

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 795*

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

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
3 INSURANCE RATE EVASION FRAUD.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 58-36-120. Rate evasion fraud; obligations of insurers and agents; Rate Evasion**
8 **Prevention Programs.**

9 (a) As used in this section:

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

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

14 (3) "Eligible applicant" means 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 the resident's motor vehicle
21 or obtain a 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 No person is an "eligible applicant" if timely payment of premium is
27 not tendered or if there is a valid unsatisfied judgment of record
28 against that person for recovery of amounts due for motor vehicle
29 insurance premiums and that person has not been discharged from

1 paying the judgment or if that person does not furnish the information
2 necessary to effect insurance.

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

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

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

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

27 (2) The applicant is an eligible applicant.

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

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

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

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

43 (2) A utility bill showing the address of the applicant-payor.

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

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

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

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

29 **"§ 58-2-163. Report to Commissioner.**

30 Whenever any insurance company, or employee or representative of such company,
31 or any other person licensed or registered under Articles 1 through 67 of this Chapter
32 knows or has reasonable cause to believe that any other person has violated
33 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
34 any insurance company, or employee or representative of such company, or any other
35 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
36 reasonable cause to believe that any entity licensed by the Commissioner is financially
37 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
38 Commissioner and provide the Commissioner with a complete statement of all of the
39 relevant facts and circumstances. Such report is a privileged communication, and when
40 made without actual malice does not subject the person making the same to any liability
41 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
42 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.