

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1107
Committee Substitute Favorable 5/1/03
Senate Commerce Committee Substitute Adopted 7/1/04

Short Title: Fortify Against Unauthorized Insurance.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THE CIVIL LIABILITY AND INCREASE THE CRIMINAL
3 PENALTY FOR PERSONS WHO REPRESENT UNAUTHORIZED INSURERS
4 AND TO PROVIDE THAT SUCH ACTIVITY IS GROUNDS FOR
5 REVOCATION OF THE LICENSE OF THE INSURANCE AGENT OR
6 BROKER; AND TO LIMIT DIRECT PROCUREMENT OF INSURANCE ONLY
7 THROUGH ELIGIBLE SURPLUS LINES INSURERS.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 58-33-95 reads as rewritten:

10 "**§ 58-33-95. Agents personally liable; representing unlicensed company**
11 **prohibited; penalty.**

12 (a) Any person representing an insurer is personally liable on all contracts of
13 insurance unlawfully made by or through him, directly or indirectly, for any company
14 not authorized to do business in the State. A person or citizen of the State who fills up
15 or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed
16 company, agent, broker or limited representative, the effect of which is to bind any
17 insurance in an unlicensed company on property in this State, is the representative of
18 such company, and personally liable for all licenses and taxes due on account of such
19 transaction. If any person shall unlawfully solicit, negotiate for, collect or transmit a
20 premium for a contract of insurance or act in any way in the negotiation or transaction
21 of any unlawful insurance with an insurance company not licensed to do an insurance
22 business in North Carolina, he shall be guilty of a Class 1 misdemeanor. or entity who
23 solicits, negotiates, or sells insurance in this State for an unauthorized insurer:

24 (1) Is the representative of that insurer and shall be strictly liable for any
25 losses or unpaid claims if an unauthorized insurer fails to pay in full or
26 in part any claim or loss within the provisions of any insurance
27 contract sold, directly or indirectly, by or through that person or entity
28 on behalf of the unauthorized insurer.

1 (2) Shall be guilty of a Class 1 misdemeanor if the person or entity does
2 not know that the insurer is an unauthorized insurer. Each solicitation,
3 negotiation, or sale shall constitute a separate offense.

4 (3) Shall be guilty of a Class H felony if the person or entity knew or
5 should have known that the insurer is an unauthorized insurer. Each
6 solicitation, negotiation, or sale shall constitute a separate offense.

7 (b) A civil action may be filed or a license revocation proceeding may be
8 initiated under this section regardless of whether a criminal action is brought or a
9 criminal conviction is obtained for the act alleged in the civil action or revocation
10 proceeding.

11 (c) As used in this section, the terms "negotiate", "sell", and "solicit" shall have
12 the meanings set forth in G.S. 58-33-10. As used in this section, the status of an entity
13 or person as an "unauthorized insurer" shall be determined in accordance with Article
14 28 of this Chapter and, if applicable, Article 49 of this Chapter."

15 **SECTION 2.** G.S. 58-33-46(a) is amended by adding a new subdivision to
16 read:

17 "(12a) Soliciting, negotiating, or selling insurance in this State for an
18 unauthorized insurer, regardless of whether the licensee or applicant
19 knew that the insurer was unauthorized. As used in this section, the
20 terms "soliciting", "negotiating", and "selling" shall have the meaning
21 of "solicit", "negotiate", and "sell", respectively, set forth in
22 G.S. 58-33-10."

23 **SECTION 3.** G.S. 58-28-45(h) reads as rewritten:

24 "(h) Any—Except as provided in G.S. 58-33-95, any person, corporation,
25 association or partnership violating any of the provisions of this section shall be guilty
26 of a Class 3 misdemeanor and shall only be fined not less than one thousand dollars
27 (\$1,000) nor more than five thousand dollars (\$5,000)."

28 **SECTION 4.** G.S. 58-28-5(b) reads as rewritten:

29 (b) Any person in this State may directly procure or directly renew insurance
30 with an ~~unlicensed insurer~~ eligible surplus lines insurer, as defined in G.S. 58-21-10(3),
31 without the involvement of an agent, broker, or surplus lines licensee, on a risk located
32 or to be performed, in whole or in part, in this State. The person shall, within 30 days
33 after the date the insurance is procured or renewed, file a written report with the
34 Commissioner on forms prescribed by the Commissioner. The report must contain the
35 name and address of the insured; name and address of the insurer; the subject of
36 insurance; a general description of the coverage; the amount of premium currently
37 charged; and any additional information requested by the Commissioner. The report
38 must also contain an affidavit of the insured that states that the full amount or kind of
39 insurance cannot be obtained from insurers that are ~~admitted-licensed~~ admitted-licensed
40 to do business in this State; and that the insured has made a diligent search among the insurers that are
41 ~~admitted-licensed~~ admitted-licensed to transact and are actually writing the particular kind and class of
42 insurance in this State. Gross premiums charged for the insurance, less any return
43 premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the
44 report required by this subsection, the insured shall pay the tax to the Commissioner.

1 The Commissioner has the powers specified in G.S. 58-21-90 with respect to the tax
2 levied by this subsection."

3 **SECTION 5.** This act becomes effective December 1, 2004, and applies to
4 acts committed on or after that date.