

CHAPTER 50
HB 299 - FINAL VERSION

2021 SESSION

21-0439
05/11

HOUSE BILL **299**

AN ACT relative to responsibilities of the insurance department.

SPONSORS: Rep. Potucek, Rock. 6

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill clarifies certain responsibilities of the insurance department.

The bill is a request of the insurance department.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to responsibilities of the insurance department.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 50:1 Accidents and Financial Responsibility; Motor Vehicles; Required Provisions. Amend RSA
2 264:18 read as follows:

3 264:18 Required Provisions. A motor vehicle liability policy, except as to coverage providing
4 protection against uninsured motor vehicles required by RSA 264:14 shall be subject, ~~[with respect~~
5 ~~to accidents which occur in New Hampshire and]~~ within limits of liability required by this chapter,
6 to the following provisions which need not be contained therein:

7 I. **Absolute Liability.** The liability of any company under a motor vehicle liability policy
8 shall become absolute whenever loss or damage covered by said policy occurs, and the satisfaction by
9 the insured of a final judgment for such loss or damage shall not be a condition precedent to the
10 right or duty of the company to make payment on account of said loss or damage. No agreement
11 between the company and the insured after the insured has incurred liability for loss or damage
12 covered by the policy shall operate to defeat the company's liability to pay for such loss or damage.
13 Upon the recovery of a final judgment against any person for any loss or damage specified in this
14 section, if the judgment debtor was, at the accrual of the cause of action, protected against liability
15 therefor under a motor vehicle liability policy, the judgment creditor shall be entitled to have the
16 insurance money applied to the satisfaction of the judgment.

17 II. **Entirety of Contract.** The policy, the written application therefor, if any, and any rider
18 or ~~[indorsement]~~ **endorsement**, which shall not conflict with the provisions of this chapter, shall
19 with the provisions of this section and any other applicable statutes constitute the entire contract
20 between the parties.

21 III. ~~[With respect to accidents which occur within this state and]~~ **Minimum Limits of**
22 **Mandatory Coverage.** Subject to the minimum limits of liability ~~[validly made]~~ under the
23 authority of RSA 259:61, the policy is to be interpreted ~~[with reference hereto]~~ **consistent with this**
24 **section** and the liability of the company under the policy shall thereby become absolute upon the
25 occurrence of such an accident; no statement made by the insured or on his behalf, and no violation
26 of exclusions, conditions, other terms, or language contained in the policy, and no unauthorized or
27 unlawful use of the vehicle except as provided in paragraph VI of this section, whether or not a
28 premium charge has been made and paid, shall operate to defeat or avoid the policy so as to bar
29 recovery for such accidents within ~~[said]~~ **minimum** limits of liability.

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1 IV. ***Death, Insolvency, and Bankruptcy.*** If the death, insolvency, or bankruptcy of the
2 insured shall occur within the policy period, the policy during the unexpired portion of such period
3 shall cover the person or persons entitled to possession of the vehicle of the insured. Such policy
4 shall contain such provisions, not inconsistent with this chapter, as shall be required by the
5 insurance commissioner.

6 V. ***Defendant Default.*** In an action of tort where payment of the judgment is secured by a
7 motor vehicle liability policy, ***as defined in RSA 259:61***, and where the defendant has been
8 defaulted for failure to enter an appearance, damages shall not be assessed, except by special order
9 of the court, until the expiration of 30 days after the plaintiff has given notice of such default to the
10 company issuing or executing such policy and has filed an affidavit thereof. Such notice may be
11 given by mailing the same, postage prepaid, to the said company or to its agent who issued or
12 executed such policy. Upon receipt of information and having become satisfied that the insured has
13 failed to comply with the terms of his policy in regard to notice to the company of an accident, the
14 director shall revoke his license and registration for such period as the director shall determine.

15 VI. ***Permissive Users.*** The insurance applies to any person who has obtained possession or
16 control of the vehicle of the insured with his express or implied consent even though the use in the
17 course of which liability to pay damages arises has been expressly or impliedly forbidden by the
18 insured or is otherwise unauthorized. This provision, however, shall not apply to the use of a vehicle
19 converted with the intent to wrongfully deprive the owner of his property therein.

20 VII. ***Bifurcation of Bodily Injury and Property Damage Claims.*** No liability insurer
21 shall require that a bodily injury claim be settled or adjudicated as a condition precedent to the
22 settlement of a property damage claim arising out of the same accident. No evidence of settlement of
23 a property damage claim shall be admissible as evidence of liability in the trial of any other cause of
24 action arising out of the same accident.

25 50:2 Cancellation or Refusal to Renew Commercial Insurance; Grounds for Cancellation.
26 Amend RSA 417-C:1 to read as follows:

27 417-C:1 Grounds for Cancellation.

28 I. A notice of cancellation of a policy, to which RSA 417-C:2 applies, shall be effective only if
29 it is based on one or more of the following reasons:

30 (a) Nonpayment of a premium, including nonpayment of any additional premiums due
31 from an audit conducted in accordance with law for the prior policy term; or

32 (b) Fraud or material misrepresentation affecting the policy or in the presentation of a
33 claim thereunder, or violation of any of the terms or conditions of the policy; or

34 (c) A change in the risk that substantially increases a hazard insured against after
35 insurance coverage has been issued or renewed.

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1 II. ~~[This section shall not apply to any policy or coverage which has been in effect less than~~
2 ~~60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal~~
3 ~~policy]~~ ***An insurer shall cancel a policy at the specific request of the insured.***

4 III. ***Paragraph I shall not apply to any policy or coverage which has been in effect***
5 ***less than 60 days at the time notice of cancellation is mailed or delivered by the insurer***
6 ***unless it is a renewal policy.***

7 IV. This section shall not apply to nonrenewal.

8 50:3 Third Party Administrators; Definition of Administrator. Amend RSA 402-H:1, I to read as
9 follows:

10 I. "Administrator" or "third party administrator" or "TPA" means a person who directly or
11 indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of
12 this state, in connection with life, annuity, or health coverage or ~~[workers' compensation]~~ ***property***
13 ***and casualty*** insurance, ~~[other than persons subject to regulation under RSA 281-A:5-d offered or~~
14 ~~provided by an insurer or under a self-funded governmental plan that is exempt from the provisions~~
15 ~~of the Employee Retirement Income Security Act pursuant to 29 U.S.C. section 1003(b)(1).]~~ except
16 any of the following:

17 (a) An employer, or a wholly owned direct or indirect subsidiary of an employer, on
18 behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such
19 employer.

20 (b) A union on behalf of its members.

21 (c) An insurer that is authorized to transact insurance in this state pursuant to RSA 401
22 or a subsidiary or affiliated corporation of such insurer if the insurer and the subsidiary or affiliated
23 corporation have overlapping directorates.

24 (d) An insurance producer licensed to sell life, annuities, or health coverage or ~~[workers'~~
25 ~~compensation]~~ ***property and casualty*** insurance in this state, whose activities are limited
26 exclusively to the sale of insurance.

27 (e) A creditor on behalf of its debtors with respect to insurance covering a debt between
28 the creditor and its debtors.

29 (f) A trust and its trustees, agents, and employees acting pursuant to such trust
30 established in conformity with 29 U.S.C. section 186.

31 (g) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its
32 trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or
33 employees acting pursuant to a custodian account which meets the requirements of section 401(f) of
34 the Internal Revenue Code.

35 (h) A credit union or a financial institution that is subject to supervision or examination
36 by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit

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1 premiums to licensed insurance producers or to limited line producers or authorized insurers in
2 connection with loan payments.

3 (i) A credit card issuing company that advances for and collects insurance premiums or
4 charges from its credit card holders who have authorized collection.

5 (j) A person who adjusts or settles claims in the normal course of that person's practice
6 or employment as an attorney at law and who does not collect charges or premiums in connection
7 with life, annuity, or health coverage or [~~workers' compensation~~] **property and casualty** insurance.

8 (k) An adjuster licensed by this state whose activities are limited to adjustment of
9 claims.

10 (l) A person licensed as a managing general agent in this state, pursuant to RSA 402-E,
11 whose activities are limited exclusively to the scope of activities conveyed under such license.

12 (m) An administrator who is affiliated with an insurer and who only performs the
13 contractual duties, between the administrator and the insurer, of an administrator for the direct and
14 assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the
15 administrator and is responsible for providing all of the administrator's books and records to the
16 insurance commissioner, upon request from the insurance commissioner. For purposes of this
17 subparagraph, "insurer" means a licensed insurance company, prepaid hospital or medical care plan,
18 or a health maintenance organization.

19 50:4 Third Party Administrators; Definition of Insurer. Amend RSA 402-H:1, VII to read as
20 follows:

21 VII. "Insurer" means, for the purposes of this chapter only and except as provided in RSA
22 402-H:6, a person undertaking to provide life, annuity, or health coverage or [~~workers'~~
23 ~~compensation~~] **property and casualty** insurance or self-funded coverage under a multiple employer
24 welfare arrangement or a church plan in this state. For the purposes of this chapter, "insurer" may
25 include an employer, a licensed insurance company, a prepaid hospital or medical care plan, or a
26 health maintenance organization.

27 50:5 Insurance Department; Confidentiality; Forms and Rates. Amend RSA 400-A:15-f, I to
28 read as follows:

29 I. Forms and rates that are filed for review in accordance with Title XXXVII shall be
30 confidential pending approval. **Forms and rates filed for informational purposes shall be**
31 **confidential until effective.**

32 50:6 New Paragraphs; Regulation of Forms and Rates for Property Insurance; Rate Standards;
33 Fees for Unanticipated Costs. Amend RSA 412:15 by inserting after paragraph V the following new
34 paragraphs:

35 VI. Insurers may charge service fees for unanticipated costs, such as the costs associated
36 with returned checks or late payments. Such fees shall not be in excess of the reasonable

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1 administrative cost associated with the service at issue. Installment fees may not be charged for the
2 first payment of each policy term because they are never unanticipated.

3 VII. For personal lines policies, the general rule is that premium is earned pro-rata over the
4 length of the policy. However, insurers may file other than pro-rata earning patterns if the risk is
5 distributed unevenly over the policy period. If the personal lines policy is canceled with or without
6 cause by either party, all unearned premium at the time of the cancellation shall be returned to the
7 insured.

8 50:7 Cancellation, Refusal to Write, Refusal to Renew Certain Property and Liability Insurance.
9 Amend the introductory paragraph of RSA 417-B:1 to read as follows:

10 417-B:1 Application of Chapter. This chapter shall apply to policies of insurance other than
11 automobile insurance[.] **and** workers' compensation insurance[~~and excess insurance~~] on risks
12 located or residents in this state which insure any of the following contingencies:

50:8 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 25, 2021
Effective Date: July 24, 2021