

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 784
SENATE BILL 1004

AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE OPERATIONS OF THE
FAIR AND BEACH PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-45-35 reads as rewritten:

"§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.

(a) Any person having an insurable interest in insurable property, may, on or after the effective date of the plan of operation, be entitled to apply to the Association for such coverage and for an inspection of the property. ~~Such application may be made on behalf of the applicant by a broker or agent authorized by him. A broker or agent authorized by the applicant may apply on the applicant's behalf.~~ Each application shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for essential property insurance on the property.

The term 'insurable interest' as used in this subsection shall ~~be deemed to include~~ any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(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~~ Association, upon receipt of the premium, or ~~such portion thereof, 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, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year. Any policy issued ~~pursuant to under~~ the provisions of this section shall be renewed annually, upon ~~application therefor, application,~~ so long as the property meets the definition of 'insurable property' set forth in G.S. 58-45-5(5).

(c) If the Association, for any reason, denies an application and refuses to cause to be issued an insurance policy on insurable property to any applicant or takes no action on an application within the time prescribed in the plan of operation, ~~such the~~ applicant may appeal to the Commissioner and the Commissioner, ~~or a member of his staff designated by him, or the Commissioner's designee from the Commissioner's staff,~~ after reviewing the facts, may direct the Association to issue or cause to be issued an insurance policy to the applicant. In carrying out ~~his the~~ Commissioner's duties ~~pursuant to under~~ this section, the Commissioner may request, and the Association shall ~~provide~~

provide, any information the Commissioner deems necessary to a determination concerning the reason for the denial or delay of the application.

(d) An agent who is licensed under Article 33 of this Chapter as an agent of a company which is a member of the Association established under this Article shall not be deemed an agent of the Association.

(e) Policies of windstorm and hail insurance provided for in subsection (b) of this section are available only for risks 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. ~~Notwithstanding G.S. 58-45-45, the rates, rating plans, and rating rules for windstorm and hail insurance shall be filed by the Association with the Commissioner for his approval.~~ 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."

Sec. 2. G.S. 58-45-45 reads as rewritten:

"§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.

(a) Except as provided in subsection (b) of this section, the ~~The~~ rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. No special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach area.

(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."

Sec. 3. G.S. 58-46-55 reads as rewritten:

"§ 58-46-55. Rates, rating plans, rating rules, and forms applicable.

The rates, rating plans, rating rules, and forms applicable to the insurance written by the association shall be in ~~accord~~ accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in this State. No special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the geographic areas to which this Article applies."

Sec. 4. G.S. 58-45-5(5) reads as rewritten:

"(5) 'Insurable property' means real property at fixed locations in the beach areas ~~Beach area of the State as that term is hereinafter defined~~ or the tangible personal property located therein, but shall not include insurance on motor ~~vehicles, vehicles or farm and manufacturing risks,~~ risks; which property is determined by the Association, after inspection and ~~pursuant to~~ under the criteria specified in the plan of operation, to be in an insurable ~~condition. Provided, however,~~ 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 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~~, but 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 shall not be considered in determining insurable condition. ~~Provided further, that~~ property. Also, any structure ~~commenced~~ began 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 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 Building Code; ~~provided, however, such an individual certificate shall not be necessary in those cases 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 Building Code and has no plans to discontinue enforcing these codes during that year."~~

Sec. 5. G.S. 58-45-30 reads as rewritten:

"§ 58-45-30. Directors to submit plan of operation to Commissioner; review and approval; amendments.

(a) Within 90 days after April 17, 1969, the directors of the Association shall submit to the Commissioner for his review and approval, a proposed plan of operation. Such proposed 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 voluntarily written in the beach area 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 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 areas. Such proposed 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 and for such other provisions as may be deemed necessary by the Commissioner to carry out the purposes of this Article.

(b) The proposed plan shall be reviewed by the Commissioner and approved by him if he finds that such plan fulfills the purposes provided by G.S. 58-45-1. In the review of the proposed plan the Commissioner may, in his discretion, consult with the directors of the Association and may seek any further information which he deems necessary to his decision. If the Commissioner approves the proposed plan, he shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Commissioner disapproves all or any part of the proposed plan of operation he shall return the same to the directors with his written statement for the reasons for disapproval and any recommendations he may wish to make. The directors may alter the plan in accordance with the Commissioner's recommendation or may within 30 days from the date of disapproval return a new plan to the Commissioner. Should the directors fail to submit a proposed plan of operation within 90 days of April 17, 1969, or a new plan which is acceptable to the Commissioner, or accept the recommendations of the Commissioner within 30 days after his disapproval of the plan, the Commissioner shall promulgate and place into effect a plan of operation certifying the same to the directors of the Association. Any such plan promulgated by the Commissioner shall take effect 10 days after certification to the directors: Provided, however, that until a plan of operation is in effect, pursuant to the provisions of this Article, any existing temporary placement facility may be continued in effect on a mandatory basis on such terms as the Commissioner may determine.

(c) The directors of the Association may, subject to the approval of the Commissioner, amend the plan of operation at any time. The Commissioner may review the plan of operation at any time ~~he~~the Commissioner deems expedient or prudent, but not less than once in each calendar year. After review of ~~such~~the plan the Commissioner may amend the plan after consultation with the directors and upon certification to the directors of ~~such~~the amendment.

(d) The Commissioner may designate the kinds of property insurance policies on principal residences to be offered by the association, including insurance policies under Article 36 of this Chapter, and the commission rates to be paid to agents or brokers for

these policies, if ~~he~~ the Commissioner finds, after a hearing held in accordance with G.S. 58-2-50, that the public interest requires the designation. The provisions of Chapter 150B do not apply to any procedure under this paragraph, except that G.S. 150B-39 and G.S. 150B-41 shall apply to a hearing under this paragraph. Within 30 days after the receipt of notification from the Commissioner of a change in designation pursuant to this paragraph, the association shall submit a revised plan and articles of association for approval in accordance with this section.

(e) The Association shall, subject to the Commissioner's approval or modification, provide in the plan of operation for coverage for appropriate classes of manufacturing risks.

(f) As used in this section, 'plan of operation' includes all written rules, practices, and procedures of the Association, except for staffing and personnel matters."

Sec. 6. G.S. 58-46-20 is amended by adding a new subsection to read:

"(d) As used in this section and in G.S. 58-46-15, 'FAIR Plan', 'plan of operation', and 'articles of association' include all written rules, practices, and procedures of the Association, except for staffing and personnel matters."

Sec. 7. Article 45 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-45-85. Assessment; inability to pay.

If any insurer fails, by reason of insolvency, to pay any assessment as provided in this Article, the amount assessed each insurer shall be immediately recalculated, excluding the insolvent insurer, so that its assessment is assumed and redistributed among the remaining insurers. Any assessment against an insolvent insurer shall not be a charge against any special deposit fund held under the provisions of Article 5 of this Chapter for the benefit of policyholders."

Sec. 8. Within 30 days after the effective date of this act, the North Carolina Insurance Underwriting Association and the North Carolina Joint Underwriting Association shall file, with the Commissioner of Insurance for approval or modification, all written rules, practices, and procedures that are in effect on that date.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of June, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives