Sixty-seventh Legislative Assembly of North Dakota

## **HOUSE BILL NO. 1092**

Introduced by

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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 created and enacted as follows:

## Administrative penalty and enforcement.

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

1			<u>dete</u>	rmined to be in violation of this chapter and that by order of the		
2			<u>com</u>	missioner a specified monetary penalty had been assessed against the		
3			<u>defe</u>	ndant, that all rights of appeal have been waived or exhausted, and that		
4			payr	ment in full has not been made in accordance with the terms of the consent		
5			orde	er or other order of the commissioner. The department shall attach to the		
6			com	plaint a certified copy of that consent order or other order of the		
7			com	missioner.		
8		<u>b.</u>	The court shall enter judgment in favor of the department for the amount			
9			spec	cified in the complaint if the department establishes:		
0			<u>(1)</u>	The defendant is the same person against which the consent order or other		
11				order of the commissioner applies; and		
2			<u>(2)</u>	Payment in full has not been made by or on behalf of the defendant		
3				according to the terms of the consent or other order of the commissioner.		
4		<u>C.</u>	Exce	ept as otherwise provided in this section the North Dakota Rules of Civil		
5			Prod	cedure govern the civil proceedings.		
6	<u>3.</u>	A pe	rson	that is found to have committed a fraudulent insurance act and assessed an		
7		<u>adm</u>	inistr	ative penalty or a person that violated an order of the commissioner pursuant		
8		to a	heari	ng or consent order in relation to an administrative penalty associated with		
9		fraud	dulen	t insurance act, may be liable for expenses incurred by the department at the		
20		discr	etion	of the commissioner. The assessment for costs may not exceed fifteen		
21		perc	ent o	f each penalty assessed under this section.		
22	<u>4.</u>	<u>The</u>	com	missioner may order restitution to the insurer or self-insured employer of any		
23		<u>insu</u>	rance	proceeds paid pursuant to a fraudulent claim. Restitution ordered must be		
24		paid	by th	ne owing party to the insurance regulatory trust fund under section		
25		<u>26.1</u>	<u>-01-0</u>	7.1 and from that fund be paid to the victim insurer or self-insured employee.		
26	<u>5.</u>	<u>The</u>	<u>expe</u>	nses or administrative penalties collected by the commissioner under this		
27		<u>chap</u>	ter a	re appropriated to the North Dakota insurance department in accordance		
28		with	this s	section and section 26.1-01-07.1. All such moneys that are deposited in the		
29		<u>insu</u>	rance	e regulatory trust fund under this chapter may be appropriated for use in the		
30		<u>educ</u>	atior	and enforcement of insurance fraud, except funds ordered as restitution to a		
R1		victir	n Re	estitution funds must be reallocated to the victim. In the discretion of the		

1		department, the department may pay a reward drawn from the assessed				
2		administrative penalty to an individual who reports to the insurance department an				
3		incident of fraudulent insurance act that results in either an admission or finding of				
4		fraud. The reward may not exceed the lesser of the assessed administrative penalty or				
5		twenty-five thousand dollars. In order to be eligible to receive a reward under this				
6		subsection, a reporting individual shall sign a written complaint that subjects the				
7		person to the sanctions of section 26.1-02.1. An insurance carrier that is the victim of a				
8		fraudulent insurance act, and employees of the carrier are not eligible to receive a				
9		reward under this subsection for reporting fraud associated with that carrier.				
10	<u>6.</u>	The insurance department may collect moneys for use by the department for fraud				
11		education and enforcement purposes.				
12		<u>a.</u>	The following amounts must be deposited in the insurance regulatory trust fund			
13			for use by the department for fraud education and enforcement purposes, all			
14			sums received from:			
15			(1) Fines assessed in accordance with this chapter; and			
16			(2) Assessment of department costs under subsection 3.			
17		<u>b.</u>	The moneys received under this subsection are reserved for the use by the			
18			insurance department to defray the expenses of the department in the			
19			performance of the various functions and duties associated with fraud			
20			enforcement, fund specialized training of department personnel tasked with			
21			working within fraud enforcement, and provide the funding for specialized			
22			equipment, specialized technology, and insurance fraud public service and			
23			prevention campaigns and rewards.			
24		<u>C.</u>	The moneys deposited for this purpose are subject to the provisions of section			
25			<u>26.1-01-07.1.</u>			
26	SEC	SECTION 2. A new section to chapter 26.1-02.1 of the North Dakota Century Code is				
27	created	eated and enacted as follows:				
28	Con	Consent orders.				
29	<u>A pe</u>	erson may enter a consent order by which such person, without admitting the conduct				
30	alleged,	ed, consents to the imposition of an administrative penalty and when so requested agrees				
31	to cease	ase and desist the acts or omissions alleged in the complaint.				

## Sixty-seventh Legislative Assembly

- 1 **SECTION 3.** A new section to chapter 26.1-02.1 of the North Dakota Century Code is
- 2 created and enacted as follows:
- 3 <u>Criminal prosecution.</u>
- 4 The imposition of a fine or other sanction under this chapter does not preclude prosecution
- 5 for a violation of a criminal law of the state.