

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 775  
Commerce Committee Substitute Adopted 4/14/03  
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Short Title: Prelitigation Mediation of Insurance Claims.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE INFORMATION REGARDING POLICY LIMITS PRIOR TO LITIGATION WHEN REQUESTED IN WRITING BY THE PERSONS WHO HAVE CLAIMS, OTHER THAN MEDICAL MALPRACTICE CLAIMS, SUBJECT TO NONFLEET PRIVATE PASSENGER AUTOMOBILE INSURANCE POLICIES AND TO GIVE THESE INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF THE CLAIMS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

**"§ 58-3-33. Insurer conditionally required to provide information.**

(a) A person who claims to have been physically injured or to have incurred property damage where such injury or damage is subject to a policy of nonfleet private passenger automobile insurance may request by certified mail directed to the insurance adjuster or to the insurance company (Attention Corporate Secretary) at its last known principal place of business that the insurance company provide information regarding the policy's limits of coverage under the applicable policy. Upon receipt of such a request, which shall include the policyholder's name, and, if available, policy number, the insurance company shall notify that person within 15 business days, on a form developed by the Department, that the insurer is required to provide this information prior to litigation only if the person seeking the information satisfies all of the following conditions:

- (1) The person seeking the information submits to the insurer the person's written consent to the person's physicians to release to the insurer the person's medical records for the three years prior to the date on which the claim arose.

1           (2)    The person seeking the information submits to the insurer the person's  
2           written consent to participate in mediation of the person's claim under  
3           G.S. 7A-38.3A.

4           (3)    The person seeking the information submits to the insurer a copy of  
5           the accident report required under G.S. 20-166.1 and a description of  
6           the events at issue with sufficient particularity to permit the insurer to  
7           make an initial determination of the potential liability of its insured.

8           (b)    Within 30 days of receiving the person's written documents required under  
9           subsection (a) of this section, the insurer shall provide the policy limits and a copy of  
10          the policy to that person.

11          (c)    Disclosure of the policy limits under this section shall not constitute an  
12          admission that the alleged injury or damage is subject to the policy.

13          (d)    This section does not apply to claims seeking recovery for medical  
14          malpractice or claims for which an insurer intends to deny coverage under any policy of  
15          insurance."

16                **SECTION 2.** Article 5 of Chapter 7A of the General Statutes is amended by  
17 adding a new section to read:

18                **§ 7A-38.3A. Prelitigation mediation of insurance claims.**

19           (a)    Initiation of Mediation. – Prelitigation mediation of an insurance claim may  
20           be initiated by an insurer that has provided the policy limits in accordance with G.S.  
21           58-3-33 by filing a request for mediation with the clerk of superior court in a county in  
22           which the action may be brought. The insurer also shall mail a copy of the request by  
23           certified mail, return receipt requested, to the person who requested the information  
24           under G.S. 58-3-33.

25           (b)    Costs of Mediation. – Costs of mediation, including the mediator's fees, shall  
26           be borne by the insurer and claimant equally. When an attorney represents a party to the  
27           mediation, that party shall pay his or her attorneys' fees.

28           (c)    Mediation Procedure. – Except as otherwise expressly provided in this  
29           section, mediation under this section shall be conducted in accordance with the  
30           provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2, and  
31           rules and standards adopted pursuant to those sections. The Supreme Court may adopt  
32           additional rules and standards to implement this section, including an exemption from  
33           the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this  
34           section.

35           (d)    Certification That Mediation Concluded. – Upon the conclusion of mediation,  
36           the mediator shall prepare a certification stating the date on which the mediation was  
37           concluded and the general results of the mediation, including, as applicable, that an  
38           agreement was reached, that mediation was attempted but an agreement was not  
39           reached, or that one or more parties, to be specified in the certification, failed or refused  
40           without good cause to attend one or more mediation meetings or otherwise participate in  
41           the mediation. The mediator shall file the original of the certification with the clerk and  
42           provide a copy to each party. Each party to the mediation has satisfied the requirements  
43           of this section upon the filing of the certification, except any party specified in the  
44           certification as having failed or refused to attend one or more mediation meetings or

1 otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation  
2 mediation conducted under this section.

3 (e) Time Periods Tolloed. – Time periods relating to the filing of a claim or the  
4 taking of other action with respect to an insurance claim, including any applicable  
5 statutes of limitations, shall be tolled upon the filing of a request for mediation under  
6 this section, until 30 days after the date on which the mediation is concluded as set forth  
7 in the mediator's certification or, if the mediator fails to set forth such date, until 30 days  
8 after the filing of the certification under subsection (d) of this section.

9 (f) Medical Malpractice Claims Excluded. – This section does not apply to  
10 claims seeking recovery for medical malpractice."

11 **SECTION 3.** This act becomes effective January 1, 2004, and applies to  
12 claims regarding physical injury or property damage that arise on or after that date.