

Mediation of Emergency or Disaster-Related Insurance Claims

This Act:

- provides for a voluntary mediation program for residential property insurance claims caused by disasters;
- requires sellers of property insurance to disclose major perils that are not covered;
- provides for the tolling of time periods in property insurance policies in disaster situations;
- provides for the tolling of time periods if the operations of the department of insurance are interrupted by force majeure, and
- authorizes motor vehicle self-insurance for certain religious organizations.

Submitted as:

North Carolina

Session Law 2006-145

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Mediating
2 Residential Property Insurance Claims Caused by Disasters.”

3
4 Section 2. [*Purpose and Scope.*]

5 (a) This Act creates a nonadversarial alternative dispute resolution procedure for a
6 facilitated claim resolution conference prompted by the critical need for effective, fair, and timely
7 handling of insurance claims arising out of damages to residential property as the result of a
8 disaster. This Act applies only if a state of disaster has been proclaimed for the state or for an area
9 within the state by the governor under [insert citation], or if the President of the United States has
10 issued a major disaster declaration for the state or for an area within the state under the Robert T.
11 Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.

12 (b) The procedure established by this Act is available to all first-party claimants who have
13 insurance claims resulting from damage to residential property occurring in this state. This Act
14 does not apply to commercial insurance, motor vehicle insurance, or to liability coverage
15 contained in property insurance policies.

16 (c) The [state commissioner of insurance] may designate a person, either within the [state
17 insurance department] or outside the [state insurance department], as the administrator or other
18 functionary to carry out any of the [commissioner’s] duties under this Act.

19
20 Section 3. [*Definitions.*] As used in this Act:

21 (1) Administrator. – The state [Commissioner of Insurance] or the [Commissioner’s
22 designee]; and the term is used interchangeably with regard to the [Commissioner’s] duties under
23 this Act.

24 (2) Disaster. – As defined in [insert citation].

25 (3) Disputed claim. – Any matter on which there is a dispute as to the cause of loss or
26 amount of loss, for which the insurer has denied payment, in part or whole, with respect to claims

27 arising from a disaster. Unless the parties agree to mediate a disputed claim involving a lesser
28 amount, a “disputed claim” involves the insured requesting [one thousand five hundred dollars
29 (\$1,500)] or more to settle the dispute, or the difference between the positions of the parties is
30 [one thousand five hundred dollars (\$1,500)] or more. “Disputed claim” does not include a
31 dispute with respect to which the insurer has reported allegations of fraud, based on a referral to
32 the insurer's special investigative unit, to the [Commissioner]. A disputed claim does not include
33 one in which there has been a denial of coverage for the loss because of exclusions in the policy,
34 terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

35 (4) Mediation. – As defined in [insert citation].

36 (5) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a
37 claim.

38 (6) Party or parties. – The insured and his or her insurer, including a surplus lines insurer
39 and underwriting associations as defined in [insert citation], when applicable.

40
41 Section 4. [*Notification of Right to Mediate.*]

42 (a) Insurers shall notify their insureds in this state who have claimed damage to their
43 residential properties as a result of a disaster of their right to mediate disputed claims. This
44 requirement applies to all disputed claims, including instances where checks have been issued by
45 the insurer to the insured.

46 (b) The insurer shall mail a notice of the right to mediate disputed claims to an insured
47 within [five days] after the time the insured or the [Administrator] notifies the insurer of a dispute
48 regarding the insured’s claim. The following apply:

49 (1) If the insurer has not been notified of a disputed claim before the time an
50 insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail
51 a notice of the right to mediate to the insured in the same mailing as the notice of denial.

52 (2) The insurer is not required to send a notice of the right to mediate if a claim is
53 denied because the amount of the claim is less than the insured’s deductible.

54 (3) The mailing that contains the notice of the right to mediate shall include any
55 consumer brochure on mediation developed by the [Commissioner].

56 (4) Notification shall be in writing and shall be legible, conspicuous, and printed in
57 at least [12-point type].

58 (5) The first paragraph of the notice shall contain the following statement: “The
59 [insert state] legislature has enacted a law to facilitate fair and timely handling of residential
60 property insurance claims arising out of disasters. The law gives you the right to attend a
61 mediation conference with your insurer in order to settle any dispute you have with your insurer
62 about your claim. An independent mediator, who has no connection with your insurer, will be in
63 charge of the mediation conference.”

64 (c) The notice shall also:

65 (1) include detailed instructions on how the insured is to request mediation,
66 including name, address, and phone and fax numbers for requesting mediation through the
67 [Administrator];

68 (2) include the insurer’s address and phone number for requesting additional
69 information, and

70 (3) state that the [Administrator] will select the mediator.

71
72 Section 5. [*Request for Mediation.*]

73 (a) If an insured requests mediation before receipt of the notice of the right to mediate or if
74 the date of the notice cannot be established, the insurer shall be notified by the [Administrator] of
75 the existence of the dispute before the [Administrator] processes the insured’s request for
76 mediation. An insured must request mediation within [60 days] after the denial of the claim;

77 failure to request mediation within this time period shall only bar the right to demand mediation;
78 it shall not prejudice any other legal right or remedy of the insured nor prohibit the insurer from
79 voluntarily accepting the request for mediation.

80 (b) If an insurer receives a request for mediation, the insurer shall electronically transmit
81 the request to the [Administrator] within [three business days] after receipt of the request. If the
82 [Department] receives any requests, it shall electronically transmit those requests to the
83 [Administrator] within [three business days] after receipt. The [Administrator] shall notify the
84 insurer within [48 hours] after receipt of a request that has been filed with the [Department].

85 (c) In the insured's request for mediation, the insured shall provide the following
86 information, if known:

87 (1) name, address, and daytime telephone number of the insured and location of
88 the property if different from the address given;

89 (2) the claim and policy number for the insured;

90 (3) a brief description of the nature of the dispute;

91 (4) the name of the insurer and the name, address, and phone number of the
92 contact person for scheduling mediation; and

93 (5) information with respect to any other policies of insurance that may provide
94 coverage of the insured property for named perils such as flood, earthquake, or windstorm.

95
96 Section 6. [*Mediation Fees.*]

97 (a) The fees of the mediator and of the [Administrator] as established by the
98 [Commissioner] shall be borne by the insurer. All other mediation costs, fees, or expenses shall
99 be borne by the party incurring such costs, fees, or expenses unless otherwise provided in a
100 settlement agreement.

101 (b) The [Commissioner] may establish fee schedules, through emergency rules, for fees to
102 be paid to the [Administrator], the mediator, and for timely and untimely mediation cancellations.

103
104 Section 7. [*Scheduling of Mediation; Qualification of Mediator.*]

105 (a) The [Administrator] shall select a mediator and schedule the mediation conference.

106 (b) In order to be approved, a mediator must be certified by the [Dispute Resolution
107 Commission] under [insert citation]; or, if not, shall be approved at the discretion of the
108 [Administrator] only if the parties agree on the selected mediator and the proposed mediator is a
109 licensed attorney in good standing with the state Bar. A mediator shall not make an award or
110 render a judgment as to the merits of the action.

111
112 Section 8. [*Conduct of the Mediation Conference.*]

113 (a) The [Commissioner] may adopt rules, in addition to the provisions of this section and
114 that are not in conflict with [insert citation], for the conduct of mediation conferences under this
115 Act. The rules adopted by the [Commissioner] shall include a requirement of the mediator to
116 advise the parties of the mediation process and their rights and duties in the process.

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

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

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

- 127 (e) The representative of the insurer attending the conference shall:
128 (1) Bring, in paper or electronic medium, a copy of the policy and the entire claims
129 file to the conference.
130 (2) Know the facts and circumstances of the claim and be knowledgeable of the
131 provisions of the policy.
132 (f) An insurer will be deemed to have failed to appear if the insurer's representative lacks
133 authority to settle within the limits of the policy.
134 (g) The mediator shall be in charge of the conference and will establish and describe the
135 procedures to be followed. The mediator shall conduct the conference in accordance with the
136 standards of professional conduct for mediation adopted by the American Arbitration
137 Association, the American Bar Association, the Society of Professionals in Dispute Resolution,
138 and, where not inconsistent, [insert citation].
139 (h) All statements made and documents produced at a settlement conference shall be
140 deemed settlement negotiations in anticipation of litigation.
141 (i) A party may move to disqualify a mediator for good cause at any time. The request
142 shall be directed to the [Administrator] if the grounds are known before the mediation conference.
143 Good cause consists of conflict of interest between a party and the mediator, inability of the
144 mediator to handle the conference competently, or other reasons that would reasonably be
145 expected to impair the conference.

146

147 Section 9. [*Post-Mediation.*]

- 148 (a) Within [five days] after the conclusion of the conference, the mediator shall file with
149 the [Administrator] a mediator's status report, on a form prescribed by the Administrator,
150 indicating whether or not the parties reached a settlement.
151 (b) Mediation is nonbinding unless all the parties specifically agree otherwise in writing.
152 (c) If the parties reach a settlement, the mediator shall include a copy of the settlement
153 agreement with the status report. Within [three business days] after the conclusion of the
154 conference, the insurer shall disburse the settlement funds in accordance with the terms of the
155 settlement agreement. The insured has [three business days] after receipt of the settlement funds
156 within which to notify the [Commissioner] and the insurer of the insured's decision to rescind the
157 settlement agreement, as long as the insured has not received the settlement funds by electronic
158 means or has not cashed or deposited any check or draft disbursed to the insured in payment of
159 the settlement funds.
160 (d) If a settlement agreement is reached and is not rescinded, it shall act as a release of all
161 specific claims that were presented in the conference. Any subsequent claim under the policy
162 shall be presented as a separate claim.

163

164 Section 10. [*Nonparticipation in Mediation Program.*] If the insured decides not to
165 participate in this program or if the parties are unsuccessful at resolving the claim, the insured
166 may choose to proceed under the appraisal process set forth in the insurance policy, by litigation,
167 or by any other dispute resolution procedure available under state law.

168

169 Section 11. [*Commissioner's Review.*] If the insured rescinds a settlement agreement in
170 accordance with [Section 9 (c)] of this Act, the [Commissioner] may review the settlement
171 agreement to determine if the agreement was fair to the parties to the agreement. If the
172 [Commissioner], upon review and within [10 business days] after receiving notice of the
173 rescission, deems that it was fair to the parties, the insured, upon notice from the [Commissioner],
174 may withdraw the rescission within [five business days] after receipt of notice from the
175 [Commissioner] and reinstate the settlement agreement as if no rescission had taken place. The

176 [Commissioner’s] review and findings shall not be offered or accepted as evidence in any
177 subsequent proceedings.

178

179 Section 12. [*Relation to Administrative Procedure Act.*] The applicable provisions of the
180 [state Administrative Procedure Act] shall govern issues relating to mediation that are not
181 addressed in this Act.

182

183 Section 13. [*Notice to Property Insurance Policyholder about Flood, Earthquake,*
184 *Mudslide, Mudflow, and Landslide Insurance Coverage.*]

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

191

192 “Warning: this property insurance policy does not protect you against
193 losses from [floods], [earthquakes], [mudslides], [mudflows],
194 [landslides]. You should contact your insurance company or agent to
195 discuss your options for obtaining coverage for these losses. This is not a
196 complete listing of all of the causes of losses not covered under your
197 policy. You should read your entire policy to understand what is covered
198 and what is not covered.”

199

200 (b) As used in this section, “insurer” includes an entity that sells property insurance under
201 [insert citation].

202

203 Section 14. [*State of Disaster; Automatic Stay of Proof of Loss Requirements; Premium*
204 *and Debt Deferrals; Loss Adjustments For Separate Windstorm Policies.*] Whenever a state of
205 disaster is proclaimed for the state or for an area within the state under [insert citation] or
206 whenever the President of the United States has issued a major disaster declaration for the state or
207 for an area within the state under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

208

209 (1) The application of any provision in an insurance policy insuring real property
210 and its contents that are located within the geographic area designated in the proclamation or
211 declaration, which provision requires an insured to file a proof of loss within a certain period of
212 time after the occurrence of the loss, shall be stayed for the time period not exceeding the
213 expiration of the disaster proclamation or declaration and all renewals of the proclamation or [45
214 days], whichever is later.

214

215 (2) As used in this subdivision, “insurance company” includes a service
216 corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under [insert
217 citation]. All insurance companies, premium finance companies, collection agencies, and other
218 people subject to this Act shall give their customers who reside within the geographic area
219 designated in the proclamation or declaration the option of deferring premium or debt payments
220 that are due during the time period covered by the proclamation or declaration. This deferral
221 period shall be [30 days] from the last day the premium or debt payment may be made under the
222 terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other
policy or contract provision that imposes a time limit on an insurer, insured, claimant, or

223 customer to perform any act during the time period covered by the proclamation or declaration,
224 including the transmittal of information, with respect to insurance policies or contracts, premium
225 finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides
226 or is located in the geographic area designated in the proclamation or declaration. Likewise, the
227 deferral period shall apply to any time limitations imposed on insurers under the terms of a policy
228 or contract or provisions of law related to people who reside within the geographic area
229 designated in the proclamation or declaration. The [Commissioner] may extend any deferral
230 period in this subdivision, depending on the nature and severity of the proclaimed or declared
231 disaster. No additional rate or contract filing shall be necessary to effect any deferral period.

232 (3) With respect to health benefit plans, after a deferral period has expired, all
233 premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage
234 shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as
235 permitted under this Act; and the insured shall be responsible for all medical expenses incurred
236 since the effective date of the lapse in coverage.

237 (4) In addition to the requirements of [insert citation] for separate windstorm
238 policies that are written by an insurer other than the [Underwriting Association], losses shall be
239 adjusted by the insurer that issued the property insurance and not by the insurer that issued the
240 windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that
241 issued the property insurance for reasonable expenses incurred by that insurer in adjusting the
242 windstorm losses.

243
244 Section 15. [*Incident Affecting Operations of the Department; Stay of Deadlines and*
245 *Deemer Provisions.*] Regardless of whether a state of disaster has been proclaimed under [insert
246 citation] or declared under the Stafford Act, whenever an incident beyond the [Department's]
247 reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic
248 technological failure, substantially affects the daily business operations of the [Department], the
249 [Commissioner] may issue an order, effective immediately, to stay the application of any
250 deadlines and deemer provisions imposed by law or rule upon the [Commissioner] or
251 [Department] or upon people subject to the [Commissioner's] jurisdiction, which deadlines and
252 deemer provisions would otherwise operate during the time period for which the operations of the
253 [Department] have been substantially affected. The order shall remain in effect for a period not
254 exceeding [30 days]. The order may be renewed by the [Commissioner] for successive periods
255 not exceeding [30 days] each for as long as the operations of the [Department] remain
256 substantially affected, up to a period of [one year] from the effective date of the initial order.

257
258 Section 16. [*Religious Organizations; Self-Insurance.*]

259 (a) Notwithstanding any other provision of this Act, any recognized religious organization
260 having established tenets or teachings and that has been in existence at all times since [December
261 31, 1950], may qualify as a self-insurer by obtaining a certificate of self-insurance from the
262 [Commissioner] as provided in [subsection (c)] of this section if the [Commissioner] determines
263 that all of the following conditions are met:

264 (1) members of the religious organization operate [five or more] vehicles that are
265 registered in this state and are either owned or leased by them;

266 (2) members of the religious organization hold a common belief in mutual
267 financial assistance in time of need to the extent that they share in financial obligations of other
268 members who would otherwise be unable to meet their obligations;

269 (3) the religious organization has met all of its insurance obligations for the [five
270 years] preceding its application;

271 (4) the religious organization is financially solvent and not subject to any actions
272 in bankruptcy, trusteeship, receivership, or any other court proceeding in which the financial
273 solvency of the religious organization is in question.

274 (5) neither the religious organization nor any of its participating members has any
275 judgments arising out of the operation, maintenance, or use of a motor vehicle taken against them
276 that have remained unsatisfied for more than [30 days] after becoming final.

277 (6) there are no other factors that cause the [Commissioner] to believe that the
278 religious organization and its participating members are not of sufficient financial ability to pay
279 judgments against them; and

280 (7) the religious organization and its participating members meet other
281 requirements that the [Commissioner] by administrative rule prescribes.

282 (b) The [Commissioner] may, in the [Commissioner's] discretion, upon the application of
283 a religious organization, issue a certificate of self-insurance when the [Commissioner] is satisfied
284 that the religious organization is possessed and will continue to be possessed of an ability to pay
285 any judgments that might be rendered against the religious organization. The certificate shall
286 serve as evidence of insurance for the purposes of [insert citation].

287 (c) A group issued a certificate of self-insurance under this section shall notify the
288 [Commissioner] in writing if any person ceases to be a member of the group. The group shall
289 notify the [Commissioner] within [10 days] of the person's removal or departure from the group.

290 (d) The [Commissioner] may, at any time after the issuance of a certificate of self-
291 insurance under this subsection, cancel the certificate by giving [30 days'] written notice of
292 cancellation to the religious organization whenever there is reason to believe that the religious
293 organization to whom the certificate was issued is no longer qualified as a self-insurer under this
294 section.

295

296 Section 17. [*Severability.*] [Insert severability clause.]

297

298 Section 18. [*Repealer.*] [Insert repealer clause.]

299

300 Section 19. [*Effective Date.*] [Insert effective date.]