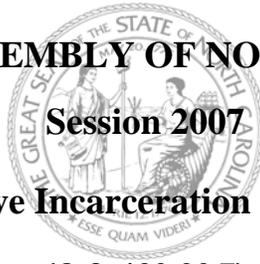


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 729 (Fourth Edition)

SHORT TITLE: Penalties for Insurance Rate Evasion Fraud.-AB

SPONSOR(S): Representatives Goforth and Holliman

	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 impact anticipated; however, the exact amount cannot be determined.				
Judicial					
Insurance			No impact anticipated.		
TOTAL EXPENDITURES:					
ADDITIONAL PRISON BEDS: (cumulative)*			None anticipated.		
POSITIONS: (cumulative)			Amount cannot be determined.		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Correction; Judicial Branch; Department of Insurance.				
EFFECTIVE DATE:	Sections 1, 3, 4, 6, and 7 become effective January 1, 2008; remainder is effective when the bill becomes law.				
<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: The third edition of H.B. 729 makes numerous changes from the second. Each provision is briefly summarized below.

Section 1: Amends G.S. 58-37-1 to define an "eligible risk," for both nonfleet passenger motor vehicle insurance and other motor vehicle insurance purposes; also defines "principally garaged" for the purposes of the Article.

Section 2: Amends G.S. 58-37-50 to authorize the termination of insurance for an individual who no longer qualifies as an eligible risk.

Section 3: Creates new G.S. 58-2-164 (Rate evasion fraud; prevention programs), which delineates applicable definitions (subsection (a), and makes it a Class 3 misdemeanor offense to do any of the following, *with the intent to deceive an insurer*:

1. Present, or cause to be presented, a written or oral statement in support of an application for auto insurance or for vehicle registration (G.S. 20-52(a)(4) and (a)(5)) that is known to falsely state the applicant is 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, and that falsely states the applicant is an eligible risk.

A violation may also be punishable by fine, not to exceed \$1,000 (subsection (b)). Subsection (c) requires insurers and their agents to verify certain information provided by the applicant, and to retain copies of items obtained under the section; (d) and (e) provide for immunity from civil liability; (f) requires every insurer to maintain safeguards against applicant misrepresentations; (g) authorizes insurers to refuse to issue a policy, cancel or refuse to renew a policy, or deny coverage if an applicant provides false/misleading information; and subsection (h) provides for liability based on prior conviction, and the award of compensatory or treble damages under certain conditions.

Section 4: Requires insurance companies, employees or representatives of such companies, and any other person licensed or registered under Articles 1 through 67 of Chapter 58 to report a believed violation of new G.S. 58-2-164.

Section 5: Authorizes the Joint Legislative Transportation Oversight Committee to study the issues related to automobile insurance rate evasion, and to report findings and any recommended legislation to the General Assembly in the 2008 Session.

Section 6: Amends G.S. 20-52(a) to require, on a Division of Motor Vehicles application form for registration and certificate of title: 1) a statement that the owner is an eligible risk; 2) for a nonfleet private passenger motor vehicle, a statement indicating criminal liability for providing incorrect, false, or misleading information as to the owner's status as an eligible risk; and 3) for a nonfleet private passenger motor vehicle, a statement that the owner will inform the insurer if he ceases to be an eligible risk (prior to the subsequent policy renewal).

Section 7: Provides for the repeal of Section 6, should S.B. 1350 ("Clarify MV Registration Requirements") become law; and effective January 1, 2008, rewrites G.S. 20-52(a), as amended by Section 2 of S.B. 1350, to include the provisions in Section 6 (see above).

Section 8: Provides that Sections 1, 3, 4, 6, and 7 become effective January 1, 2008; Section 2 is effective upon ratification, and applies to motor vehicle policies issued or renewed on or after that date; and, the remainder of the act is effective upon ratification.

The fourth edition (Senate amendment) makes technical changes only, by updating the proposed amendments to G.S. 20-52(a) to reflect its amendment by S.L. 2007-209, and conforming the effective date section.

ASSUMPTIONS AND METHODOLOGY:

General

The Department of Insurance does not have an estimate of the number of potential violators of proposed G.S. 58-2-164. Accordingly, given the present lack of data, Fiscal Research cannot provide a reliable projection of future criminal charges and/or convictions, proceeds from criminal fines, or resultant as civil actions. Thus, while additional criminal or civil caseload will generate some additional costs for the Courts and Corrections, the proposed penalty level (Class 3 misdemeanor) does not suggest a significant fiscal impact.

Judicial Branch

Though the numbers of resultant Class 3 misdemeanor charges and civil actions are indeterminate, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal. Presently the estimated costs per Class 3 misdemeanor trial and plea are \$2,770 and \$226, respectively.¹ Based on the proposed penalty level, *it is assumed that the majority of new Class 3 misdemeanor charges, which are not dismissed, will be settled via guilty plea.*

Department of Correction

It is not known how many additional Class 3 misdemeanor convictions might result. However, since *Class 3 misdemeanants serve their designated terms of incarceration within local jails, there is no anticipated impact on the state prison population.*² *The potential impact on the local jail population is unknown.*

In FY 2005-06, 23% of Class 3 misdemeanor convictions resulted in active sentences, with an average estimated time served of 8.5 days. Per Structured Sentencing, Class 3 active sentences may range from one to twenty days in length. Consequently, the Department of Correction would not incur any additional costs for county reimbursement.

The remaining 77% of Class 3 misdemeanants in FY 2005-06 received non-active, intermediate or community punishments. Thus, if new convictions were to occur, the Division of Community Corrections (DCC) could incur some additional costs for offenders placed under its supervision. Included below is a brief overview of DCC sanction costs, per offender:

- 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.
- 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.

¹ Cost estimates account for indigent defense; however, actual costs may vary with time requirements and disposition.

² 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.

Department of Insurance

The Department of Insurance does not anticipate any additional fiscal impact due to the proposed legislation.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and 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

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