

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

SESSION LAW 1997-498
HOUSE BILL 452

AN ACT TO AMEND THE BEACH PLAN PARTICIPATION FORMULA, PROVIDE FOR WINDSTORM AND HAIL INSURANCE IN COASTAL COUNTIES, AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE AVAILABILITY OF PROPERTY INSURANCE IN THE STATE, AND REVISE OTHER STATUTES RELATED TO THE INSURANCE UNDERWRITING ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-45-5 reads as rewritten:

"§ 58-45-5. Definition of terms.

~~In~~ As used in this Article, unless the context clearly otherwise ~~requires,~~ requires:

- (1) 'Association' means the North Carolina Insurance Underwriting Association established ~~pursuant to the provisions of~~ under this Article;
- (2) 'Beach area' means all of that area of the State of North Carolina south and east of the inland waterway from the South Carolina line to Fort Macon (Beaufort Inlet); thence south and east of Core, Pamlico, Roanoke and Currituck sounds to the Virginia line, being those portions of land generally known as the Outer Banks;
- (2a) 'Coastal area' means all of that area of the State of North Carolina comprising the following counties: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. 'Coastal area' does not include the portions of these counties that lie within the beach area.
- (3) Repealed by Session Laws 1991, c. 720, s. 6.
- (3a) 'Crime insurance' means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in the various crime insurance policies, or their successor forms of coverage, approved by the Commissioner and issued by the Association. Such policies shall not be more restrictive than those issued under the Federal Crime Insurance Program authorized by Public Law 91-609.
- (3b) 'Directors' means the Board of Directors of the Association.

- (4) 'Essential property insurance' means insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, or their successor forms of coverage, as approved by the Commissioner;
- (5) 'Insurable property' means real property at fixed locations in the ~~Beach area~~ beach and coastal area, including travel trailers when tied down at a fixed location, or the tangible personal property located therein, but shall not include insurance on motor ~~vehicles or farm risks; vehicles;~~ which property is determined by the Association, after inspection and under the criteria specified in the plan of operation, to be in an insurable condition. However, any one and two family dwellings built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code and any structure or building built in substantial compliance with the North Carolina State Building Code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Article. However, none of the following factors shall be considered in determining insurable condition: neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property. Also, any structure begun on or after January 1, 1970, not built in substantial compliance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the Federal Manufactured Home Construction and Safety Standards, any predecessor or successor federal or State construction or safety standards, and any further construction or safety standards promulgated by the association and approved by the Commissioner, or the North Carolina Uniform Residential Building Code or the North Carolina State Building Code; however, an individual certificate shall not be necessary where the structure is located within a political subdivision which has certified to the Association on an annual basis

that it is enforcing the North Carolina Uniform Residential Building Code or the North Carolina State Building Code and has no plans to discontinue enforcing these codes during that year.

- (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.
- (6a) 'Net direct premiums' means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril insurance policies as computed by the Commissioner, less:
 - a. Return premiums on uncanceled contracts;
 - b. Dividends paid or credited to policyholders; and
 - c. The unused or unabsorbed portion of premium deposits.
- (7) 'Plan of operation' or 'plan' means the plan of operation of the Association approved or promulgated by the Commissioner, pursuant to the provisions of Commissioner under this Article."

Section 2. G.S. 58-45-25 reads as rewritten:

"§ 58-45-25. Each member of Association to participate in its expenses, profits, and losses.

~~All members of the Association shall participate in its expenses, profits, and losses and shall receive credit annually for essential property insurance voluntarily written as determined by the directors of the Association, with the approval of the Commissioner. Participation of each member in the losses of the Association shall be reduced accordingly. Any insurer authorized to write and engage in writing any insurance, the writing of which requires the insurer to be a member of the Association, pursuant to G.S. 58-45-10, shall become a member of the Association on the January 1 immediately following authorization and the determination of the insurer's participation in the Association shall be made as of the date of membership in the same manner as for all other members of the Association.~~

(a) Each member of the Association shall participate in the expenses, profits, and losses of the Association in the proportion that its net direct premium written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas bears to the aggregate net direct premiums written in this State during the preceding calendar year for residential and commercial properties outside of the beach and coastal areas by all members of the Association, as certified to the Association by the Commissioner. The Commissioner shall certify each member's participation after review of annual statements and any other reports and data necessary to determine participation and may obtain any necessary information or data from any member of the Association for this purpose. Any insurer that is authorized to write and that is engaged in writing any insurance, the writing of which requires the insurer to be a member of the Association under G.S. 58-45-10, shall become a member of the Association on the first day of January after authorization. The determination of the insurer's participation in the Association shall be made as of the date of membership of the insurer in the same manner as for all other members of the Association.

(b) All member companies shall receive credit each year for essential property insurance, farmowners insurance, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach and coastal areas in accordance with guidelines and procedures to be submitted by the Directors to the Commissioner for approval. The participation of each member company in the expenses, profits, and losses of the Association shall be reduced accordingly; provided, no credit shall be given where coverage for the peril of wind has been excluded. The guidelines and procedures for granting credit shall encourage and assist each member company to voluntarily write these coverages in the beach and coastal areas for commercial and residential properties."

Section 3. G.S. 58-45-30(a) reads as rewritten:

"(a) ~~Within 90 days after April 17, 1969, the directors of the Association~~ The Directors shall submit to the Commissioner for his review and approval, a proposed plan of operation. ~~Such proposed~~ The plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors, and shall grant proper credit annually to each member of the Association for essential property ~~insurance~~ insurance, farmowners, homeowners insurance, and the property portion of commercial multiple peril policies voluntarily written in the beach ~~area and coastal areas~~ and shall provide for the efficient, economical, fair and nondiscriminatory administration of the Association and for the prompt and efficient provision of essential property insurance in the beach and coastal areas of North Carolina ~~so as to~~ promote orderly community development in those areas and to provide means for the adequate maintenance and improvement of the property in ~~such those~~ areas. ~~Such proposed~~ The plan may include a preliminary assessment of all members for initial expenses necessary ~~to the commencement of operation;~~ the establishment of necessary facilities; management of the Association; ~~plan for~~ the assessment of members to defray losses and expenses; underwriting standards; procedures for the acceptance and cession of reinsurance; procedures for determining the amounts of insurance to be provided to specific risks; time limits and procedures for processing applications for ~~insurance~~ insurance; and ~~for such any other provisions as may be deemed that are considered~~ necessary by the Commissioner to carry out the purposes of this Article."

Section 4. G.S. 58-33-100 reads as rewritten:

"§ 58-33-100. Payment of premium to agent valid; obtaining by fraud a crime.

(a) Any agent, broker or limited representative who acts for a person other than himself negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations may be contained in the policy or contract. This subsection does not apply to the Insurance Underwriting Association established under Article 45 of this Chapter or the Joint Underwriting Association established under Article 46 of this Chapter.

(b) ~~Such~~ Any agent, broker or limited representative knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be guilty of a Class 1 misdemeanor."

Section 5. G.S. 58-45-35(b) reads as rewritten:

"(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income and extra expense coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Short term policies may also be issued. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property."

Section 6. G.S. 58-45-35(e) reads as rewritten:

"(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks in the beach and coastal areas for which essential property insurance has been written by licensed insurers. Whenever such other essential property insurance written by licensed insurers includes replacement cost coverage, the Association shall also offer replacement cost coverage. In order to be eligible for a policy of windstorm and hail insurance, the applicant shall provide the Association, along with the premium payment for the windstorm and hail insurance, a certificate that the essential property insurance is in force. The policy forms for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval before they may be used. Catastrophic losses, as determined by the Association and approved by the Commissioner, that are covered under the windstorm and hail coverage in the beach and coastal areas shall be adjusted by the licensed insurer that issued the essential property insurance and not by the Association. Expenses incurred by the licensed insurer in adjusting windstorm and hail losses shall be reimbursed by the Association."

Section 7. G.S. 58-45-45(b) reads as rewritten:

"(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. For windstorm and hail policies issued or renewed in the coastal area, unless otherwise determined by the Commissioner, the Association shall charge ninety percent (90%) of the approved windstorm and hail rates for the coastal area. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification."

Section 8. Effective January 1, 2000, G.S. 58-45-45(b), as amended by Section 7 of this act, reads as rewritten:

"(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. ~~For windstorm and hail policies issued or renewed in the coastal area, unless otherwise determined by the Commissioner, the Association shall charge ninety percent (90%) of the approved~~

~~windstorm and hail rates for the coastal area.~~ Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification."

Section 9. G.S. 58-45-1 reads as rewritten:

"§ 58-45-1. Declarations and purpose of Article.

(a) It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the ~~beach area~~ beach and coastal areas of the State of North Carolina and that without such insurance the orderly growth and development of ~~the beach area of the State of North Carolina~~ those areas would be severely impeded; that furthermore, adequate insurance upon property in the ~~beach area~~ beach and coastal areas is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the ~~beach area,~~ beach and coastal areas, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the ~~beach area~~ and coastal areas of North Carolina.

(b) The General Assembly further declares that it is its intent in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort."

Section 10. G.S. 58-46-1(a) reads as rewritten:

"(a) It is the purpose of this Article to provide a program whereby adequate basic property insurance may be made available to property owners having insurable property in the State. It is further the purpose of this Article to encourage the improvement of properties located in the State and to arrest the decline of properties located in the State. It is the intent of the General Assembly in creating and, from time to time, amending this Article that the market provided by this Article not be the first market of choice, but the market of last resort."

Section 11. The Legislative Research Commission may study the provisions of Articles 45 and 46 of Chapter 58 of the General Statutes, other relevant portions of the North Carolina General Statutes, and the plans and operations of the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association. The Commission may consider all possible options to improve availability of property and homeowners insurance in the State. The Commission may report its findings and recommendations, along with legislation, to the 1998 Regular Session of the 1997 General Assembly and to the 1999 General Assembly.

Section 12. The North Carolina Insurance Underwriting Association and the Commissioner of Insurance shall consider any further revisions necessary for the participation formulas of the Association for the purpose of encouraging insurance companies to voluntarily write property insurance policies in the beach and coastal areas of the State.

Section 13. The North Carolina Insurance Underwriting Association shall use the "take out" program, as filed with and approved by the Commissioner, in the coastal area.

Section 14. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Section 15. Section 4 of this act becomes effective October 1, 1997. Sections 2, 3, 6, 7, 8, 9, 10, and 13 of this act become effective January 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of August, 1997.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:28 p.m. this 11th day of September, 1997