

§ 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 on which the person or persons will be a named insured.
- (2) "Auto insurance" means both nonfleet and other than nonfleet private passenger motor vehicle insurance.
- (3) "Eligible risk" means a person who is an eligible risk as defined in either G.S. 58-37-1(4) or G.S. 58-37-1(4a).
- (4) "Insurer" means an insurance company 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).
- (5a) "Principal place of business" means the single physical location from which the majority of the essential operations of the applicant's business are directed and controlled. The location of a consultant, service agent, or attorney of the applicant shall not be sufficient to establish an applicant's principal place of business.
- (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) Presents or causes to be presented a written or oral statement in support of an application for issuance of or amendment to a policy of auto insurance, 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) Assists, abets, solicits, or conspires 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 issuance of or amendment to a policy of auto insurance, 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.

(b1) It shall be a Class H felony for any applicant who, with the intent to deceive an insurer, knowingly violates G.S. 58-2-164(b) for the purpose of obtaining auto insurance covering one or more vehicles, the operation of which requires a Commercial Drivers License pursuant to G.S. 20-4.01(3c).

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than ten thousand dollars (\$10,000) 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 insurer and its agent may satisfy the requirements of this section by, within 25 days

of binding, obtaining from the applicant reliable proof of North Carolina residency and the applicant's status as an eligible risk.

(cl) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes one or more of the following:

- (1) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (2) A utility bill in the name of the applicant showing the applicant's current North Carolina address, including, but not limited to, a utility bill accessed electronically by the applicant.
- (3) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (4) A receipt for personal property taxes paid by the applicant within the preceding 12-month period and showing the applicant's current North Carolina address, including, but not limited to, a utility bill accessed electronically by the applicant.
- (5) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address, including, but not limited to, a utility bill accessed electronically by the applicant.
- (6) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (7) A valid unexpired North Carolina driver's license issued to the applicant and showing the applicant's current North Carolina address.
- (8), (9) Repealed by Session Laws 2015-294, s. 13, effective January 1, 2016, and applicable to insurance policies entered into on or after that date.
- (10) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.
- (11) A valid military ID.
- (12) A valid student ID of the applicant for a North Carolina school or university.
- (13) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.
- (14) A homeowner's or renter's declarations page showing the applicant's current North Carolina address.

(c2) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes two or more of the following:

- (1) A utility bill in the name of the applicant showing a North Carolina address for the principal place of business of the applicant, including, but not limited to, a utility bill accessed electronically by the applicant.
- (2) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (3) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.

- (4) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.
- (5) The valid North Carolina driver's license of an owner of an applicant that is a corporation or an LLC, provided that the person holds at least twenty (20%) percent ownership interest in the applicant corporation or LLC.
- (6) If the principal place of business of a corporation or LLC is the primary residence of the sole owner, any of the documents identified in subdivisions (1) through (5) of this subsection, whether in the name of the corporation or LLC or in the name of the sole owner. For purposes of this subsection, "sole owner" shall mean an individual or a husband and wife.

For purposes of subdivisions (5) and (6) of this subsection, on policies to be ceded to the North Carolina Reinsurance Facility, proof of ownership is established through the execution by the owner of the corporation or LLC, of a form promulgated by the North Carolina Reinsurance Facility. The execution of this form shall constitute a written statement in support of an application for insurance or amendment to a policy of auto insurance under subsections (b) and (b1) of this section.

(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, their principal places of business, 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 or misleading information material to the applicant's or any named insured's status as an eligible risk and that fraudulent information makes the applicant or any named insured appear to be an eligible risk when that person is in fact not an eligible risk, the insurer may do any or all of the following:

- (1) Refuse to issue, amend, or endorse a policy.
- (2) Cancel or refuse to renew a policy that has been issued.
- (3) Deny coverage for any claim by the applicant for auto liability, comprehensive, or collision coverage. This subdivision does not apply to bodily injury or property damage claims of innocent third parties to the extent of any minimum financial responsibility requirement of State or federal law.

(g1) Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment made under a policy of insurance if the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured's status as an eligible risk. For purposes of this subsection, a payment made shall include any sums paid for satisfaction, in whole or in part, of any judgment against the insured or for a reasonable settlement of a claim against the insured for bodily injury or property damage. A payment made shall further include any costs or attorneys' fees incurred by the insurer in the adjustment, investigation, or defense of a claim.

(h) In a civil cause of action for recovery under subsection (g1) of this section, a conviction of the defendant for a violation of G.S. 58-2-164(b) or (bl) may be entered into evidence against the defendant and shall establish the liability of the defendant as a matter of law for damages, fees, or costs as may be proven. 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. (2007-443, s. 3; 2015-294, s. 13; 2016-78, s. 3.2(a); 2017-69, s. 2(c); 2018-120, s. 4.10.)