

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 735*

Short Title: Mediation of Property Insurance Claims.-AB

(Public)

Sponsors: Senator Dalton.

Referred to: Judiciary II (Criminal).

March 14, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CHANGES IN THE LAWS
3 GOVERNING MEDIATION OF PROPERTY INSURANCE CLAIMS ARISING
4 OUT OF DISASTERS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 58-44-70 reads as rewritten:

7 "**§ 58-44-70. Purpose and scope.**

8 (a) This Part ~~creates~~ provides for a nonadversarial alternative dispute resolution
9 procedure for a facilitated claim resolution conference prompted by the critical need for
10 effective, fair, and timely handling of insurance claims arising out of damages to
11 residential property as the result of ~~a disaster.~~ an event for which there is a state of
12 disaster declared within 60 days of the event. This Part applies only (i) if a state of
13 disaster has been proclaimed for the State or for an area within the State by the
14 Governor or by a resolution of the General Assembly under G.S. 166A-6; or (ii) if the
15 President of the United States has issued a major disaster declaration for the State or for
16 an area within the State under the Robert T. Stafford Disaster Relief and Emergency
17 Assistance Act, 42 U.S.C. § 5121, et seq., as ~~amended.~~ amended; and (iii) if the
18 Commissioner issues an order establishing the mediation procedure authorized by this
19 Part.

20 (b) The procedure ~~established~~ authorized by this Part is available to all
21 first-party claimants who have insurance claims resulting from damage to residential
22 property occurring in this State. This Part does not apply to commercial insurance,
23 motor vehicle insurance, or to liability coverage contained in property insurance
24 policies.

25 (c) The Commissioner may designate a person, either within the Department or
26 outside of the Department, as the Administrator or other functionary to carry out any of
27 the Commissioner's duties under this Part."

28 **SECTION 2.** G.S. 58-44-80(b) reads as rewritten:

1 "(b) The insurer shall mail a ~~the notice of the right to mediate disputed claims~~
2 ~~described in subsection (a) of this section~~ to an insured within five days after the time
3 the insured or the Administrator notifies the insurer of a dispute regarding the insured's
4 claim. The following apply:

5 "

6 **SECTION 3.** G.S. 58-44-95 reads as rewritten:

7 "**§ 58-44-95. Scheduling of mediation; qualification of mediator.**

8 (a) The Administrator shall select a mediator and schedule the mediation
9 conference.

10 (b) In order to be approved, a mediator must be certified by the Dispute
11 Resolution Commission under ~~G.S. 7A-38.2; or, if not, shall be approved at the~~
12 ~~discretion of the Administrator only if the parties agree on the selected mediator and the~~
13 ~~proposed mediator is a licensed attorney in North Carolina in good standing with the~~
14 ~~North Carolina State Bar. A mediator shall not make an award or render a judgment as~~
15 ~~to the merits of the action. G.S. 7A-38.2."~~

16 **SECTION 4.** G.S. 58-44-100 reads as rewritten:

17 "**§ 58-44-100. Conduct of the mediation conference.**

18 (a) The Commissioner may adopt rules, in addition to the provisions of this
19 section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing
20 Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by
21 the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for
22 the conduct of mediation conferences under this Part. The rules adopted by the
23 Commissioner shall include a requirement of the mediator to advise the parties of the
24 mediation process and their rights and duties in the process.

25 ~~(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a~~
26 ~~coverage determination shall not be considered a failure to negotiate in good faith. A~~
27 ~~party shall be determined to have not negotiated in good faith if the party or a person~~
28 ~~participating on the party's behalf, becomes unduly argumentative or adversarial or~~
29 ~~continuously disrupts or otherwise inhibits the negotiations, as determined by the~~
30 ~~mediator.~~

31 (c) The mediator shall terminate the negotiations if the mediator determines that
32 ~~either party is not negotiating in good faith~~, either party is unable or unwilling to
33 participate meaningfully in the ~~process~~, process or upon mutual agreement of the
34 parties.

35 ~~(d) The party responsible for causing termination shall be responsible for paying~~
36 ~~the mediator's fee and the administrative fee for any rescheduled mediation.~~

37 (e) The representative of the insurer attending the conference shall:

38 (1) Bring, in paper or electronic medium, a copy of the policy and the
39 entire claims file to the conference.

40 (2) Know the facts and circumstances of the claim and be knowledgeable
41 of the provisions of the policy.

42 (f) An insurer will be deemed to have failed to appear if the insurer's
43 representative lacks authority to settle within the limits of the policy.

1 (g) The mediator shall be in charge of the conference and ~~will~~ shall establish and
2 describe the procedures to be followed. The mediator shall conduct the conference in
3 accordance with the ~~standards of professional conduct for mediation~~ Standards of
4 Professional Conduct for Mediators adopted by the ~~American Arbitration Association,~~
5 ~~the American Bar Association, the Society of Professionals in Dispute Resolution,~~
6 Supreme Court of North Carolina and, where not inconsistent, with the Rules
7 Implementing Statewide Mediated Settlement Conferences in Superior Court Civil
8 Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and
9 G.S. 7A-38.2. The Commissioner may refer any matter regarding the conduct of any
10 mediator to the North Carolina Dispute Resolution Commission.

11 (h) All statements made and documents produced at a settlement conference shall
12 be deemed settlement negotiations in anticipation of litigation. The provisions of
13 G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference. If
14 the Commissioner or an employee or designee of the Commissioner attends a settlement
15 conference, the Commissioner, employee, or designee shall not be compelled to testify
16 about what transpired at the settlement conference or about any other matter in
17 connection with the settlement conference.

18 (i) A party may move to disqualify a mediator for good cause at any time. The
19 request shall be directed to the Administrator if the grounds are known before the
20 mediation conference. Good cause consists of conflict of interest between a party and
21 the mediator, inability of the mediator to handle the conference competently, or other
22 reasons that would reasonably be expected to impair the conference."

23 **SECTION 5.** G.S. 58-44-60(a) reads as rewritten:

24 "(a) Every insurer that sells residential or commercial property insurance policies
25 that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or
26 landslide shall, upon the issuance and renewal of each policy, identify to the
27 policyholder which of these perils are not covered under the policy. The insurer shall
28 print the following warning, citing which peril is not covered, in Times New Roman
29 16-point font or other equivalent font and include it in the policy on a separate page
30 immediately before the declarations page:

31 "WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT
32 YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES],
33 [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE
34 COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING
35 COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL
36 OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU
37 SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS
38 COVERED AND WHAT IS NOT COVERED."

39 **SECTION 6.** This act becomes effective October 1, 2007, and applies to
40 policies issued or renewed on or after that date.