

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1120

Senate Insurance and Consumer Protection Committee Substitute Adopted 10/2/02
Third Edition Engrossed 10/2/02

Short Title: Beach and FAIR Plan Amendments.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THE BEACH PLAN TO ISSUE A HOMEOWNERS'
2 INSURANCE POLICY; REQUIRE A STUDY OF THE BEACH AND FAIR
3 PLANS; PROVIDE FOR IMMEDIATE TEMPORARY BINDING AUTHORITY
4 OF AGENTS ACCEPTING APPLICATIONS TO THE BEACH PLAN; REQUIRE
5 THE BEACH AND FAIR PLANS TO MAINTAIN UNEARNED PREMIUM
6 RESERVES AND RESERVES FOR LOSSES; MAKE TECHNICAL
7 CORRECTIONS TO THE APPOINTMENT PROVISIONS FOR THE MOTOR
8 VEHICLE REINSURANCE FACILITY BOARD OF GOVERNORS; CLARIFY
9 THAT THE BEACH AND FAIR PLANS ARE SUBJECT TO THE OPEN
10 MEETINGS ACT; AND AMEND THE INSURANCE LAW PERTAINING TO
11 SPECIAL DEPOSITS TO PERMIT HARDSHIP PAYMENTS UNDER
12 WORKERS' COMPENSATION POLICIES.

13 The General Assembly of North Carolina enacts:

14 **PART I. FINDINGS OF THE GENERAL ASSEMBLY**

15
16 **SECTION 1.** The General Assembly of North Carolina finds that:

- 17
18 (1) An adequate market for property insurance is necessary to the
19 economic welfare of the beach and coastal counties of North Carolina.
20
21 (2) The establishment of the North Carolina Insurance Underwriting
22 Association ("Beach Plan") was designed to provide a residual
23 property insurance market in our State's beach and coastal counties.
24
25 (3) Despite the availability of property protection through the Beach Plan,
26 the availability of homeowners' insurance policies continues to be
27 inadequate in beach and coastal counties.
28
29 (4) In an effort to address this ongoing problem, the Commissioner of
30 Insurance has requested the Board of Directors of the Beach Plan to

1 offer homeowners' insurance to residents in beach and coastal
2 counties.

3 (5) The Board of Directors of the Beach Plan has developed a
4 homeowners' policy and has submitted this policy to the
5 Commissioner of Insurance for approval.

6 (6) The Commissioner of Insurance has the authority under G.S. 58-45-30
7 to direct and approve the offering of a homeowners' insurance policy
8 through the Beach Plan.

9 (7) The availability of a homeowners' insurance policy offered through the
10 Beach Plan will assist in alleviating the lack of homeowners' insurance
11 currently available in beach and coastal counties.

12 (8) The General Assembly will await further recommendations by the
13 Commissioner of Insurance on other options to increase the
14 availability of homeowners' insurance both in beach and coastal
15 counties and statewide, as directed in Section 3 of this act.

16 17 **PART II. HOMEOWNERS' INSURANCE THROUGH BEACH PLAN**

18 19 **SECTION 2.** G.S. 58-45-30(d) reads as rewritten:

20 "~~(d) The Commissioner may designate the kinds of property insurance policies on~~
21 ~~principal residences to be offered by the association, including insurance policies under~~
22 ~~Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for~~
23 ~~these policies, if the Commissioner finds, after a hearing held in accordance with G.S.~~
24 ~~58-2-50, that the public interest requires the designation. The provisions of Chapter~~
25 ~~150B do not apply to any procedure under this paragraph, except that G.S. 150B-39 and~~
26 ~~G.S. 150B-41 shall apply to a hearing under this paragraph. Within 30 days after the~~
27 ~~receipt of notification from the Commissioner of a change in designation pursuant to~~
28 ~~this paragraph, the association shall submit a revised plan and articles of association for~~
29 ~~approval in accordance with this section. As used in this subsection, 'homeowners'~~
30 ~~insurance policy' means a multiperil policy providing full coverage of residential~~
31 ~~property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy~~
32 ~~under Article 36 of this Chapter. The Association shall issue, for principal residences,~~
33 ~~homeowners' insurance policies approved by the Commissioner. Homeowners'~~
34 ~~insurance policies shall be available to persons who reside in the beach and coastal areas~~
35 ~~and who are unable to obtain homeowners' insurance policies from insurers that are~~
36 ~~authorized to transact and are actually writing homeowners' insurance policies in this~~
37 ~~State. The terms and conditions of the homeowners' insurance policies available under~~
38 ~~this subsection shall not be more favorable than those of homeowners' insurance~~
39 ~~policies available in the voluntary market in beach and coastal counties. Rates for the~~
40 ~~homeowners' insurance policies authorized by this subsection shall be set pursuant to~~
41 ~~rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall~~
42 ~~not apply.~~"

43 44 **PART III. STUDY OF THE BEACH AND FAIR PLANS**

1
2 **SECTION 3.** The Commissioner of Insurance, in consultation with other
3 governmental bodies specified below, shall study the provisions of Articles 45 and 46 of
4 Chapter 58 of the General Statutes, other relevant portions of the General Statutes, and
5 the plans and operations of the North Carolina Insurance Underwriting Association
6 ("Beach Plan") and the North Carolina Joint Underwriting Association ("FAIR Plan").
7 In this study, the Commissioner may consider all issues and potential remedies related
8 to the availability of homeowners' insurance coverage statewide, and specifically in the
9 beach and coastal counties of the State. In conducting this study, the Commissioner may
10 call upon any department, agency, institution, or officer of the State or of any political
11 subdivision of the State, and the North Carolina Rate Bureau, the North Carolina
12 Insurance Underwriting Association ("Beach Plan"), the North Carolina Joint
13 Underwriting Association ("FAIR Plan"), and the North Carolina Motor Vehicle
14 Reinsurance Facility, and representatives of property and casualty insurers and
15 reinsurers, for such assistance and information, and these departments, agencies,
16 institutions, officers, and other entities shall cooperate with the Commissioner to the
17 fullest possible extent. The Commissioner shall report to the 2003 General Assembly on
18 or before April 1, 2003, on the Commissioner's findings and may make any legislative
19 or other recommendations he considers appropriate.
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21 **PART IV. BEACH PLAN BINDER PROVISIONS**

22

23 **SECTION 4.1.** G.S. 58-45-35(d) reads as rewritten:

24 "(d) An agent who is licensed under Article 33 of this Chapter as an agent of a
25 company which is a member of the Association established under this Article shall not
26 be deemed an agent of the Association. The foregoing notwithstanding, an agent of a
27 company which is a member of the Association shall have the authority, subject to the
28 underwriting guidelines established by the Association, to temporarily bind coverage
29 with the Association. The Association shall establish rules and procedures, including
30 any limitations for binding authority, in the plan of operation.

31 Any unearned premium on the temporary binder shall be returned to the
32 policyholder if the Association refuses to issue a policy. Nothing in this section shall
33 prevent the Association from suspending binding authority in accordance with its plan
34 of operation."

35 **SECTION 4.2.** Article 45 of Chapter 58 of the General Statutes is amended
36 by adding a new section to read:

37 "**§ 58-45-36. Temporary contracts of insurance.**

38 Consistent with G.S. 58-45-35(d), the Association shall be temporarily bound by a
39 written temporary binder of insurance issued by any duly licensed insurance agent or
40 broker. Coverage shall be effective upon payment to the agent or broker of the entire
41 premium or part of the premium, as prescribed by the Association's plan of operation.
42 Nothing in this section shall impair or restrict the rights of the Association under G.S.
43 58-45-35(b) to decline to issue a policy based upon a lack of insurability as determined
44 by the Association or the existence of an unpaid premium due from the applicant."

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2 **PART V. BEACH AND FAIR PLAN RESERVING**
3

4 **SECTION 5.1.** Article 45 of Chapter 58 of the General Statutes is amended
5 by adding a new section to read:

6 **"§ 58-45-46. Unearned premium, loss, and loss expense reserves.**

7 The Association shall make provisions for reserving unearned premiums and
8 reserving for losses, including incurred but not reported losses, and loss expenses, in
9 accordance with G.S. 58-3-71, 58-3-75, and 58-3-81."

10 **SECTION 5.2.** Article 46 of Chapter 58 of the General Statutes is amended
11 by adding a new section to read:

12 **"§ 58-46-41. Unearned premium, loss, and loss expense reserves.**

13 The Association shall make provisions for reserving unearned premiums and
14 reserving for losses, including incurred but not reported losses, and loss expenses, in
15 accordance with G.S. 58-3-71, 58-3-75, and 58-3-81."

16 **SECTION 5.3.** The North Carolina Joint Underwriting Association and the
17 North Carolina Insurance Underwriting Association shall request from the United States
18 Internal Revenue Service a ruling as to whether or not the reserves required by Sections
19 5.1 and 5.2 of this act are subject to federal taxation. If the ruling states that the reserves
20 are subject to federal taxation, in whole or in part, the Associations shall pursue ways
21 and means for an exemption from federal taxation.
22

23 **PART VI. NC MOTOR VEHICLE REINSURANCE FACILITY**
24 **APPOINTMENTS**
25

26 **SECTION 6.** G.S. 58-37-35(d) reads as rewritten:

27 "(d) The Facility shall be administered by a Board of Governors. The Board of
28 Governors shall consist of 12 members having one vote each from the classifications
29 ~~hereinafter enumerated plus specified in this subsection and the Commissioner~~
30 Commissioner, who shall serve ex officio without vote. Each Facility insurance
31 company member serving on the Board shall be represented by a senior officer of the
32 company. Not more than one company in a group under the same ownership or
33 management shall be represented on the Board at the same time. Five members of the
34 Board shall be selected by the member insurers, which members shall be fairly
35 representative of the industry. To insure representative member insurers, one each shall
36 be selected from the following ~~groups: trade associations:~~ trade associations: the American Insurance
37 Association (or its successors), the Alliance of American Insurers (or its successors), the
38 National Association of Independent Insurers (or its successors), all other stock insurers
39 not affiliated with ~~the above groups, those trade associations,~~ those trade associations, and all other nonstock
40 insurers not affiliated with ~~the above groups. those trade associations.~~ those trade associations. The
41 Commissioner shall appoint two members of the Board who ~~shall be~~ are Facility
42 insurance company members domiciled in this State. ~~The Commissioner shall appoint~~
43 ~~one member of the Board who shall be selected from a list of two nominees submitted~~
44 ~~by the Auto Insurance Agents of North Carolina, Inc.~~ The Commissioner shall appoint

1 ~~four~~ five members of the Board who shall be fire and casualty insurance agents licensed
2 in this State and actively engaged in writing motor vehicle insurance in this State. The
3 ~~Commissioner shall select two agents from among a list of four nominees submitted by~~
4 ~~the Independent Insurance Agents of North Carolina, Inc., (or its successors).~~ The initial
5 term of office of ~~said~~ the Board members shall be two years. Following completion of
6 initial terms, successors to the members of the original Board of Governors shall be
7 selected to serve three years. All members of the Board of Governors shall serve until
8 their successors are selected and qualified and the Commissioner may fill any vacancy
9 on the Board from any of the ~~above~~ mentioned ~~classifications~~ specified in this subsection
10 until ~~such~~ the vacancies are filled in accordance with ~~the provisions of this Article.~~ The
11 Board of Governors of the Facility shall also have as nonvoting members two persons
12 who are not employed by or affiliated with any insurance company or the Department
13 and who are appointed by the Governor to serve at the Governor's pleasure."
14

15 PART VII. BEACH AND FAIR PLANS SUBJECT TO OPEN MEETINGS ACT

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17 SECTION 7.1. Article 46 of Chapter 58 of the General Statutes is amended
18 by adding a new section to read:

19 "**§ 58-45-90. Open meetings.**

20 The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of
21 the General Statutes, as amended."

22 SECTION 7.2. Article 46 of Chapter 58 of the General Statutes is amended
23 by adding a new section to read:

24 "**§ 58-46-60. Open meetings.**

25 The Association is subject to the Open Meetings Act, Article 33C of Chapter 143 of
26 the General Statutes, as amended."

27 PART VIII. AMEND SPECIAL DEPOSITS INSURANCE LAW

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29 SECTION 8. G.S. 58-5-63 is amended by adding a new subsection to read:

30
31 "(c) Notwithstanding the provisions of G.S. 58-5-70, if any company that is or has
32 been the subject of supervision or rehabilitation proceedings fails to pay its liabilities for
33 temporary disability payments or emergency medical expenses under policies of
34 workers' compensation insurance, the Commissioner shall liquidate the company's
35 deposits and accrued interest and shall use the proceeds to pay such liabilities until that
36 company becomes the subject of a final order of liquidation with a finding of insolvency
37 that has not been stayed or been the subject of a writ of supersedeas or other comparable
38 order. The Commissioner also may enter into one or more contracts to handle the
39 administration of the identification and payment of such liabilities, and to the extent
40 such a contract is entered into, the contractor and its employees, agents, and attorneys,
41 shall have immunity of the same scope and extent as an employee of the State acting in
42 the course and scope of the public duties of such employment. After an order of
43 liquidation with a finding of insolvency has been entered by a court of competent
44 jurisdiction that has not been stayed or been the subject of a writ of supersedeas or other

1 comparable order, then the balance of the proceeds, if any, shall be delivered to the
2 North Carolina Insurance Guaranty Association in accordance with G.S. 58-48-95. To
3 the extent that any payment made hereunder reduces the ratable amount payable to
4 policyholders under G.S. 58-5-70, the liens obtained by the North Carolina Insurance
5 Guaranty Association pursuant to Article 48 of this Chapter shall be reduced to such
6 extent as necessary to permit the policyholders to be paid the ratable share that would
7 have been due but for such payments."

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9 **PART XI. EFFECTIVE DATES**

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11 **SECTION 9.** Part II of this act becomes effective May 1, 2003. Part IV of
12 this act becomes effective January 1, 2003. The remainder of this act is effective when it
13 becomes law.