

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 729\*  
Committee Substitute Favorable 5/17/07

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE  
3 INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT  
4 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY  
5 THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 36 of Chapter 58 of the General Statutes is amended by  
8 adding a new section to read:

9 **"§ 58-36-120. Rate evasion fraud; prevention programs.**

10 (a) The following definitions apply in this section:

11 (1) Applicant. – One or more persons applying for the issuance of an auto  
12 insurance policy.

13 (2) Auto insurance. – Nonfleet private passenger motor vehicle insurance.

14 (3) Eligible applicant. – A person who is any of the following:

15 a. A resident of this State who owns a motor vehicle registered  
16 and principally garaged in this State.

17 b. A resident of this State who has a valid North Carolina drivers  
18 license or who is required to file proof of financial  
19 responsibility under Article 9A or 13 of Chapter 20 of the  
20 General Statutes in order to register a motor vehicle or obtain a  
21 drivers license in this State.

22 c. A nonresident of this State who owns a motor vehicle registered  
23 and principally garaged in this State.

24 d. The State and its agencies and cities and counties in this State  
25 and their agencies.

26 (4) Insurer. – A member of the Bureau that is licensed to write and is  
27 writing auto insurance in this State.

28 (b) A person is not an eligible applicant, as defined in subdivision (a)(3) of this  
29 section, if the person has not tendered timely payment of premium; if there is a valid

1 unsatisfied judgment of record against that person for recovery of amounts due for  
2 motor vehicle insurance premiums and that person has not been discharged from paying  
3 the judgment; or if that person does not furnish the information necessary to effect  
4 insurance.

5 (c) It shall be a Class H felony for any person, who with the intent to deceive an  
6 insurer, to do any of the following:

7 (1) Present or cause to be presented a written or oral statement in support  
8 of an application for auto insurance, knowing that the application  
9 contains false or misleading information that states the applicant is an  
10 eligible applicant when the applicant is not an eligible applicant.

11 (2) Assist, abet, solicit, or conspire with another person to prepare or make  
12 any written or oral statement that is intended to be presented to an  
13 insurer in connection with or in support of an application for auto  
14 insurance, if the person knows that the statement contains false or  
15 misleading information that states the applicant is an eligible applicant  
16 when the applicant is not an eligible applicant.

17 (d) In order to prevent persons who are not eligible applicants from purchasing  
18 auto insurance in this State, an agent shall require every applicant for insurance to sign a  
19 statement that includes all of the following attestations:

20 (1) The applicant and all named insureds to be insured on the policy for  
21 which application is made are eligible applicants.

22 (2) All of the information provided by the applicant is true and correct.

23 (3) The applicant understands that providing fraudulent information as to  
24 the applicant's or any named insured's status as an eligible applicant  
25 may result in criminal prosecution and the denial of coverage under the  
26 policy for which application is made for any bodily injury or property  
27 damage suffered by the applicant.

28 (e) The statement required under subsection (d) of this section may be made:

29 (1) Orally if application for an auto insurance policy is made by way of  
30 telephone and the applicant's answers are recorded in writing by the  
31 agent; or

32 (2) Electronically if application for an auto insurance policy is made by  
33 way of the Internet.

34 (f) The insurer and its agent shall also take reasonable steps to verify that the  
35 information provided by an applicant regarding the applicant's address and the place the  
36 motor vehicle is garaged is correct. The agent shall retain copies of any items obtained  
37 under this section as required under the record retention rules adopted by the  
38 Commissioner.

39 (g) Every insurer shall audit its auto insurance business at least annually for  
40 misrepresentations by applicants regarding their addresses and the places their motor  
41 vehicles are garaged. A copy of the audit shall be provided to the Commissioner upon  
42 request.

43 (h) If an applicant provides fraudulent information as to the applicant's or any  
44 named insured's status as an eligible applicant and that fraudulent information makes

1 the applicant or any named insured appear to be an eligible applicant when that person  
2 is in fact not an eligible applicant, the insurer may do any or all of the following:

- 3 (1) Refuse to issue a policy.
- 4 (2) Cancel or refuse to renew a policy that has been issued.
- 5 (3) Deny coverage for any bodily injury or property damage suffered by  
6 the applicant. This subdivision does not apply to innocent third  
7 parties."

8 **SECTION 2.** G.S. 58-2-163 reads as rewritten:

9 **"§ 58-2-163. Report to Commissioner.**

10 Whenever any insurance company, or employee or representative of such company,  
11 or any other person licensed or registered under Articles 1 through 67 of this Chapter  
12 knows or has reasonable cause to believe that any other person has violated  
13 G.S. 58-2-161, 58-2-162, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), 58-36-120, or whenever  
14 any insurance company, or employee or representative of such company, or any other  
15 person licensed or registered under Articles 1 through 67 of this Chapter knows or has  
16 reasonable cause to believe that any entity licensed by the Commissioner is financially  
17 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the  
18 Commissioner and provide the Commissioner with a complete statement of all of the  
19 relevant facts and circumstances. Such report is a privileged communication, and when  
20 made without actual malice does not subject the person making the same to any liability  
21 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of  
22 any licensee who willfully fails to comply with this section."

23 **SECTION 3.** The Joint Legislative Transportation Oversight Committee  
24 may study the issues related to automobile insurance rate evasion (S.B. 795 –  
25 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended  
26 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

27 **SECTION 4.** Sections 1 and 2 of this act become effective January 1, 2008,  
28 and apply to applications for nonfleet private passenger motor vehicle insurance made  
29 on and after that date. This remainder of this act is effective when it becomes law.