



DEPARTMENT OF INSURANCE

State of North Carolina

1201 MAIL SERVICE CENTER

RALEIGH, NC 27699-1201

JIM LONG

COMMISSIONER OF INSURANCE

(919) 733-3058

TO: Credit Property Insurance Companies

FROM: Jim Long, Commissioner of Insurance

A handwritten signature in orange ink that reads "Jim Long".

DATE: October 9, 2008

RE: NONFILING INSURANCE

Pursuant to North Carolina General Statute § 53-177 (North Carolina Consumer Finance Act), the Commissioner of Insurance is authorized to fix the premium rate for nonfiling or nonrecording insurance coverage. The statute further states, "Such premium shall be at least one dollar less than the cost of recording or filing a security interest." Session Law 2003-284 amended North Carolina General Statute § 25-9-525 by increasing the \$30.00 recording fee to \$38.00, effective July 15, 2003. I have provided a copy of the current, applicable statutes along with this memorandum for your convenience.

As authorized by the Consumer Finance Act, I therefore direct the following:

1. Effective as of the date of this memorandum, the rate for nonfiling insurance under the Consumer Finance Act shall be no more than \$30.00 (non-automobile) and \$7.00 (automobile). Note: The automobile rate remains unchanged.
2. Each year all insurance companies writing this line of coverage shall file a statement reflecting written premiums, earned premiums, and losses and expenses incurred in this line of coverage. The statement shall be filed no later than April 1 with the Department's Actuarial Services Division. This requirement is in addition to any similar information required with the filing of an Annual Statement or any experience reporting required by the Consumer Finance Act and the Retail Installment Sales Act. Please address these filings to Mr. Arthur Schwartz in the Actuarial Services Division. If you have questions about this requirement, please contact Mr. Schwartz at 919-733-3284, ext. 259.
3. Pursuant to North Carolina General Statute § 58-41-50, all insurance companies writing this line of coverage shall file their premium rates with the Department before using the rates. Please address these filings to Mrs. Cara Shackelford in the Life and



Health Division. If you have questions about this requirement, please contact Mrs. Shackelford at 919-733-5060, ext. 352.

An insurer's failure to file rates before use or failure to submit experience rate data as outlined above may subject an insurer to licensing or civil penalty sanctions. If you have any additional questions, please contact Mrs. Cara Shackelford, Senior Policy and Rate Analyst, at 919-733-5060, ext. 352.

JEL:TAH/css

C: W. Reitzel Deaton
Consumer Finance Administration
North Carolina Banking Commission

Attachments: North Carolina General Statute §§ 53-177, 25-9-525, and 20-58

§ 53-177. Recording fees.

The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose. (1961, c. 1053, s. 1; 1989, c. 17, s. 7; 2000-169, s. 36.)

Session Law 2003-284 changes (effective July 15, 2003) are in bold print

§ 25-9-525. Fees.

(a) Initial financing statement or other record: general rule. – Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this Part is:

- (1) **Thirty-eight dollars (\$38.00)** if the record is communicated in writing and consists of one or two pages;
- (2) Forty-five dollars (\$45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars (\$2.00) for each page over 10 pages; and
- (3) Thirty dollars (\$30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Reserved.

(c) Number of names. – The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. – The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

- (1) **Thirty-eight dollars (\$38.00)** if the request is communicated in writing; and
- (2) **Thirty dollars (\$30.00)** if the request is communicated by another medium authorized by filing-office rule.

Upon request the filing office shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars (\$2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) **Record of mortgage.** – This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply. (1866-7, c. 1, s. 1; 1872-3, c. 133, s. 1; Code, s. 1799; 1893, c. 9; Rev., s. 2052; C.S., s. 2480; 1925, c. 302, s. 1; 1927, c. 22; 1935, c. 205; 1945, c. 182, ss. 2, 4; c. 196, s. 2; 1955, c. 386, ss. 1, 2; c. 816; 1957, cc. 564, 999; 1961, c. 574; 1965, c. 700, s. 1; 1967, c. 562, s. 1; 1969, c. 1115, s. 1; 1971, c. 1170; 1973, c. 1316, s. 1; 1975, c. 862, s. 7; 1977, cc. 156, 295; 1983, c. 713, s. 23; 1987, c. 792, s. 6; 1989, c. 523, s. 4; 1991, c. 164, s. 1; 1997-456, s. 55.3; 1997-475, s. 5.4; 2000-169, s. 1; **2003-284, ss. 35B.1(a), 35B.1(b).**)

§ 20-58. Perfection by indication of security interest on certificate of title.

(a) Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

- (1) If the vehicle is not registered in this State, the application for notation of a security interest shall be the application for certificate of title provided for in G.S. 20-52.
- (2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and contain the date of application of each security interest, and name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition contain the name and address of such prior secured party. An application for notation of a security

interest may be signed by the secured party instead of the debtor when the application is accompanied by documentary evidence of the applicant's security interest in that motor vehicle signed by the debtor and by affidavit of the applicant stating the reason the debtor did not sign the application. In the event the certificate cannot be obtained for recordation of the security interest, when title remains in the name of the debtor, the Division shall cancel the certificate and issue a new certificate of title listing all the respective security interests.

- (3) If the application for notation of security interest is made in order to continue the perfection of a security interest perfected in another jurisdiction, it may be signed by the secured party instead of the debtor. Such application shall be accompanied by documentary evidence of a perfected security interest. No such application shall be valid unless an application for a certificate of title has been made in North Carolina. The security interest perfected herein shall be subject to the provisions set forth in G.S. 20-58.5.

(b) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder who holds a valid license as a motor vehicle dealer issued by the Commissioner under Article 12 of this Chapter or his designee may file a notarized copy of an instrument creating and evidencing a security interest in the motor vehicle with the Division of Motor Vehicles. A filing pursuant to this subsection shall constitute constructive notice to all persons of the security interest in the motor vehicle described in the filing. The constructive notice shall be effective from the date of the filing if the filing is made within 20 days after the date of the security agreement. The constructive notice shall date from the date of the filing with the Division if it is made more than 20 days after the date of the security agreement. The notation of a security interest created under this subsection shall automatically expire 60 days after the date of the creation of the security interest, or upon perfection of the security interest as provided in subsection (a) of this section, whichever occurs first. A security interest notation made under this subsection and then later perfected under subsection (a) of this section shall be presumed to have been perfected on the date of the earlier filing. The Division may charge a fee not to exceed ten dollars (\$10.00) for each notation of security interest filed pursuant to this subsection. The fee shall be credited to the Highway Fund. A false filing with the Division pursuant to this subsection shall constitute a Class H felony. (1937, c. 407, s. 22; 1955, c. 554, s. 2; 1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5; 1979, c. 145, ss. 1, 2; c. 199; 2000-182, s. 2.)