

**HOUSE BILL NO. 1231**

Introduced by

Representatives Keiser, Carlson, Dosch

Senators Espeguard, Grindberg, Klein

1 A BILL for an Act to create and enact sections 26.1-02.1-02.1, 26.1-02.1-06, 26.1-02.1-07,  
2 26.1-02.1-08, 26.1-02.1-09, 26.1-02.1-10, 26.1-02.1-11, and 26.1-02.1-12 of the North Dakota  
3 Century Code, relating to insurance fraud; to amend and reenact sections 26.1-02.1-01,  
4 26.1-02.1-04, and 26.1-02.1-05 of the North Dakota Century Code, relating to insurance fraud;  
5 to repeal sections 26.1-02.1-02 and 26.1-02.1-03 of the North Dakota Century Code, relating to  
6 insurance fraud; to provide a penalty; and to provide an appropriation.

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

8 **SECTION 1. AMENDMENT.** Section 26.1-02.1-01 of the North Dakota Century Code  
9 is amended and reenacted as follows:

10 **26.1-02.1-01. Definitions.** As used in this chapter:

- 11 1. ~~"Authorized agency" means any duly constituted criminal investigative department~~  
12 ~~or agency of the United States or this state; the prosecuting attorney of any city,~~  
13 ~~county, state, or of the United States or any subdivision thereof; or the insurance~~  
14 ~~commissioner.~~ "Business of insurance" means the writing of insurance or the  
15 reinsuring of risks by an insurer, including acts necessary or incidental to writing  
16 insurance or reinsuring risks and the activities of persons who act as or who are  
17 officers, directors, agents, or employees of insurers, or who are other persons  
18 authorized to act on their behalf. The term does not include the activities of the  
19 North Dakota life and health insurance guaranty association or the North Dakota  
20 insurance guaranty association.
- 21 2. "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair  
22 and replacement costs, and claims payments.
- 23 3. "Fraudulent insurance act" includes the following acts or omissions committed by a  
24 person knowingly and with intent to defraud:

- 1           a. Presenting, causing to be presented, or preparing with knowledge or belief  
2           that it will be presented to or by an insurer, reinsurer, insurance producer, or  
3           any agent thereof, false or misleading information as part of, in support of, or  
4           concerning a fact material to one or more of the following:
- 5           (1) An application for the issuance or renewal of an insurance policy or  
6           reinsurance contract;
- 7           (2) The rating of an insurance policy or reinsurance contract;
- 8           (3) A claim for payment or benefit pursuant to an insurance policy or  
9           reinsurance contract;
- 10          (4) Premiums paid on an insurance policy or reinsurance contract;
- 11          (5) Payments made in accordance with the terms of an insurance policy or  
12          reinsurance contract;
- 13          (6) A document filed with the commissioner or the chief insurance  
14          regulatory official of another jurisdiction;
- 15          (7) The financial condition of an insurer or reinsurer;
- 16          (8) The formation, acquisition, merger, reconsolidation, dissolution, or  
17          withdrawal from one or more lines of insurance or reinsurance in all or  
18          part of this state by an insurer or reinsurer;
- 19          (9) The issuance of written evidence of insurance;
- 20          (10) The reinstatement of an insurance policy; or
- 21          (11) The formation of an agency, brokerage, or insurance producer contract.
- 22          b. Solicitation or acceptance of new or renewal insurance risks on behalf of an  
23          insurer, reinsurer, or other person engaged in the business of insurance by a  
24          person who knows or should know that the insurer or other person  
25          responsible for the risk is insolvent at the time of the transaction.
- 26          c. Removal, concealment, alteration, or destruction of the assets or records of  
27          an insurer, reinsurer, or other person engaged in the business of insurance.
- 28          d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or  
29          conversion of moneys, funds, premiums, credits, or other property of an  
30          insurer, reinsurer, or person engaged in the business of insurance.

- 1           e. Attempting to commit, aiding or abetting in the commission of, or conspiring to  
2           commit the acts or omissions specified in this section.
- 3           4. "Insurance" means a contract or arrangement in which one undertakes to:  
4           a. Pay or indemnify another as to loss from certain contingencies called "risks",  
5           including through reinsurance;  
6           b. Pay or grant a specified amount or determinable benefit to another in  
7           connection with ascertainable risk contingencies;  
8           c. Pay an annuity to another; or  
9           d. Act as surety.
- 10       ~~3.~~ 5. "Insurer" includes an authorized insurer, self insurer, reinsurer, broker, insurance  
11       producer, or any agent thereof means a person entering into arrangements or  
12       contracts of insurance or reinsurance and who agrees to perform any of the acts  
13       set forth in subsection 4, whether the person has or is required to have a certificate  
14       of authority or denies being an insurer. The term does not include the North  
15       Dakota life and health insurance guaranty association or the North Dakota  
16       insurance guaranty association.
- 17       4. 6. "Person" means a natural person, company, an individual, corporation,  
18       unincorporated association, partnership, professional corporation, and any other  
19       legal association, joint stock company, trust, unincorporated organization, or any  
20       similar entity or any combination of the foregoing.
- 21       7. "Policy" means an individual or group policy, group certificate, contract, or  
22       arrangement of insurance or reinsurance affecting the rights of a resident of this  
23       state or bearing a reasonable relation to this state, regardless of whether delivered  
24       or issued for delivery in this state.
- 25       ~~5.~~ 8. "Practitioner" means a licensee of this state authorized to practice medicine and  
26       surgery, psychology, chiropractic, or law or any other licensee of the state whose  
27       services are compensated, directly or indirectly, by insurance proceeds, or a  
28       licensee similarly licensed in other states and nations or the practitioner of any  
29       nonmedical treatment rendered in accordance with a recognized religious method  
30       of healing.

- 1           6. ~~"Statement" includes any notice statement, proof of loss, bill of lading, receipt for~~  
2           ~~payment, invoice, account, estimate of property damages, bills for services,~~  
3           ~~diagnosis, prescription, hospital or doctor records, x rays, test result, or other~~  
4           ~~evidence of loss, injury, or expense.~~
- 5           9. "Reinsurance" means a contract, binder of coverage including placement slip, or  
6           arrangement under which an insurer procures insurance for itself in another insurer  
7           as to all or part of an insurance risk of the originating insurer.

8           **SECTION 2.** Section 26.1-02.1-02.1 of the North Dakota Century Code is created and  
9 enacted as follows:

10           **26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation of**  
11 **convicted felons prohibited.**

- 12           1. A person may not commit a fraudulent insurance act.
- 13           2. A person may not knowingly or intentionally interfere with the enforcement of the  
14           provisions of this chapter or investigations of suspected or actual violations of this  
15           chapter.
- 16           3. a. A person convicted of a felony involving dishonesty or breach of trust may not  
17           participate in the business of insurance.
- 18           b. A person in the business of insurance may not knowingly or intentionally  
19           permit a person convicted of a felony involving dishonesty or breach of trust to  
20           participate in the business of insurance.

21           **SECTION 3. AMENDMENT.** Section 26.1-02.1-04 of the North Dakota Century Code  
22 is amended and reenacted as follows:

23           **26.1-02.1-04. Immunity.**

- 24           1. A person when acting without malice is not subject to liability by virtue of filing  
25           reports, or furnishing orally or in writing other information concerning any  
26           suspected, anticipated, or completed fraudulent insurance act, when the reports or  
27           information are provided to or received from ~~any authorized agency,~~ the  
28           commissioner; federal, state, or local law enforcement or regulatory officials; the  
29           national association of insurance commissioners; or any other not-for-profit  
30           organization established to detect and prevent insurance fraud; and ~~their agents,~~  
31           employees, any employee or designees agent of any of these entities.

- 1           2. Except in prosecution for perjury or insurance fraud, and in the absence of malice,  
2           an insurer, or any officer, employee, or agent thereof, or any licensed insurance  
3           producer or private person who cooperates with, furnishes evidence, or provides or  
4           receives information regarding any suspected fraudulent insurance act to or from  
5           ~~an authorized agency, the commissioner; federal, state, or local law enforcement~~  
6           or regulatory officials; the national association of insurance commissioners; or any  
7           not-for-profit organization established to detect and prevent fraudulent insurance  
8           acts ~~of~~ and any employee or agent of any these entities who complies with an  
9           order issued by a court of competent jurisdiction acting in response to a request by  
10          any of these entities to provide evidence or testimony is not subject to a criminal  
11          proceeding or to a civil penalty with respect to any act concerning which the person  
12          testifies to or produces relevant matter.
- 13          3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or  
14          any licensed insurance producer or private person who cooperates with, furnishes  
15          evidence, or provides information regarding any suspected fraudulent insurance  
16          act to ~~an authorized agency, the commissioner; federal, state, or local law~~  
17          enforcement or regulatory officials; the national association of insurance  
18          commissioners; or any not-for-profit organization established to detect and prevent  
19          fraudulent insurance acts ~~of~~ and any employee or agent of any of these entities  
20          who complies with an order issued by a court of competent jurisdiction acting in  
21          response to a request by any of these entities to furnish evidence or provide  
22          testimony, is not subject to civil liability for libel, slander, or any other relevant tort,  
23          and no civil cause of action of any nature exists against the person, for filing  
24          reports, providing information, or otherwise cooperating with an investigation or  
25          examination of any of these entities.
- 26          4. The ~~authorized agency, commissioner; federal, state, or local law enforcement or~~  
27          regulatory officials; the national association of insurance commissioners; or any  
28          not-for-profit organization established to detect and prevent fraudulent insurance  
29          acts and any employee or agent of any of these entities, when acting without  
30          malice is not subject to civil liability for libel, slander, or any other relevant tort, and  
31          no civil cause of action of any nature will lie against the person by virtue of the

1 execution of official activities or duties of the entity by virtue of the publication of  
2 any report or bulletin related to the official activities or duties of the entity.

3 5. This section does not abrogate or modify in any way common law or statutory  
4 privilege or immunity heretofore enjoyed by any person or entity.

5 **SECTION 4. AMENDMENT.** Section 26.1-02.1-05 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **26.1-02.1-05. Penalties - ~~Probation~~ Restitution.**

8 1. A violation of section ~~26.1-02.1-02~~ 26.1-02.1-02.1 is a class C felony if the value of  
9 any property or services retained exceeds five thousand dollars and a class A  
10 misdemeanor in all other cases. For purposes of this section, the value of any  
11 property and services must be determined in accordance with subsection 6 of  
12 section 12.1-23-05.

13 2. In the event that a practitioner is adjudicated guilty of a violation of section  
14 ~~26.1-02.1-02~~ 26.1-02.1-02.1, the court shall notify the appropriate licensing  
15 authority of this state of the adjudication. The appropriate licensing authority shall  
16 hold an administrative hearing to consider the imposition of administrative  
17 sanctions as provided by law against the practitioner.

18 3. ~~Probation may not be granted to, nor may the imposition of a sentence be~~  
19 ~~suspended, after the first adult conviction for a violation under section 26.1-02.1-02~~  
20 ~~and any subsequent conviction of the same.~~

21 4. ~~The existence of any fact that would make a person ineligible for probation under~~  
22 ~~this section must be alleged in the information or indictment, and:~~

- 23 a. ~~Admitted by the defendant in open court;~~  
24 b. ~~Determined to be true at trial by a jury or the court; or~~  
25 e. ~~By plea of guilty or nolo contendere.~~

26 5. In addition to any other punishment, a person who violates section ~~26.1-02.1-02~~  
27 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any other  
28 person for any financial loss sustained as a result of the violation of section  
29 ~~26.1-02.1-02~~ 26.1-02.1-02.1. The court shall determine the extent and method of  
30 restitution.

1           **SECTION 5.** Section 26.1-02.1-06 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **26.1-02.1-06. Investigative authority of the commissioner.** The commissioner may:

- 4           1. Investigate suspected fraudulent insurance acts.
- 5           2. Employ and designate attorneys to assist in the prosecution of violations of this  
6           chapter.

7           **SECTION 6.** Section 26.1-02.1-07 of the North Dakota Century Code is created and  
8 enacted as follows:

9           **26.1-02.1-07. Mandatory reporting of fraudulent insurance acts.**

- 10          1. A person engaged in the business of insurance having knowledge or a reasonable  
11          belief that a fraudulent insurance act is being, will be, or has been committed shall  
12          provide to the commissioner the information required by, and in a manner  
13          prescribed by, the commissioner.
- 14          2. Any other person having knowledge or a reasonable belief that a fraudulent  
15          insurance act is being, will be, or has been committed may provide to the  
16          commissioner the information required by, and in a manner prescribed by, the  
17          commissioner.
- 18          3. A person who provides nonpublic personal information to the commissioner  
19          pursuant to this section does not violate the insurance privacy law under section  
20          26.1-02-27.

21          **SECTION 7.** Section 26.1-02.1-08 of the North Dakota Century Code is created and  
22 enacted as follows:

23          **26.1-02.1-08. Confidentiality.**

- 24          1. Any documents, materials, or other information in the possession or control of the  
25          commissioner which are provided pursuant to section 26.1-02.1-07 or obtained by  
26          the commissioner in an investigation of suspected or actual fraudulent insurance  
27          acts are confidential by law and privileged, not subject to subpoena, and not  
28          subject to discovery or admissible in evidence in any private civil action. However,  
29          the commissioner is authorized to use the documents, materials, or other  
30          information in the furtherance of any regulatory or legal action brought as a part of  
31          the commissioner's official duties.

- 1           2. Neither the commissioner nor any person who received documents, materials, or  
2           other information while acting under the authority of the commissioner may be  
3           permitted or required to testify in any private civil action concerning any confidential  
4           documents, materials, or information subject to subsection 1.
- 5           3. In order to assist in the performance of the commissioner's duties, the  
6           commissioner may:
- 7           a. Share documents, materials, or other information, including the confidential  
8           and privileged documents, materials, or information subject to subsection 1  
9           with other state, federal, and international regulatory agencies, with the  
10           national association of insurance commissioners and its affiliates and  
11           subsidiaries, and with local, state, federal, and international law enforcement  
12           authorities, provided that the recipient agrees to maintain the confidentiality  
13           and privileged status of the document, material, or other information;
- 14           b. Receive documents, materials, or information, including otherwise confidential  
15           and privileged documents, materials, or information from the national  
16           association of insurance commissioners and its affiliates and subsidiaries and  
17           from regulatory and law enforcement officials of other foreign or domestic  
18           jurisdictions, and shall maintain as confidential or privileged any document,  
19           material, or information received with notice or the understanding that it is  
20           confidential or privileged under the laws of the jurisdiction that is the source of  
21           the document, material, or information; and
- 22           c. Enter into agreements governing sharing and use of information consistent  
23           with this subsection.
- 24           4. A privilege or claim of confidentiality in the documents, materials, or information is  
25           not waived as a result of disclosure to the commissioner under this section or as a  
26           result of sharing as authorized in subsection 3.

27           **SECTION 8.** Section 26.1-02.1-09 of the North Dakota Century Code is created and  
28 enacted as follows:

29           **26.1-02.1-09. Creation and purpose of the insurance fraud unit.**

- 30           1. The North Dakota insurance fraud unit is established within the insurance  
31           department. The commissioner may appoint the full-time supervisory and

1 investigative personnel of the insurance fraud unit, who must be qualified by  
2 training and experience to perform the duties of their positions. The commissioner  
3 may also appoint clerical and other staff necessary for the insurance fraud unit to  
4 carry out its duties and responsibilities under this chapter.

5 2. The insurance fraud unit shall:

6 a. Initiate independent inquiries and conduct independent investigations when  
7 the insurance fraud unit has cause to believe that a fraudulent insurance act  
8 may be, is being, or has been committed;

9 b. Review reports or complaints of alleged fraudulent insurance activities from  
10 federal, state, and local law enforcement and regulatory agencies, persons  
11 engaged in the business of insurance, and the public to determine whether  
12 the reports require further investigation and to conduct these investigations;  
13 and

14 c. Conduct independent examinations of alleged fraudulent insurance acts and  
15 undertake independent studies to determine the extent of fraudulent  
16 insurance acts.

17 3. The insurance fraud unit may:

18 a. Inspect, copy, or collect records and evidence;

19 b. Serve subpoenas;

20 c. Administer oaths and affirmations;

21 d. Share records and evidence with federal, state, or local law enforcement or  
22 regulatory agencies;

23 e. Execute search warrants and arrest warrants for criminal violations of this  
24 chapter;

25 f. Arrest upon probable cause without warrant a person found in the act of  
26 violating or attempting to violate a provision of this chapter;

27 g. Make criminal referrals to prosecuting authorities; and

28 h. Conduct investigations outside of this state. If the information the insurance  
29 fraud unit seeks to obtain is located outside this state, the person from whom  
30 the information is sought may make the information available to the insurance  
31 fraud unit to examine at the place where the information is located. The

1                   insurance fraud unit may designate a representative, including an official of  
2                   the state in which the matter is located, to inspect the information on behalf of  
3                   the insurance fraud unit, and the insurance fraud unit may respond to a similar  
4                   request from an official of another state.

5                   **SECTION 9.** Section 26.1-02.1-10 of the North Dakota Century Code is created and  
6 enacted as follows:

7                   **26.1-02.1-10. Peace officer status.** A fraud unit investigator has all the powers  
8 conferred by law upon any peace officer of this state when making arrests for criminal violations  
9 established as a result of an investigation pursuant to this chapter. The general laws applicable  
10 to arrests by a peace officer of the state also apply to a fraud unit investigator. A fraud unit  
11 investigator may execute an arrest warrant and search warrant for the same criminal violation;  
12 serve subpoenas issued for the examination, investigation, and trial of all offenses identified  
13 through an investigation; and arrest upon probable cause without warrant a person found in the  
14 act of committing a violation of the provisions of this chapter.

15                   **SECTION 10.** Section 26.1-02.1-11 of the North Dakota Century Code is created and  
16 enacted as follows:

17                   **26.1-02.1-11. Other law enforcement or regulatory authority.** This chapter does  
18 not:

- 19                   1. Preempt the authority or relieve the duty of other law enforcement or regulatory  
20 agencies to investigate, examine, and prosecute suspected violations of law;
- 21                   2. Prevent or prohibit a person from disclosing voluntarily information concerning  
22 insurance fraud to a law enforcement or regulatory agency other than the  
23 insurance fraud unit; or
- 24                   3. Limit the powers granted elsewhere by the laws of this state to the commissioner  
25 or the insurance fraud unit to investigate and examine possible violations of law  
26 and to take appropriate action against wrongdoers.

27                   **SECTION 11.** Section 26.1-02.1-12 of the North Dakota Century Code is created and  
28 enacted as follows:

29                   **26.1-02.1-12. Rules.** The commissioner may adopt rules deemed necessary by the  
30 commissioner for the administration of this chapter.

1           **SECTION 12. REPEAL.** Sections 26.1-02.1-02 and 26.1-02.1-03 of the North Dakota  
2 Century Code are repealed.

3           **SECTION 13. APPROPRIATION.** There is appropriated out of any moneys in the  
4 insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of  
5 \$150,000, or so much of the sum as may be necessary, to the insurance commissioner for the  
6 purpose of defraying the expenses in carrying out the duties of this Act relating to the insurance  
7 fraud unit for the biennium beginning July 1, 2003, and ending June 30, 2005.