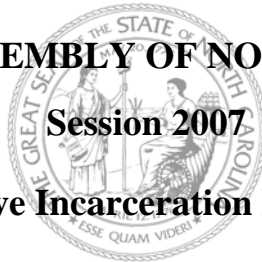


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 588 (Second Edition)

SHORT TITLE: Update the Unauthorized Insurers Laws.-AB

SPONSOR(S): Representative 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	No significant fiscal impact anticipated; exact amount cannot be determined. See Assumptions and Methodology.				
Judicial					
Insurance	Minimal fiscal impact. See Assumptions and Methodology.				
TOTAL EXPENDITURES:	Amount cannot be determined.				
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:	December 1, 2007.				
<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: H.B. 588 would enact the following revisions to Article 28 (Unauthorized Insurers) of Chapter 58 (Insurance) of the General Statutes:

Section 1. Current G.S. 58-28-45 prohibits a range of actions (acting as an agent, negotiating contracts, etc.) by a "...person, corporation, association or partnership..." regarding unauthorized insurers. Presently, violation of any provision in Article 28 of Chapter 58 is a Class 3 misdemeanor offense, punishable only by fine of between \$1,000 and \$5,000. H.B. 588 amends G.S. 58-28-45 ("Uniform Unauthorized Insurers Act") to increase the penalties for violations of certain subsections, from Class 3 misdemeanors to either Class H felonies or Class 1 misdemeanors. The penalty enhancements are as follows: (1) violation of subsection (a), (b), (c), or (k) are a Class H felonies, subject to fine between \$1,000 and \$5,000; and, (2) violation of subsections (e), (f), and (g) are Class 1 misdemeanors, punishable only by fine (between \$1,000 and \$5,000).

The bill adds new subsection (k) to prohibit anyone from acting as an officer, director, or controlling person for another who is engaged in violation of subsections (a), (b), or (c), thereby creating a new Class H felony offense (see aforementioned penalties). New subsection (l) also provides that a person violating the section is strictly liable for losses or unpaid claims if an unauthorized insurer fails to pay any claim or loss within the provision of the insurance contract issued in violation of the Article. Furthermore, new subsection (m) permits a civil action to be filed regardless of whether a criminal action is brought or a conviction is obtained for the act alleged in the criminal action.

Sections 2 and 3. Amends G.S. 58-28-20 to include violation of G.S. 58-33-45 as a violation for which the Commissioner of Insurance may issue a cease and desist order.

Section 4. Amends G.S. 58-33-95 (Agents personally liable; representing unlicensed company prohibited; penalty) to impose joint and several liability if more than one person violates the section.

Section 5. Provides for the severability of the Act.

Section 6. Effective for offenses committed on or after December 1, 2007.

The second edition makes technical corrections in sections 1 and 2, and amends G.S. 58-28-5 (a) (effective upon ratification) to exclude an activity in the state by or on behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies from the requirement that a company have a license to enter into a contract of insurance as an insurer or to transact insurance business in the state.

Source: Adapted from Bill Digest H.B. 588 (03/12/0200) and H0588e1-SMRD

ASSUMPTIONS AND METHODOLOGY:

General

Given the proposed penalty enhancements and new offense, any new charge and/or conviction for the affected offenses will generate some fiscal impact for the Courts and Corrections. Similarly, any additional civil action or judicial review resulting from this proposal will increase court-time demands and case disposal costs for the Courts.

However, the Administrative Office of the Courts does not currently maintain offense codes for offenses under G.S. 58-28-45, indicating that such offense is infrequently charged and/or infrequently results in conviction. Therefore, Fiscal Research does not anticipate a significant fiscal impact due to the proposed criminal penalty changes. However, there is no readily available data from which to project the potential incidence of civil action or judicial review due to this bill. Thus, depending on the number and complexity of such cases, the proposed civil action changes could potentially generate a significant impact for the court system. *Such impact is presently indeterminate.*

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.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Because the bill specifies that any Class 1 misdemeanor conviction for violation of either subsection (e), (f), or (g) is punishable only by fine between \$1,000 and \$5,000, active sentencing is not assumed for potential convictions. Therefore, there should be no impact on local jail populations. Any fines imposed would be credited to the Civil Penalty and Forfeiture Fund.

In contrast, new convictions for violation of subsections (a), (b), (c), and new (k), under the proposed Class H felony enhancement, could result in some additional active sentences (formerly only Class 3 misd., punishable by fine). If additional active sentences were to result, this enhancement would significantly increase time served for these offenses, and also necessitate imprisonment within a state facility.¹ Fines imposed for these offenses would be credited to the Civil Penalty and Forfeiture Fund.

At this time, it is not known how many convictions and resultant active sentences, non-active sentences, and/or fines would occur. In FY 2005-06, 34% of Class H felony convictions received active sentences, with an average estimated time served of 11 months. For illustration, *if three Class H felony convictions were to occur under this proposal per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first applicable year; two additional prison beds in the second year; and one new employee in the second year.* Assuming this threshold and inmate assignment to medium custody, the construction of two prison beds within a new, stand alone facility could cost the State \$136,080 in FY 2007-08; conversely, bed construction within an add-on facility could cost approximately \$84,240.² These costs are attributed to FY 2007-08 since the construction of additional prison beds, whether within

¹ Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

² 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).

an add-on or stand-alone facility, requires budgeting at least three years in advance. Potential operating costs could total \$28,250 in FY 2008-09, and \$58,195 in FY 2009-10.³

Department of Correction: Division of Community Corrections

In FY 2005-06, 80% of Class 1 misdemeanor and 66% of Class H felony convictions resulted in non-active, intermediate or community sentences; approximately 78% of Class 1 misdemeanor convictions resulted in community punishment, and approximately 48% of Class H felony convictions resulted in intermediate punishment. Thus, *assuming that future convictions for the affected offenses were to occur, the Division of Community Corrections (DCC) could assume some additional costs for offenders placed under its supervision.* It is not known exactly how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

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. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, 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

The Administrative Office of the Courts presently does not have any offense code for offenses under G.S. 58-28-45, and therefore no data from which to estimate the number of charges that would be subject to proposed penalty enhancements or new offense. However, it is expected that any enhancement in punishment will be accompanied by more vigorous defense and prosecution, resulting in increased court-time demands and the associated costs of case disposal. Any impact would be assumed as increased workload for district court judges, superior court judges, district attorneys, clerks, and court reporters. Increased expenditures for jury fees and indigent defense would also be expected. The estimated difference in cost per case is depicted below.⁴

Table 1. Administrative Office of the Courts Cost Estimates Per Trial and Plea: FY 2007-08				
<i>Offense Class</i>	<i>Trial</i>	<i>Plea</i>	<i>Change in Cost: Trial*</i>	<i>Change in Cost: Plea*</i>
Class 3 Misdemeanor	\$ 2,770	\$ 230	N/A	N/A
Class 1 Misdemeanor	\$ 3,702	\$ 243	\$ 932	\$ 13
Class H Felony	\$ 7,345	\$ 325	\$ 4,575	\$ 90

** Assumes prosecution for Class 3 misdemeanor offenses, as currently provided*

³ Impact on incarcerated population is assumed to begin in FY 2008-09, given the effective date of December 1, 2007 and typical lag time between charge and conviction (6 months).

⁴ Actual court-time costs may vary with time requirements and disposition (i.e. trial or plea). These cost estimates are based on projected court-time requirements for jurors, judges, assistant district attorneys, deputy clerks, court reporters, and indigent defense counsel, and therefore represent only partial costs for court proceedings. Costs account for indigent defense.

In addition, H.B. 588 imposes strict liability and joint and several liability for losses and unpaid claims arising from violations of this Act, providing that a civil action may be filed regardless of whether a criminal action has been brought or a criminal conviction has been obtained. Furthermore, it expands G.S. 58-28-20 to provide that the Commissioner of Insurance may issue cease and desist orders for persons believed to have violated, or who are violating G.S. 58-28-45. Per G.S. 58-2-75 any person who has been issued such order may seek judicial review of the order in superior court in Wake County.

There is no readily available data from which to estimate the number of civil actions that would be filed as a result of this provision, nor the incidence of judicial review. Depending on the number and complexity of such cases, the AOC anticipates a potentially significant impact for the court system. Any impact would be assumed as increased workload for superior court judges, clerks, and court reporters.

Department of Insurance

According to DOI, HB 588 should have little or no fiscal impact on the Department. While sections 2 and 3 expand the Commissioner's authority to issue cease and desist orders for additional violations, this is not anticipated to have measurable impact on DOI workload.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 11, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices