

NORTH CAROLINA GENERAL ASSEMBLY  
1969 SESSION

CHAPTER 249  
SENATE BILL 26

1 AN ACT TO ESTABLISH THE NORTH CAROLINA UNDERWRITING ASSOCIATION  
2 SO AS TO PROVIDE A METHOD WHEREBY ADEQUATE FIRE AND EXTENDED  
3 COVERAGE INSURANCE MAY BE OBTAINED IN THE BEACH AREA OF NORTH  
4 CAROLINA.

5  
6 The General Assembly of North Carolina do enact:

7  
8 **Section 1.** Article 18A of Chapter 58 of the General Statutes of North Carolina is  
9 hereby repealed in its entirety and in lieu thereof the following is substituted:

10 **"Sec. 58-173.1. Declarations and purpose of the Act.** It is hereby declared by the General  
11 Assembly of North Carolina that an adequate market for fire and extended coverage insurance  
12 is necessary to the economic welfare of the beach area of the State of North Carolina and that  
13 without such insurance the orderly growth and development of the beach area of the State of  
14 North Carolina would be severely impeded; that furthermore, adequate insurance upon property  
15 in the beach area is necessary to enable home owners and commercial owners to obtain  
16 financing for the purchase and improvement of their property; and that while the need for such  
17 insurance is increasing the market for such insurance is not adequate and is likely to become  
18 less adequate in the future; and that the present plans to provide adequate insurance on property  
19 in the beach area, while deserving praise, have not been sufficient to meet the needs of this  
20 area. It is further declared that the State has an obligation to provide an equitable method  
21 whereby every licensed insurer writing fire and extended coverage in North Carolina is  
22 required to meet its public responsibility instead of shifting the burden to a few willing and  
23 public spirited insurers. It is the purpose of this Act to accept this obligation and to provide a  
24 mandatory program to assure an adequate market for fire and extended coverage insurance in  
25 the beach area of North Carolina."

26 **"Sec. 58-173.2. Definition of terms.** In this Article, unless the context otherwise requires,

- 27       "(1) 'Essential Property Insurance' means insurance against direct loss to property  
28       as defined and limited in the standard statutory fire policy and extended  
29       coverage endorsement thereon, as approved by the Commissioner;  
30       "(2) 'Association' means the North Carolina Insurance Underwriting Association  
31       established pursuant to the provisions of this Act;  
32       "(3) 'Plan of Operation' means the plan of operation of the Association approved  
33       or promulgated by the Commissioner of Insurance, pursuant to the  
34       provisions of this Act;  
35       "(4) 'Insurable Property' means real property at fixed locations in beach areas of  
36       the State as that term is hereinafter defined or the tangible personal property  
37       located therein, but shall not include insurance on motor vehicles, farm and  
38       manufacturing risks, which property is determined by the Association, after  
39       inspection and pursuant to the criteria specified in the plan of operation, to  
40       be in an insurable condition: Provided, however, any one and two family  
41       dwellings built in substantial accordance with the North Carolina Uniform  
42       Residential Building Code and any structure or building built in substantial  
43       compliance with the North Carolina Building Code, including the design-

wind requirements, which is not otherwise rendered uninsurable by reason of use or occupancy, shall be an insurable risk within the meaning of this Act, but neighborhood, area, location, environmental hazards beyond the control of the applicant or owner of the property shall not be considered in determining insurable condition. Provided further, that any structure commenced on or after January 1, 1970, not built in substantial compliance with the North Carolina Uniform Residential Building Code or the North Carolina Building Code, including the design-wind requirements therein, shall not be an insurable risk. The owner or applicant shall furnish with the application proof in the form of a certificate from a local building inspector, contractor, engineer or architect that the structure is built in substantial accordance with the North Carolina Uniform Residential Building Code or the North Carolina Building Code;

"(5) 'Commissioner' means the Commissioner of Insurance of the State of North Carolina;

"(6) 'Beach Area' means all of that area of the State of North Carolina South and East of the inland waterway from the South Carolina line to Fort Macon(Beaufort Inlet); thence South and East of Core, Pamlico, Roanoke and Currituck Sounds to the Virginia line, being those portions of land generally known as the Outer Banks;

"(7) 'Net Direct Premiums' means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for fire and extended coverage insurance, including the fire and extended coverage components of home owners and commercial multiple peril package policies as computed by the Commissioner, less return premiums upon cancelled contracts, dividends paid or credited to policyholders or the unused or unabsorbed portion of premium deposits, and further excluding premiums on farm properties and manufacturing risks."

**"Sec. 58-173.3. North Carolina Insurance Underwriting Association created.** There is hereby created the North Carolina Insurance Underwriting Association, consisting of all insurers authorized to write and engage in writing within this State, on a direct basis, property insurance, except town and county mutual insurance associations and assessable mutual companies as authorized by General Statute 58-77(5)b, 58-77(5)d, and 58-77(7)b. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence as a condition of its authority to continue to transact the business of insurance in this State."

**"Sec. 58-173.4. Powers and duties of the Association.** The Association shall, pursuant to the provisions of this Act and the plan of operation, and with respect to essential property insurance on insurable property, have the power on behalf of its members:

(a) to cause to be issued policies of insurance to applicants;

(b) to assume reinsurance from its members;

(c) to cede reinsurance to its members and to purchase reinsurance in behalf of its members."

**"Sec. 58-173.5. Temporary directors of Association.** Within ten days after the effective date of this Act the Commissioner shall appoint a temporary Board of Directors of this Association, which shall consist of eleven (11) representatives of members of the Association. Such temporary Board of Directors shall prepare and submit a plan of operation in accordance with Section 58-173.7 and shall serve until the permanent Board of Directors shall take office in accordance with said plan of operation."

**"Sec. 58-173.6. Members of Association to participate in its writings, expenses, profits and losses in proportion to net direct premium of such member.** All members of the

1 Association shall participate in its writings, expenses, profits and losses in the proportion that  
2 the net direct premium of such member written in this State during the preceding calendar year  
3 bears to the aggregate net direct premiums written in this State by all members of the  
4 Association, as certified to the Association by the Commissioner after review of annual  
5 statements, other reports and any other statistics the Commissioner shall deem necessary to  
6 provide the information herein required and which the Commissioner is hereby authorized and  
7 empowered to obtain from any member of the Association, provided, however, that a member  
8 shall annually receive credit for essential property insurance voluntarily written in the beach  
9 area and its participation in the writings in the Association shall be reduced accordingly. Each  
10 member's participation in the Association shall be determined annually in the same manner as  
11 the initial determination. Any insurer authorized to write and engage in writing any insurance,  
12 the writing of which requires such insurer to be a member of the Association, pursuant to the  
13 provisions of General Statute 58-173.3 of this Act, who is authorized and engaged in writing  
14 such insurance after the effective date of this Act, shall become a member of the Association on  
15 the January 1 immediately following such authorization and the determination of such insurer's  
16 participation in the Association shall be made as of the date of such membership in the same  
17 manner as for all other members of the Association."

18 **"Sec. 58-173.7. Directors to submit plan of operation to Commissioner for review and**  
19 **approval.** Within ninety (90) days after the effective date of this Act, the directors of the  
20 Association shall submit to the Commissioner for his review and approval, a proposed plan of  
21 operation. Such proposed plan shall set forth the number, qualifications, terms of office, and  
22 manner of election of the members of the Board of Directors, and shall grant proper credit  
23 annually to each member of the Association for essential property insurance voluntarily written  
24 in the beach area and shall provide for the efficient, economical, fair and non-discriminatory  
25 administration of the Association and for the prompt and efficient provision of essential  
26 property insurance in the beach areas of North Carolina so as to promote orderly community  
27 development in those areas and to provide means for the adequate maintenance and  
28 improvement of the property in such areas. Such proposed plan may include a preliminary  
29 assessment of all members for initial expenses necessary to the commencement of operation;  
30 the establishment of necessary facilities; management of the Association; plan for the  
31 assessment of members to defray losses and expenses; underwriting standards; procedures for  
32 the acceptance and cession of reinsurance; procedures for determining the amounts of insurance  
33 to be provided to specific risks; time limits and procedures for processing applications for  
34 insurance and for such other provisions as may be deemed necessary by the Commissioner to  
35 carry out the purposes of this Act.

36 "The proposed plan shall be reviewed by the Commissioner and approved by him if he  
37 finds that such plan fulfills the purposes provided by General Statute 58-173.1 of this Act. In  
38 the review of the proposed plan the Commissioner may, in his discretion, consult with the  
39 directors of the Association and may seek any further information which he deems necessary to  
40 his decision. If the Commissioner approves the proposed plan, he shall certify such approval to  
41 the directors and the plan shall become effective ten (10) days after such certification. If the  
42 Commissioner disapproves all or any part of the proposed plan of operation he shall return the  
43 same to the directors with his written statement for the reasons for disapproval and any  
44 recommendations he may wish to make. The directors may alter the plan in accordance with the  
45 Commissioner's recommendation or may within thirty (30) days from the date of disapproval  
46 return a new plan to the Commissioner. Should the directors fail to submit a proposed plan of  
47 operation within ninety (90) days of the effective date of this Act, or a new plan which is  
48 acceptable to the Commissioner, or accept the recommendations of the Commissioner within  
49 thirty (30) days after his disapproval of the plan, the Commissioner shall promulgate and place  
50 into effect a plan of operation certifying the same to the directors of the Association. Any such  
51 plan promulgated by the Commissioner shall take effect ten (10) days after certification to the

1 directors: Provided, however, that until a plan of operation is in effect, pursuant to the  
2 provisions of this Act, any existing temporary placement facility may be continued in effect on  
3 a mandatory basis on such terms as the Commissioner may determine.

4 "The directors of the Association may, subject to the approval of the Commissioner, amend  
5 the plan of operation at any time. The Commissioner may review the plan of operation at any  
6 time he deems expedient or prudent, but not less than once in each calendar year. After review  
7 of such plan the Commissioner may amend the plan after consultation with the directors and  
8 upon certification to the directors of such amendment."

9 **"Sec. 58-173.8. Persons eligible to apply to Association for coverage: contents of**  
10 **application.** (a) Any person having an insurable interest in insurable property, may, on or after  
11 the effective date of the plan of operation, be entitled to apply to the Association for such  
12 coverage and for an inspection of the property. Such application may be made on behalf of the  
13 applicant by a broker or agent authorized by him. Every such application shall be submitted on  
14 forms prescribed by the Association after consultation with the Commissioner, which  
15 application shall contain statement as to whether or not there is any unpaid premiums due from  
16 the applicant for fire insurance on the property.

17 "The term 'insurable interest' as used in this subsection shall be deemed to include any  
18 lawful and substantial economic interest in the safety or preservation of property from loss,  
19 destruction or pecuniary damage.

20 "(b) If the Association determines that the property is insurable and that there is no  
21 unpaid premium due from the applicant for prior insurance on the property, the Association  
22 upon receipt of the premium, or such portion thereof, as is prescribed in the plan of operation,  
23 shall cause to be issued a policy of essential property insurance for a term of one (1) year. Any  
24 policy issued pursuant to the provisions of this section shall be renewed annually, upon  
25 application therefor, so long as the property meets the definition of 'insurable property' set forth  
26 in G.S. 58-173.2(4).

27 "(c) If the Association, for any reason, denies an application and refuses to cause to be  
28 issued an insurance policy on insurable property to any applicant or takes no action on an  
29 application within the time prescribed in the plan of operation, such applicant may appeal to the  
30 Commissioner and the Commissioner, or a member of his staff designated by him, after  
31 reviewing the facts, may direct the Association to issue or cause to be issued an insurance  
32 policy to the applicant. In carrying out his duties pursuant to this section, the Commissioner  
33 may request, and the Association shall provide any information the Commissioner deems  
34 necessary to a determination concerning the reason for the denial or delay of the application."

35 **"Sec. 58-173.9. Association members may cede insurance to the Association.** Any member  
36 of the Association may cede to the Association essential property insurance written on  
37 insurable property, to the extent, if any, and on the terms and conditions set forth in the plan of  
38 operation."

39 **"Sec. 58-173.10. Rates, rating plans and rate rules applicable.** The rates, rating plans and  
40 rating rules applicable to the insurance written by the Association shall be in accord with the  
41 manual rates in current usage throughout the State of North Carolina. No special surcharge  
42 (other than those presently in effect) may be applied to the fire or extended coverage rates of  
43 properties located in the beach area."

44 **"Sec. 58-173.11. Appeal from acts of the Association to Insurance Commissioner; appeal**  
45 **to the Superior Court from the Commissioner.** Any person insured pursuant to this Act, or  
46 his representative, or any affected insurer, who may be aggrieved by an act, ruling or decision  
47 of the Association, may, within thirty (30) days after such ruling appeal to the Commissioner.  
48 Any hearings held by the Insurance Commissioner pursuant to such an appeal shall be in  
49 accordance with the procedure set forth in General Statute 58-9.2: Provided, however, the  
50 Insurance Commissioner is authorized to appoint a member of his staff as Deputy  
51 Commissioner for the purpose of hearing such appeals and a ruling based upon such hearing

1 shall have the same effect as if heard by the Commissioner. All persons or insureds aggrieved  
2 by any order or decision of the Insurance Commissioner may appeal as is provided by the  
3 provisions of General Statute 58-9.3."

4 **"Sec. 58-173.12. Reports of inspection made available.** All reports of inspection performed  
5 by or on behalf of the Association shall be made available to the members of the Association,  
6 applicants, agents or broker, and the Commissioner."

7 **"Sec. 58-173.13. Association and Commissioner immune from liability.** There shall be no  
8 liability on the part of and no cause of action of any nature shall arise against the Insurance  
9 Commissioner or any of his staff, the Association or its agents or employees, or against any  
10 participating insurer, for any inspections made hereunder or any statements made in good faith  
11 by them in any reports or communications concerning risks submitted to the Association, or at  
12 any administrative hearings conducted in connection therewith under the provisions of this  
13 Act."

14 **"Sec. 58-173.14. Association to file annual report with Commissioner.** The Association  
15 shall file in the Office of the Commissioner on an annual basis on or before July 1 a statement  
16 which shall summarize the transactions, conditions, operations and affairs of the Association  
17 during the preceding year. Such statement shall contain such matters and information as are  
18 prescribed by the Com- missioner and shall be in such form as is approved by him. The  
19 Commissioner may at any time require the Association to furnish to him any additional  
20 information with respect to its transactions or any other matter which the Commissioner deems  
21 to be material to assist him in evaluating the operation and experience of the Association."

22 **"Sec. 58-173.15.** Commissioner may examine affairs of the Association. The Commissioner  
23 may from time to time make an examination into the affairs of the Association when he deems  
24 it to be prudent and in undertaking such examination he may hold a public hearing pursuant to  
25 the provisions of General Statute 58-9.2. The expenses of such examination shall be borne and  
26 paid by the Association."

27 **"Sec. 58-173.16. Commissioner authorized to promulgate reasonable rules and**  
28 **regulations.** The Commissioner of Insurance shall have authority to make reasonable rules and  
29 regulations, not inconsistent with law, to enforce, carry out and make effective the provisions  
30 of this Article. The Commisssioner shall not be liable for any act or omission in connection  
31 with the administration of the duties imposed upon him by the provisions of this Article."

32 **Sec. 2.** If any provisions of this Act or the application thereof to any person or  
33 circumstance is held invalid, such invalidity shall not affect other provisions or applications of  
34 the Act which can be given effect without the invalid provision or application, and to this end  
35 the provisions of this Act are declared to be severable.

36 **Sec. 3.** This Act shall become effective upon ratification.

37 In the General Assembly read three times and ratified, this the 17th day of April,  
38 1969.