

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH20031-LT-55\* (3/1)

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

Sponsors: Representatives Goforth and Holliman (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE  
INSURANCE RATE EVASION FRAUD.

The General Assembly of North Carolina enacts:

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

**"§ 58-36-120. Rate evasion fraud; obligations of insurers and agents; Rate Evasion**

**Prevention Programs.**

(a) As used in this section:

(1) "Applicant" means one or more persons applying for the issuance of an  
auto insurance policy.

(2) "Auto insurance" means nonfleet private passenger motor vehicle  
insurance.

(3) "Eligible applicant" means a person who is any of the following:

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

b. A resident of this State 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 of the  
General Statutes in order to register the resident's motor vehicle  
or obtain a drivers license in this State.

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

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

No person is an "eligible applicant" if timely payment of premium is  
not tendered or if there is a valid unsatisfied judgment of record

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

5           (4)   "Insurer" means a member of the Bureau that is licensed to write and is  
6           writing nonfleet private passenger motor vehicle insurance in this  
7           State.

8           (b)   Any person who, with the intent to deceive an insurer, either (i) presents or  
9           causes to be presented a written or oral statement in support of an application for auto  
10          insurance knowing that the application contains false or misleading information that  
11          states the applicant is an eligible applicant and the applicant is in fact not an eligible  
12          applicant, or (ii) assists, abets, solicits, or conspires with another person to prepare or  
13          make any written or oral statement that is intended to be presented to an insurer in  
14          connection with or in support of an application for auto insurance, knowing that the  
15          statement contains false or misleading information that states the applicant is an eligible  
16          applicant and the applicant is in fact not an eligible applicant, is guilty of a Class H  
17          felony. Each claim shall be considered a separate count. Upon conviction, if the court  
18          imposes probation, the court may order the defendant to pay restitution as a condition of  
19          probation. In determining the amount of restitution pursuant to G.S. 15A-1343(d), the  
20          reasonable costs and attorneys' fees incurred by the victim in the investigation of, and  
21          efforts to recover damages arising from, the claim may be considered part of the  
22          damage caused by the defendant arising out of the offense.

23          (c)   In order to prevent persons who are not eligible applicants from purchasing  
24          auto insurance in this State, an agent shall require every applicant for insurance to sign a  
25          statement that includes the applicant's attestations of eligible applicant status for all  
26          named insureds to be insured on the policy for which application is made and states all  
27          of the following:

28               (1)   All of the information provided by the applicant is true and correct.

29               (2)   The applicant is an eligible applicant.

30               (3)   The applicant understands that providing incorrect or fraudulent  
31               information as to the applicant's address can result in criminal  
32               prosecution and the denial of coverage for any loss not occurring in  
33               North Carolina under the policy for which application is made, if the  
34               applicant falsely claims eligible applicant status for the applicant or  
35               any named insured, or if the applicant fails to notify the insurer at  
36               policy renewal if any named insured ceases to be an eligible applicant.

37               (4)   The applicant will inform the insurer before the next policy renewal if  
38               any insured ceases to be an eligible applicant.

39          (d)   The agent shall also verify that the information provided by an applicant for  
40          auto insurance as to the applicant's address and the location where the vehicle is garaged  
41          is correct. The agent shall satisfy the requirements of this section by obtaining reliable  
42          proof of North Carolina residency from the applicant in the form of any of the  
43          following:

44               (1)   A pay stub with the payee's address.

- 1           (2)    A utility bill showing the address of the applicant-payor.
- 2           (3)    A contract for an apartment, house, modular unit, or manufactured
- 3           home with a North Carolina address signed by the applicant.
- 4           (4)    A receipt for personal property taxes paid.
- 5           (5)    A receipt for real property taxes paid to a North Carolina locality.
- 6           (6)    A current auto insurance policy issued to the applicant showing the
- 7           applicant's address.
- 8           (7)    A monthly or quarterly financial statement from a North Carolina
- 9           regulated financial institution.
- 10          (8)    A valid unexpired North Carolina drivers license.
- 11          (9)    A matricula consular or substantially similar document issued by the
- 12          Mexican Consulate for North Carolina.
- 13          (10) A document similar to that described in subdivision (9) of this section,
- 14          issued by the consulate or embassy of another country that would be
- 15          accepted by the North Carolina Division of Motor Vehicles as set forth
- 16          in G.S. 20-7(b4)(9).

17          (e)    The agent shall retain copies of the items obtained under subsection (d) of  
18 this section in accordance with G.S. 58-2-185 and the record retention administrative  
19 rules adopted by the Commissioner.

20          (f)    All insurers, as a prerequisite to the further engaging in this State in the  
21 writing of auto insurance or any component thereof, shall implement a program  
22 designated as a Rate Evasion Prevention Program designed to prevent fraudulent  
23 procurement of insurance in this State by persons who would not otherwise qualify as  
24 eligible applicants. A Rate Evasion Prevention Program shall require (i) the insurer to  
25 audit its business written for auto insurance at least annually to determine whether its  
26 insureds have stated misrepresentations in their applications regarding their addresses  
27 and the locations where their vehicles are garaged and (ii) the insurer's agents to validate  
28 the residency of insureds at the point of sale and upon notification of a claim."

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

30           **"§ 58-2-163. Report to Commissioner.**

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

1           **SECTION 3.** This act becomes effective January 1, 2008, and applies to  
2 offenses committed, and applications for nonfleet private passenger motor vehicle  
3 insurance made, on or after that date.