



# HOUSE BILL 287: Amend Ins. Laws- AB.

**This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.**

2016-2017 General Assembly

<b>Committee:</b>	Senate Insurance	<b>Date:</b>	June 15, 2016
<b>Introduced by:</b>	Reps. Setzer, Bumgardner	<b>Prepared by:</b>	Kristen L. Harris
<b>Analysis of:</b>	PCS to Third Edition H287-CSMH-18		Committee Co-Counsel

**SUMMARY:** *The Proposed Committee Substitute for House Bill 287 would increase property damage thresholds under the State's Safe Driver Incentive Plan; place a 15% cap on annual premium increases on long-term care insurance policies; appropriate \$425,000 for the operation and establishment of a publicly-accessible on-line Building Code; make various updates to Chapter 58's fire and rescue provisions; provide for a study on the reduction in recruitment and retention of volunteer firefighters in North Carolina; increase penalties in Chapter 58's anti-fraud and criminal provisions; make technical and substantive changes to North Carolina's captive insurance laws; authorize the Department to plan for and establish a private flood insurance market; enable third parties, including insurers, to recover restitution from convicted defendants; exempt accountable care organizations participating in Medicare programs from Department regulation; and make various other changes to insurance laws, as recommended by the Department.*

## **BILL ANALYSIS:**

### **PART I. CONSUMER TRANSPARENCY AND ASSISTANCE PROVISIONS**

**Section 1.1.** would increase the property damage thresholds for major, intermediate, and minor accidents under the State's Safe Driver Incentive Plan. Major accidents previously defined as involving property damage of \$3,085 or more would now require property damage of \$4,100 or more. Intermediate accidents would now involve property damage between \$2,501 and \$4,099. Minor accidents would now have \$2,500 or less in property damage rather than \$1,850 or less.

**Section 1.2.** would add a new subsection making fifteen percent (15%) of the current rate the most a long-term care insurance policy premium could be increased in any calendar year.

**Section 1.3.** would create a special fund of \$425,000 for the establishment and operation of a publicly-accessible on-line Building Code by the Commissioner, in consultation with the Building Code Council and would direct both the Council and the Department to make recommendations to the General Assembly on or before the 2018 Legislative session about sufficiency of funding and modifications to the Code.

### **PART II. FIRE AND RESCUE PROVISIONS**

**Section 2.1.(a)** would remove language that requires a fire department to serve 12,000 or less people to be eligible for a grant from the Volunteer Fire Department Fund.

**Section 2.1.(b)** would remove previous prioritizing methodology used by the Department to provide grants from the Volunteer Rescue/EMS fund. Grants would now be based on need only.

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**Section 2.2.** would define "fire safety" as including "community education and outreach, and the provision and installation of fire safety devices in high-risk and high-need locations throughout the State" and include fire safety as one of the costs covered by the \$250.00 paid by a cigarette manufacturer to the Commissioner for each brand style listed in a certification.

**Section 2.3.** would direct the Office of State Fire Marshall, Department of Insurance, in consultation with other fire, rescue, and state organizations to study the reduction in recruitment and retention of volunteer firefighters in North Carolina and to make recommendations to the General Assembly before the 2018 Legislative session.

## **PART III. ANTI-FRAUD AND CRIMINAL PROVISIONS**

**Section 3.1.** would increase the penalty from a Class H felony to a Class F felony if an insurance fiduciary causes the cancellation or nonrenewal, with loss of coverage, of a group health or life insurance policy by willfully failing to pay the premiums or fund the plan or to deliver 45 days' notice of his or her intention to stop payment or funding, when the loss of value is \$100,000 or more. For losses of less than \$100,000, the penalty would remain a Class H felony.

**Section 3.2.(a)** would amend G.S. 58-2-164. Rate evasion fraud; prevention programs.

- Would amend the definitions of "applicant," "auto insurance," "eligible risk," and "insurer," and add a definition for "principal place of business".
- Would clarify that the Class 3 misdemeanor penalty for providing or assisting in the provision of false or misleading information on an application for auto insurance applies to both an application for issuance of or an amendment to a policy. G.S. 58-2-164(b)
- Would add a new subsection (G.S. 58-2-164(b1)) creating a Class H felony penalty if someone knowingly violates G.S. 58-2-164(b) to obtain auto insurance to cover a vehicle which requires a commercial driver's license. Would also add a possible fine of up to \$10,000 per violation.
- Would amend what documentation can be provided to show proof of North Carolina residency or eligible risk status to obtain nonfleet private passenger motor vehicle insurance.
- Would add a new subsection stating what documentation can be provided to show proof of North Carolina residency or eligible risk status to obtain other than nonfleet private passenger motor vehicle insurance.
- Would require false or misleading information provided by an applicant to be material to status as an eligible applicant before insurer could do any of the following:
  - Refuse to issue, amend, or endorse a policy.
  - Deny the applicant coverage for auto liability, comprehensive, or collision coverage. However, an insurer could not deny bodily injury or property damage claims to innocent third parties to the extent of any minimum financial responsibility requirement of state or federal law.
- Would allow a motor vehicle insurance policy to require an insured to reimburse an insurer for any payment made by the insurer if the issuance of the policy was induced by the insured's knowing and material misrepresentation of facts relating to his or her status as an eligible risk.
- Would allow a conviction of G.S. 58-2-164(b) or (b1) to be entered into evidence against a defendant in a civil cause of action.

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**Section 3.2.(b)** would amend the definition of "eligible risk" by stating that a person who owes a payment for reimbursement under G.S. 58-2-164(g1) is not an eligible risk.

## **PART IV. CAPTIVE INSURANCE LAW PROVISIONS**

Part IV contains various technical and substantive changes to the North Carolina Captive Insurance Act. Substantive changes are outlined below by section.

**Section 4.1.(b)** would amend G.S. 58-10-345. Licensing; authority; confidentiality.

- Would allow a captive insurance company to be exempt from the annual board meeting requirement if the captive insurance company utilizes the services of at least two North Carolina service providers for either legal, accounting, actuarial, investing, captive management, or other services acceptable to the Commissioner.
- Would add a new subsection to enable companies established in other jurisdictions to be licensed as captive insurance companies in North Carolina.

**Section 4.1.(c)** would add a new section allowing the Commissioner to grant an applicant business entity a 90-day provisional license after the Commissioner has made a preliminary finding that the expertise, experience, and character of the person or persons who will control or manage the applicant business entity are acceptable. The Commissioner may limit the authority of any provisional licensee in any way deemed necessary and rescind the provisional approval at any time.

**Section 4.1.(f)** would give the Commissioner discretion when setting the minimum capital and surplus requirements for protected cell captive insurance companies applying for licenses.

**Section 4.1.(k)** would add a new subsection authorizing the Commissioner to grant 30-day extensions to captive insurance companies to file their annual reports upon a showing and finding of good cause for the extension.

**Section 4.1.(l)** would remove the requirement that, in addition to the captive insurance company, its independent certified public accountant also has to show good reason when a captive requests an extension to file an annual audit.

**Section 4.1.(m)** would remove the requirement that the Commissioner consider the number of jurisdictions in which the insurer transacts business when considering whether to allow the lead audit partner to serve in that capacity for more than five years.

**Section 4.1.(t)** would amend G.S. 58-10-510 Establishment of protected cells.

- Would give the Commissioner the discretion to allow assets other than cash and readily marketable securities with established market values to be attributed to protected cells.
- Would add a new subsection allowing an actuary to file one Statement of Actuarial Opinion for a protected cell captive insurance company if it includes required information on a supplemental schedule of loss and loss expense reserves for each protected cell and the core, if the core is retaining risk.
- Would require a protected cell captive insurance company to give notice to the Commissioner if it becomes unable to meet its claim or expense obligations.

**Section 4.1.(v)** would clarify that the capital and surplus of a protected cell captive insurance company is not available to pay claims or expenses associated with a contract that an incorporated protected cell entered into in its own name and for its own account and which the protected cell captive insurance company is not a party.

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## PART V. ACOS PARTICIPATING IN MEDICARE PROGRAMS

**Section 5** would add a new section stating that accountable care organizations participating in Medicare programs are not regulated by the Department.

## PART VI. INSURANCE LAW AMENDMENTS, AS RECOMMENDED BY THE DEPARTMENT

**Section 6.1.** would authorize the Department to plan for and establish a private flood insurance market in North Carolina pending federal approval under H.R. 2901, the Flood Insurance Market Parity and Modernization Act.

**Section 6.2.** would remove the sunset provision from law governing affiliate transfer of policies.

**Section 6.3.** would delete the word "extraordinary" and allow the court to order a pharmacy benefits manager to make restitution to the Department for administrative expenses, rather than extraordinary administrative expenses, if the pharmacy benefits manager violated a provision of Article 56A, Pharmacy Benefits Management.

**Section 6.4.** would repeal G.S. 15A-1340.37(d) which would enable courts to order convicted defendants to make restitution to third parties, including insurers.

**Section 6.5** would clarify that an applicant renewing a permit for a collection agency business would not be required to disclose information related to his or her employee stock ownership plan.

**EFFECTIVE DATE:** Section 1.1 of this act becomes effective on October 1, 2017 and applies to accidents that occur on or after that date. Section 1.2 of this act becomes effective October 1, 2017 and applies to policies issued, renewed, or amended on or after that date. Part III of this act becomes effective December 1, 2016. The remainder of this act is effective when it becomes law.

\*The Department of Insurance contributed to this summary.