

Eric C. Marsh
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NC Department of Insurance
Attn: Alisha Benjamin Rulemaking Coordinator
1201 Mail Service Center
Raleigh, NC 27699-1201
NCDOI.Rulemaking@ncdoi.gov

RE: Notice of Petition to Repeal Rule 11 NCAC 06A .1002 Ethical Standards

Dear Ms. Benjamin,

As the Codifier and Assistant General Counsel for the North Carolina Department of Insurance, we are submitting this letter as a petition to repeal rule 11 NCAC 06A .1002 regarding the interpretive Ethical Standards.

In 2023, Mr. Danny Wyatt petitioned for repeal, and the repeal was granted by NCDOI Chief Counsel John Hoomani. The notice of the intentions to repeal rule 11 NCAC 06A .1002 was published in the North Carolina Register on May 15, 2023, with the repeal set to take effect on September 1, 2023. However, your predecessor, Loretta Peace-Bunch, did not complete the next step in the rulemaking process by submitting the proposed repeal to the Rules Review Commission for approval.

TITLE 11 – DEPARTMENT OF INSURANCE (May 15, 2023)

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rules cited as 11 NCAC 04 .0418-.0421, .0425 and repeal the rule cited as 11 NCAC 06A .1002.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

The Department of Insurance Double Standards

The Department of Insurance exhibits "double standards" in the application and enforcement of ethical rules. Rule 11 NCAC 04 .0423 falls under the Consumer Services Division, while Rule 11 NCAC 06A .1002 is under the Agent Services Division. The discrepancies in the enforcement of these rules are highlighted in the attached reasons for why Rule 11 NCAC 06A .1002 should be repealed.

Additionally, Rule 11 NCAC 06A .1002 consists of six individual rules that are open to multiple interpretations and do not cite any supporting statutes under N.C. GS § 58 that would justify their adoption.

Two of these individual rules exceed the statutory authority of the Department of Insurance and the Office of the North Carolina Attorney General. Violating these two rules could result in criminal or civil liability.

NC Supreme Court Mitchell v. UNC Board of Governors (N.C. Oct. 17, 2025)

Summary of the Opinion

Writing for the Court, Justice Dietz announced these core holdings:

North Carolina courts apply de novo review when interpreting state agencies' rules and regulations. An agency's interpretation may be considered but is never binding.

The Court expressly disavows any interpretive rule that requires deference to a state agency's interpretation of state rules and regulations and overrules any Court of Appeals decisions to the contrary.

The Court distinguishes and limits prior state decisions that borrowed federal Auer-style deference (including Morrell v. Flaherty) as inapplicable to state agencies and state regulations.

Ms. Benjamin repealing of Rule 11 NCAC 06A .1002 is not difficult and it will have no economic impact on those licensed as motor vehicle damage appraisers (MVDA), nor will not affect the public financially.

As Assistant General Counsel and Codifier for the Department of Insurance, we would like to think the Department of Insurance will follow through by submitting for the repeal of Rule 11 NCAC 06A .1002 to the Rules Review Commission's for repeal for the next calendar date.

Attached are reasons why Rule 11 NCAC 06A .1002 should be repealed. Former NCDOL Chief Counsel John Hoomani's letter granting the repeal of Rule 11 NCAC 06A, North Carolina Register VOLUME 37 • ISSUE 22, dated May 15, 2023 and Agent Services Division's Fiscal Year-2024 report.

Looking forward to your response,

Sincerely,



Eric Marsh - Current Petitioner

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Danny Wyatt - 2023 Original Petitioner

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Salisbury NC 28147

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CC: House Select Committee on Oversight and Reform

Joe Coletti - Jake Johnson - Brenden Jones - Harry Warren - Eric Ager

CC: Joint Legislative Administrative Procedure Oversight Committee

Rep. Allen Chesse – Senator Amy Gale – Senator Sarah Stevens - Senator Julie Mayfield - Senator –
Senator Tim Longest

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Senator Tim Longest

RE: Petition to Repeal Rule 11 NCAC 06A .1002 Ethical Standards

Dear Member NC Senators and House Representatives,

Our North Carolina House Representative, Harry Warren, has asked us to include you in our petition to the North Carolina Department of Insurance regarding the repeal of 11 NCAC 06A .1002 Ethical Standards.

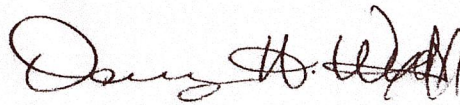
In 2023, a petition was originally submitted to repeal this rule and amend other regulations, which was approved by former NCDI Chief Counsel John Hoomani. However, for unknown reasons, former Rules Codifier Loretta Peace-Bunch of the North Carolina Department of Insurance did not proceed with the process of submitting the repeal of rule 11 NCAC 06A, as well as other 11 NCAC rules, to the Rules Review Commission for approval.

Attached is the new petition to repeal and reasons why 11 NCAC 06A .1002 Ethical Standards needs to be repealed.

Sincerely,



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Petition to Repeal 11 NCAC 06A .1002 Comments

The Department's Two Different Ethical (Double) Standards Rules

Comment: The Department has two entirely different sets of administrative ethical standards rules; 11 NCAC 04 .0423 is enforced by the Consumer Services Division, and 11 NCAC 06A .1002 is enforced by the Agent Services Division (hereon "the Division"). Individuals licensed as motor vehicle damage appraiser, (hereon "MVDA") are bound to follow both sets of ethical standards. Other license holders, such as agents, limited representatives, brokers, adjusters, or representatives of insurers, are not bound to 11 NCAC 06A .1002.

Comment: In 2023, a license lookup was made on National Association of Insurance Commissioners website to those people licensed as a motor vehicle damage appraiser in North Carolina.

The lookup is subject to error of the actual number of people licensed as a MVDA. Using first letter of the alphabet "a," all the way to "z" of the person's last name was named. The second lookup was made by using first letter of the alphabet and vowels. The third lookup was made using first letter of the alphabet "a," with the second letter to "z" without vowels.

The lookup results showed approximately 235 resident and over 880 non-resident licensed as a MVDA.

According to the Division's Fiscal Year 2023 – 2024 (July 1, 2023 – June 30, 2024) the total number of those granted a license was 102,758. (Division's Fiscal Year Report attached) Therefore, repealing of Rule 11 NCAC 06A .1002 will have no economic impact on those licensed as a MVDA and will not affect the public financially.

Comment: Having two different ethical standards expands the scope of requirements of a person licensed as a MVDA and must be seen as an inequitable rule that unjustly discriminates against a "specific group." This discriminatory framework undermines the principles of fairness and equality and stands in direct violation of the Fourteenth Amendment, rendering it unconstitutional and indefensible.

11 NCAC 04 .0423 Ethical Standards (Consumer Services Division)

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when conducting insurance business with a member of the public:

- (1) identify himself or herself and his or her occupation; and
- (2) provide his or her National Producer Number and the Department's website address and phone number for verification of licensure status when requested to show proof of licensure by any claimant, any repairer while he or she is investigating a claim or loss, any Department representative, or any other person with whom he or she has contact while performing his or her insurance business

(b) No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

- (1) accept any gratuity or other form of remuneration from any provider of services for recommending that provider to claimants;
- (2) purchase salvage from a claimant;
- (3) intimidate or discourage any claimant from seeking legal advice or counsel by withdrawing and

reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking legal counsel nor recommend any legal counsel to any claimant; or

(4) cause a delay in the settlement of a property damage claim on account of the claimant's choice of a motor vehicle repair service.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without informing the claimant that he or she is under no obligation to use the recommended repair service and that he or she may use the service of his or her choice.

11 NCAC 06A .1002 Ethical Standards (Agent Services Division)

(a) Every licensed motor vehicle damage appraiser, when conducting business, shall:

- (1) identify himself or herself and his or her job title;
- (2) when requested, provide his or her National Producer Number, and the Department's website address and phone number for verification of license status;
- (3) prepare an independent appraisal of damages; and
- (4) comply with all local, State, and federal laws, in the motor vehicle damage appraiser's business affairs.**

(b) Every licensed motor vehicle damage appraiser shall refrain from:

- (1) disparaging the professional reputation of a motor vehicle damage appraiser or other persons associated with the claim;**
- (2) recommending the utilization of a particular motor vehicle repair service in violation of G.S. 58-33-76(a)
- (3) recommending a claimant needing repairs or other services in connection with a loss to any person with whom the motor vehicle damage appraiser has a financial interest or who provides the motor vehicle damage appraiser any compensation for the referral or any resulting business;
- (4) impeding the appraisal process or the settlement of a property damage claim;**
- (5) receiving any gratuity or other consideration in violation of G.S. 58-33-76(b).
- (6) advising or recommending a claimant to obtain or not obtain legal advice or counsel from a particular legal counsel;
- (7) giving legal advice on property damage claims in violation of G.S. 84-4;**
- (8) solicit a power of attorney from a consumer that authorizes the motor vehicle damage appraiser to sign insurance-related forms;
- (9) attempting to influence a magistrate in the selection of an umpire pursuant to G.S. 20-279.21(d1), including using influence through a client or claimant;
- (10) engaging in the salvage of automobiles if the salvage is obtained as a result of appraisal services rendered by the motor vehicle damage appraiser; and
- (11) act in any manner outside the scope of a motor vehicle damage appraiser, as set forth in Chapter 58, Article 33 of the General Statutes.**

(c) Pursuant to G.S. 58-2-70 and G.S. 58-33-46, the Commissioner may consider the failure of a licensed motor vehicle damage appraiser to comply with this Rule as a basis for administrative action.

Comments Why 11 NCAC 06A .1002 Ethical Standards Must Be Repealed

Failure to Provide Continuing Education Program for Compliance-Non Compliance

Comment: Rule 11 NCAC 06A .1002 is under the authority of the Division. This rule has been in place for over five years and the Division's Deputy and Senior Commissioner(s) have yet to provide any continuing education classes stated within GS 58-33-130, which includes (6) General compliance procedures and (7) Sanctions for noncompliance.

The issue arises from the use of the word "may" used within GS 58-33-130 instead of the word "shall." The Division's Division's Deputy and Senior Commissioner(s) interprets "may" as "not required," despite 11 NCAC 06A .0101 stating that the Division is responsible for the licensing, education, and regulation of agents and other licensees.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

11 NCAC 06A .1002 Ethical Standards Line Item Comments

(b) Every licensed motor vehicle damage appraiser shall refrain from:

(1.) (b)(1) disparaging the professional reputation of a motor vehicle damage appraiser or other persons associated with the claim;

Comment: It's important to understand that not all MVDAS collaborate effectively when discussing the repairs associated with repairing a damaged vehicle, assessing the loss in a diminished value claim, or determining the value for a total loss vehicle. Disagreements can arise during face-to-face, over the phone, or email exchanges, which may lead to hurt feelings, and potential "retaliation" in the form of a "false complaint" against an opposing MVDA to the Division.

Comment: The Division's Deputy and Senior Commissioner(s) have chosen not to offer continuing education classes on (6) general compliance procedures and (7) sanctions for noncompliance, is based on their interpretation of the word "may" in GS 58-33-130, as "not required."

Comment: The Division staff members and the Division's Deputy and Senior Commissioner(s) are not licensed attorneys, and not qualified to differentiate between false claims of disparagement/defamation and legitimate claims of disparagement / defamation that require the four elements for a claim.

Taube v. Hooper

"a plaintiff must allege and prove that the defendant made false defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiffs reputation." Taube v. Hooper, 270 N.C. App. 604, 608, S.E.2d 313 (2020).

Comment: Disparaging / Defamation is a civil matter, not a matter of insurance laws. 11 NCAC 06A .1002 (b)(1) exceeds the authority and jurisdiction of the Department and the Division and lacks any supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

(2.) (b)(4) impeding the appraisal process or the settlement of a property damage claim;

Comment: This rule has been in effect for over five years, yet the Department and the Division's Deputy and Senior Commissioner(s) have failed to provide clear written guidelines defining what constitutes impeding with the appraisal process or the settlement of property damage claims. The absence of such guidelines renders this rule ineffective and undermines its intended purpose. It is crucial that we establish these standards to ensure a fair and efficient process.

Comment: This rule is "susceptible of multiple interpretations," having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

(3.) (b)(7) giving legal advice on property damage claims in violation of G.S. 84-4; (Unauthorized Practice of Law or UPL)

Comment: This section of 11 NCAC 06A .1002 Ethical Standards **imposes criminal liability** or a civil penalty for an act or omission, including the violation of a rule against those licensed as a MVDA.

Comment: This rule falls outside the statute authority of enforcement by the Department, the Division and the North Carolina Attorney General Office who represents the Department, the Division at informal conferences, administrative hearings and in a N.C. Court of Law.

"N.C. Gen. Stat. § 84-7. The North Carolina State Bar is an administrative agency created by statute. N.C. Gen. Stat. § 84-15. It has the power to seek injunctive relief to enjoin the unauthorized practice of law, independent of the district attorneys. N.C. Gen. Stat. § 84-37." Black Polaski et al v. Stein, 7:24-cv-00004

"the Attorney General cannot credibly threaten to initiate prosecution for unauthorized practice of law; only a district attorney can in North Carolina. Additionally, a district attorney or the North Carolina State Bar may seek to enjoin Plaintiffs from unauthorized practice of law; the Attorney General cannot." Black Polaski et al v. Stein, 7:24-cv-00004

Comment: Vehicle property damage claims involve communication or "speech" between the vehicle owner (collision claimant), the repair shop, insurance adjuster or a MVDA.

Comment: Most collision claimants typically lack expertise in the collision claim process and the claimant may seek advice. Since attorneys are not specialists in collision repair, diminished value claims or total loss vehicle value claims, the attorney may recommend the collision claimant to consult with a MVDA for assistance which *involves communication or "speech."*

"Corum v. UNC Board of Governors was a landmark 1992 North Carolina Supreme Court case that established a direct cause of action for individuals to sue state officials for damages under the North Carolina Constitution when their constitutional rights, particularly free speech, were violated. The case

involved a professor's claim of retaliation and is notable for eliminating sovereign immunity as a bar to such claims against the state in North Carolina.”

Comment: This rule is “susceptible of multiple interpretations,” having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

Black Polaski et al v. Stein, 7:24-cv-00004 February 26, 2024

Brief in Support of Motion to Dismiss

INTRODUCTION (Page 1-2)

Plaintiffs wish to practice law without a license. ***They ask this court to forbid the North Carolina Attorney General from enforcing North Carolina’s unauthorized practice of law statutes and regulations on First Amendment grounds. But the Attorney General does not enforce the unauthorized practice of law statutes; those powers are exclusively granted to other governmental actors.***

“For these reasons, Plaintiffs’ claim should be dismissed for lack of subject-matter jurisdiction or, alternatively, for failure to state a claim upon which relief may be granted.”

STATEMENT OF FACTS

The State Bar summarizes the regulatory enforcement regime for unauthorized practice of law as:

“The North Carolina State Bar has the authority by statute to investigate allegations of unauthorized practice of law as well as the District Attorney. The State Bar may seek injunctive relief. ***District attorneys may prosecute*** charges of unauthorized practice of law as a class 1 misdemeanor. (Compl. Ex. B at 4).

ARGUMENT

(Page 3-4)

Plaintiffs lack standing because they have not plausibly alleged that the Attorney General will prosecute them for unauthorized practice of law. While a credible threat of prosecution may confer standing in a First Amendment challenge, ***the Attorney General cannot credibly threaten to initiate prosecution for unauthorized practice of law; only a district attorney can in North Carolina.*** ***Additionally, a district attorney or the North Carolina State Bar may seek to enjoin Plaintiffs from unauthorized practice of law; the Attorney General cannot.***

(Page 4-5)

Federal courts must dismiss a claim for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) where the plaintiffs lack standing. Ali v. Hogan, 26 F.4th 587, 596 (4th Cir. 2022). ***Standing must be established from the moment a complaint is filed. Id.***

(Page 5-6)

Plaintiffs cannot establish any of these elements for one common reason: **the North Carolina Attorney General does not, and indeed cannot, enforce the unauthorized practice of law statutes and regulations against Plaintiffs civilly, or indict them criminally for the unauthorized practice of law. North Carolina's unauthorized practice of law statutes provide criminal and civil remedies, but they are expressly and exclusively assigned to district attorneys and the State Bar, not the Attorney General.**

"N.C. Gen. Stat. § 84-7. The North Carolina State Bar is an administrative agency created by statute. N.C. Gen. Stat. § 84-15. It has the power to seek injunctive relief to enjoin the unauthorized practice of law, independent of the district attorneys. N.C. Gen. Stat. § 84-37. While district attorneys can bring an action to enjoin unauthorized practice only "upon the application" of a North Carolina attorney or bar association, N.C. Gen. Stat. § 84-7, the State Bar may do so based upon information from "any person." N.C. Gen. Stat. § 84-37(a).1"

Within its regulatory role, the State Bar has created a standing committee to investigate and discipline the unauthorized practice of law, 27 NCAC 1A .0701(4), and that committee may pursue civil relief in administrative proceedings or in court, 27 NCAC 1D .0206 & .0208, using its own appointed counsel, 27 NCAC 1D .0207, who must practice law exclusively for the State Bar, 27 NCAC 1D .0204. The State Bar has the exclusive power to create the rules and regulations that Plaintiffs challenge, subject only to a caveat that the Chief Justice of the North Carolina Supreme Court may decline to publish such rules "which in the opinion of the Chief Justice are inconsistent with this Article." N.C. Gen. Stat. §§ 84-21, 23.

Plaintiff cannot sue the Attorney General to enjoin him from pursuing civil remedies for the unauthorized practice of law because the Attorney General has not been delegated that authority by either statute or through North Carolina's constitution.

(Page 7)

"The Attorney General has no role in the State Bar's regulation of the unauthorized practice of law. Nor does the Attorney General have the power to seek such an injunction even at the request of a District Attorney. State v. Felts, 79 N.C. App. 205, 209-10, 339 S.E.2d 99, 101-02 (1986).2"

(4.) (b)(11) act in any manner outside the scope of a motor vehicle damage appraiser, as set forth in Chapter 58, Article 33 of the General Statutes.

Comment: Division staff and the Division's Deputy and Senior Commissioner(s) interpret rules and statutes in a way that aligns with their preferences. Moreover, it is widely recognized that the Division's Deputy and Senior Commissioner(s) often cites GS58-33-10(14) to justify allegations of "act in any manner outside the scope of a motor vehicle damage appraiser."

GS 58-33-10(14) Definition of Motor Vehicle Damage Appraiser

(14) "Motor vehicle damage appraiser" means an individual who, for salary, fee, commission, or other compensation of any nature, regularly investigates or advises relative to the nature and amount of damage to motor vehicles located in this State or the amount of money deemed necessary to effect repairs thereto and who is not:

- a. An adjuster licensed to adjust insurance claims in this State;
- b. An agent for an insurance company who is not required by law to be licensed as an adjuster;
- c. An attorney at law who is not required by law to be licensed as an adjuster; or
- d. An individual who, incident to his regular employment in the business of repairing defective or damaged motor vehicles, investigates and advises relative to the nature and amount of motor vehicle damage or the amount of money deemed necessary to effect repairs thereto.

Comment: According to this definition, all North Carolina residents and nonresidents MVDAs are acting outside the scope of a motor vehicle damage appraiser by providing appraisals for diminished claims under GS 20-279.21(d1), appraising a total loss vehicle for its actual cash value (ACV), or acting as an umpire.

Comment: The phrase "acting outside the scope of a motor vehicle damage appraiser" serves as a broad guideline that allows the Division to take action against any MVDA they choose. This specific wording does not appear anywhere in GS 58.

Comment: This rule is very unclear and ambiguous, is "susceptible of multiple interpretations," having no supporting G.S. 58 Statute(s) cited under which the Rule(s) is adopted.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

(c) Pursuant to G.S. 58-2-70 and G.S. 58-33-46, the Commissioner may consider the failure of a licensed motor vehicle damage appraiser to comply with this Rule as a basis for administrative action.

Comment: Part C does not exist in 11 NCAC 04 .0423 Ethical Standards (Consumer Services Division). This section is a "cast-the-fishing net rule," by the Division to bring action against any MVDA they choose to.

Comment: This section of 11 NCAC 06A .1002 Ethical Standards *imposes criminal liability* or a civil penalty for an act or omission, including the violation of a rule against those licensed as a MVDA, whereas 11 NCAC 04 .0423 Ethical Standards does not.

Comment: Having two different ethical standards expands the scope of requirements of a person licensed as a MVDA and must be seen as an inequitable rule that unjustly discriminates against a "specific group." This discriminatory framework undermines the principles of fairness and equality and stands in direct violation of the Fourteenth Amendment, rendering it unconstitutional and indefensible.

Comment: This is sufficient justification for good cause to repeal this unjust rule.

Comment: Rule 11 NCAC 06A .1002 fails to meet § 150B-19. Restrictions on what can be adopted as a rule and § 150B-19.1. Requirements for agencies in the rule-making process.

Mitchell v. UNC Board of Governors

Summary of the Opinion

Writing for the Court, Justice Dietz announced these core holdings:

North Carolina courts apply de novo review when interpreting state agencies' rules and regulations. An agency's interpretation may be considered but is never binding.

The Court expressly disavows any interpretive rule that requires deference to a state agency's interpretation of state rules and regulations and overrules any Court of Appeals decisions to the contrary.

*The Court distinguishes and limits prior state decisions that borrowed federal Auer-style deference (including *Morrell v. Flaherty*) as inapplicable to state agencies and state regulations.*

*[Cite as *TWISM Ents., L.L.C. v. State Bd. of Registration for Professional Engineers & Surveyors*, 172 Ohio St.3d 225, 2022-Ohio-4677.]*

"it is the role of the judiciary, not administrative agencies, to make the ultimate determination about what the law means. Thus, the judicial branch is never required to defer to an agency's interpretation of the law."

End of Comments

Undersign Petitioners



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**NC DEPARTMENT
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MIKE CAUSEY, COMMISSIONER

GENERAL COUNSEL

Tel 919.807.6650 Fax 919.715.8889

March 8, 2023

VIA CERTIFIED MAIL /
7020 0640 0000 3185 8316

Danny H. Wyatt
Collision Service Investigators of North Carolina
190 Archer Road
Salisbury, NC 28147

Re: Petition for Rulemaking

Mr. Wyatt:


This responds to the Petition for Rulemaking you filed with the N.C. Department of Insurance, dated February 3, 2023, and received in our offices on February 9, 2023, regarding rules contained in Title 11 of the N.C. Administrative Code. The Petition requests various amendments to the following rules:

1. 11 NCAC 04 .0418 – Total Loss on Motor Vehicles
2. 11 NCAC 04 .0419 – Motor Vehicle Repair Estimates
3. 11 NCAC 04 .0420 – Written Confirmation of Oral Agreements
4. 11 NCAC 04 .0421 – Handling of Loss and Claim Payments
5. 11 NCAC 04 .0425 – Definitions

In addition, the Petition requests that the following rule be repealed: 11 NCAC 06A .1002 – Ethical Standards.

Pursuant to N.C. Gen. Stat. § 150B-20 and 11 NCAC 01 .0209, the Department has considered the information submitted with your Petition and other relevant facts and has decided to GRANT your request. As a result, the Department is in the process of preparing the proposed rule changes pursuant to N.C. Gen. Stat. § 150B-21.2. As soon as the proposed rule amendments are completed, you will be notified of the rulemaking action pursuant to N.C. Gen. Stat. § 150B-21.2(d).

Best regards,


A. John Hoomani
General Counsel

NORTH CAROLINA REGISTER

VOLUME 37 • ISSUE 22 • Pages 2111 – 2165

May 15, 2023

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PUBLISHED BY

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Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rules cited as 11 NCAC 04 .0418-.0421, .0425 and repeal the rule cited as 11 NCAC 06A .1002.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdoi.gov/insurance-industry/rules-rules-review-and-legislative-reports>

Proposed Effective Date: September 1, 2023

Public Hearing:

Date: June 27, 2023

Time: 10:00 a.m.

Location: North Carolina Department of Insurance, Albermarle Building, Room 131, 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The proposed rule amendments and rule repeal are being proposed in response to a petition for rulemaking.*

Comments may be submitted to: Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; email ncdoirulescomments@ncdoi.gov

Comment period ends: July 14, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 04 - CONSUMER SERVICES DIVISION

SECTION .0400 - PROPERTY AND LIABILITY

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.
- (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.
- (3) "Published ~~Regional Average Values~~ Retail Value" means ~~values derived from printed or electronically published motor vehicle pricing guides recognized in the motor vehicle industry, including National Automobile Dealers Association Pricing Guide Book or Kelley Blue Book that analyze current and historical motor vehicle sales data taking into consideration the year, make, model and condition of the motor vehicle, motor vehicle market conditions, and geographic area to reach an average retail value of the motor vehicle. the retail value of the claimant's motor vehicle at the time of the loss derived from the printed or electronic version of the J.D. Power Valuation Services published pricing guide.~~
- (4) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, and year of the damaged motor vehicle. year, make,



Annual Report for State Agency Licensing Boards

Fiscal Year 2023-2024

July 1, 2023 – June 30, 2024

Pursuant to N.C. Gen. Stat. § 93B-2(e) the North Carolina Department of Insurance Agent Services Division has compiled data in compliance with the reporting requirements below:

No later than October 31 of each year, each State agency licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

- (1) The number of applicants for a license and, of that number, the number granted a license.*
- (2) The number of applicants with a conviction record and, of that number, the number granted a license, (2) denied a license for any reason, and (3) denied a license because of a conviction.*
- (3) The number of applicants with military training and, of that, the number (1) granted a license and (2) the number denied a license, and (3) a summary of the reasons for denial.*
- (4) The number of applicants who are military spouses and, of that, the number (1) granted a license, (2) denied a license for any reason, and (3) a summary of the reasons for denial.*

The following table summarizes the required information from the NCDOI Agent Services Division for State Fiscal Year 2023–2024.

No. of Applicants	No. of Applicants Granted a license	No. of Applicants w/ Conviction Record	No. of Applicants w/ Conviction Record Granted a License	No. of Applicants w/ Conviction Record Denied a License for Any Reason*	No. of Applicants w/ Conviction Record Denied a License Because of Conviction
121,306	102,785	7,602	2,465	5,137	13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing pleading or paper by mailing a copy by U.S. Mail, in a first class postage prepaid envelope addressed on November ,

29 2025 as follows:

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