

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 552*
Judiciary II Committee Substitute Adopted 4/19/05

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

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN UNAUTHORIZED INSURER AGAINST WHICH AN EMERGENCY CEASE AND DESIST ORDER HAS BEEN ISSUED TO PETITION THE DEPARTMENT OF INSURANCE FOR A HEARING ON THE MATTER AND TO APPEAL THAT DECISION TO THE SUPERIOR COURT OF WAKE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-28-20 reads as rewritten:

"§ 58-28-20. Cease and desist ~~orders~~ orders; judicial review.

(a) Whenever the Commissioner, ~~from evidence satisfactory to him,~~ Commissioner has reasonable grounds to believe that any person is violating or is about to violate G.S. 58-28-5, ~~he the Commissioner~~ may, after notice and opportunity for hearing, ~~reduce his findings to writing~~ make written findings and issue and cause to be served upon ~~such the~~ person an order to cease and desist ~~from~~ violating G.S. 58-28-5.

(b) Until the expiration of the time allowed under ~~G.S. 58-28-25(a)~~ G.S. 58-2-75 for filing a petition for review, ~~if no such petition has been duly filed within such time; or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the Court,~~ the Commissioner may at any time, upon ~~such~~ notice and in ~~such a~~ manner as ~~he~~ the Commissioner considers proper, modify or set aside in whole or in part any order issued by ~~him~~ the Commissioner under this ~~section.~~ section as follows:

(1) Any time before the expiration of the time allowed for seeking judicial review, if no petition for review has been filed; or

(2) If a petition for review has been timely filed, until the transcript of the record in the proceeding has been filed with the Court.

(c) ~~After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time,~~ If no petition for judicial review has been filed within the time provided under G.S. 58-2-75, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in

1 whole or in part, any order issued by ~~him~~ the Commissioner under this section,
2 whenever in ~~his~~ the Commissioner's opinion conditions of fact or of law have so
3 changed as to require such action or if the public interest requires.

4 (d) Whenever the Commissioner has evidence that any person has or is violating
5 G.S. 58-28-5, or has or is violating any order or requirement of the Commissioner
6 issued ~~or promulgated~~ by the Commissioner under this Article, and that the interests of
7 policyholders, creditors, or the public may be irreparably harmed by delay, the
8 Commissioner may issue ~~a~~ an emergency cease and desist order. Notice of the cease and
9 desist order and notice of hearing shall be delivered by first class mail. order that shall
10 become effective on the date specified in the order or upon service of a certified copy of
11 the order upon the person ordered to cease and desist, whichever is later. The
12 emergency cease and desist order shall also include a notice of hearing, which shall be
13 conducted as provided under Article 3A of Chapter 150B of the General Statutes.
14 However, the person ordered to cease and desist under this subsection may request and
15 shall be granted an expedited review of the order. The emergency order shall remain in
16 effect prior to and during the proceedings, unless modified by the Commissioner as
17 provided under subsection (b) of this section.

18 (e) Any person required to cease and desist violating G.S. 58-28-5 by an order
19 issued after notice and a hearing under subsection (a) or (d) of this section may seek
20 judicial review of that order under G.S. 58-2-75."

21 **SECTION 2.** G.S. 58-28-25 is repealed.

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