

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 277
Commerce Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 6/28/06

Short Title: Motor Vehicle Self-Insurers.

(Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR A VOLUNTARY MEDIATION PROGRAM FOR
2 RESIDENTIAL PROPERTY INSURANCE CLAIMS CAUSED BY DISASTERS,
3 TO REQUIRE SELLERS OF PROPERTY INSURANCE TO DISCLOSE MAJOR
4 PERILS THAT ARE NOT COVERED, TO PROVIDE FOR THE TOLLING OF
5 TIME PERIODS IN PROPERTY INSURANCE POLICIES IN DISASTER
6 SITUATIONS, TO PROVIDE FOR THE TOLLING OF TIME PERIODS IF THE
7 OPERATIONS OF THE DEPARTMENT OF INSURANCE ARE INTERRUPTED
8 BY FORCE MAJEURE, AND TO AUTHORIZE MOTOR VEHICLE
9 SELF-INSURANCE FOR CERTAIN RELIGIOUS ORGANIZATIONS.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Article 44 of Chapter 58 of the General Statutes is amended
12 by renaming the title of Article 44 to "Property Insurance Policies," by designating
13 G.S. 58-44-1 through G.S. 58-44-55 of Article 44 as Part 1, entitled "Policy Provisions,"
14 and by adding the following new Part 2:

15 "Part 2. Mediation of Emergency or Disaster-Related Property Insurance Claims.

16 **§ 58-44-70. Purpose and scope.**

17 (a) This Part creates a nonadversarial alternative dispute resolution procedure for
18 a facilitated claim resolution conference prompted by the critical need for effective, fair,
19 and timely handling of insurance claims arising out of damages to residential property
20 as the result of a disaster. This Part applies only if a state of disaster has been
21 proclaimed for the State or for an area within the State by the Governor under
22 G.S. 166A-6; or if the President of the United States has issued a major disaster
23 declaration for the State or for an area within the State under the Robert T. Stafford
24 Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.

25 (b) The procedure established by this Part is available to all first-party claimants
26 who have insurance claims resulting from damage to residential property occurring in
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1 this State. This Part does not apply to commercial insurance, motor vehicle insurance, or
2 to liability coverage contained in property insurance policies.

3 (c) The Commissioner may designate a person, either within the Department or
4 outside of the Department, as the Administrator or other functionary to carry out any of
5 the Commissioner's duties under this Part.

6 **"§ 58-44-75. Definitions.**

7 As used in this Part:

8 (1) Administrator. – The Commissioner or the Commissioner's designee;
9 and the term is used interchangeably with regard to the
10 Commissioner's duties under this Part.

11 (2) Disaster. – As defined in G.S. 166A-4(1).

12 (3) Disputed claim. – Any matter on which there is a dispute as to the
13 cause of loss or amount of loss, for which the insurer has denied
14 payment, in part or whole, with respect to claims arising from a
15 disaster. Unless the parties agree to mediate a disputed claim involving
16 a lesser amount, a "disputed claim" involves the insured requesting one
17 thousand five hundred dollars (\$1,500) or more to settle the dispute, or
18 the difference between the positions of the parties is one thousand five
19 hundred dollars (\$1,500) or more. "Disputed claim" does not include a
20 dispute with respect to which the insurer has reported allegations of
21 fraud, based on a referral to the insurer's special investigative unit, to
22 the Commissioner. A disputed claim does not include one in which
23 there has been a denial of coverage for the loss because of exclusions
24 in the policy, terms in the policy, conditions in the policy, or
25 nonexistence of the policy at the time of the loss.

26 (4) Mediation. – As defined in G.S. 7A-38.1(b)(2).

27 (5) Mediator. – A neutral person who acts to encourage and facilitate a
28 resolution of a claim.

29 (6) Party or parties. – The insured and his or her insurer, including a
30 surplus lines insurer and the underwriting associations in Articles 45
31 and 46 of this Chapter, when applicable.

32 **"§ 58-44-80. Notification of right to mediate.**

33 (a) Insurers shall notify their insureds in this State who have claimed damage to
34 their residential properties as a result of a disaster of their right to mediate disputed
35 claims. This requirement applies to all disputed claims, including instances where
36 checks have been issued by the insurer to the insured.

37 (b) The insurer shall mail a notice of the right to mediate disputed claims to an
38 insured within five days after the time the insured or the Administrator notifies the
39 insurer of a dispute regarding the insured's claim. The following apply:

40 (1) If the insurer has not been notified of a disputed claim before the time
41 an insurer notifies the insured that a claim has been denied in whole or
42 in part, the insurer shall mail a notice of the right to mediate to the
43 insured in the same mailing as the notice of denial.

- 1 (2) The insurer is not required to send a notice of the right to mediate if a
2 claim is denied because the amount of the claim is less than the
3 insured's deductible.
- 4 (3) The mailing that contains the notice of the right to mediate shall
5 include any consumer brochure on mediation developed by the
6 Commissioner.
- 7 (4) Notification shall be in writing and shall be legible, conspicuous, and
8 printed in at least 12-point type.
- 9 (5) The first paragraph of the notice shall contain the following statement:
10 "The General Assembly of North Carolina has enacted a law to
11 facilitate fair and timely handling of residential property insurance
12 claims arising out of disasters. The law gives you the right to attend a
13 mediation conference with your insurer in order to settle any dispute
14 you have with your insurer about your claim. An independent
15 mediator, who has no connection with your insurer, will be in charge
16 of the mediation conference."

17 (c) The notice shall also:

- 18 (1) Include detailed instructions on how the insured is to request
19 mediation, including name, address, and phone and fax numbers for
20 requesting mediation through the Administrator.
- 21 (2) Include the insurer's address and phone number for requesting
22 additional information.
- 23 (3) State that the Administrator will select the mediator.

24 **"§ 58-44-85. Request for mediation.**

25 (a) If an insured requests mediation before receipt of the notice of the right to
26 mediate or if the date of the notice cannot be established, the insurer shall be notified by
27 the Administrator of the existence of the dispute before the Administrator processes the
28 insured's request for mediation. An insured must request mediation within 60 days after
29 the denial of the claim; failure to request mediation within this time period shall only
30 bar the right to demand mediation; it shall not prejudice any other legal right or remedy
31 of the insured nor prohibit the insurer from voluntarily accepting the request for
32 mediation.

33 (b) If an insurer receives a request for mediation, the insurer shall electronically
34 transmit the request to the Administrator within three business days after receipt of the
35 request. If the Department receives any requests, it shall electronically transmit those
36 requests to the Administrator within three business days after receipt. The Administrator
37 shall notify the insurer within 48 hours after receipt of a request that has been filed with
38 the Department.

39 (c) In the insured's request for mediation, the insured shall provide the following
40 information, if known:

- 41 (1) Name, address, and daytime telephone number of the insured and
42 location of the property if different from the address given.
- 43 (2) The claim and policy number for the insured.
- 44 (3) A brief description of the nature of the dispute.

- 1 (4) The name of the insurer and the name, address, and phone number of
2 the contact person for scheduling mediation.
3 (5) Information with respect to any other policies of insurance that may
4 provide coverage of the insured property for named perils such as
5 flood, earthquake, or windstorm.

6 **"§ 58-44-90. Mediation fees.**

7 (a) The fees of the mediator and of the Administrator as established by the
8 Commissioner shall be borne by the insurer. All other mediation costs, fees, or expenses
9 shall be borne by the party incurring such costs, fees, or expenses unless otherwise
10 provided in a settlement agreement.

11 (b) The Commissioner may establish fee schedules, through emergency rules, for
12 fees to be paid to the Administrator, the mediator, and for timely and untimely
13 mediation cancellations.

14 **"§ 58-44-95. Scheduling of mediation; qualification of mediator.**

15 (a) The Administrator shall select a mediator and schedule the mediation
16 conference.

17 (b) In order to be approved, a mediator must be certified by the Dispute
18 Resolution Commission under G.S. 7A-38.2; or, if not, shall be approved at the
19 discretion of the Administrator only if the parties agree on the selected mediator and the
20 proposed mediator is a licensed attorney in North Carolina in good standing with the
21 North Carolina State Bar. A mediator shall not make an award or render a judgment as
22 to the merits of the action.

23 **"§ 58-44-100. Conduct of the mediation conference.**

24 (a) The Commissioner may adopt rules, in addition to the provisions of this
25 section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing
26 Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by
27 the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for
28 the conduct of mediation conferences under this Part. The rules adopted by the
29 Commissioner shall include a requirement of the mediator to advise the parties of the
30 mediation process and their rights and duties in the process.

31 (b) All parties shall negotiate in good faith. A decision by an insurer to stand by a
32 coverage determination shall not be considered a failure to negotiate in good faith. A
33 party shall be determined to have not negotiated in good faith if the party or a person
34 participating on the party's behalf, becomes unduly argumentative or adversarial or
35 continuously disrupts or otherwise inhibits the negotiations, as determined by the
36 mediator.

37 (c) The mediator shall terminate the negotiations if the mediator determines that
38 either party is not negotiating in good faith, either party is unable or unwilling to
39 participate meaningfully in the process, or upon mutual agreement of the parties.

40 (d) The party responsible for causing termination shall be responsible for paying
41 the mediator's fee and the administrative fee for any rescheduled mediation.

42 (e) The representative of the insurer attending the conference shall:

- 43 (1) Bring, in paper or electronic medium, a copy of the policy and the
44 entire claims file to the conference.

1 (2) Know the facts and circumstances of the claim and be knowledgeable
2 of the provisions of the policy.

3 (f) An insurer will be deemed to have failed to appear if the insurer's
4 representative lacks authority to settle within the limits of the policy.

5 (g) The mediator shall be in charge of the conference and will establish and
6 describe the procedures to be followed. The mediator shall conduct the conference in
7 accordance with the standards of professional conduct for mediation adopted by the
8 American Arbitration Association, the American Bar Association, the Society of
9 Professionals in Dispute Resolution, and, where not inconsistent, with the Rules
10 Implementing Statewide Mediated Settlement Conferences in Superior Court Civil
11 Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and
12 G.S. 7A-38.2.

13 (h) All statements made and documents produced at a settlement conference shall
14 be deemed settlement negotiations in anticipation of litigation. The provisions of
15 G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference.

16 (i) A party may move to disqualify a mediator for good cause at any time. The
17 request shall be directed to the Administrator if the grounds are known before the
18 mediation conference. Good cause consists of conflict of interest between a party and
19 the mediator, inability of the mediator to handle the conference competently, or other
20 reasons that would reasonably be expected to impair the conference.

21 **"§ 58-44-105. Post mediation.**

22 (a) Within five days after the conclusion of the conference, the mediator shall file
23 with the Administrator a mediator's status report, on a form prescribed by the
24 Administrator, indicating whether or not the parties reached a settlement.

25 (b) Mediation is nonbinding unless all the parties specifically agree otherwise in
26 writing.

27 (c) If the parties reach a settlement, the mediator shall include a copy of the
28 settlement agreement with the status report. Within three business days after the
29 conclusion of the conference, the insurer shall disburse the settlement funds in
30 accordance with the terms of the settlement agreement. The insured has three business
31 days after receipt of the settlement funds within which to notify the Commissioner and
32 the insurer of the insured's decision to rescind the settlement agreement, as long as the
33 insured has not received the settlement funds by electronic means or has not cashed or
34 deposited any check or draft disbursed to the insured in payment of the settlement
35 funds.

36 (d) If a settlement agreement is reached and is not rescinded, it shall act as a
37 release of all specific claims that were presented in the conference. Any subsequent
38 claim under the policy shall be presented as a separate claim.

39 **"§ 58-44-110. Nonparticipation in mediation program.**

40 If the insured decides not to participate in this program or if the parties are
41 unsuccessful at resolving the claim, the insured may choose to proceed under the
42 appraisal process set forth in the insurance policy, by litigation, or by any other dispute
43 resolution procedure available under North Carolina law.

44 **"§ 58-44-115. Commissioner's review.**

1 If the insured rescinds a settlement agreement in accordance with G.S. 58-44-105(c),
2 the Commissioner may review the settlement agreement to determine if the agreement
3 was fair to the parties to the agreement. If the Commissioner, upon review and within
4 10 business days after receiving notice of the rescission, deems that it was fair to the
5 parties, the insured, upon notice from the Commissioner, may withdraw the rescission
6 within five business days after receipt of notice from the Commissioner and reinstate
7 the settlement agreement as if no rescission had taken place. The Commissioner's
8 review and findings shall not be offered or accepted as evidence in any subsequent
9 proceedings.

10 **"§ 58-44-120. Relation to Administrative Procedure Act.**

11 The applicable provisions of Chapter 150B of the General Statutes shall govern
12 issues relating to mediation that are not addressed in this Part. The provisions of this
13 Part shall govern in the event of any conflict with Chapter 150B of the General
14 Statutes."

15 **SECTION 2.** Article 44 of Chapter 58 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 58-44-60. Notice to property insurance policyholder about flood, earthquake,**
18 **mudslide, mudflow, and landslide insurance coverage.**

19 (a) Every insurer that sells property insurance policies that do not provide
20 coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon
21 the issuance and renewal of each policy, identify to the policyholder which of these
22 perils are not covered under the policy. The insurer shall print the following warning,
23 citing which peril is not covered, in Times New Roman 16-point font or other
24 equivalent font and include it in the policy on a separate page immediately before the
25 declarations page:

26 "WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT
27 YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES],
28 [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE
29 COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING
30 COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL
31 OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU
32 SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS
33 COVERED AND WHAT IS NOT COVERED."

34 (b) As used in this section, "insurer" includes an entity that sells property
35 insurance under Articles 21, 45, or 46 of this Chapter."

36 **SECTION 3.** Article 2 of Chapter 58 of the General Statutes is amended by
37 adding two new sections to read:

38 **"§ 58-2-46. State of disaster; automatic stay of proof of loss requirements;**
39 **premium and debt deferrals; loss adjustments for separate windstorm**
40 **policies.**

41 Whenever a state of disaster is proclaimed for the State or for an area within the
42 State under G.S. 166A-6 or whenever the President of the United States has issued a
43 major disaster declaration for the State or for an area within the State under the Stafford
44 Act, 42 U.S.C. § 5121, et seq., as amended:

- 1 (1) The application of any provision in an insurance policy insuring real
2 property and its contents that are located within the geographic area
3 designated in the proclamation or declaration, which provision requires
4 an insured to file a proof of loss within a certain period of time after
5 the occurrence of the loss, shall be stayed for the time period not
6 exceeding the expiration of the disaster proclamation or declaration
7 and all renewals of the proclamation or 45 days, whichever is later.
- 8 (2) As used in this subdivision, "insurance company" includes a service
9 corporation, HMO, MEWA, surplus lines insurer, and the underwriting
10 associations under Articles 45 and 46 of this Chapter. All insurance
11 companies, premium finance companies, collection agencies, and other
12 persons subject to this Chapter shall give their customers who reside
13 within the geographic area designated in the proclamation or
14 declaration the option of deferring premium or debt payments that are
15 due during the time period covered by the proclamation or declaration.
16 This deferral period shall be 30 days from the last day the premium or
17 debt payment may be made under the terms of the policy or contract.
18 This deferral period shall also apply to any statute, rule, or other policy
19 or contract provision that imposes a time limit on an insurer, insured,
20 claimant, or customer to perform any act during the time period
21 covered by the proclamation or declaration, including the transmittal
22 of information, with respect to insurance policies or contracts,
23 premium finance agreements, or debt instruments when the insurer,
24 insured, claimant, or customer resides or is located in the geographic
25 area designated in the proclamation or declaration. Likewise, the
26 deferral period shall apply to any time limitations imposed on insurers
27 under the terms of a policy or contract or provisions of law related to
28 individuals who reside within the geographic area designated in the
29 proclamation or declaration. The Commissioner may extend any
30 deferral period in this subdivision, depending on the nature and
31 severity of the proclaimed or declared disaster. No additional rate or
32 contract filing shall be necessary to effect any deferral period.
- 33 (3) With respect to health benefit plans, after a deferral period has expired,
34 all premiums in arrears shall be payable to the insurer. If premiums in
35 arrears are not paid, coverage shall lapse as of the date premiums were
36 paid up, and preexisting conditions shall apply as permitted under this
37 Chapter; and the insured shall be responsible for all medical expenses
38 incurred since the effective date of the lapse in coverage.
- 39 (4) In addition to the requirements of G.S. 58-45-35(e), for separate
40 windstorm policies that are written by an insurer other than the
41 Underwriting Association, losses shall be adjusted by the insurer that
42 issued the property insurance and not by the insurer that issued the
43 windstorm policy. The insurer that issued the windstorm policy shall

1 reimburse the insurer that issued the property insurance for reasonable
2 expenses incurred by that insurer in adjusting the windstorm losses.

3 **"§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and**
4 **deemer provisions.**

5 Regardless of whether a state of disaster has been proclaimed under G.S. 166A-6 or
6 declared under the Stafford Act, whenever an incident beyond the Department's
7 reasonable control, including an act of God, insurrection, strike, fire, power outage, or
8 systematic technological failure, substantially affects the daily business operations of
9 the Department, the Commissioner may issue an order, effective immediately, to stay
10 the application of any deadlines and deemer provisions imposed by law or rule upon the
11 Commissioner or Department or upon persons subject to the Commissioner's
12 jurisdiction, which deadlines and deemer provisions would otherwise operate during the
13 time period for which the operations of the Department have been substantially affected.
14 The order shall remain in effect for a period not exceeding 30 days. The order may be
15 renewed by the Commissioner for successive periods not exceeding 30 days each for as
16 long as the operations of the Department remain substantially affected, up to a period of
17 one year from the effective date of the initial order."

18 **SECTION 4.** G.S. 58-2-25(a) reads as rewritten:

19 "(a) The Commissioner shall appoint or employ such other deputies, actuaries,
20 economists, financial analysts, financial examiners, licensed attorneys, rate and policy
21 analysts, accountants, fire and rescue training instructors, market conduct analysts,
22 insurance complaint analysts, investigators, engineers, building inspectors, risk
23 managers, clerks and other employees that the Commissioner considers to be necessary
24 for the proper execution of the work of the Department, at the compensation that is
25 fixed and provided by the Department of Administration. If the Commissioner considers
26 it to be necessary for the proper execution of the work of the Department to contract
27 with persons, except to fill authorized employee positions, all of those contracts, except
28 those provided for in Articles 36 and 37 and Part 2 of Article 44 of this Chapter, shall be
29 made pursuant to the provisions of Article 3C of Chapter 143 of the General Statutes."

30 **SECTION 5.** Article 9A of Chapter 20 of the General Statutes is amended
31 by adding a new section to read:

32 **"§ 20-279.33A. Religious organizations; self-insurance.**

33 (a) Notwithstanding any other provision of this Article or Article 13 of this
34 Chapter, any recognized religious organization having established tenets or teachings
35 and that has been in existence at all times since December 31, 1950, may qualify as a
36 self-insurer by obtaining a certificate of self-insurance from the Commissioner as
37 provided in subsection (c) of this section if the Commissioner determines that all of the
38 following conditions are met:

- 39 (1) Members of the religious organization operate five or more vehicles
40 that are registered in this State and are either owned or leased by them.
41 (2) Members of the religious organization hold a common belief in mutual
42 financial assistance in time of need to the extent that they share in
43 financial obligations of other members who would otherwise be unable
44 to meet their obligations.

- 1 (3) The religious organization has met all of its insurance obligations for
2 the five years preceding its application.
- 3 (4) The religious organization is financially solvent and not subject to any
4 actions in bankruptcy, trusteeship, receivership, or any other court
5 proceeding in which the financial solvency of the religious
6 organization is in question.
- 7 (5) Neither the religious organization nor any of its participating members
8 has any judgments arising out of the operation, maintenance, or use of
9 a motor vehicle taken against them that have remained unsatisfied for
10 more than 30 days after becoming final.
- 11 (6) There are no other factors that cause the Commissioner to believe that
12 the religious organization and its participating members are not of
13 sufficient financial ability to pay judgments against them.
- 14 (7) The religious organization and its participating members meet other
15 requirements that the Commissioner by administrative rule prescribes.

16 (b) The Commissioner may, in the Commissioner's discretion, upon the
17 application of a religious organization, issue a certificate of self-insurance when the
18 Commissioner is satisfied that the religious organization is possessed and will continue
19 to be possessed of an ability to pay any judgments that might be rendered against the
20 religious organization. The certificate shall serve as evidence of insurance for the
21 purposes of G.S. 20-7(c1), 20-13.2(e), 20-16.1, 20-19(k), and 20-179.3(l).

22 (c) A group issued a certificate of self-insurance under this section shall notify
23 the Commissioner in writing if any person ceases to be a member of the group. The
24 group shall notify the Commissioner within 10 days of the person's removal or
25 departure from the group.

26 (d) The Commissioner may, at any time after the issuance of a certificate of
27 self-insurance under this subsection, cancel the certificate by giving 30 days' written
28 notice of cancellation to the religious organization whenever there is reason to believe
29 that the religious organization to whom the certificate was issued is no longer qualified
30 as a self-insurer under this section."

31 **SECTION 6.** If any section or provision of this act is declared
32 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
33 validity of the act as a whole or any part other than the part so declared to be
34 unconstitutional, preempted, or otherwise invalid.

35 **SECTION 7.** Section 2 of this act becomes effective January 1, 2007, and
36 applies to policies issued or renewed on or after that date. Section 5 of this act becomes
37 effective January 1, 2007. The remainder of this act is effective when it becomes law.