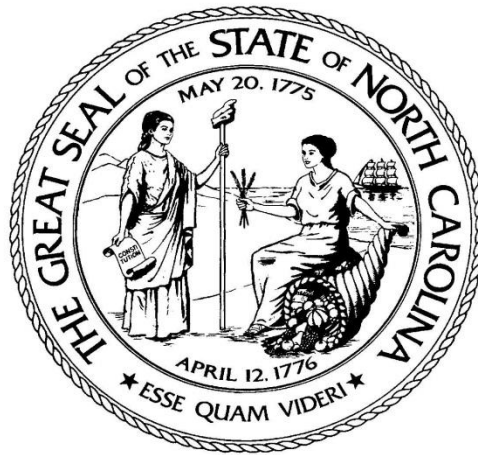


LEGISLATIVE RESEARCH COMMISSION

**COMMITTEE ON REGULATORY AND
RATE ISSUES IN INSURANCE**

NORTH CAROLINA GENERAL ASSEMBLY



**REPORT TO THE
2017 SESSION
of the
2017 GENERAL ASSEMBLY
OF NORTH CAROLINA**

DECEMBER 2016

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TRANSMITTAL LETTER

December 16, 2016

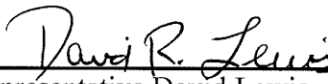
TO THE MEMBERS OF THE 2017 REGULAR SESSION
OF THE 2017 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2017 Regular Session of the 2017 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Regulatory and Rate Issues in Insurance, pursuant to G.S. 120-30.17(1).

Respectfully submitted,



Senator Harry Brown



Representative David Lewis

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

2015 – 2016

Senator Michael Lee
Co-Chair

Representative Paul Tine
Co-Chair

Senator Harry Brown, Ex Officio
Senator Ralph Hise
Senator Wesley Meredith
Senator Bill Cook
Senator Joel Ford

Representative David Lewis, Ex Officio
Representative Christopher Millis
Representative Jeffrey Collins
Representative William Brawley
Representative Darren Jackson

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Regulatory and Rate Issues in Insurance, under authority of G.S. 120-30.17(1). The Committee was chaired by Senator Michael Lee and Representative Paul Tine, Co-Chairs of the Committee. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2015-2016** biennium.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Regulatory and Rate Issues in Insurance met four times after the 2015 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

April 7, 2016

- Bill Patterson, Staff Attorney, Legislative Analysis Division, reviewed the Committee's Charge and reporting requirements.
- Ben Popkin, Legislative Liaison, Department of Insurance, presented information on the practice of consent to rate used by insurance companies in North Carolina including the statutory basis for consent to rate, the administrative and procedural requirements for consent to rate, and the Department of Insurance's oversight of consent to rate practices and its concerns with consent to rate.
- Ben Popkin also presented an overview of the ratemaking process for property insurance including what roles the North Carolina Rate Bureau and the Department of Insurance play in the process.
- Ray Evans, General Manager, North Carolina Rate Bureau, discussed the role of the Rate Bureau in North Carolina's property insurance market including (i) an outline of the process by which the Rate Bureau submits a rate filing to the Department of Insurance and the Department considers the filing and (i) the statutory requirements that must be met for the rate to be approved.
- Tim Hovis, Staff Attorney, Legislative Analysis Division, reviewed past studies conducted by prior insurance LRC committees.
- Representative Paul Tine reviewed House Bill 151, Property Insurance Ratemaking Reform, from the 2015-2016 Session for the Committee.
- Representative Chris Millis reviewed House Bill 182, Property Insurance Fairness, from the 2015-2016 Session for the Committee.

September 29, 2016

- Ben Popkin, Legislative Liaison, Department of Insurance, presented information on the reporting, collection, and use of consent to rate data by the Department of Insurance.
- Ben Popkin gave two presentations on property insurance ratemaking: a general overview of the ratemaking process and a detailed analysis of the ratemaking appeals process.
- Oyango Snell spoke on behalf of Property Casualty Insurers Association of America (PCI) regarding efficiency in ratemaking and compared other states' "file and use" insurance markets to North Carolina's rate bureau model.

- John McMillan spoke on behalf of Insurance Federation of North Carolina regarding the property insurance ratemaking appeals process.
- Gina Schwitzgebel, General Manager, NCJUA/NCIUA, gave a presentation on the Coastal Property Insurance Pool ("CPIP" formerly known as "the Beach Plan").
- Willow Kelly spoke on behalf of the Outer Banks Association of REALTORS® regarding the elimination of consent to rate in North Carolina.

December 5, 2016

- Jeff Cherry, Staff Attorney, Legislative Drafting Division, reviewed the liability insurance provision from House Bill 1043, Zip Line and Challenge Course Safety/Sanders' Law, from the 2015-2016 Session for the Committee.
- David Ferrell, Legislative Counsel, North Carolina Aerial Adventure Association (NCAAA), presented information on challenge and aerial courses including a history and background and the national safety standards applied in the design, construction, and operation of the courses. Mr. Ferrell discussed the North Carolina Department of Labor's Report on Zip Line Operations from February 2016 and advised that the NCAAA's recommendation to the Committee is to require challenge and aerial course operators to maintain a minimum level of liability insurance at all times.
- Korey Hampton, owner of French Broad Adventures in Madison County, spoke about her zip line and canopy tour company's safety procedures and inspection and training schedules.
- Henry DeHart, Jr., Executive Vice President, Camping Services, YMCA of the Triangle, Wake County, North Carolina Youth Camp Association, spoke about the safety procedures and inspections performed at North Carolina camps.

December 15, 2016

- Senator Michael Lee presided over the meeting. With a quorum present, the Committee approved the Committee's draft report and recommendations to the 2017 Regular Session of the 2017 General Assembly for transmittal to the Legislative Research Commission. Committee staff was authorized to revise the report to reflect the proceedings of the meeting and to address technical corrections to the report and proposed legislation.

FINDINGS AND RECOMMENDATIONS

Findings – Consent to Rate

The Committee on Regulatory and Rate Issues in Insurance has considered the speakers' presentations and materials presented on consent to rate and the information obtained during question and answer sessions and discussions at the committee meetings and finds the following:

- The intended purpose of consent to rate is to assist insurance carriers in underwriting policies.
- When the ratemaking process results in inadequate rates the only recourse for insurers and consumers is to utilize consent to rate.
- Consent to rate allows insurers to charge a rate higher than that promulgated by the Rate Bureau if done so in accordance with rules adopted by the Department of Insurance and with the knowledge and written consent of the insured.
- Legislation was adopted during the 2016 Session of the General Assembly (House Bill 287) requiring insurers to provide enhanced notice to consumers who choose to enter a consent to rate agreement. Specifically, effective October 1, 2017, the following notice must be included on the initial consent to rate form and on any renewal for any subsequent increase above the manual rate: “NOTICE: THE PREMIUM USING NORTH CAROLINA RATE BUREAU’S APPROVED RATES FOR THE HOMEOWNER’S INSURANCE COVERAGE I APPLIED FOR IS \$____. THE PREMIUM FOR THIS COVERAGE IS \$____. THE TOTAL PERCENTAGE INCREASE ABOVE THE APPROVED RATE IS ____%.” The insurer must give at least thirty days' notice to the insured for all consent to rate renewals and endorsements.
- Consent to rate premiums are not subject to any actuarial standards or review.
- The Committee found that the consent to rate process allows insurers to circumvent the Rate Bureau process of setting rates. Once a consent to rate has been signed by an insured, the insurance company may charge up to 250% of the approved rate. The Committee was unable to determine the extent to which consent to rate is used in North Carolina or the impact on rates to the citizens in the State. Therefore, it is recommended that the Department of Insurance obtain the appropriate information necessary to determine the overall impact on rates.
- The Department of Insurance currently only reviews an insurer's initial consent to rate application form for statutory and code compliance, not the frequency with which consent to rate is used or the percentage of the rate increases.
- Under current law, the majority of consent to rate data obtained by the Department of Insurance is confidential and proprietary and not available to the public.

Recommendation #1 – Make Consent to Rate Data Available to the Public

Based on the above findings, the Committee on Regulatory and Rate Issues in Insurance recommends that consent to rate data be made available to the public. Therefore, the Committee recommends that during the 2017 Session, the General Assembly enact legislation to allow public access to certain aggregated consent to rate data. (See Appendix D of Proposed Legislation.)

Findings – Property Insurance Ratemaking Appeals Process

The Committee on Regulatory and Rate Issues in Insurance has considered the speakers' presentations and materials presented on the property insurance ratemaking appeals process and the information obtained during question and answer sessions and discussions at the committee meetings and finds the following:

- Before any insurance carrier can write policies in North Carolina, it must become a member of the Rate Bureau, and it shall not knowingly issue a policy that doesn't conform to the rates, rating plans, classifications, schedules, rules, and standards made and filed by the Rate Bureau.
- Since 1993, the Rate Bureau has filed eight homeowners' insurance rate filings.
- The most recent rate filing was submitted on January 3, 2014. The Rate Bureau identified the need for a 25.6% rate increase. The Commissioner convened a hearing in October 2015 and in December ordered a 0% statewide average rate level change. The Rate Bureau appealed the Commissioner's Order. On August 2, 2016, the Court of Appeals issued an Order affirming the Commissioner's Order. A petition for review is pending before the Supreme Court.
- On appeal, the Commissioner's Order is *presumed to be correct and proper* if it is supported by substantial evidence.
- The ratemaking appeals process is an adversarial process between the Rate Bureau and the Department of Insurance. Both parties are represented by counsel. Department of Insurance staff attorneys represent the Department. Department staff and employees are often called as witnesses and experts to testify. The Commissioner of Insurance sits as the hearing officer, rules on evidentiary issues, makes findings, and enters an Order.
- There are differing opinions as to whether it is possible for the Commissioner to remain neutral when acting in the capacity of hearing officer.

Recommendation #1 – Continue the Study of the Ratemaking Appeals Process

Based on the above findings, the Committee on Regulatory and Rate Issues in Insurance recommends that the General Assembly continue to study the property insurance ratemaking appeals process for possible recommendations to the 2018 General Assembly.

Findings – Challenge and Aerial Courses

The Committee on Regulatory and Rate Issues in Insurance has considered the speakers' presentations and materials presented on challenge and aerial courses and the information obtained during question and answer sessions and discussions at the committee meetings and finds the following:

- Challenge and aerial courses with some containing zip lines operate in both commercial and non-commercial settings at businesses, camps, universities, recovery centers, and parks.
- The Association for Challenge Course Technology (ACCT) is the primary national standard for challenge courses and includes best practices for design, construction, performance, equipment, inspections, operations, practitioner certification, and training. Occupational Safety and Health Administration (OSHA) and Professional Ropes Course Association (PRCA) standards are also used to regulate the industry.
- In its study on zip lines and challenge courses, the North Carolina Department of Labor concluded that the challenge course industry is self-regulating, in that, insurance companies require annual inspections and affirmation that any deficiencies found by an inspection are corrected.
- Currently, two to three insurance companies provide coverage to challenge and aerial course operators in North Carolina. The insurers require annual inspections by third parties and if applicable, inspections by arborists.
- The North Carolina Aerial Adventure Association (NCAAA) recommends that the Committee propose legislation requiring challenge and aerial course operators to maintain a minimum level of liability insurance.
- It is not known which, if any, currently operating challenge and aerial course companies in North Carolina do not have liability insurance.

Recommendation #1 – Require Insurance for Challenge and Aerial Course Operators

Based on the above findings, the Committee on Regulatory and Rate Issues in Insurance recommends that minimum liability insurance requirements be established for challenge and aerial course operators. Therefore, the Committee recommends that during the 2017 Session, the General Assembly enact legislation requiring insurance coverage for challenge and aerial course operators. (See Appendix D of Proposed Legislation.)

COMMITTEE MEMBERSHIP

2015-2016

Senate Members:

Senator Michael Lee, Co-Chair

Senator Sen. Bill Cook
Senator Sen. Joel Ford
Senator Sen. Ralph Hise
Senator Sen. Wesley Meredith
Senator Sen. Harry Brown, Ex Officio

House of Representatives Members:

Representative Paul Tine, Co-Chair

Representative Rep. William Brawley
Representative Rep. Jeffrey Collins
Representative Rep. Darren Jackson
Representative Rep. Christopher Millis
Representative Rep. David Lewis, Ex Officio

COMMITTEE CHARGE

Regulatory and Rate Issues in Insurance – Study the equity of property insurance rate making in North Carolina. In doing so, the Committee may (but is not limited to) review the feasibility of making property insurance data available to the public, reviewing roles and responsibilities of the N.C. Insurance Underwriting Association, reviewing consent to rate practices, catastrophe modeling and other issues the Committee deems appropriate.

The Committee may also examine regulatory and insurance issues associated with challenge and aerial courses operating within North Carolina, including:

1. Whether any counties or a city in the State and/or federal law regulates challenge or aerial adventure courses and the content of any such ordinances.
2. Types of insurance coverage recommended for challenge and aerial adventure courses and the costs and availability of such coverage.
3. Protections available under existing law to challenge course and aerial adventure industry operators and participants.
4. Costs associated with safety inspections of challenge course and aerial adventure industry equipment, gear, and operations.
5. A review of other states' laws, ordinances, and regulations for challenge and aerial adventure courses.
6. Any training requirements, certifications, and standards recommended for challenge course and aerial adventure industry employees.
7. Strategies for addressing the safe operations of challenge and aerial adventure courses.
8. Any other issues the Committee deems relevant.

STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

D

BILL DRAFT 2017-MHz-10 [v.6] (11/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/15/2016 05:04:57 PM

Short Title: DOI to Report Certain CTR Data. (Public)

Sponsors: Senator Lee (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REPORTING BY THE DEPARTMENT OF INSURANCE OF CERTAIN AGGREGATE PROPERTY INSURANCE CONSENT TO RATE DATA, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON REGULATORY AND RATE ISSUES IN INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-30(b1), as enacted by section 1.3(a) of S.L. 2016-78, reads as rewritten:

"(b1) This subsection applies only to insurance against loss to residential real property with not more than four housing units. A rate in excess of that promulgated by the Bureau may be charged by an insurer on any specific risk if the higher rate is charged in accordance with rules adopted by the Commissioner and is charged with the knowledge and written consent of the insured. An insurer shall give reasonable notice to the insured by including the following language on the insured's written consent to rate form in at least 14 point type, bolded, and underlined:

NOTICE: THE PREMIUM USING NORTH CAROLINA RATE BUREAU'S APPROVED RATES FOR THE HOMEOWNER'S INSURANCE COVERAGE I APPLIED FOR IS \$_____. THE PREMIUM FOR THIS COVERAGE IS \$_____. THE TOTAL PERCENTAGE INCREASE ABOVE THE APPROVED RATES IS _____%.

The insurer shall provide the rate information on the disclosure statement above, as applicable, to the insured. The disclosure statement noted above in this subsection shall be included on any renewal of or endorsement to the policy for any subsequent increase above the manual rate following the initial written consent of an insured. However, once an initial written consent to rate is received, the insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy. The insurer shall give at least 30 days' notice to the insured for all written consents to rate and notices required under this subsection on all policy renewals and endorsements. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner. Any data identifying individual insurers or insureds obtained by the Commissioner under this subsection is proprietary and confidential and is not a public record under G.S. 132-1 or G.S. 58-2-100. However, the Commissioner shall (i) collect annually from insurers, in a format and manner designated by the

Appendix D

1 Commissioner, and (ii) publish on the Department's website no later than July 1, the following
2 data aggregated across all insurers for each geographical ratemaking territory:

3 (1) The percentage of policies for which a consent to rate has been obtained.

4 (2) The average difference between the manual premium and the consented
5 premium."

6 **SECTION 2.** This act is effective when it becomes law.
7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

D

BILL DRAFT 2017-MHz-11 [v.9] (11/30)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/15/2016 05:03:57 PM

Short Title: Aerial Adventure Financial Responsibility. (Public)

Sponsors: Senator Lee (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AERIAL ADVENTURE PARKS TO MAINTAIN CERTAIN
MINIMUM INSURANCE COVERAGES, AS RECOMMENDED BY THE
LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON REGULATORY AND
RATE ISSUES IN INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new
Article to read:

"Article 47.

"Zip Line and Challenge Course Financial Responsibility.

"§ 66-450. Definitions.

The following definitions apply in this Article:

- (1) Aerial adventure park. – A self-guided challenge course that is open to the public.
- (2) Canopy tour. – A belayed aerial recreational or educational, guided or self-guided, traverse or discovery tour of the forest canopy, flora and fauna, and related ecologically significant areas most commonly by means of a series of zip lines or aerial walkways with platforms.
- (3) Challenge course. – Any apparatus or facility specifically designed or constructed, or both, for the use of individuals or teams, which through high or low nonspotted, spotted, or belayed activities, under trained facilitated learning programs or curriculums or as adventure/challenge recreational components or courses. Such facility or facilities usually consists of one or more elements that challenge participants and include zip line tours, canopy tours, or aerial adventure parks.
- (4) Commissioner. – The Commissioner of Insurance.
- (5) Owner. – Any person or authorized agent of such person who owns a device subject to the provisions of this Article or in the event such device is leased, the lessee. The term "owner" also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.
- (6) Person. – Any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

Appendix D

1 (7) Zip line. – A lifeline suspended between support structures that enables a
2 person attached to a pulley to traverse from a starting point to a terminus
3 propelled by the force of gravity or a passive method of controlled
4 acceleration.

5 (9) Zip line tour. – A belayed recreational or educational, guided or self-guided,
6 course or tour traversing areas of scenic, ecological, and/or cultural
7 significance. Zip line tours typically involve action or activity systems such
8 as zip lines, platforms, landing areas, and connecting trails.

9 "**§ 66-451. Liability insurance.**

10 (a) No owner shall operate an aerial adventure park, canopy tour, challenge course, zip
11 line tour, zip line, or similar device unless at the time there is in existence a contract of
12 insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence
13 and two million dollars (\$2,000,000) in the aggregate against liability for injury to persons or
14 property arising out of the operation of such facility or use of such device. The insurance
15 contract to be provided must be by any insurer or surety that is acceptable to the Commissioner
16 of Insurance and approved or authorized to transact business in this State, and shall not include
17 per person sublimits to liability.

18 (b) The Commissioner of Insurance shall have the authority to request from the owner
19 of a facility or device regulated by this Article, or the owner's authorized agent, proof of the
20 required contract of insurance, and upon failure of the owner or the owner's authorized agent to
21 provide such proof, the Commissioner shall have the authority to prevent or stop operation of
22 the facility or device until such time as proof is provided.

23 (c) The Commissioner shall not accept any commercial general liability insurance
24 policy unless it obligates the insurer to give written notice to the insured at least 30 days before
25 any proposed cancellation, suspension, or nonrenewal of the policy. The owner or the owner's
26 authorized agent shall immediately notify the Commissioner upon receipt of notice of
27 cancellation, suspension, or nonrenewal of the policy.

28 "**§ 66-452. Exceptions.**

29 This Article does not apply to aerial adventure park, canopy tour, challenge course, zip line
30 tour, zip line, or similar devices (i) installed at a private residence that is not open to the public
31 and for which no fee is charged; or (ii) operated by a government entity solely for law
32 enforcement or military training purposes."

33 **SECTION 2.** The Department of Insurance shall adopt permanent rules and may
34 adopt temporary rules, to implement this act. The Department shall propose permanent rules
35 and adopt temporary rules no later than January 15, 2018.

36 **SECTION 3.** Section 1 of this act becomes effective June 1, 2018. The remainder
37 of this act is effective when it becomes law.

SUPPORTING DOCUMENTS
