



TESTIMONY SUPPORTING SB 2089

John Arnold, Deputy Insurance Commissioner

House Industry, Business, and Labor Committee

March 12, 2025

Good afternoon, Chairman Warrey, and members of the House Industry, Business, and Labor Committee.

Today I am here to introduce and ask for your support of SB 2089 relating to the confidentiality of Insurance Department records.

This bill is intended to ensure that when an insurance consumer has a complaint about an insurance company, insurance producer, or another person or entity licensed by the Department, the complaint submitted to the Department is open to the public, while maintaining the confidentiality already afforded to a consumer's personal, financial, and health information.

One of the Department's roles is to investigate complaints filed against licensees. Currently, §26.1-02-31, provides for confidentiality related to those complaints. When the Insurance Department investigates a complaint, licensees are required to provide all documents requested by the Department. Those documents are currently required to be given confidentiality under the statute, and the Department does not want to disturb that requirement.

Over the last couple of years, it has become very apparent that clarification of §26.1-02-31 is required regarding the consumer complaint itself. The Department has been involved in regulatory actions that were initiated after receiving complaints from insurance consumers. During the pendency of these actions, the Department received numerous requests for information from both the public and legislators about other instances where the Department received complaints similar to these current Department actions. These consumer and legislator requests were aimed at gathering information to better understand the scope, extent, and frequency of the issues related to the Department's current administrative actions. The Department has been concerned about violating confidentiality since the statute currently specifies that:

“the commissioner may disclose the subject matter of the assistance request or complaint, provide a general description of the disposition of the request or complaint,”

As a result, the Department has been unable to provide information such as the reason the Department did or did not take action against the licensee, an explanation of the facts that show why the Department is able to take action in some cases and not others, and other

factual information that assists the public in understanding the allegations against licensees.

The bill removes that text from the current statute that implies the Commissioner may only disclose the subject matter and the disposition of the complaint and inserts reworded text that removes the implied confidentiality of the complaint. The new text also ensures that the commissioner may publish orders that result from administrative action.

Section 2 was added in the House and was a friendly amendment that the Department worked on with the American Property Casualty Insurance Association. The amendment impacts subsection 6 of §26.1-03-19.4 which also relates to confidential records collected by the Department. This amendment ensures that disclosing records to the Insurance Commissioner does not waive privilege or confidentiality claims others might argue have been waived due to disclosing records to the Insurance Department. This language is consistent with other confidentiality statutes in the insurance title and is present in the National Association of Insurance Commissioners' model law on which the original statute is based.

Finally, attached to my testimony is an amendment the Department created after receiving a request from Blue Cross Blue Shield of North Dakota (Blue Cross). The Department is neutral on this amendment, but Blue Cross offered the Department the opportunity to draft the amendment to assure the new text is consistent with the other text of the bill. The amendment adds new language to Section 1 of the bill, creating a new subsection 2 of §26.1-02-31. The amendment permits the Department to exempt insurance company employee names from open records request.

Thank you, Chairman Warrey and members of the committee. I'd be happy to take any questions that you may have and respectfully request your consideration of a Do Pass recommendation on SB 2089.

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2089**

FIRST ENGROSSMENT

Introduced by

Industry and Business Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact section 26.1-02-31 and subsection 6 of section
2 26.1-03-19.4 of the North Dakota Century Code, relating to confidentiality of insurance
3 department records.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 SECTION 1. AMENDMENT. Section 26.1-02-31 of the North Dakota Century Code is
6 amended and reenacted as follows:

- 7 1. A document, material, or other information, including the contents of a claim file, which
8 is provided to, obtained by, created by, or disclosed to the commissioner in response
9 to a consumer assistance request or a complaint is confidential and not subject to
10 section 44-04-18, a subpoena to the department, or discovery request or admissible
11 as evidence in a private civil action. ~~However, the commissioner may disclose the~~
12 ~~subject matter of the assistance request or complaint, provide a general description of~~
13 ~~the disposition of the request or complaint, and~~ The commissioner may use the
14 document, material, or other information for a regulatory or legal action brought as a
15 part of the official duties of the commissioner. This section does not preclude the
16 commissioner from publishing orders resulting from administrative action taken by the
17 commissioner or providing the general description of the disposition of the consumer
18 assistance request or complaint.
- 19 2. Individual names in the complaint or consumer assistance request, other than the
20 individuals submitting the complaint or consumer assistance request, are considered
21 exempt information for purposes of open records.

1 3. A privilege or claim of confidentiality in the document, material, or information is not
2 waived as a result of disclosure to the commissioner under this section or as a result of
3 providing or disclosing information to the commissioner.

4 SECTION 2. AMENDMENT. Subsection 6 of section 26.1-03-19.4 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 6. All working papers, recorded information, documents, and copies thereof produced by,
7 obtained by, or disclosed to the commissioner or any other person in the course of an
8 examination made under this chapter, or in the course of analysis by the commissioner
9 of the financial condition or market conduct of the company, must be given confidential
10 treatment and are not subject to subpoena and may not be made public by the
11 commissioner or any other person, except to the extent provided in subsection 5.
12 Access also may be granted to the national association of insurance commissioners.
13 The parties must agree in writing prior to receiving the information to provide to it the
14 same confidential treatment as required by this section, unless the prior written
15 consent of the company to which it pertains has been obtained. Disclosure of
16 documents, materials, or information to the commissioner under this section, or as a
17 result of sharing as authorized in subdivision b of subsection 5, does not waive an
18 existing privilege or claim of confidentiality.