

HOUSE BILL NO. 1092

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact three new sections to chapter 26.1-02.1 of the North
2 Dakota Century Code, relating to civil and administrative remedies used to combat insurance
3 fraud; and to provide a penalty.

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

5 **SECTION 1.** A new section to chapter 26.1-02.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Administrative penalty and enforcement.**

- 8 1. Upon a showing by a preponderance of evidence that a violation of this chapter
9 occurred, and with the consent of the county state's attorney, the commissioner may
10 impose an administrative penalty not to exceed ten thousand dollars for each
11 fraudulent insurance act. Assessment of the administrative penalty must be
12 determined by the nature, circumstances, extent, and gravity of the fraudulent
13 insurance act or acts, any prior history of such act or acts, the degree of culpability,
14 and such other matters as justice may require. The commissioner shall determine the
15 administrative penalty, such as fines, restitution, or both.
- 16 2. In the event of nonpayment of the administrative penalty after all rights of appeal have
17 been waived or exhausted, the commissioner may bring a civil action in district court
18 for the collection of the administrative penalty and any other expenses incurred,
19 including interest, attorney's fees, and costs, in the following manner:
- 20 a. A summons and complaint must be filed in the district court of Burleigh County
21 setting forth that administrative action was taken against the defendant in
22 accordance with this chapter, that the defendant either voluntarily entered a
23 consent order that called for the payment of a specified monetary penalty, or in
24 the alternative, that after proper notice and hearing, the defendant was

1 determined to be in violation of this chapter and that by order of the
2 commissioner a specified monetary penalty had been assessed against the
3 defendant, that all rights of appeal have been waived or exhausted, and that
4 payment in full has not been made in accordance with the terms of the consent
5 order or other order of the commissioner. The department shall attach to the
6 complaint a certified copy of that consent order or other order of the
7 commissioner.

8 b. The court shall enter judgment in favor of the department for the amount
9 specified in the complaint if the department establishes:

10 (1) The defendant is the same person against which the consent order or other
11 order of the commissioner applies; and

12 (2) Payment in full has not been made by or on behalf of the defendant
13 according to the terms of the consent or other order of the commissioner.

14 c. Except as otherwise provided in this section the North Dakota Rules of Civil
15 Procedure govern the civil proceedings.

16 3. A person that is found to have committed a fraudulent insurance act and assessed an
17 administrative penalty or a person that violated an order of the commissioner pursuant
18 to a hearing or consent order in relation to an administrative penalty associated with
19 fraudulent insurance act, may be liable for expenses incurred by the department at the
20 discretion of the commissioner. The assessment for costs may not exceed fifteen
21 percent of each penalty assessed under this section.

22 4. The commissioner may order restitution to the insurer or self-insured employer of any
23 insurance proceeds paid pursuant to a fraudulent claiminsurance act. Restitution
24 ordered must be paid by the owing party to the insurance regulatory trust fund under
25 section 26.1-01-07.1 and from that fund be paid to the victim insurer or self-insured
26 employee.

27 5. The expenses or administrative penalties collected by the commissioner under this
28 chapter are appropriated to the North Dakota insurance department in accordance
29 with this section and section 26.1-01-07.1. All such moneys that are deposited in the
30 insurance regulatory trust fund under this chapter may be appropriated for use in the
31 education and enforcement of insurance fraud, except funds ordered as restitution to a

1 victim. Restitution funds must be reallocated to the victim. In the discretion of the
2 department, the department may pay a reward drawn from the assessed
3 administrative penalty to an individual who reports to the insurance department an
4 incident of fraudulent insurance act that results in either an admission or finding of
5 fraud. The reward may not exceed the lesser of the assessed administrative penalty or
6 twenty-five thousand dollars. In order to be eligible to receive a reward under this
7 subsection, a reporting individual shall sign a written complaint that subjects the
8 person to the sanctions of section 26.1-02.1. ~~An insurance carrier that is the victim of a~~
9 ~~fraudulent insurance act, and employees of the carrier are not eligible to receive a~~
10 ~~reward under this subsection for reporting fraud associated with that carrier~~Persons
11 required to report fraudulent insurance acts under subsection 1 of section
12 26.1-02.1-06 are not eligible to receive a reward pursuant to this subsection.

- 13 6. The insurance department may collect moneys for use by the department for fraud
14 education and enforcement purposes.
- 15 a. The following amounts must be deposited in the insurance regulatory trust fund
16 for use by the department for fraud education and enforcement purposes, all
17 sums received from:
- 18 (1) Fines assessed in accordance with this chapter; and
19 (2) Assessment of department costs under subsection 3.
- 20 b. The moneys received under this subsection are reserved for the use by the
21 insurance department to defray the expenses of the department in the
22 performance of the various functions and duties associated with fraud
23 enforcement, fund specialized training of department personnel tasked with
24 working within fraud enforcement, and provide the funding for specialized
25 equipment, specialized technology, and insurance fraud public service and
26 prevention campaigns and rewards.
- 27 c. The moneys deposited for this purpose are subject to the provisions of section
28 26.1-01-07.1.

29 **SECTION 2.** A new section to chapter 26.1-02.1 of the North Dakota Century Code is
30 created and enacted as follows:

1 **Consent orders.**

2 A person may enter a consent order by which such person, without admitting the conduct
3 alleged, consents to the imposition of an administrative penalty and when so requested agrees
4 to cease and desist the acts or omissions alleged in the complaint.

5 **SECTION 3.** A new section to chapter 26.1-02.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Criminal prosecution.**

8 The imposition of a fine or other sanction under this chapter does not preclude prosecution
9 for a violation of a criminal law of the state.