

INSURANCE FRAUD: INSURANCE FROM ANOTHER STATE
N.J.S.A. 2C:21-4.6b

The defendant is charged in count _____ of the indictment with insurance fraud.

[READ COUNT OF INDICTMENT]

Our statutes provide that:

A person who operates a motor vehicle on the public highways of this State, which motor vehicle is insured by a policy issued under the laws of another state, is guilty of the crime of insurance fraud if that person maintains a principal residence in this State or has his motor vehicle principally garaged in this State and he has knowingly prepared or made any written, electronic or oral statement, presented to any insurance company or producer licensed to transact the business of insurance under the laws of that other state, and which resulted in obtaining a motor vehicle insurance policy for his motor vehicle in that other state, that the person to be insured: (1) maintains a principal residence in the other state when, in fact, that person's principal residence is in this State; or (2) has his motor vehicle principally garaged in this other state, when, in fact, that person has his motor vehicle principally garaged in this State.

In order to convict defendant, the State must prove beyond a reasonable doubt the following five elements:

- (1) Defendant operated a motor vehicle on the public highways of this State;
- (2) The motor vehicle is insured by a policy under the laws of another state;

(CHOOSE APPLICABLE)

- (3) Defendant maintains a principal residence in this State;

OR

- (3) Defendant has his motor vehicle principally garaged in this State;
- (4) Defendant knowingly prepared or made any written, electronic or oral statement, presented to any insurance company or producer licensed to transact the business of insurance under the laws of that other state; and

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(5) Defendant obtained a motor vehicle insurance policy for his motor vehicle in that other state, claiming that he:

(CHOOSE APPLICABLE)

[1] maintains a principal residence in the other state when, in fact, that person's principal residence is in this State.

OR

[2] has his motor vehicle principally garaged in the other state, when, in fact, that person has his motor vehicle principally garaged in this State.

The first element that the State must prove beyond a reasonable doubt is that the defendant operated a motor vehicle on the public highways of this State.

An operator is defined as a person who is in actual, physical control of a vehicle or street car.¹

A motor vehicle is defined as any vehicle propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.²

Public highways means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.³

The second element that the State must prove beyond a reasonable doubt is that the defendant's motor vehicle is insured by a policy under the laws of another state.

"Insurance policy" means the instrument, in writing, electronically or in any other form, in which are set forth the terms of any certificate of insurance, binder of coverage, contract of insurance or contract of re-insurance, issued by an insurance company, including, but not limited to, a state-assigned risk plan, plan of indemnity protection provided by or on behalf of a joint insurance fund or benefit plan, motor club service plan, or guaranty bond, surety bond, cash bond or any other alternative to insurance authorized or permitted by the State of New Jersey.⁴

¹ N.J.S.A. 39:1-1.

² Id.

³ Id.

⁴ N.J.S.A. 2C:21-4.5.

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(CHOOSE APPLICABLE)

The third element that the State must prove beyond a reasonable doubt is that the defendant maintains a principal residence in this State.

A person's principal residence is the place that they inhabit, and spend a majority of their time.⁵

OR

The third element that the State must prove beyond a reasonable doubt is that the defendant has his motor vehicle principally garaged in this State.

A vehicle is principally garaged at the physical location where an automobile is primarily or chiefly kept or where it is kept most of the time.⁶

The fourth element that the State must prove beyond a reasonable doubt is that the defendant knowingly prepared or made any written, electronic or oral statement, presented to any insurance company or producer licensed to transact the business of insurance under the laws of that other state.

To be done knowingly means a person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result.⁷

“Knowing,” “with knowledge,” or the equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen and can only be determined by inference from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but most ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce a witness to testify that an accused said that he had a certain state of mind when he did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his acts and conduct and from all he said and did at the particular time and place and from all surrounding circumstances

⁵ Principal residence can be defined as a homestead actually and continually occupied ... as his or her permanent residence. Howard v. Director, Div. of Taxation, 26 N.J. Tax 308, 318-19 (Tax 2012).

⁶ Chalef v. Ryerson, 277 N.J. Super. 22, 27 (App. Div. 1994). Intent is not as important as the physical location to where the automobile is kept. Id. at 28.

⁷ N.J.S.A. 2C:2-2b(2).

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established by the evidence.

The fifth element that the State must prove beyond a reasonable doubt is (**CHOOSE APPLICABLE**) that the defendant obtained a motor vehicle insurance policy for his motor vehicle in that other state by claiming that the person to be insured maintains a principal residence in the other state when, in fact, that person's principal residence is in this State.

OR

that the defendant obtained a motor vehicle insurance policy for his motor vehicle in that other state by claiming that the person to be insured has his motor vehicle principally garaged in the other state, when, in fact, that person has his motor vehicle principally garaged in this State.

(IF NO AFFIRMATIVE DEFENSE IS ALLEGED)

If you find that the State has proven each element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

(IF AFFIRMATIVE DEFENSE IS ALLEGED)

The defendant, as part of his/her denial of guilt, asserts an affirmative defense that during the time of the alleged commission of the offense of insurance fraud, he insured a vehicle in another state, as permitted by and in accordance with the laws of that state, based upon either a second residence or attendance at an educational institution in that other state, and in obtaining the policy the defendant truthfully disclosed to the insurance company or producer the state of his/her principal residence and the state where the vehicle is principally garaged. It is the State's burden to prove beyond a reasonable doubt that the defendant was not permitted to insure his car in another state or that he did not truthfully disclose.

If you conclude that the State has proven all of the elements of insurance fraud beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved defendant's claim that he/she did have an affirmative defense, then you must find defendant not guilty. However, if you find that the State has proven all of the elements of insurance fraud and has also proven beyond a reasonable doubt that defendant did not have an affirmative defense, then you must find defendant guilty of insurance fraud.