

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
REVISED**

BILL NUMBER: House Bill 1107 (Third Edition)

SHORT TITLE: Fortify Against Unauthorized Insurance

SPONSOR(S): Representative C. Wilson

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>
REVENUES:					
EXPENDITURES:					
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance.					
EFFECTIVE DATE: December 1, 2004					

BILL SUMMARY:

Section 1. (Amending G.S. 58-33-95): Clarifies that an agent is strictly liable for any losses or claims unpaid if the agent sells or offers to sell insurance for an unauthorized insurer and the insurer fails to pay, in full or in part, any valid claim or loss.

- Specifically provides that selling or offering to sell insurance for an unauthorized insurer is grounds for revocation of the agent’s license.
- Increases to a Class H felony the criminal penalty for an agent who *knowingly* sells insurance for an unauthorized insurer. Under existing law, it is a Class 1 misdemeanor to sell insurance for an unauthorized insurer, regardless of the agent’s knowledge.

Section 2. Makes conforming changes to G.S. 58-28-45(h).

Section 3. (Amending G.S. 58-28-5) More strictly limits which entities may directly sell insurance to a person in this State. In general, an insurance company cannot sell insurance in this State without a license. However, an unlicensed insurer may sell insurance in this State as a surplus lines insurer if it meets certain eligibility requirements. Even then, such insurers may only sell coverage for a risk if the applicant is unable to procure coverage from a licensed insurer. One exception to these laws involves the sale of insurance without the use of an agent or broker (“direct procurement”). Currently, a person can directly procure from any “unauthorized insurer”. Under

this exception, a person can directly buy “insurance” from an entity that does not even have to meet any statutory requirements. The opportunity for rogue entities to enter this arena is substantial. The proposed change would shut down this avenue for possible fraud by limiting direct procurement only to eligible surplus lines insurers, which must, at least, meet financial and other standards in Article 21 of Chapter 58.

July 2, 2004

House Commerce committee substitute changes the nature of the felony offense. It had read that it would be a Class F if the agent "knows" the company is unauthorized. The committee changed that to "knew or should have known"

ASSUMPTIONS AND METHODOLOGY: This bill requires a fiscal note because it includes criminal penalties. Any bill with a potential impact on the state’s prison population must have a fiscal note. For this memorandum, the bill’s impact on judicial and prison resources will be the focus; the Department of Insurance feels that this bill’s requirements are within their current resources.

Judicial Department

The Administrative Office of the Courts currently does not have an offense code for GS 58-33-95, an indicator that relatively few charges occur. We have no data from which to estimate the number of additional charges that would arise from this amendment. We expect the enhancement in punishment to be accompanied in some cases by a more vigorous defense and prosecution, resulting in more court time and costs to dispose of these cases. The attached costs sheets indicate a \$3,000 difference in cost between a Class H felony trial and a Class 1 misdemeanor trial, and a \$76 difference in cost between a Class H felony plea and a Class 1 misdemeanor plea. AOC has no data from which to estimate the number of new civil actions or license revocation proceedings that would arise from this provision. Depending on the number and complexity of these cases, the impact on the court system could be substantial.

These amendments can be expected to increase the workload of district and superior court judges, district attorneys, clerks, and court reporters. There would also be an increase in expenses for jury fees and indigent defense.

This bill expands current GS 58-33-46(a) by adding to this list of violations the act of soliciting, negotiating, or selling insurance for an unauthorized insurer, regardless of whether the licensee knew that the insurer was unauthorized.

This provision can be expected to result in increased enforcement and court actions appealing enforcement actions. AOC has no data from which to estimate the number of such matters or the impact on the courts. Depending on the number and complexity of such proceedings, the court impact could be significant.

Department of Correction

Since this bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders

might be convicted and sentenced for the proposed offense. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

This bill retains the current Class 1 misdemeanor under G.S. 58-33-95 but limits it to if the person does not know the insurer is not authorized to do business in North Carolina. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 58-33-95. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

SOURCES OF DATA: Administrative Office of the Courts; NC Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS:

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DATE: July 7, 2004



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