

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65176-LD-5A (2/4)

Short Title: Prelitigation Mediation of Insurance Claims. (Public)

Sponsors: Senators Dalton; and Hartsell.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE
2 INFORMATION REGARDING POLICY PROVISIONS AND POLICY LIMITS
3 PRIOR TO LITIGATION WHEN REQUESTED IN WRITING BY THE
4 PERSONS WHO HAVE CLAIMS, OTHER THAN MEDICAL MALPRACTICE
5 CLAIMS, SUBJECT TO INSURANCE POLICIES AND TO GIVE THESE
6 INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF
7 THE CLAIMS.
8

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** Article 3 of Chapter 58 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 58-3-33. Insurer conditionally required to provide information.**

13 (a) Upon receiving a written request for information regarding policy provisions
14 or policy limits under an insurance policy from a person who claims to have been
15 physically injured or to have incurred property damage subject to the policy, an
16 insurance company shall notify that person within five business days, on a form
17 developed by the Department, that the insurer is required to provide this information
18 prior to litigation only if the person seeking the information satisfies all of the following
19 conditions:

20 (1) The person seeking the information submits to the insurer the person's
21 written consent to the person's physicians to release to the insurer the
22 person's medical records for the three years prior to the date on which
23 the claim arose.

24 (2) The person seeking the information submits to the insurer the person's
25 written consent to participate in mediation of the person's claim under
26 G.S. 7A-38.3A.

1 (b) Within 30 days of receiving the person's written consent under both
2 subdivision (1) and subdivision (2) of subsection (a) of this section, the insurer shall
3 provide the policy limits and a copy of the policy to that person.

4 (c) This section does not apply to claims seeking recovery for medical
5 malpractice."

6 **SECTION 2.** Article 5 of Chapter 7A of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 7A-38.3A. Prelitigation mediation of insurance claims.**

9 (a) Initiation of Mediation. – Prelitigation mediation of an insurance claim may
10 be initiated by an insurer that has provided the policy limits and a copy of the policy in
11 accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of
12 superior court in a county in which the action may be brought. The insurer also shall
13 mail a copy of the request by certified mail, return receipt requested, to the person who
14 requested the information under G.S. 58-3-33.

15 (b) Costs of Mediation. – Costs of mediation, including the mediator's fees, shall
16 be borne by the insurer. When an attorney represents a party to the mediation, that party
17 shall pay his or her attorneys' fees.

18 (c) Mediation Procedure. – Except as otherwise expressly provided in this
19 section, mediation under this section shall be conducted in accordance with the
20 provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and
21 rules and standards adopted pursuant to those sections. The Supreme Court may adopt
22 additional rules and standards to implement this section, including an exemption from
23 the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this
24 section.

25 (d) Certification That Mediation Concluded. – Upon the conclusion of mediation,
26 the mediator shall prepare a certification stating the date on which the mediation was
27 concluded and the general results of the mediation, including, as applicable, that an
28 agreement was reached, that mediation was attempted but an agreement was not
29 reached, or that one or more parties, to be specified in the certification, failed or refused
30 without good cause to attend one or more mediation meetings or otherwise participate in
31 the mediation. The mediator shall file the original of the certification with the clerk and
32 provide a copy to each party. Each party to the mediation has satisfied the requirements
33 of this section upon the filing of the certification, except any party specified in the
34 certification as having failed or refused to attend one or more mediation meetings or
35 otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation
36 mediation conducted under this section.

37 (e) Time Periods Tolloed. – Time periods relating to the filing of a claim or the
38 taking of other action with respect to an insurance claim, including any applicable
39 statutes of limitations, shall be tolled upon the filing of a request for mediation under
40 this section, until 30 days after the date on which the mediation is concluded as set forth
41 in the mediator's certification or, if the mediator fails to set forth such date, until 30 days
42 after the filing of the certification under subsection (d) of this section.

43 (f) Medical Malpractice Claims Excluded. – This section does not apply to
44 claims seeking recovery for medical malpractice."

1 **SECTION 3.** This act becomes effective October 1, 2003, and applies to
2 claims regarding physical injury or property damage that arise on or after that date.