

HOUSE BILL 1092

Presented by: **J. Dale Pittman**
 Director, Fraud Division
 North Dakota Insurance Department

Before: **Senate Industry, Business and Labor Committee**
 Senator Jerry Klein, Chairman

Date: **February 16, 2021**

TESTIMONY

Chairman Klein and members of the committee, my name is Dale Pittman and I am the director of the North Dakota Insurance Department's Fraud Division. I've been with the North Dakota Insurance Department for over ten years and have investigated hundreds of cases of insurance fraud. The purpose of this bill is to enhance the fight against insurance fraud with a new tool that focuses on education and personal accountability over criminal sanctions. The hope is to impact the mindset of the minor violator early-on and avoid later more serious acts of fraud.

Understand, criminal investigations and prosecutions will still take place. The most egregious violators will still be pursued in the criminal arena, just as they are today. This bill will focus on the remainder—those who commit low level insurance fraud out of a sense of panic or ignorance rather than greed. With the passing of this bill we will have the option of bringing administrative sanctions against these individuals – hold them accountable – without staining them with the stigma of a permanent criminal record.

It has been my experience that insurance fraudsters fall into two camps: those who act out of greed with the intent to benefit and profit by scamming insurance companies (Camp-1) and those who act out of circumstances that they suddenly find themselves in and panic (Camp-2). For example, a person doesn't have insurance and then gets into a car accident. They get on their phone and buy an insurance policy while they are waiting for the police to arrive. Should this

person be held accountable? —yes. Do they deserve to have a permanent criminal record? —not necessarily.

Since I have been working for the Department insurance fraud referrals have risen steadily. This doesn't mean that insurance fraud has necessarily risen but reports to our department have. In 2019, out of over 2000 insurers licensed to do business in North Dakota, only 57 of them filed fraud referrals to the department. We know that there is more fraud that has gone undiscovered. Cases reported to us have become more complex and Camp-1 fraudsters have become increasingly wiser in avoiding detection. We have been forced to ignore many of those cases that fall into Camp-2 so that we can concentrate on Camp-1. We close Camp-2 cases as "Investigator Criteria Not Met" (ICNM), usually the same day we receive them. In 2019 37% of cases were closed for ICNM and in 2020 40% were closed for that reason. This is the population of fraudsters that this bill will concentrate on.

The mechanics of how this will work is this: The Department will utilize an FTE that is currently vacant and transfer it to the Fraud Division as a civilian investigator. That investigator will concentrate his or her investigation on the Camp 2 fraudsters. At the conclusion of the investigation, if it shows that by the preponderance of the evidence, the fraudster has committed the crime of insurance fraud, I will meet with the Commissioner to determine a dollar amount for an administrative penalty to be brought against that person. The fraudster will be given the option to accept the penalty and sign a Consent Order, or not accept the penalty and have a hearing before an Administrative Law Judge. Section 1 of this bill addresses this process.

Section 1 (pages 1-2, subsection 1-3) explains the process if the fraudster fails to pay the administrative penalty: that civil action will be brought against him or her, and a civil judgement will be ordered, along with a maximum of 15% of the penalty amount for costs.

Section 1, subsection 4 (page 2) authorizes the Commissioner to order restitution to insurers or self-insured employers for any claims that they have paid pursuant to the fraudulent claim. This is in addition to, and separate from, the penalty. Restitution collected must be deposited into the Insurance Regulatory Trust fund (26.1-01-07.1) and these will be paid to the insurer. It is

important that the Commissioner can order restitution as a way to make the victim company whole. Insurance fraud drives up the price of all our insurance premiums. According to the FBI, the total cost of insurance fraud—not including health-care fraud—is estimated to be more than \$40 billion per year, costing the average U.S. family between \$400 and \$700 per year in the form of increased premiums. Restitution helps mitigate these losses that we all pay.

Subsection 5 (page 2-3) explains what the Department will do with any fines or expenses collected. The money will be deposited into the Insurance Regulatory Trust Fund (26.1-01-07.1) and used for education and enforcement of insurance fraud.

This subsection also authorizes the Department to offer rewards, capped at \$25,000, for information that results in either an admission or finding of fraud. Insurers are not eligible to collect this reward.

Subsection 6 (page 3) further addresses what the fines and expenses will be used for. The primary plan for this money is to develop a public education campaign to help reduce fraud at the onset. We have found that many people don't understand the prevalence of insurance fraud and more concerningly, that it is largely considered a "victimless crime." It is the Department's hope that a public education campaign will help curb that mentality. Secondarily we would use this money for training and equipment to stay ahead of the Camp-1 fraudsters. At this time, we do not have any data that would give us an estimate as to how much money we would be collecting. I personally do not believe we will collect much. It is not the intent of the Department to profit through the collection of fines. Personal accountability and education are the primary focus.

Section 2 (page 3) authorizes the Department to settle the cases through a Consent Order where the violator legally agrees to settle the case as an administrative matter.

Section 3 (page 4) gives the Department the option of pursuing the case criminally if it becomes necessary to do so.

In conclusion, this bill will assist the Department in the fight against insurance fraud by adding another tool to the toolbox. A tool that holds violators accountable without permanently staining their reputation. Therefore, I respectfully request a “do pass” recommendation from this committee and I am more than happy to take any questions you may have. Thank you.