11 modify his findings of fact, or make new findings by reason of the additional evidence  
12 so taken; and he shall file such modified or new findings which, if supported by  
13 substantial evidence, shall be conclusive; or shall file his recommendations, if any, for  
14 the modification or setting aside of his original order, with the return of such additional  
15 evidence.

16 (c) A cease and desist order issued by the Commissioner under G.S. 58-28-20  
17 shall become final:

18 (1) Upon the expiration of the time allowed for filing a petition for review  
19 if no such petition has been duly filed within such time; except that the  
20 Commissioner may thereafter modify or set aside his order to the  
21 extent provided in G.S. 58-28-20(b); or

22 (2) Upon the final decision of the court if the court directs that the order of  
23 the Commissioner be affirmed or the petition for review dismissed.

24 (d) No order of the Commissioner under this Article or order of a court to enforce  
25 the same shall in any way relieve or absolve any person affected by such order from any  
26 liability under any other laws of this State."

27 **SECTION 2.** G.S. 58-28-20(b) reads as rewritten:

28 "(b) Until the expiration of the time allowed under ~~G.S. 58-28-25(a)~~  
29 G.S. 58-28-25 for filing a petition for review, if no such petition has been duly filed  
30 within such time; or if a petition for review has been filed within such time, then until  
31 the transcript of the record in the proceeding has been filed in the Court, the  
32 Commissioner may at any time, upon such notice and in such manner as he considers  
33 proper, modify or set aside in whole or in part any order issued by him under this  
34 section."

35 **SECTION 3.** This act becomes effective October 1, 2005, and applies to  
36 orders issued on or after that date.