

August 14, 2012

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Senate Bill 836

Legislation was enacted by the North Carolina General Assembly earlier this summer which requires the Bureau to develop and file *optional* policy forms for residential property insurance that do not contain coverage for the perils of windstorm or hail. (See Sections 4 of Senate Bill 836, a copy of which is attached.) The Bureau will file such forms in sufficient time to meet the December 1, 2012 effective date of that portion of the new legislation.

Section 5 of the same legislation also amended G.S. 58-44-60 to include "windstorm and hail" in the list of perils which must be specifically identified to the policyholder if coverage for that peril is not provided in the policy. Effective December 1, 2012, the warning notice required under that statute will be as follows:

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

The portion of the legislation that requires the Bureau to develop and file optional policy forms that do not provide coverage for the perils of windstorm or hail specifically states:

"Insurers that sell such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance shall be deemed to have given notice to all insured (sic) and persons claiming benefits under such policies that such policies do not include coverage for the perils of windstorm or hail."

Note that G.S. 58-44-60 continues to require that the warning be printed in Times New Roman 16-point font or other equivalent font and that the warning be included in the policy on a separate page immediately before the declarations page.

After G.S. 58-55-60 was first passed in 2006, questions were raised as to compliance. The Department of Insurance provided the following interpretations and guidance at that time:

The statute requires the notice to be “on a separate page immediately before the declaration page.” Such a requirement may present problems for companies that have the insured’s name and address appear on the declarations page and through the window of an envelope. The Department’s position is that, if a company places a “mailing page” immediately preceding the declaration page in which the only purpose of the “mailing page” is to provide the insured name and address so as to fit in a window envelope, the company may print the statutory language on the “mailing page”.

The interpretations referenced above result from extensive discussions with the Department regarding implementation of the statute, and the Bureau is advised by the Department that the interpretations remain applicable.

The current statutory warning notice is reproduced in the manual rules applicable to the Homeowners and Dwelling programs. See: Homeowners Policy Program and Dwelling Policy Program, Manual Rules A1.D – Flood, Earthquake, Mudslide, Mudflow, Or Landslide Insurance Notice. Please note that the current statutory language in the manuals will be replaced by the revised statutory language to coincide with the effective date of the new statute. Revised manual rule pages will be distributed at a later date.

Please note that this information is advisory only. The revised warning has been set by the statute. As always, please consult your own legal counsel regarding these requirements and note that the Department’s interpretations may not be binding in the courts.

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

P-12-4

Attachment

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-162
SENATE BILL 836**

AN ACT TO IMPROVE THE RATE-MAKING PROCESS BY REQUIRING THE DEPARTMENT OF INSURANCE TO ACCEPT PUBLIC COMMENT ON ALL PROPERTY INSURANCE RATE FILINGS, BY PROVIDING THE COMMISSIONER WITH THE POWER TO SPECIFY THE APPROPRIATE RATE LEVEL OR LEVELS BETWEEN THE CURRENT RATE AND THE FILED RATE UPON A FINDING THAT A RATE FILING DOES NOT COMPLY WITH APPLICABLE LAW, BY PROVIDING THAT THE COST OF REINSURANCE BE INCLUDED AS A FACTOR IN RATE MAKING AND REQUIRING CERTAIN SUPPORTING INFORMATION ON REINSURANCE COSTS IN A FILING, BY REQUIRING THAT THE RATE BUREAU CREATE A RATING PLAN FOR A PROPERTY INSURANCE POLICY THAT EXCLUDES COVERAGE FOR THE PERILS OF WINDSTORM AND HAIL, AND BY REQUIRING THAT THE RATE BUREAU AND THE DEPARTMENT OF INSURANCE STUDY THE FAIRNESS AND EFFICACY OF THE CURRENT PROPERTY INSURANCE GEOGRAPHIC RATE TERRITORIES, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON PROPERTY INSURANCE RATE MAKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-15(b) reads as rewritten:

"(b) A filing by the Rate Bureau shall be open to public inspection immediately upon submission to the Commissioner. All property insurance rate filings shall be open to the public except as provided in this Article where necessary to maintain the confidentiality of certain testimony. At least 30 days before a notice of hearing issues, the Department shall receive comments from the public regarding a property insurance rate filing. The comments may be provided to the Department by e-mail, mail, or in person at a time and place set by the Department. All public comments shall be shared with the Rate Bureau in a timely manner."

SECTION 2. G.S. 58-36-20(a) reads as rewritten:

"(a) At any time within 50 days after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent the Commissioner contends the filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. Once begun, hearings must proceed without undue delay. At the hearing the burden of proving that the proposed rates are not excessive, inadequate, or unfairly discriminatory is on the Bureau. At the hearing the factors specified in G.S. 58-36-10 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which the filing shall no longer be effective. In the event the Commissioner finds that the proposed rates are excessive, the Commissioner shall specify the overall rates, between the existing rates and the rates proposed by the Bureau filing, that may be used by the members of the Bureau instead of the rates proposed by the Bureau filing. In any such order, the Commissioner shall make findings of fact based on the evidence presented in the filing and at the hearing. Any order issued after a hearing shall be issued within 45 days after the completion of the hearing. If no order is issued within 45 days after the completion of the hearing, the filing shall be deemed to be approved."

SECTION 3. G.S. 58-36-10 is amended by adding a new subdivision to read:

"(7) Property insurance rates established under this Article may include a provision to reflect the cost of reinsurance to protect against catastrophic



exposure within this State. Amounts to be paid to reinsurers, ceding commissions paid or to be paid to insurers by reinsurers, expected reinsurance recoveries, North Carolina exposure to catastrophic events relative to other states' exposure, and any other relevant information may be considered when determining the provision to reflect the cost of reinsurance."

SECTION 4. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-42. Development of policy form or endorsement for residential property insurance that does not include coverage for perils of windstorm or hail.

With respect to residential property insurance under its jurisdiction, the Bureau shall develop an optional policy form or endorsement to be filed with the Commissioner for approval that provides residential property insurance coverage without coverage for the perils of windstorm or hail. Insurers that sell such policies shall comply with the provisions of G.S. 58-44-60 and through such compliance shall be deemed to have given notice to all insured and persons claiming benefits under such policies that such policies do not include coverage for the perils of windstorm or hail."

SECTION 5. G.S. 58-44-60 reads as rewritten:

"§ 58-44-60. Notice to property insurance policyholder about flood, earthquake, mudslide, mudflow, and ~~landslide~~ landslide, and windstorm or hail insurance coverage.

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

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

(b) As used in this section, "insurer" includes an entity that sells property insurance under Articles 21, 45, or 46 of this Chapter."

SECTION 6. The North Carolina Rate Bureau, with the assistance of the Department of Insurance, shall study the current geographic territories established by the Bureau for rating purposes. The study shall address the following issues:

- (1) Whether risks of the same class and essentially the same hazard are charged premiums that are commensurate with the risk of loss, actuarially correct, and not unfairly discriminatory.
- (2) Whether geographic territories in the beach and coastal areas (as defined in G.S. 58-45-5) currently meet the standards and mandates set forth in G.S. 58-36-10(6).
- (3) Whether current technology and statistical data sources make possible any practical and cost-effective alternative to the geographic territory system for property insurance rate setting.

The Bureau shall submit a final report, including any recommendations for changes to the geographic territories or alternatives to the geographic territory rating system, to the 2013 General Assembly.

SECTION 7. Sections 4 and 5 of this act become effective December 1, 2012. Sections 6 and 7 of this act are effective when this act becomes law. The remainder of this act becomes effective July 1, 2012.

In the General Assembly read three times and ratified this the 28th day of June, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:27 p.m. this 12th day of July, 2012