

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 452  
Committee Substitute Favorable 4/22/97

Short Title: Beach Plan Amendments/AB.

(Public)

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Sponsors:

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Referred to:

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March 10, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE BEACH PLAN PARTICIPATION FORMULA AND  
3 REVISE OTHER STATUTES RELATED TO THE BEACH PLAN.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 58-45-5 reads as rewritten:

6 **"§ 58-45-5. Definition of terms.**

7 In this Article, unless the context otherwise requires,

8 (1) 'Association' means the North Carolina Insurance Underwriting  
9 Association established pursuant to the provisions of under this Article;

10 (2) 'Beach area' means all of that area of the State of North Carolina south  
11 and east of the inland waterway from the South Carolina line to Fort  
12 Macon (Beaufort Inlet); thence south and east of Core, Pamlico,  
13 Roanoke and Currituck sounds to the Virginia line, being those portions  
14 of land generally known as the Outer Banks;

15 (3) Repealed by Session Laws 1991, c. 720, s. 6.

16 (3a) 'Crime insurance' means insurance against losses resulting from  
17 robbery, burglary, larceny, and similar crimes, as more specifically  
18 defined and limited in the various crime insurance policies, or their  
19 successor forms of coverage, approved by the Commissioner and issued

1 by the Association. Such policies shall not be more restrictive than  
2 those issued under the Federal Crime Insurance Program authorized by  
3 Public Law 91-609.

4 (3b) 'Directors' means the Board of Directors of the Association.

5 (4) 'Essential property insurance' means insurance against direct loss to  
6 property as defined in the standard statutory fire policy and extended  
7 coverage, vandalism and malicious mischief endorsements thereon, or  
8 their successor forms of coverage, as approved by the Commissioner;

9 (5) 'Insurable property' means real property at fixed locations in the Beach  
10 ~~area-area~~, including travel trailers when tied down at a fixed location, or  
11 the tangible personal property located therein, but shall not include  
12 insurance on motor vehicles or farm risks; which property is determined  
13 by the Association, after inspection and under the criteria specified in  
14 the plan of operation, to be in an insurable condition. However, any one  
15 and two family dwellings built in substantial accordance with the  
16 Federal Manufactured Home Construction and Safety Standards, any  
17 predecessor or successor federal or State construction or safety  
18 standards, and any further construction or safety standards promulgated  
19 by the association and approved by the Commissioner, or the North  
20 Carolina Uniform Residential Building Code and any structure or  
21 building built in substantial compliance with the North Carolina  
22 Building Code, including the design-wind requirements, which is not  
23 otherwise rendered uninsurable by reason of use or occupancy, shall be  
24 an insurable risk within the meaning of this Article. However, none of  
25 the following factors shall be considered in determining insurable  
26 condition: neighborhood, area, location, environmental hazards beyond  
27 the control of the applicant or owner of the property. Also, any  
28 structure begun on or after January 1, 1970, not built in substantial  
29 compliance with the Federal Manufactured Home Construction and  
30 Safety Standards, any predecessor or successor federal or State  
31 construction or safety standards, and any further construction or safety  
32 standards promulgated by the association and approved by the  
33 Commissioner, or the North Carolina Uniform Residential Building  
34 Code or the North Carolina Building Code, including the design-wind  
35 requirements therein, shall not be an insurable risk. The owner or  
36 applicant shall furnish with the application proof in the form of a  
37 certificate from a local building inspector, contractor, engineer or  
38 architect that the structure is built in substantial accordance with the  
39 Federal Manufactured Home Construction and Safety Standards, any  
40 predecessor or successor federal or State construction or safety  
41 standards, and any further construction or safety standards promulgated  
42 by the association and approved by the Commissioner, or the North  
43 Carolina Uniform Residential Building Code or the North Carolina

1 Building Code; however, an individual certificate shall not be necessary  
2 where the structure is located within a political subdivision which has  
3 certified to the Association on an annual basis that it is enforcing the  
4 North Carolina Uniform Residential Building Code or the North  
5 Carolina Building Code and has no plans to discontinue enforcing these  
6 codes during that year.

7 (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 592, s. 2.

8 (6a) 'Net direct premiums' means gross direct premiums (excluding  
9 reinsurance assumed and ceded) written on property in this State for  
10 essential property insurance, homeowners, and the property portion of  
11 commercial multiple peril policies as computed by the Commissioner,  
12 less:

13 a. Return premiums on uncanceled contracts;

14 b. Dividends paid or credited to policyholders; and

15 c. The unused or unabsorbed portion of premium deposits.

16 'Net direct premiums' shall not include premiums on farm properties  
17 and manufacturing risks.

18 (7) 'Plan of operation' or 'plan' means the plan of operation of the  
19 Association approved or promulgated by the Commissioner, pursuant to  
20 the provisions of under this Article."

21 Section 2. G.S. 58-45-25 reads as rewritten:

22 **"§ 58-45-25. Each member of Association to participate in its expenses, profits, and**  
23 **losses.**

24 ~~All members of the Association shall participate in its expenses, profits, and losses~~  
25 ~~and shall receive credit annually for essential property insurance voluntarily written as~~  
26 ~~determined by the directors of the Association, with the approval of the Commissioner.~~  
27 ~~Participation of each member in the losses of the Association shall be reduced~~  
28 ~~accordingly. Any insurer authorized to write and engage in writing any insurance, the~~  
29 ~~writing of which requires the insurer to be a member of the Association, pursuant to G.S.~~  
30 ~~58-45-10, shall become a member of the Association on the January 1 immediately~~  
31 ~~following authorization and the determination of the insurer's participation in the~~  
32 ~~Association shall be made as of the date of membership in the same manner as for all~~  
33 ~~other members of the Association.~~

34 (a) Each member of the Association shall participate in the expenses, profits, and  
35 losses of the Association in the proportion that its net direct premium written in this State  
36 during the preceding calendar year for residential and commercial properties outside of  
37 the Beach area bears to the aggregate net direct premiums written in this State during the  
38 preceding calendar year for residential and commercial properties outside of the Beach  
39 area by all members of the Association, as certified to the Association by the  
40 Commissioner. The Commissioner shall certify each member's participation after review  
41 of annual statements and any other reports and data necessary to determine participation  
42 and may obtain any necessary information or data from any member of the Association  
43 for this purpose. Any insurer that is authorized to write and that is engaged in writing

1 any insurance, the writing of which requires the insurer to be a member of the  
2 Association under G.S. 58-45-10, shall become a member of the Association on the first  
3 day of January after authorization. The determination of the insurer's participation in the  
4 Association shall be made as of the date of membership of the insurer in the same manner  
5 as for all other members of the Association.

6 (b) All member companies shall receive credit each year for essential property  
7 insurance, homeowners insurance, and the property portion of commercial multiple peril  
8 policies voluntarily written in the Beach area in accordance with guidelines and  
9 procedures to be submitted by the Directors to the Commissioner for approval. The  
10 participation of each member company in the expenses, profits, and losses of the  
11 Association shall be reduced accordingly; provided, no credit shall be given where  
12 coverage for the peril of wind has been excluded. The guidelines and procedures for  
13 granting credit shall encourage and assist each member company to voluntarily write  
14 these coverages in the Beach area for commercial and residential properties."

15 Section 3. G.S. 58-45-30(a) reads as rewritten:

16 "(a) ~~Within 90 days after April 17, 1969, the directors of the Association~~ The Directors  
17 shall submit to the Commissioner for his review and approval, a proposed plan of  
18 operation. ~~Such proposed~~ The plan shall set forth the number, qualifications, terms of  
19 office, and manner of election of the members of the board of directors, and shall grant  
20 proper credit annually to each member of the Association for essential property ~~insurance~~  
21 insurance, homeowners insurance, and the property portion of commercial multiple peril  
22 policies voluntarily written in the ~~beach~~ Beach area and shall provide for the efficient,  
23 economical, fair and nondiscriminatory administration of the Association and for the  
24 prompt and efficient provision of essential property insurance in the ~~beach areas of North~~  
25 Carolina so as Beach area in order to promote orderly community development in those  
26 areas ~~the Beach area~~ and to provide means for the adequate maintenance and  
27 improvement of the property in ~~such areas~~ the Beach area. ~~Such proposed~~ The plan may  
28 include a preliminary assessment of all members for initial expenses necessary to the  
29 commencement of operation; the establishment of necessary facilities; management of the  
30 Association; ~~plan for~~ the assessment of members to defray losses and expenses;  
31 underwriting standards; procedures for the acceptance and cession of reinsurance;  
32 procedures for determining the amounts of insurance to be provided to specific risks;  
33 time limits and procedures for processing applications for ~~insurance~~ insurance; and for  
34 such other provisions as ~~may be deemed~~ that are considered necessary by the  
35 Commissioner to carry out the purposes of this Article."

36 Section 4. G.S. 58-33-100 reads as rewritten:

37 **"§ 58-33-100. Payment of premium to agent valid; obtaining by fraud a crime.**

38 (a) Any agent, broker or limited representative who acts for a person other than  
39 himself negotiating a contract of insurance is, for the purpose of receiving the premium  
40 therefor, the company's agent, whatever conditions or stipulations may be contained in  
41 the policy or contract. This subsection does not apply to the Insurance Underwriting  
42 Association established under Article 45 of this Chapter or the Joint Underwriting  
43 Association established under Article 46 of this Chapter.

1       (b) ~~Such~~ Any agent, broker or limited representative knowingly procuring by  
2 fraudulent representations payment, or the obligation for the payment, of a premium of  
3 insurance, shall be guilty of a Class 1 misdemeanor."

4           Section 5. G.S. 58-45-35(b) reads as rewritten:

5       "(b) If the Association determines that the property is insurable and that there is no  
6 unpaid premium due from the applicant for prior insurance on the property, the  
7 Association, upon receipt of the premium, or part of the premium, as is prescribed in the  
8 plan of operation, shall cause to be issued a policy of essential property insurance and  
9 shall offer additional extended coverage, optional perils endorsements, business income  
10 coverage, crime insurance, separate policies of windstorm and hail insurance, or their  
11 successor forms of coverage, for a term of one year or three years. Short term policies  
12 may also be issued. Any policy issued under this section shall be renewed, upon  
13 application, as long as the property is insurable property."

14           Section 6. If any section or provision of this act is declared unconstitutional or  
15 invalid by the courts, it does not affect the validity of the act as a whole or any part other  
16 than the part so declared to be unconstitutional or invalid.

17           Section 7. Sections 1, 3, 4, 5, and this section of this act are effective when  
18 this act becomes law. Section 2 of this act becomes effective January 1, 1998, and  
19 applies to policies issued or renewed on or after that date.