



# HOUSE BILL 287: Amend Insurance Laws.

2015-2016 General Assembly

<b>Committee:</b>		<b>Date:</b>	July 27, 2016
<b>Introduced by:</b>		<b>Prepared by:</b>	Kristen L. Harris Staff Attorney
<b>Analysis of:</b>	S.L. 2016-78		

**SUMMARY:** *S.L. 2016-78 amends various insurance laws as follows:*

- *Increases property damage thresholds under the State's Safe Driver Incentive Plan. This provision becomes effective on October 1, 2017, and applies to accidents that occur on or after that date.*
- *Places a 25% cap on annual premium increases on long-term care insurance policies. This provision becomes effective October 1, 2017, and applies to policies issued, renewed, or amended on or after that date.*
- *Adds notice requirements to North Carolina's consent to rate laws for homeowner's insurance and allows the use of catastrophe models in rate filings under certain circumstances. These provisions become effective on October 1, 2017, and apply to policies issued, renewed, or amended on or after that date and filings submitted on or after that date.*
- *Makes various updates to the fire and rescue provisions in North Carolina's insurance statutes.*
- *Directs the Office of the State Fire Marshal in the Department of Insurance (DOI) to study the reduction in recruitment and retention of volunteer firefighters in North Carolina.*
- *Effective December 1, 2016, increases penalties for fraudulent and criminal acts involving insurance.*
- *Makes technical and substantive changes to North Carolina's captive insurance laws*
- *Authorizes the DOI to plan for and establish a private flood insurance market.*
- *Effective December 1, 2016, enables third parties, including insurers, to recover restitution from convicted defendants.*
- *Exempts accountable care organizations participating in Medicare programs from DOI regulation.*
- *Makes various other changes to insurance laws, as recommended by the DOI.*

*Except as otherwise provided, this act became effective June 30, 2016.*

**BILL ANALYSIS:**

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

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**Section 1.1.** increases 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 now require property damage of \$3,850 or more. Intermediate accidents now involve property damage between \$2,301 and \$3,849. Minor accidents now have \$2,300 or less in property damage rather than \$1,850 or less.

**Section 1.2.** adds a new subsection making twenty-five percent (25%) of the current rate the most a long-term care insurance policy premium may be increased in any calendar year.

**Section 1.3.(a)** adds a new subsection to North Carolina's consent to rate statute requiring homeowner's insurance carriers to include a disclosure statement on their insured's initial written consent to rate forms notifying the insureds that the premium they are paying is above the rate approved by the North Carolina Rate Bureau. The disclosure statement must also be included on any renewals of or endorsements to policies where there was an increase above the approved rate. An insurer is required to give at least 30 days' notice of any consents to rate and notices.

**Section 1.3.(b)** in the case of property insurance rates, allows the Rate Bureau to present data to the Commissioner from a commercial hurricane simulation computer model. The Bureau is required to present data from more than one model and the Commissioner is required to consider the modeled hurricane losses presented.

**Section 1.3.(c)** adds two new subsections. The first requires certain minimum data to be included in any property insurance rate filing where a catastrophe model is used. The second subsection requires the Rate Bureau to identify each territory's wind and hail rate and requires the Department to publish the wind and hail rates for all territories in the State.

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

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

**Section 2.2.** defines "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 includes 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.** directs 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.** increases 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 remains a Class H felony.

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

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- Amends the definitions of "applicant," "auto insurance," "eligible risk," and "insurer," and adds a definition for "principal place of business."
- Clarifies 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)
- Adds 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. Also adds a possible fine of up to \$10,000 per violation.
- Amends what documentation can be provided to show proof of North Carolina residency or eligible risk status to obtain nonfleet private passenger motor vehicle insurance.
- Adds 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.
- Requires false or misleading information provided by an applicant to be material to status as an eligible applicant before an insurer can 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 cannot 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.
- Allows 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.
- Allows 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.

**Section 3.2.(b)** amends 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)** amends G.S. 58-10-345. Licensing; authority; confidentiality.

- Allows 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.
- Adds a new subsection to enable companies established in other jurisdictions to be licensed as captive insurance companies in North Carolina.

**Section 4.1.(c)** adds 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

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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)** gives the Commissioner discretion when setting the minimum capital and surplus requirements for protected cell captive insurance companies applying for licenses.

**Section 4.1.(k)** adds 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)** removes 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)** removes 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)** amends G.S. 58-10-510 Establishment of protected cells.

- Gives the Commissioner the discretion to allow assets other than cash and readily marketable securities with established market values to be attributed to protected cells.
- Adds 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.
- Requires 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)** clarifies 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.

## **PART V. ACOS PARTICIPATING IN MEDICARE PROGRAMS**

**Section 5** adds 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.** authorizes 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.** removes the sunset provision from the law governing affiliate transfer of policies.

**Section 6.3.** deletes the words "extraordinary administrative" and allows the court to order a pharmacy benefits manager to make restitution to the Department for expenses, rather than extraordinary administrative expenses, if the pharmacy benefits manager violates a provision of Article 56A, Pharmacy Benefits Management.

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

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**Section 6.5** clarifies that an applicant renewing a permit for a collection agency business is not 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. Section 1.3.(a) of this act becomes effective on October 1, 2017 and applies to policies issued, renewed, or amended on or after that date. Sections 1.3.(b) and 1.3.(c) become effective October 1, 2017, and apply to filings submitted on or after that date. Sections 3.1, 3.2, and 6.4 of this act become effective December 1, 2016. The remainder of this act became effective on June 30, 2016.

\*The Department of Insurance contributed to this summary.