

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 729*
Committee Substitute Favorable 5/17/07
Senate Commerce, Small Business and Entrepreneurship Committee Substitute
Adopted 7/18/07

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

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

(1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.

(2) Repealed by Session Laws 1991, c. 720, s. 6.

(3) "Company" means each member of the Facility.

(4) "~~Eligible risk~~-risk," for the purpose of motor vehicle insurance ~~other than nonfleet private passenger motor vehicle insurance, means a person; means:~~

a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this ~~State or who~~State;

b. A person who has a valid driver's license in this ~~State or who~~State;

c. A person who is required to file proof of financial responsibility ~~pursuant to under~~ Article 9A or 13 of the ~~North Carolina Motor Vehicle Code Chapter 20 of the General Statutes~~ in order to register his or her motor vehicle or to obtain a driver's license in this State; ~~or~~

- d. ~~a~~ A nonresident of this State who owns a motor vehicle registered or principally garaged in this State, or the State; or
- e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided however, that agencies.

However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

(4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance, means:

- a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
- b. A resident of this State and who has a valid driver's license issued by this State;
- c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver's license in this State;
- d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
- e. A nonresident of the State who is one of the following:
 - 1. A member of the United States armed forces stationed in this State who intends to return to his or her home state;
 - 2. The spouse of a nonresident member of the United States armed forces stationed in this State who intends to return to his or her home state;
 - 3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or
- f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment or premium is not tendered or if there is a valid unsatisfied judgment of record against the person for recovery of amounts due for motor vehicle insurance premiums and the person has not been discharged from paying the judgment or if the person does not furnish the information necessary to effect insurance.

- (5) "Facility" means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of under this Article.
- (6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for

1 use with such vehicles (except traction engines, road rollers, farm
2 tractors, tractor cranes, power shovels, and well drillers). "Motor
3 vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.

- 4 (7) "Motor vehicle insurance" means direct insurance against liability
5 arising out of the ownership, operation, maintenance or use of a motor
6 vehicle for bodily injury including death and property damage and
7 includes medical payments and uninsured and underinsured motorist
8 coverages.

9 With respect to motor carriers who are subject to the financial
10 responsibility requirements established under the Motor Carrier Act of
11 1980, the term, "motor vehicle insurance" includes coverage with
12 respect to environmental restoration. As used in this subsection the
13 term, "environmental restoration" means restitution for the loss,
14 damage, or destruction of natural resources arising out of the
15 accidental discharge, dispersal, release, or escape into or upon the
16 land, atmosphere, water course, or body of water of any commodity
17 transported by a motor carrier. Environmental restoration includes the
18 cost of removal and the cost of necessary measures taken to minimize
19 or mitigate damage to human health, the natural environment, fish,
20 shellfish, and wildlife.

- 21 (8) "Person" means every natural person, firm, partnership, association,
22 trust, limited liability company, firm, corporation, government, or
23 governmental agency.

- 24 (9) "Plan of operation" means the plan of operation approved pursuant to
25 the provisions of this Article.

- 26 (10) Repealed by Session Laws 1977, c. 828, s. 10.

- 27 (11) "Principally garaged" means the vehicle is garaged for six or more
28 months of the current or preceding year on property in this State which
29 is owned, leased, or otherwise lawfully occupied by the owner of the
30 vehicle."

31 **SECTION 2.** G.S. 58-37-50 reads as rewritten:

32 **"§ 58-37-50. Termination of insurance.**

33 No member may terminate insurance to the extent that cession of a particular type of
34 coverage and limits is available under the provisions of this Article except for the
35 following reasons:

- 36 (1) Nonpayment of premium when due to the insurer or producing agent.
37 (2) The named insured has become a nonresident of this State and would
38 not otherwise be entitled to insurance on submission of new
39 application under this Article.
40 (3) A member company has terminated an agency contract for reasons
41 other than the quality of the agent's insureds or the agent has
42 terminated the contract and such agent represented the company in
43 taking the original application for insurance.

- 1 (4) When the insurance contract has been cancelled pursuant to a power of
2 attorney given a company licensed pursuant to the provisions of
3 G.S. 58-35-5.
- 4 (5) The named insured, at the time of renewal, fails to meet the
5 requirements contained in the corporate charter, articles of
6 incorporation, and/or bylaws of the insurer, when the insurer is a
7 company organized for the sole purpose of providing members of an
8 organization with insurance policies in North Carolina.
- 9 (6) The named insured is no longer an eligible risk under G.S. 58-37-1."

10 **SECTION 3.** Article 2 of Chapter 58 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 58-2-164. Rate evasion fraud; prevention programs.**

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

- 14 (1) "Applicant" means one or more persons applying for the issuance or
15 renewal of an auto insurance policy.
- 16 (2) "Auto insurance" means nonfleet private passenger motor vehicle
17 insurance.
- 18 (3) "Eligible applicant" means a person who is an eligible risk under
19 G.S. 58-37-1(4a).
- 20 (4) "Insurer" means a member of the North Carolina Rate Bureau that is
21 licensed to write and is writing auto insurance in this State.
- 22 (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).
- 23 (6) "Private passenger motor vehicle" means a motor vehicle as defined in
24 G.S. 58-40-10(1).

25 (b) It shall be a Class 3 misdemeanor for any person who, with the intent to
26 deceive an insurer, does any of the following:

- 27 (1) Present or cause to be presented a written or oral statement in support
28 of an application for auto insurance or for vehicle registration pursuant
29 to G.S. 20-52(a)(4) and (a)(5), knowing that the application contains
30 false or misleading information that states the applicant is an eligible
31 risk when the applicant is not an eligible risk.
- 32 (2) Assist, abet, solicit, or conspire with another person to prepare or make
33 any written or oral statement that is intended to be presented to an
34 insurer in connection with or in support of an application for auto
35 insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and
36 (a)(5), if the person knows that the statement contains false or
37 misleading information that states the applicant is an eligible risk when
38 the applicant is not an eligible risk.

39 In addition to any other penalties authorized by law, a violation of this subsection
40 may be punishable by a fine of not more than one thousand dollars (\$1,000) for each
41 violation.

42 (c) The insurer and its agent shall also take reasonable steps to verify that the
43 information provided by an applicant regarding the applicant's address and the place the
44 motor vehicle is garaged is correct. The insurer may take its own reasonable steps to

1 verify residency or eligible risk status or may rely upon the agent verification of
2 residency or eligible risk status to meet the insurer's verification obligations under this
3 section. The agent shall retain copies of any items obtained under this section as
4 required under the record retention rules adopted by the Commissioner and in
5 accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section
6 by obtaining reliable proof of North Carolina residency from the applicant or the
7 applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes
8 but is not limited to:

- 9 (1) A pay stub with the payee's address.
- 10 (2) A utility bill showing the address of the applicant-payor.
- 11 (3) A lease for an apartment, house, modular unit, or manufactured home
12 with a North Carolina address signed by the applicant.
- 13 (4) A receipt for personal property taxes paid.
- 14 (5) A receipt for real property taxes paid to a North Carolina locality.
- 15 (6) A monthly or quarterly financial statement from a North Carolina
16 regulated financial institution.
- 17 (7) A valid unexpired North Carolina driver's license
- 18 (8) A matricula consular or substantially similar document issued by the
19 Mexican Consulate for North Carolina.
- 20 (9) A document similar to that described in subdivision (8) of this section,
21 issued by the consulate or embassy of another country that would be
22 accepted by the North Carolina Division of Motor Vehicles as set forth
23 in G.S. 20-7(b4)(9).
- 24 (10) A valid North Carolina vehicle registration.
- 25 (11) A valid military ID.
- 26 (12) A valid student ID for a North Carolina school or university.

27 (d) In the absence of actual malice, neither an insurer, the authorized
28 representative of the insurer, a producer, the Commissioner, an organization of which
29 the Commissioner is a member, the North Carolina Reinsurance Facility, nor the
30 respective employees and agents of such persons acting on behalf of such persons shall
31 be subject to civil liability as a result of any statement or information provided or action
32 taken pursuant to this section.

33 (e) In any action brought against a person that may have immunity under
34 subsection (d) of this section for making any statement required by this section or for
35 providing any information relating to any statement that may be requested by the
36 Commissioner, the party bringing the action shall plead specifically in any allegation
37 that subsection (d) of this section does not apply because the person making the
38 statement or providing the information did so with actual malice. Subsections (d) and
39 (e) of this section do not abrogate or modify any existing statutory or common law
40 privileges or immunities.

41 (f) Every insurer shall maintain safeguards within its auto insurance business at
42 the point of sale, renewal, and claim to identify misrepresentations by applicants
43 regarding their addresses and the places their motor vehicles are garaged. Identified
44 misrepresentations are subject to the requirements of Article 2 of this Chapter.

1 (g) If an applicant provides false and misleading information as to the applicant's
2 or any named insured's status as an eligible applicant and that fraudulent information
3 makes the applicant or any named insured appear to be an eligible applicant when that
4 person is in fact not an eligible applicant, the insurer may do any or all of the following:

5 (1) Refuse to issue a policy.

6 (2) Cancel or refuse to renew a policy that has been issued.

7 (3) Deny coverage for any claim arising out of bodily injury or property
8 damage suffered by the applicant. This subdivision does not apply to
9 innocent third parties.

10 (h) In a civil cause of action for recovery based upon a claim for which a
11 defendant has been convicted under this section, the conviction may be entered into
12 evidence against the defendant and shall establish the liability of the defendant as a
13 matter of law for such damages, fees, or costs as may be proven. The court may award
14 the prevailing party compensatory damages including but not limited to any costs,
15 losses, expenses, and attorneys' fees incurred in connection with any false statement of
16 eligible risk status made in an application for insurance or incurred in connection with
17 any claim submitted under a policy obtained as a result of a false statement of status as
18 an eligible risk, attorneys' fees, costs, and reasonable investigative costs. If the
19 prevailing party can demonstrate that the defendant has engaged in a pattern of
20 violations of this section, the court may award treble damages."

21 **SECTION 4.** G.S. 58-2-163 reads as rewritten:

22 "**§ 58-2-163. Report to Commissioner.**

23 Whenever any insurance company, or employee or representative of such company,
24 or any other person licensed or registered under Articles 1 through 67 of this Chapter
25 knows or has reasonable cause to believe that any other person has violated
26 G.S. 58-2-161, 58-2-162, ~~58-2-164~~, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), or whenever any
27 insurance company, or employee or representative of such company, or any other
28 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
29 reasonable cause to believe that any entity licensed by the Commissioner is financially
30 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
31 Commissioner and provide the Commissioner with a complete statement of all of the
32 relevant facts and circumstances. Such report is a privileged communication, and when
33 made without actual malice does not subject the person making the same to any liability
34 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
35 any licensee who willfully fails to comply with this section."

36 **SECTION 5.** The Joint Legislative Transportation Oversight Committee
37 may study the issues related to automobile insurance rate evasion (S.B. 795 –
38 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended
39 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

40 **SECTION 6.** G.S. 20-52(a) reads as rewritten:

41 "(a) An owner of a vehicle subject to registration must apply to the Division for a
42 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
43 an owner must complete an application ~~form~~ provided by the Division. The application

1 ~~form~~ must request all of the following information and may request other information
2 the Division considers necessary:

- 3 (1) The owner's name.
- 4 (1a) If the owner is an individual, the following information:
 - 5 a. The owner's mailing address and residence address.
 - 6 b. The owner's North Carolina drivers license number or North
7 Carolina special identification card number.
- 8 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
9 the address of the entity.
- 10 (2) A description of the vehicle, including the following:
 - 11 a. The make, model, type of body, and vehicle identification
12 number of the vehicle.
 - 13 b. Whether the vehicle is new or used and, if a new vehicle, the
14 date the manufacturer or dealer sold the vehicle to the owner
15 and the date the manufacturer or dealer delivered the vehicle to
16 the owner.
- 17 (3) A statement of the owner's title and of all liens upon the vehicle,
18 including the names and addresses of all lienholders in the order of
19 their priority, and the date and nature of each lien.
- 20 (4) A statement that the owner is an eligible risk for insurance coverage as
21 defined in G.S. 58-37-1.
- 22 (5) For registration and certificate of title for a nonfleet private passenger
23 motor vehicle, a statement that providing incorrect or false and
24 misleading information as to the owner's status as an eligible risk can
25 result in criminal prosecution and the denial of insurance coverage for
26 any loss of the owner under any insurance policies for which
27 application is made if the owner provides false and misleading
28 information as to eligible risk status.
- 29 (6) For registration and certificate of title for a nonfleet private passenger
30 motor vehicle, a statement that the owner will inform the insurer
31 before the next policy renewal if the owner ceases to be an eligible
32 risk.

33 The application ~~form~~ must contain the disclosures concerning the request for an
34 applicant's social security number required by section 7 of the federal Privacy Act of
35 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
36 may disclose a social security number obtained under this subsection only for the
37 purpose of administering the motor vehicle registration laws and may not disclose the
38 social security number for any other purpose. The social security number of a person
39 who applies to register a vehicle or of a person in whose name a vehicle is registered is
40 therefore not a public record. A violation of the disclosure restrictions is punishable as
41 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

42 **SECTION 7.** If Senate Bill 1350, 2007 Regular Session, becomes law,
43 Section 6 of this act is repealed, and, effective January 1, 2008, G.S. 20-52(a) as
44 amended by Section 2 of Senate Bill 1350, reads as rewritten:

1 "(a) An owner of a vehicle subject to registration must apply to the Division for a
2 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
3 an owner must complete an application ~~form~~ provided by the Division. The application
4 ~~form~~ must request all of the following information and may request other information
5 the Division considers necessary:

6 (1) The owner's name.

7 (1a) If the owner is an individual, the following information:

8 a. The owner's mailing address and residence address.

9 b. One of the following:

10 1. The owner's North Carolina drivers license number or
11 North Carolina special identification card number.

12 2. The owner's home state drivers license number or home
13 state special identification card number and valid active
14 duty military identification card if the owner is a person
15 on active military duty and is stationed in this State.

16 3. The owner's home state drivers license number or home
17 state special identification card number and proof of
18 enrollment in a school in this State if the owner is a
19 permanent resident of another state but is currently
20 enrolled in a school in this State.

21 4. The owner's home state drivers license number or home
22 state special identification card number if the owner or
23 co-owner intends to principally garage the vehicle in this
24 State. "Principally garage" means the vehicle is garaged
25 for six or more months of the year on property in this
26 State which is owned, leased, or otherwise lawfully
27 occupied by the owner of the vehicle.

28 c. For vehicles that have more than one owner, only one co-owner
29 is required to provide the information requested under
30 sub-subdivision b. of this subdivision.

31 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
32 the address of the entity.

33 (2) A description of the vehicle, including the following:

34 a. The make, model, type of body, and vehicle identification
35 number of the vehicle.

36 b. Whether the vehicle is new or used and, if a new vehicle, the
37 date the manufacturer or dealer sold the vehicle to the owner
38 and the date the manufacturer or dealer delivered the vehicle to
39 the owner.

40 (3) A statement of the owner's title and of all liens upon the vehicle,
41 including the names and addresses of all lienholders in the order of
42 their priority, and the date and nature of each lien.

43 (4) A statement that the owner is an eligible risk for insurance coverage as
44 defined in G.S. 58-37-1.

1 (5) For registration and certificate of title for a nonfleet private passenger
2 motor vehicle, a statement that providing incorrect or false and
3 misleading information as to the owner's status as an eligible risk can
4 result in criminal prosecution and the denial of insurance coverage for
5 any loss of the owner under any insurance policies for which
6 application is made if the owner provides false and misleading
7 information as to eligible risk status.

8 (6) For registration and certificate of title for a nonfleet private passenger
9 motor vehicle, a statement that the owner will inform the insurer
10 before the next policy renewal if the owner ceases to be an eligible
11 risk.

12 The application ~~form~~ must contain the disclosures concerning the request for an
13 applicant's social security number required by section 7 of the federal Privacy Act of
14 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
15 may disclose a social security number obtained under this subsection only for the
16 purpose of administering the motor vehicle registration laws and may not disclose the
17 social security number for any other purpose. The social security number of a person
18 who applies to register a vehicle or of a person in whose name a vehicle is registered is
19 therefore not a public record. A violation of the disclosure restrictions is punishable as
20 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

21 **SECTION 8.** Sections 1, 3, 4, 6, and 7 of this act become effective January
22 1, 2008. Section 1 applies to motor vehicle insurance policies issued or renewed on or
23 after January 1, 2008. Sections 3 and 4 apply to applications for nonfleet private
24 passenger motor vehicle insurance made on and after January 1, 2008. Sections 6 and 7 of
25 this act apply to applications for registration and certificate of title made on or after
26 January 1, 2008. Section 2 of this act is effective when it becomes law and applies to
27 motor vehicle insurance policies issued or renewed on or after that date. The remainder of
28 this act is effective when it becomes law.