



TESTIMONY

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Senate Industry and Business Committee

January 22, 2025

Good morning, Chairman Barta, and members of the Senate Industry and Business Committee. My name is Johannes (Johnny) Palsgraaf, and I am the General Counsel and Legal Division Director of the North Dakota Insurance Department. I am here today to testify in 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, but this bill also maintains 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. The statute SB 2089 is amending, 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. Because 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,”

The Department in fear of violating confidentiality by providing more information than allowed under this language was 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 ensure that the commissioner may publish orders that result from administrative action.

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

I urge the committee to give SB 2089 a do pass recommendation with the addition of the amendment, and I am happy to stand for any questions from the committee.

BILL NO.

Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2089

Introduced by

Industry and Business Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact subsection 1 of section 26.1-02-31 and subsection 6 of
2 section 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.** Subsection 1 of section 26.1-02-31 of the North Dakota
6 Century Code is 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 **SECTION 2. AMENDMENT.** Subsection 6 of section 26.1-03-19.4 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 6. All working papers, recorded information, documents, and copies thereof produced by,
22 obtained by, or disclosed to the commissioner or any other person in the course of an
23 examination made under this chapter, or in the course of analysis by the commissioner
24 of the financial condition or market conduct of the company, must be given confidential

Legislative Assembly

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treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subsection 5. Access also may be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained. No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection 5(b) of this section.