

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 552*

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

Sponsors: Senator Dalton.

Referred to: Judiciary II.

March 15, 2005

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

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

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

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

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

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

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

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

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