



August 29, 2007

CIRCULAR LETTER TO ALL MEMBER COMPANIES

**Re: House Bill 729
Changes to the Eligibility Statute**

Attached is a copy of House Bill 729, which became law in North Carolina on August 23, 2007. A portion of this legislation was effective on ratification; however, most of the bill's provisions become effective on January 1, 2008. We bring this legislation to your attention because it amends several statutes dealing with the eligibility of risks that can be ceded to the Facility. One of the major changes was in the eligibility for cession of nonfleet private passenger motor vehicles owned by nonresidents. Prior to this change, N.C.G.S. §58-37-1 provided that nonfleet private passenger motor vehicles owned by nonresidents were eligible risks if they were registered or principally garaged in North Carolina. As amended by House Bill 729, N.C.G.S. §58-37-1 now provides that such vehicles are eligible risks only if they are registered and principally garaged in North Carolina and provides a definition of "principally garaged." We also note that the legislation contains a new section (N.C.G.S. §58-2-164) to address rate evasion fraud and prevention programs that will require consideration by the companies.

We urge you review the entirety of this new legislation and to bring the legislation and this circular letter to the attention of personnel in your Company responsible for the cession of policies to the Facility to ensure compliance with the new statutory requirements. This circular letter is provided for your information only; any questions regarding the interpretation of these changes should be addressed to your legal counsel.

Sincerely,

Edith T. Davis,

Director, Reinsurance Facility

ETD:lam
RF-07-8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-443
HOUSE BILL 729

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- (2) Repealed by Session Laws 1991, c. 720, s. 6.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 register his or her motor vehicle or to obtain a driver's license in this State; ~~or~~
 - d. ~~a~~-A nonresident of this State who owns a motor vehicle registered or principally garaged in this State, ~~or the State; or~~
 - e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided however, that agencies.

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

- (4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance, means:
 - a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
 - b. A resident of this State and who has a valid driver's license issued by this State;

- c. A person 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 his or her vehicle or to obtain a driver's license in this State;
- d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
- e. A nonresident of the State who is one of the following:
 - 1. A member of the United States armed forces stationed in this State who intends to return to his or her home state;
 - 2. The spouse of a nonresident member of the United States armed forces stationed in this State who intends to return to his or her home state;
 - 3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or
- f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

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

- (5) "Facility" means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of ~~under~~ this Article.
- (6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers). "Motor vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.
- (7) "Motor vehicle insurance" means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorist coverages.

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

- (8) "Person" means every natural person, firm, partnership, association, trust, limited liability company, firm, corporation, government, or governmental agency.
- (9) "Plan of operation" means the plan of operation approved pursuant to the provisions of this Article.
- (10) Repealed by Session Laws 1977, c. 828, s. 10.
- (11) "Principally garaged" means the vehicle is garaged for six or more months of the current or preceding year on property in this State which

is owned, leased, or otherwise lawfully occupied by the owner of the vehicle."

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

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

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

- (1) Nonpayment of premium when due to the insurer or producing agent.
- (2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
- (3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.
- (4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.
- (5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.
- (6) The named insured is no longer an eligible risk under G.S. 58-37-1."

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

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

(a) The following definitions apply in this section:

- (1) "Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy.
- (2) "Auto insurance" means nonfleet private passenger motor vehicle insurance.
- (3) "Eligible applicant" means a person who is an eligible risk under G.S. 58-37-1(4a).
- (4) "Insurer" means a member of the North Carolina Rate Bureau that is licensed to write and is writing auto insurance in this State.
- (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).
- (6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).

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

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

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

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

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

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

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

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

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

- (1) Refuse to issue a policy.

- (2) Cancel or refuse to renew a policy that has been issued.
- (3) Deny coverage for any claim arising out of bodily injury or property damage suffered by the applicant. This subdivision does not apply to innocent third parties.

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

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

"§ 58-2-163. Report to Commissioner.

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

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

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

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

- (1) The owner's name.
- (1a) If the owner is an individual, the following information:
 - a. The owner's mailing address and residence address.
 - b. One of the following:
 - 1. The owner's North Carolina drivers license number or North Carolina special identification card number.
 - 2. The owner's home state drivers license number or home state special identification card number and valid active duty military identification card if the owner is a person on active military duty and is stationed in this State.
 - 3. The owner's home state drivers license number or home state special identification card number and proof of enrollment in a school in this State if the owner is a

- permanent resident of another state but is currently enrolled in a school in this State.
4. The owner's home state drivers license number or home state special identification card number if the owner or co-owner intends to principally garage the vehicle in this State. "Principally garage" means the vehicle is garaged for six or more months of the year on property in this State which is owned, leased, or otherwise lawfully occupied by the owner of the vehicle.
 - c. For vehicles that have more than one owner, only one co-owner is required to provide the information requested under sub-subdivision b. of this subdivision.
- (1b) If the owner is a firm, a partnership, a corporation, or another entity, the address of the entity.
 - (2) A description of the vehicle, including the following:
 - a. The make, model, type of body, and vehicle identification number of the vehicle.
 - b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.
 - (3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.
 - (4) A statement that the owner is an eligible risk for insurance coverage as defined in G.S. 58-37-1.
 - (5) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that providing incorrect or false and misleading information as to the owner's status as an eligible risk can result in criminal prosecution and the denial of insurance coverage for any loss of the owner under any insurance policies for which application is made if the owner provides false and misleading information as to eligible risk status.
 - (6) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that the owner will inform the insurer before the next policy renewal if the owner ceases to be an eligible risk.

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

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

In the General Assembly read three times and ratified this the 26th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:22 a.m. this 23rd day of August, 2007