

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 615

Short Title: Property Insurance Fairness. (Public)

Sponsors: Senators Brown (Primary Sponsor); Goolsby, Jackson, and Jenkins.

Referred to: Insurance.

April 4, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE FAIRNESS AND EQUITY OF PROPERTY INSURANCE  
3 RATE MAKING IN NORTH CAROLINA BY REQUIRING THAT CERTAIN  
4 PROPERTY INSURANCE DATA BE MADE AVAILABLE TO THE PUBLIC; BY  
5 PROVIDING THE COMMISSIONER WITH THE AUTHORITY TO ORDER A  
6 DECREASE IN RATES IN A PROPERTY INSURANCE RATE-MAKING  
7 PROCEEDING; BY LIMITING THE COMMISSION ON POLICIES ISSUED UNDER  
8 THE BEACH PLAN TO TEN PERCENT; BY INCREASING THE BEACH PLAN'S  
9 NONRECOUPABLE ASSESSMENT CAP; AND BY EXEMPTING PREMIUMS PAID  
10 FOR BEACH PLAN POLICIES FROM THE GROSS PREMIUM TAX.

11 The General Assembly of North Carolina enacts:

12  
13 **PART I. PROPERTY INSURANCE CLARITY**

14 **SECTION 1.** Article 10 of Chapter 58 of the General Statutes is amended by  
15 adding a new Part to read:

16 "Part 9. Property Insurance Rate Clarity.

17 "**§ 58-10-335. Title.**

18 This Part is known and may be cited as the "Property Insurance Clarity Act."

19 "**§ 58-10-340. Information submission and compilation: current year.**

20 (a) Each insurer authorized to transact property insurance business in the State of North  
21 Carolina shall annually submit to the Department of Insurance, no later than April 1,  
22 computations of the total amount of direct incurred losses, the number of policies in force, and  
23 the direct earned premiums for the prior calendar year for all property insurance policies  
24 written by the insurer. The insurance company shall report the computations to the Department  
25 by rate territory. For purposes of this Part, property insurance shall also include condominium  
26 insurance, dwelling fire policies, renters or tenants insurance, and mobile home and  
27 manufactured housing property insurance. Condominium association insurance and commercial  
28 insurance are excluded from this Part.

29 (b) Each insurance company authorized to transact homeowners insurance business in  
30 the State shall annually submit to the Department, no later than April 1, computations of the  
31 direct incurred losses and the number of policies in force, by rate territory, for the prior  
32 calendar year for each of the following perils:

- 33 (1) Fire.  
34 (2) All wind and hail.  
35 (3) All other perils.



1       (c) Each insurance company authorized to transact homeowners insurance business in  
2 the State shall submit to the Department catastrophe wind and hail information pursuant to a  
3 data call by the Department based on a specific catastrophic event.

4       (d) The information received by the Department under the submission requirements of  
5 this section shall be aggregated across all insurance companies collectively, arranged by rate  
6 territory, and posted to the Department's Web site no later than June 1 for the prior calendar  
7 year.

8 **"§ 58-10-345. Submission of historical information.**

9       No later than October 1, 2014, each insurer authorized to transact property insurance  
10 business in this State shall provide the information required pursuant to G.S. 58-10-340(a) for  
11 calendar years 2007 through 2012. Voluntary submissions of the information required by  
12 G.S. 58-10-340(a) for calendar years prior to 2007 may be submitted and shall be compiled and  
13 posted by the Department in the same manner. Based upon the submitted information, the  
14 Department shall compile aggregate totals, commencing with 2007, and post those aggregate  
15 totals on the Department Web site no later than December 1, 2014.

16 **"§ 58-10-350. Waiver; sanctions.**

17       (a) Upon written request of an insurer, the Commissioner may waive, modify, or extend  
18 for an additional time period, for good cause shown, the reporting requirements imposed by this  
19 act. The request shall demonstrate good cause for waiving, modifying, or extending the  
20 reporting requirements. Good cause may include, but is not limited to, the insurer's limited  
21 percentage of the total property insurance market in this State, or the undue burden of  
22 compiling and reporting the computations, data, and other information required by this act due  
23 to the manner, format, or method in which the insurer has stored the computations, data, or  
24 other information required.

25       (b) Any insurer that fails to timely comply with the reporting requirements imposed by  
26 this act shall be given notice by the Department of such failure and provided 90 days within  
27 which to comply. Any insurer that fails to comply on or before the 90th day shall pay, after  
28 notice and hearing, a civil penalty of two thousand five hundred dollars (\$2,500) per month to  
29 the Commissioner until the date of compliance. The clear proceeds of civil penalties provided  
30 for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with  
31 G.S. 115C-457.2.

32 **"§ 58-10-355. Confidentiality of information.**

33       Any information reported to the Department by an insurer pursuant to this act is considered  
34 a trade secret as defined in G.S. 66-152 and shall be treated as confidential information by the  
35 Department. However, once the information from all property insurers is aggregated, then the  
36 Department may provide such information in accordance with this Part. Notice of at least 10  
37 business days shall be given to the insurer if confidential information pertaining to that insurer  
38 is ordered by a court of competent jurisdiction to be released by the Department."

39  
40 **PART II. AUTHORITY TO LOWER RATES**

41       **SECTION 2.** G.S. 58-36.20 reads as rewritten:

42 **"§ 58-36-20. Disapproval; hearing, order; adjustment of premium, review of filing.**

43       (a) At any time within 50 days after the date of any filing, the Commissioner may give  
44 written notice to the Bureau specifying in what respect and to what extent the Commissioner  
45 contends the filing fails to comply with the requirements of this Article and fixing a date for  
46 hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings  
47 must proceed without undue delay. At the hearing the burden of proving that the proposed rates  
48 are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the  
49 factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds  
50 that the filing does not comply with the provisions of this Article, he may issue his order  
51 determining wherein and to what extent such filing is deemed to be improper and fixing a date

1 thereafter, within a reasonable time, after which the filing shall no longer be effective. In the  
2 event the Commissioner finds that the proposed rates are excessive, the Commissioner shall  
3 ~~specify the overall rates, between the existing rates and the rates proposed by the Bureau filing,~~  
4 ~~that may be used by the members of the Bureau instead of the rates proposed by the Bureau~~  
5 ~~filing, issue an order disapproving the filing and specifying the appropriate rate level or levels~~  
6 ~~that may be used by the members of the Bureau instead of the rate level or levels proposed by~~  
7 ~~the Bureau filing.~~ In any such order, the Commissioner shall make findings of fact based on the  
8 evidence presented in the filing and at the hearing. Any order issued after a hearing shall be  
9 issued within 45 days after the completion of the hearing. If no order is issued within 45 days  
10 after the completion of the hearing, the filing shall be deemed to be approved.

11 ...."

### 12 13 **PART III. LIMIT AGENT'S COMMISSION**

14 **SECTION 3.1.** G.S. 58-45-35 is amended by adding a new subsection to read:

15 "**§ 58-45-35. Persons eligible to apply to Association for coverage; contents of application.**

16 ...

17 (f) The Association shall provide in its plan of operation that the commission rates to  
18 be paid to agents or brokers for policies issued under this section shall not exceed ten percent  
19 (10%) of written premium."

20 **SECTION 3.2.** No later than October 1, 2013, the North Carolina Insurance  
21 Underwriting Association shall amend its plan of operation as provided in G.S. 58-45-30 to  
22 implement Section 3.1 of this act.

### 23 24 **PART IV. INCREASE NONRECOUPABLE ASSESSMENT CAP**

25 **SECTION 4.** G.S. 58-45-47 reads as rewritten:

26 "**§ 58-45-47. Deficit event.**

27 (a) In the event of losses and expenses to the Association exceeding available surplus,  
28 reinsurance, and other sources of funding of Association losses, the Association is authorized to  
29 issue a nonrecoupable assessment upon its members in accordance with its Plan of Operation.  
30 Member assessments shall not exceed ~~one billion dollars (\$1,000,000,000)~~ one billion two  
31 hundred million dollars (\$1,200,000,000) for losses incurred from any event or series of events  
32 that occur in a given calendar year, regardless of when such assessments are actually levied on  
33 or collected from member companies.

34 (b) When the Association knows that it has incurred losses and loss expenses in a  
35 particular calendar year that will exceed the combination of available surplus, reinsurance, and  
36 other sources of funding, including permissible member company assessments, then the  
37 Association shall immediately give notice to the Commissioner that a deficit event has  
38 occurred.

39 (c) Upon a determination by the Association that a deficit event has occurred, the  
40 Association shall determine, in its discretion, the appropriate means of financing the deficit,  
41 which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit,  
42 or other forms of borrowing or financing. If the Association determines that the member  
43 companies have paid ~~one billion dollars (\$1,000,000,000)~~ one billion two hundred million  
44 dollars (\$1,200,000,000) in nonrecoupable assessments for losses and expenses incurred in any  
45 given year pursuant to subsection (a) of this section, the Association may, subject to the  
46 verification by the Commissioner that the dollar value of losses and expenses has reached the  
47 level necessary for a catastrophe recovery charge, authorize member companies to impose a  
48 catastrophe recovery charge on their residential and commercial property insurance  
49 policyholders statewide. Catastrophe recovery charges shall be charged as a uniform percentage  
50 of written premiums as prescribed by the Commissioner and shall not exceed an aggregate  
51 amount of ten percent (10%) of the annual policy premium on any one policy of insurance.

1 Catastrophe recovery charges collected under this section shall be transferred directly to the  
2 Association on a periodic basis as determined by the Association and ordered by the  
3 Commissioner. The Association and the FAIR Plan also shall charge their policyholders a  
4 catastrophe recovery charge as provided in this section.

5 ...."

## 6 7 **PART V. EXEMPT BEACH PLAN FROM GROSS PREMIUM TAX**

8 **SECTION 5.1.** G.S. 58-45-1 reads as rewritten:

9 "**§ 58-45-1. Declarations and purpose of Article.**

10 ...

11 (c) It is the intent of the General Assembly that except for ~~North Carolina gross~~  
12 ~~premium taxes and the fire and lightning tax~~, the activities of the Association be exempt from  
13 State and federal taxation to the fullest extent permitted by law."

14 **SECTION 5.2.** G.S. 58-45-80 reads as rewritten:

15 "**§ 58-45-80. ~~Premium taxes to be paid through Association.~~Exemption from premium**  
16 **taxes.**

17 All ~~premium taxes due on insurance~~ written under this Article shall be ~~remitted by each~~  
18 ~~insurer to the Association; and the Association, as collecting agent for its member companies,~~  
19 ~~shall forward all such taxes to the Secretary of Revenue as provided~~ exempt from the gross  
20 premium tax levied in Article 8B of Chapter 105 of the General Statutes."

21 **SECTION 5.3.** G.S. 105-228.5 reads as rewritten:

22 "**§ 105-228.5. Taxes measured by gross premiums.**

23 ...

24 (g) Exemptions. – This section does not apply to any of the following:

- 25 (1) ~~farmers'~~ Farmers' mutual assessment fire insurance ~~companies~~ companies, or  
26 to  
27 (2) ~~fraternal~~ Fraternal orders or societies that do not operate for a profit and do  
28 not issue policies on any person except members.  
29 (3) Insurance policies written under Article 45 of Chapter 58 of the General  
30 Statutes."

## 31 32 **PART VI. MISCELLANEOUS PROVISIONS**

33 **SECTION 6.1.** If any section or provision of this act is declared unconstitutional or  
34 invalid by the courts, such action does not affect the validity of this act as a whole or any part  
35 other than the part so declared to be unconstitutional or invalid.

36 **SECTION 6.2.** Section 1 of this act is effective when it becomes law and applies to  
37 the 2013 calendar year. Part V of this act is effective for taxable years beginning on or after  
38 July 1, 2013. The remainder of this act becomes effective July 1, 2013.