

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- (2) Repealed by Session Laws 1991, c. 720, s. 6.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

1 register his or her motor vehicle or to obtain a driver's license in  
2 this State; ~~or~~

3 d. a ~~A~~ nonresident of this State who owns a motor vehicle  
4 registered or principally garaged in this State, ~~or the State; or~~

5 e. The State and its agencies and cities, counties, towns and  
6 municipal corporations in this State and their agencies, provided  
7 however, that agencies.

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

14 (4a) "Eligible risk," for the purpose of nonfleet private passenger motor  
15 vehicle insurance, means:

16 a. A resident of this State who owns a motor vehicle registered or  
17 principally garaged in this State;

18 b. A resident of this State and who has a valid driver's license  
19 issued by this State;

20 c. A person who is required to file proof of financial responsibility  
21 under Article 9A or 13 of Chapter 20 of the General Statutes in  
22 order to register his or her vehicle or to obtain a driver's license  
23 in this State;

24 d. A nonresident of this State who owns a motor vehicle registered  
25 and principally garaged in this State;

26 e. A nonresident of the State who is one of the following:

27 1. A member of the United States armed forces stationed in  
28 this State who intends to return to his or her home state;

29 2. The spouse of a nonresident member of the United States  
30 armed forces stationed in this State who intends to return  
31 to his or her home state;

32 3. An out-of-state student who intends to return to his or  
33 her home state upon completion of his or her time as a  
34 student enrolled in school in this State; or

35 f. The State and its agencies and cities, counties, towns, and  
36 municipal corporations in this State and their agencies.

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

43 (5) "Facility" means the North Carolina Motor Vehicle Reinsurance  
44 Facility established pursuant to the provisions of under this Article.

1 (6) "Motor vehicle" means every self-propelled vehicle that is designed  
 2 for use upon a highway, including trailers and semitrailers designed for  
 3 use with such vehicles (except traction engines, road rollers, farm  
 4 tractors, tractor cranes, power shovels, and well drillers). "Motor  
 5 vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.

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

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

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

26 (9) "Plan of operation" means the plan of operation approved pursuant to  
 27 the provisions of this Article.

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

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

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

34 **"§ 58-37-50. Termination of insurance.**

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

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

1 terminated the contract and such agent represented the company in  
2 taking the original application for insurance.

3 (4) When the insurance contract has been cancelled pursuant to a power of  
4 attorney given a company licensed pursuant to the provisions of  
5 G.S. 58-35-5.

6 (5) The named insured, at the time of renewal, fails to meet the  
7 requirements contained in the corporate charter, articles of  
8 incorporation, and/or bylaws of the insurer, when the insurer is a  
9 company organized for the sole purpose of providing members of an  
10 organization with insurance policies in North Carolina.

11 (6) The named insured is no longer an eligible risk under G.S. 58-37-1."

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

14 **"§ 58-2-164. Rate evasion fraud; prevention programs.**

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

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

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

20 (3) "Eligible applicant" means a person who is an eligible risk under  
21 G.S. 58-37-1(4a).

22 (4) "Insurer" means a member of the North Carolina Rate Bureau that is  
23 licensed to write and is writing auto insurance in this State.

24 (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).

25 (6) "Private passenger motor vehicle" means a motor vehicle as defined in  
26 G.S. 58-40-10(1).

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

29 (1) Present or cause to be presented a written or oral statement in support  
30 of an application for auto insurance or for vehicle registration pursuant  
31 to G.S. 20-52(a)(4) and (a)(5), knowing that the application contains  
32 false or misleading information that states the applicant is an eligible  
33 risk when the applicant is not an eligible risk.

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

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

1       (c) The insurer and its agent shall also take reasonable steps to verify that the  
2 information provided by an applicant regarding the applicant's address and the place the  
3 motor vehicle is garaged is correct. The insurer may take its own reasonable steps to  
4 verify residency or eligible risk status or may rely upon the agent verification of  
5 residency or eligible risk status to meet the insurer's verification obligations under this  
6 section. The agent shall retain copies of any items obtained under this section as  
7 required under the record retention rules adopted by the Commissioner and in  
8 accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section  
9 by obtaining reliable proof of North Carolina residency from the applicant or the  
10 applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes  
11 but is not limited to:

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

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

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

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

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

9           (1) Refuse to issue a policy.

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

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

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

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

26       "**§ 58-2-163. Report to Commissioner.**

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

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

1           **SECTION 6.** Effective January 1, 2008, G.S. 20-52(a) as rewritten by  
2 Section 2 of S.L. 2007-209 reads as rewritten:

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

8           (1) The owner's name.

9           (1a) If the owner is an individual, the following information:

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

11           b. One of the following:

12                   1. The owner's North Carolina drivers license number or  
13 North Carolina special identification card number.

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

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

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

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

33           (1b) If the owner is a firm, a partnership, a corporation, or another entity,  
34 the address of the entity.

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

36           a. The make, model, type of body, and vehicle identification  
37 number of the vehicle.

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

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

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

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

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

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

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