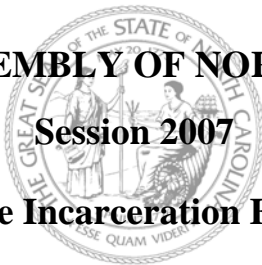


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 729 (Second Edition)
SHORT TITLE: Penalties for Insurance Rate Evasion Fraud.-AB
SPONSOR(S): Representatives Holliman and Goforth

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	Some fiscal impact anticipated; however, the exact amount cannot be determined. See pp. 2-4, "Assumptions and Methodology"				
Judicial					
Insurance	No impact anticipated.				
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*	Amount cannot be determined.				
POSITIONS: (cumulative)	Amount cannot be determined.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Department of Insurance.				
EFFECTIVE DATE:	Sections 1 and 2 become effective Jan. 1, 2008; remainder is effective upon ratification.				
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

Section 1: Creates new G.S. 58-36-120, which makes it a Class H felony offense for any person to, *with the intent to deceive an insurer in the course of obtaining auto insurance*, do any of the following:

1. Present, or cause to be presented, a written or oral statement that is known to falsely claim an applicant's eligibility.
2. Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that falsely claims eligibility, and is intended to be presented to an insurer.

The statute also establishes the criteria for eligibility, and mandates that agents require applicants to "sign" statements of eligibility, which may be made orally (if over the phone and recorded) or electronically (if by Internet). In addition, it requires that insurers and their agents verify certain applicant information and retain records in accordance with rules adopted by the Commissioner of Insurance. Furthermore, it mandates that each insurer conduct an annual audit (minimum) for misrepresentations by applicants, copies of which are to be provided to the Commissioner upon request. The statute also authorizes insurers, in the event that fraudulent information is found, to: 1) Refuse to issue a policy, 2) Cancel or refuse to renew a policy that has been issued; 3) Deny coverage for any bodily injury or property damage suffered by the applicant (does not apply to innocent third parties).

Section 2: Amends G.S. 58-2-163 to also require insurers (includes employees and representatives) to notify the Commissioner of a believed violation of new G.S. 58-36-120, and to provide a complete statement of all relevant facts and circumstances of the case.

Section 3: Authorizes the Joint Legislative Transportation Oversight Committee to study the issues related to automobile insurance rate evasion, and to report findings and any recommended legislation to the General Assembly in the 2008 Session.

Section 4: Provides that Sections 1 and 2 become effective January 1, 2008, and apply to applications made on or after that date. The remainder of the act is effective upon ratification.

ASSUMPTIONS AND METHODOLOGY:

General

Proposed G.S. 58-36-120 specifies that an applicant is eligible for auto insurance in North Carolina, if he or she meets any of the following criteria:

1. Is a resident of North Carolina, who owns a motor vehicle registered and principally garaged in the state.
2. Is a resident who has a valid North Carolina drivers license, or who is required to file proof of financial responsibility (under Article 9A or 13 of Chapter 20) to register a motor vehicle or to obtain a drivers license.
3. Is a nonresident who owns a motor vehicle registered and principally garaged in North Carolina.

The statute also provides that the State, and its agencies, cities, counties, and their agencies are eligible. However, a person who meets the above criteria is ineligible if that person: 1) has not paid the insurance premium in a timely manner; 2) has a valid unsatisfied judgment of record against him/her for the recovery of insurance premiums due, and who has not been discharged from paying the judgment; and/or 3) does not provide the information necessary to obtain insurance.

It is not known how many current residents and non-residents would be excluded by the above criteria, and would therefore be "ineligible" for auto insurance. Nor is it known how many would engage in the

proscribed acts, falsely claiming eligibility to obtain insurance. Consequently, the number of resultant charges and convictions is presently indeterminate. However, based on current resource levels, Fiscal Research expects that any additional charge and/or conviction will generate some additional fiscal impact for the Courts and Corrections.

Department of Correction – Division of Prisons

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.*¹ Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

It is not known how many new convictions and active sentences might occur for the proposed offenses. In FY 2005-06, 34% of Class H felony convictions received active sentences, with an average estimated time served of approximately 11 months.²

Assuming this sentencing pattern, if three Class H convictions were to occur annually, *the combination of active sentences and probation revocations would require one additional prison bed in the first applicable year; two additional beds in the second year; and one new employee in the second year.* Assuming these thresholds and inmate assignment to medium custody, the construction of two additional prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; whereas, bed construction within an add-on facility could cost approximately \$84,240.³ These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$58,195 by FY 2009-10.⁴

Department of Correction – Division of Community Corrections

In FY 2005-06, 66% of Class H felony convictions resulted in either intermediate or community punishments, predominately special, intensive, or general supervision probation. Thus, *assuming that additional non-active sentences result, the Division of Community Corrections could incur some additional costs for offenders placed under its jurisdiction.* It is not known how many offenders might be sentenced to intermediate or community punishments, to which type, or for how long. Included below is a brief discussion of DCC supervision costs, per offender:

¹ The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Accordingly, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

² These FY 2005-06 statistics, per offense class, represent total conviction averages across all prior record levels and sentencing ranges (mitigated, presumptive, and aggravated). The type of sentence imposed (active, intermediate, or community) and length of sentence imposed could vary for affected offenses.

³ New, “stand alone” institution built for Expanded Operating Capacity (EOC); single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC). “Add-on” facilities (close and medium custody) are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. “Add-on” facilities employ the same EOC custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁴ Impact on incarcerated population is assumed for FY 2008-09, given the effective date of January 1, 2008 and typical lag time between charge and conviction (6 months).

- Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution.
- The daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction.
- Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day; on average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

Judicial Branch

Although it is not known how many additional Class H felony charges might result for the proposed offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal - jury involvement, and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Presently, the estimated costs per single Class H felony trial and plea are \$7,345 and \$325, respectively. Actual costs could vary from these estimates, which account for indigent defense.

Department of Insurance

The Department of Insurance does not anticipate any additional fiscal impact due to the proposed legislation.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction; Department of Insurance.

TECHNICAL CONSIDERATIONS: None

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DATE: May 21, 2007



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