



# South Carolina Department of Insurance

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HENRY McMASTER  
Governor

RAYMOND G. FARMER  
Director

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IN THE MATTER OF:

Promulgation of Emergency  
Insurance Regulation 69-79

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**EMERGENCY ORDER NO. 2018-EO-001**

This matter comes before me as a result of the state of emergency created by Hurricane Florence. I hereby find and conclude as follows:

1. The South Carolina Department of Insurance has the duty pursuant to the provisions of Title 38 of the South Carolina Code Annotated to enforce the provisions of the South Carolina Insurance Law. The Department has the authority expressly conferred upon it by, or reasonably implied from, the provisions of S.C. Code Ann. §§ 38-3-10 *et seq.* to implement and enforce the insurance laws of this state. Section 38-3-410(A) of the South Carolina Insurance Law provides:

If the Governor declares a state of emergency pursuant to Section 1-3-420, the director may issue one or more emergency regulations pursuant to Section 1-23-130(A) applicable to all insurance companies, entities, and persons, as defined in Section 38-1-20, that are subject to Title 38.

2. Governor Henry McMaster declared a state of emergency effective September 8, 2018 by Executive Order 2018-26 for the State of South Carolina due to the significant threat to the property and lives of South Carolina citizens. *See* Exhibit 1. The emergency conditions that necessitated the issuance of that declaration continue.


Neither this Order nor Emergency Regulation 69-79 are intended to confer any additional property or other rights upon insureds directly impacted by this event. It is intended to provide additional time for insureds impacted by this catastrophic event to act or respond to insurance requirements. The issuance of this Emergency Order and Emergency Regulation 69-79 are fair under the circumstances due to the catastrophic damage caused by Hurricane Florence.

## ACCORDINGLY IT IS ORDERED THAT:

1. All persons licensed by the South Carolina Department of Insurance or otherwise authorized to transact the business of insurance shall take the action necessary to effectuate and comply with the requirements of Emergency Regulation 69-79. *See* Exhibit 2.
2. The provisions of this emergency order and regulation shall be liberally construed to effectuate the purposes and intent expressed therein and to afford maximum protection to consumers affected by this disaster.

3. The emergency regulation shall apply to the lines of insurance and geographic areas specified in the regulation and shall continue in effect from the date of filing for 120 days unless otherwise extended.

Entered this 14th day of September, 2018.

  
Raymond G. Farmer

Columbia, South Carolina

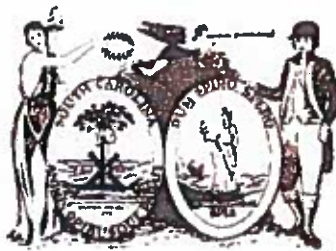
# State of South Carolina

## Executive Department

**FILED**

SEP 08 2018

*Mark Hammond*  
SECRETARY OF STATE



## Office of the Governor

EXECUTIVE ORDER NO.

2018-26

**WHEREAS**, the National Hurricane Center has determined that the coastline of the State of South Carolina may be impacted by Hurricane Florence, a strengthening hurricane that continues to develop in the Atlantic Ocean; and

**WHEREAS**, I have been advised that Hurricane Florence represents a significant threat to the State of South Carolina and requires that the State take timely precautions to protect and preserve property, critical infrastructure, communities, and the general safety and welfare of the people of this State.

**NOW, THEREFORE**, by virtue of the power and authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, effective at noon, September 8, 2018, I hereby declare that a State of Emergency exists in South Carolina. I direct that the South Carolina Emergency Operations Plan be placed into effect. I direct that all prudent preparations be taken at the individual, local, and state levels to protect against the possible effects of Hurricane Florence.

**FURTHER**, I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to my authority under section 25-1-1840 of the South Carolina Code of Laws, as amended, and I will do so by directing the Adjutant General to issue supplemental orders. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, in coordination with the Director of the South Carolina Emergency Management Division, to take necessary and prudent actions to assist the citizens of this State.

I also order Dual Status Command to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status) as necessary.

September 8, 2018

**IT IS FURTHER ORDERED** that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina be suspended, and the South Carolina Law Enforcement Division ("SLED") shall initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

I also note that the prohibitions against price gouging stated in section 39-5-145 of the South Carolina Code of Laws are in effect due to the State of Emergency.

This Order shall take effect immediately. Further proclamations and directives deemed necessary to ensure the fullest protection of life and property during this State of Emergency shall be issued orally by me and thereafter reduced to writing within the succeeding 24-hour period. This State of Emergency shall remain in effect until rescinded or otherwise amended.



**GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS EIGHTH  
DAY OF SEPTEMBER, 2018.**

A handwritten signature in blue ink, reading "Henry McMaster", is written over a horizontal line.

**HENRY MCMASTER**  
Governor

ATTEST:  
A handwritten signature in blue ink, reading "Mark Hammond", is written over a horizontal line.

**MARK HAMMOND**  
Secretary of State

Document No.  
**DEPARTMENT OF INSURANCE**  
**CHAPTER 69**

Statutory Authority: 1976 Code Sections 1-23-10 et seq., 38-3-10 et seq., 38-3-110, 38-3-410 et seq., and Executive Order 2018-26

69-79. Moratorium on Cancellation Due to Nonpayment of Premiums and Certain Nonrenewals and Extension of Insurance-Related Provisions Affecting Insureds in South Carolina Impacted by Hurricane Florence.

**Emergency Situation:**

On September 8, 2018, by Executive Order 2018-26, Governor Henry McMaster declared a state of emergency due to Hurricane Florence, a hurricane that represents a significant threat to the State of South Carolina. Areas of South Carolina have been directly impacted by Hurricane Florence's tropical and hurricane force winds, heavy rainfall, and storm surge creating flooding and other emergency conditions. The threat of hurricane, tropical force winds and storm surge necessitated the closing of many businesses, schools, roads and interstates throughout South Carolina. Coastal counties in South Carolina were subject to mandatory evacuations to protect the health, safety, and welfare of South Carolina residents and visitors. Hurricane Florence has impacted the public health, safety, and welfare of South Carolina consumers necessitating the immediate promulgation of an emergency regulation.

To help provide safeguards for consumers and to ensure that South Carolina insureds affected by this disaster do not suffer any additional unnecessary hardship, all individuals, entities, and persons licensed or authorized to transact insurance business in this State are hereby required to implement the safeguards listed below for all lines of business. These safeguards address problems consumers may face due to circumstances that make it difficult for them to take normal action required by policy language or otherwise required by insurer policies or procedures. These measures are intended to provide some peace of mind during the recovery process and help ensure that disaster victims do not lose important insurance coverage during the time they need it most.

**Text:**

**Section 1. Purpose**

This Emergency Regulation is issued to expedite and facilitate the state's recovery from Hurricane Florence to protect the interests of South Carolina insureds in light of this catastrophic event.

S.C. Code Ann. Section 38-3-410 *et. seq.* gives the Director the authority to adopt procedures that facilitate recovery from the emergency. South Carolina law requires that the emergency regulation address claims reporting requirements; grace periods for payment of premiums and performance of other duties by insureds; temporary postponement of cancellations and nonrenewals; and *any* other rule the Director considers necessary to aid the state's recovery from this catastrophic event.

Hurricane Florence has disrupted the lives of many South Carolinians. Some consumers have been evacuated and may experience the destruction or damage of their homes and property. Thus, many victims are displaced and currently unable to timely act or respond to insurance notices or to timely pay insurance premiums and may need additional time within which to act or respond. Additionally, insureds who wish to make timely payment may be otherwise prevented from making such payments because of the effects of Hurricane Florence and the aforementioned circumstances. This Emergency Regulation provides emergency relief to the insureds of South Carolina affected by this disaster event. It is the expectation of

this Department that insurers will be guided by a “reasonableness” standard and, when uncertain, will “err” on the side of the consumer.

## **Section 2. Definitions**

As used in this regulation, the terms below have the following meaning:

(1) “Insured” includes, but is not limited to, a person, policyholder, member, subscriber, enrollee, covered individual, or certificate holder for which coverage or benefits are provided under an insurance contract that is subject to regulation under the South Carolina Insurance Law directly impacted by Hurricane Florence. For purposes of this regulation, an insured directly impacted by Hurricane Florence means the insured has experienced emergency conditions that make it difficult for the insured to timely act or respond to insurance notices, documentation requests or timely pay premiums.

(2) “Insurer” means any person or entity that is licensed, authorized, registered, or otherwise subject to regulation under the South Carolina Insurance Law that provides insurance coverage for one or more of the line(s) of insurance as defined in sub-item (3).

(3) “Line of insurance” or “lines of insurance” includes any insurance contract that is subject to regulation under the South Carolina Insurance Law and includes, but is not limited to, flood insurance (not issued pursuant to the National Flood Insurance Program), property insurance, automobile insurance, liability insurance, casualty insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, life insurance, accident and health insurance, credit life insurance, credit property insurance, annuities, health maintenance organizations (HMOs), excess and surplus lines insurance, reciprocal insurance, and stop loss insurance. It does not include workers’ compensation insurance.

(4) “Person” means, as defined in S.C. Code Section 38-1-20(44) (2015).

(5) “Impacted area” includes all forty-six South Carolina counties.

(6) “Insurance contract” means a plan, policy, contract, certificate, or agreement that is subject to regulation under the South Carolina Insurance Law. It includes premium service company agreements relating to people, property, or risks located in the impacted area.

## **Section 3. Scope and Applicability**

This regulation shall apply to all insurers with respect to any insurance contract that is (1) for any line of insurance and (2) relates to either an insured residing in an impacted area or an insured’s risk located in an impacted area.

## **Section 4. 60-Day Moratorium on Cancellations Due to Nonpayment of Premium and on Nonrenewals**

There is a 60-day moratorium on the cancellation of any insurance contract attributed to a failure to pay premium(s) by insureds directly impacted by this disaster. This is not a waiver; it is only an extension or grace period for insureds directly impacted by this disaster to pay premiums.

In the case of an insurance contract for which a nonrenewal takes effect during the moratorium period, coverage shall be continued at the request of insured for the duration of the moratorium period. An insured requesting a temporary extension of coverage under this provision is responsible for any additional premium owed during the time period for which coverage is extended.

After the moratorium, insurers shall work with insureds directly impacted by the disaster event that may request or require additional time to pay premiums that would have been due during the moratorium (e.g., payment plan or further extension of the date by which the amount due must be paid in full).

The 60-day moratorium period begins Friday, September 14, 2018 and ends November 13, 2018.

### **Section 5. Exceptions to Contract Requirements or Underwriting Decisions for Insureds Directly Impacted by the Disaster Event**

Insurers shall consider exceptions to insurance contracts or underwriting requirements for insureds directly impacted by the disaster event. This includes, but is not limited to:

- a. an extension of proof of loss deadlines;
- b. waivers of limitations relating to the use of out-of-network providers; and
- c. insureds that may temporarily be unable to receive or timely act in response to notices regarding underwriting decisions.

Any such exception will not be considered unfairly discriminatory if it is focused on providing additional consumer protections for insureds that are directly impacted by this disaster event.

With respect to insureds that contact their insurer, or a representative of their insurer, for the express purpose of obtaining a letter documenting that coverage does not exist for damages resulting from the disaster event in order to complete an application for governmental assistance (e.g., Federal Emergency Management Agency Individual Assistance), an insurer must not consider this contact as a claim or a claim inquiry for purposes of rating, underwriting, or reporting to a third-party claims history database.

### **Section 6. Cancellation and Nonrenewal**

No insurance contract shall be cancelled or nonrenewed solely because of a claim resulting from this disaster event.

### **Section 7. Policy Cancellation Permissible Upon Request**

Nothing in this regulation shall prevent an insurer from cancelling an insurance contract upon the documented request or concurrence of the insured.

### **Section 8. Copy of Insurance Contract to be Provided at No Cost to Impacted Insureds**

If an insured displaced as a result of, or directly impacted by, the disaster event requests a copy of his insurance contract, the insurer shall provide a copy of the requested contract at no cost to the insured within fifteen calendar days of the written request.

### **Section 9. Adjustment and Settlement of Claims**

Insurers should always promptly and in good faith adjust and pay all valid insurance claims. This is extremely important following a declared disaster emergency with respect to claims related to the disaster. S. C. Code Ann. Section 38-59-20(4) (2015) requires that claim payments be made in a prompt, fair, and equitable manner. The Director expects insurers take the following action upon receiving notice of a claim, keeping in mind that the magnitude of and circumstances surrounding the disaster may impact the adjustment and settlement of individual claims:

- a. Promptly establish contact with the claimant;
- b. Promptly survey and assess the claimant's damage;
- c. Accurately and completely respond to Department inquiries, including inquiries made relating to consumer complaints filed with the Department, by the deadline prescribed by the Department;
- d. Promptly inform claimants of any documents that must be submitted to evaluate or process a claim;
- e. Provide prompt and accurate responses to claimants;

- f. Provide prompt payment for additional living expenses and temporary repairs after the assessment of the insured's or claimant's damage;
- g. Promptly set appointments with the claimant for examination and resolution of claim matters.

If necessary, the Director may establish a mediation program to facilitate the resolution of disputed open claims for damage to real and personal property resulting from the disaster. The requirements for any such program will be established by order or subsequent amendment to this regulation.

#### **Section 10. Method of Payment for Claims**

In order to facilitate the resolution of claims in an expeditious manner, claims payment for losses due to Hurricane Florence may be made by insurers by issuance of a prepaid debit card or any other form of electronic transfer *provided* (1) the insured is informed that payment in this manner is a voluntary option for payment and agrees to the method of payment; (2) the method of payment is not subject to any fees that would result in the insured receiving less than the full amount due; (3) the insured is permitted, at any time, to convert any balance into cash; and (4) the insured is notified of applicable terms and conditions.

#### **Section 11. Premium Offset**

In the course of settlement of a claim from an insured, any claim payment made to the insured or beneficiary under the insurance policy may not include an offset for any premium due unless the insured or beneficiary agrees in writing to an offset.

This section is not applicable to accident and health insurance coverage or any coverage provided by HMOs.

#### **Section 12. Prescription Refills**

An insurance policy or contract, including an HMO, that provides coverage for prescription drugs must allow one early refill of a prescription if there are authorized refills remaining or allow one replacement prescription for a prescription that was recently filled for insureds who reside in the impacted area. This section is valid for requests made on or before September 30, 2018.

#### **Section 13. Cancellation for Fraud or Material Representation**

This regulation shall not be construed so as to prevent an insurer from canceling or terminating coverage for fraud or material misrepresentation in accordance with applicable law.

#### **Section 14. Insured's Obligation to Provide Information and Cooperation**

This regulation shall not relieve an insured who has a claim caused by this disaster event from compliance with the insured's obligation to provide information and cooperate in the adjustment or investigative process related to the claim.

#### **Section 15. Waiver of Certain Interest, Penalties, Fees and Other Charges**

The Director expects insurers to suspend the imposition of fees, penalties, or interest that would be charged due to an insured's temporary inability to submit premium payments or otherwise respond as a result of this disaster event. Examples include, but are not limited to, fees, penalties, or interest resulting from insufficient funds, late payments, or reinstatements.



Fees that are not the result of an insured's failure to timely or completely respond are not impacted by this provision.

#### **Section 16. Intent and Construction**

The benefits, entitlements, and protections of this regulation shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of South Carolina.

Insurers, as defined in this regulation, should take into consideration the difficulties related to this weather event that citizens of this state have suffered and continue to suffer and should take such consideration into account when dealing with matters relating to collection of premium, cancellation, nonrenewal, documentation and other requirements or policy provisions, including, but not limited to: notifications of hospital admissions; due dates relating to claims; premium payments; optional service fees; prior authorization requirements; and limitations on prescription refills.

The Department will review allegations or disputes, and if warranted, direct the insurer to work with the insured by providing the relief required in this regulation or to take other corrective action. If the insurer fails to comply, the matter will be referred for further investigation.

#### **Section 17. Sanctions for Violations**

The Director retains the authority to enforce violations of this regulation. Accordingly, any insurer, person, or entity subject to regulation under the South Carolina Insurance Law who violates any provision of this regulation shall be subject to institution of administrative or civil action by the Director under any applicable provisions of the South Carolina Insurance Law, including the provisions of S.C. Code Ann. Section 38-2-10. These provisions include penalties of up to \$15,000 for each violation or \$30,000 for each violation if the violation is willful. In addition to the fines listed, the insurer, person or entity may also be subject to suspension or revocation of its authority to transact business subject to the Insurance Law in South Carolina.

#### **Section 18. Rate, Rule, and Form Filing Deemer Dates**

The Director may extend the timeframes set forth in filing statutes, if necessary, to enable the Department to devote the resources necessary to the state's recovery from this catastrophic event.

#### **Section 19. Authority**

The Director reserves the right to extend, amend, modify, alter or rescind all or any portions of this emergency regulation via subsequent regulation or by order of the Director.

#### **Section 20. Severability Clause**

If any section or provision of this emergency regulation is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of this regulation, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

#### **Section 21. Effective Date**

In accordance with S.C. Code Section 38-3-410, this regulation shall be effective immediately upon filing and shall continue for 120 days unless otherwise extended or terminated by the Director.

**Statement of Need and Reasonableness:**

The emergency regulation is needed to protect the interests of South Carolina insurance consumers and to expedite and facilitate the state's recovery from Hurricane Florence.

**Fiscal Impact Statement:**

There will be no increased costs to the state or its political subdivisions.