

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 217**

Short Title: Med Malpractice Prelitigation Mediation. (Public)

Sponsors: Senators Dalton; Clodfelter, Hagan, Hartsell, Kinnaird, Purcell, Rand, and Snow.

Referred to: Judiciary II.

February 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE INFORMATION REGARDING MEDICAL MALPRACTICE INSURANCE POLICY LIMITS PRIOR TO LITIGATION OF MEDICAL MALPRACTICE CLAIMS, TO GIVE THESE INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF THESE CLAIMS, AND TO REPEAL THE PRIOR EXEMPTIONS FOR THESE CLAIMS AS TO PROVIDING THIS INFORMATION AND GIVING THE OPTION TO INITIATE PRELITIGATION MEDIATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-3-33 reads as rewritten:

**"§ 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 all of the person's medical providers to release to the insurer the person's medical records for the three years prior to the date on which the claim arose, as well as all medical records pertaining to the claimed injury.

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 (a1) A person who seeks recovery for medical malpractice subject to a policy of  
9 medical malpractice insurance may request by certified mail directed to the insurance  
10 adjuster or to the insurance company (Attention Corporate Secretary) at its last known  
11 principal place of business that the insurance company provide information regarding  
12 the policy's limits of coverage under the applicable policy. Upon receipt of such a  
13 request, which shall include the policyholder's name, and, if available, policy number,  
14 the insurance company shall notify that person within 15 business days, on a form  
15 developed by the Department, that the insurer is required to provide this information  
16 prior to litigation only if the person seeking the information satisfies all of the following  
17 conditions:

18 (1) The person seeking the information satisfies the conditions under  
19 subdivision (1) and subdivision (2) of subsection (a) of this section.

20 (2) The person seeking the information submits to the insurer a copy of  
21 the certification by an expert or other documents required by Rule 9(j)  
22 of the Rules of Civil Procedure.

23 (b) ~~Within 30 days of receiving the person's written documents required under~~  
24 ~~subsection (a) of this section, or subsection (a1) of this section, whichever applies,~~ the  
25 insurer shall provide the policy limits.

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

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

31 **SECTION 2.** G.S. 7A-38.3A(f) is repealed.

32 **SECTION 3.** This act becomes effective October 1, 2005, and applies to  
33 actions filed on or after that date seeking recovery for medical malpractice.