

2013 SENATE JUDICIARY

SB 2074

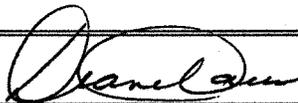
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2074
1/9/2013
17046

Conference Committee

Committee Clerk Signature



Minutes:

Attached written testimony

Relating to penalties for insurance fraud; and to provide a penalty

Senator David Hogue - Chairman

In support of the bill:

Mary Hoberg - Legal Counsel, ND Insurance Dept. - See written testimony.

Senator Hogue asks Ms. Hoberg to breakdown the statistics on page 3 and how many involve the producers and how many involve the policy holders and types of policies. She refers to Mr. Pittman.

Dale Pittman - Police Officer with the ND Insurance Fraud Unit - He explains the overall statistics of insurance fraud. He says 14% of the cases to come across his desk involve misconduct by insurance agents, 39% involve automobile fraud, 3% are arson, 4% health, 9% medical, 15% property. He mentions that of those breakdowns 58% of the actual dollar amount lost to insurance companies come from misconduct from insurance agent. Automobile losses are at 7%. He says there is quite a difference skew between the actual dollars amount lost and the actual amounts of crimes reported to them.

Senator Lyson - Asks if this bill would match any other bills to change the criminal code if this were changed.

Pittman - Replies the intent is to make the bills match each other.

Senator Lyson - Asks if the report comes in to the local law enforcement.

Pittman - States the majority of cases referred to him come from insurance companies. He explains where he gets his referrals from.

Senator Berry - Asks why the codes are different at present.

Pittman - Replies it is a recommendation from the Nation Association of Insurance Commissioners. They helped draft the Insurance Fraud Statute.

Mary Hoberg - Added a clarification that the original insurance fraud chapter came from a model from the National Association of Insurance Commissioners. She said our penalty chapter is original to ND but it has been around since 1993. She mentions there are different times that the statutes have been enacted or amended which accounts for different times.

Senator Armstrong - Asks under the new grading offense how many of the cases listed would have qualified as misdemeanors.

Pittman - Replies that he has not researched that issue but that he would find out what the separation is.

Senator Sitte - Said she is curious about involved verses retained. She would like that clarified.

Pittman - Explains a claim scenario. If the insurance fraud was only an attempt it goes to a misdemeanor level.

Senator Hogue - Gives an example of misrepresenting a health insurance application.

Pittman - Says there must be intent to steal established.

Senator Berry - Questions if there is prosecutorial discretion. Can it be a misdemeanor or a felony?

Pittman - Believes it would be discretionary at the State's Attorney's office. He is unsure if the dollar amount would matter if it wasn't collected.

Senator Sitte - Wonders if the word retained needs to be changed at all. She would feel better if clear criminal intent were written into the bill. She believes this is left to open.

Pittman - Said he believes it is written with intent to fraud.

Senator Sitte - Believes it doesn't say it has to involve retaining money only if they lied on the application.

Senator Lyson - Likes the way this bill is written because now it has the discretion to give the report to the State's Attorney and may charge as a misdemeanor as a slap on the wrist.

Senator Armstrong - Asks if most policies don't have a misdemeanor or c-felony requirement upon submission. He thinks the application and the actual policy paid out is different.

Hoberg - Says she would like to reinforce that the point of the bill is to match penalties that are already in the criminal code.

Pittman - States the intent is alignment and to get the message out that insurance fraud is the same thing as stealing. Insurance fraud affects everyone.

Opposition
None

Neutral
None

Closed the hearing 2074

Discussion

Committee discusses bill 2074. Senator Lyson says he likes the way this bill is written. Senator Hogue agrees that it strikes the word retained and says involved which covers the situation where there is an attempt but it was stopped. Senator Grabinger asks if conspiracy is the same as act. To him it sounds like the charge is the same and he wonders if it should be. Senator Armstrong says essentially what they are doing is eliminating misdemeanor insurance fraud. Senator Sitte believes a lot of people do not realize insurance fraud is a crime. She gives an example of kids trying to get a new cell phone from their insurance company. She doesn't believe that should be a felony and that the wording here is too broad. Senator Berry asks about intent. Senator Hogue believes you have to have specific intent.

Close discussion

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2074
2/12/2013
Job #18813

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Committee discusses the amendment for the word retained. Senator Armstrong relates that he does not like this bill as it is written. He explains his reason why he thinks this is a shift in policy.

Senator Sitte moves a do not pass

Senator Armstrong seconded

Discussion

The committee discusses if they are comfortable with the bill as is or with the amendments.

Vote - 4 yes, 2 no

Senator Berry will carry

Senator Hogue calls for a vote to reconsider the bill

Verbal - all yes

Committee discusses the unintended consequences of the bill. Senator Berry thinks it should be a harsher penalty and if the amendments were put forward he would be comfortable. Committee discusses putting on the amendment and insurance fraud.

Senator Grabinger moves to adopt the amendment

Senator Armstrong seconded

Verbal vote - all yes

Amendment adopted

Senator Grabinger moves a do pass as amended

Senator Armstrong seconded

Vote - 6 yes, 1 no

Motion passes

Senator Berry will carry

13.8062.01001
Title.02000

Adopted by the Judiciary Committee

February 11, 2013

FB
2-11-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2074

Page 1, line 7, replace "involved" with "retained"

Page 1, line 8, remove the overstrike over "~~retained~~"

Page 1, line 8, remove "involved"

Page 1, line 8, remove the overstrike over "~~thousand~~"

Page 1, line 8, remove "hundred"

Renumber accordingly

Date: 2/11/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2074**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson		
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 4 No 2

Absent 1

Floor Assignment S. Berry

If the vote is on an amendment, briefly indicate intent:

Date: 2/11/13
 Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2074

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,8026.01000
Grabinger/Armstrong

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By S. Grabinger Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal - yes

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2074: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "involved" with "retained"

Page 1, line 8, remove the overstrike over "retained"

Page 1, line 8, remove "involved"

Page 1, line 8, remove the overstrike over "~~thousand~~"

Page 1, line 8, remove "hundred"

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2074

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2074
March 19, 2013
Job # 20184

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to penalties for insurance fraud; and to provide a penalty.

Minutes:

Testimony 1, Handout #2

Vice Chairman Larry Klemin: Opened the hearing on SB 2074.

Mary Hoberg, Legal Counsel, North Dakota Insurance Department: (See testimony and handout #1, see attached.) 00:56 - 13:30 Senate embraces Class B felony. After this bill was heard in Senate they heard SB 2251. The relationship between SB 2251 and 2074 are shown on page 3. On the last page of testimony shows what the results would like if SB 2074 is passed.

Rep. Roger Brabandt: Are the fraud cases seem to be going up in North Dakota. Are they going up Nationwide as well?

Mary Hoberg: I would like to refer to my colleague Mr. Pittman for that.

Joe Pittman, Police Officer with Insurance Department: I am not sure. I believe they have but I don't know for a fact. I know North Dakota has seen an increase in insurance fraud over the past three years, but we are starting to go down some now.

Rep. Lois Delmore: If we rewrite this even if it is \$50 it would become a Class A misdemeanor?

Joe Pittman: My understanding is the separation between Class B misdemeanor and Class A misdemeanor would be \$50. That is correct?

Rep. Lois Delmore: I am interested in the breakdown of the cases and amounts on page 4. How many more felonies and what is the classification and what category?

Rep. Randy Boehning: If you are going to do that for the old law can you do if this would be the new law, or under this bill?

Jim Pittman: Actually I can. Currently 16% of our cases are felonies. The rest are misdemeanors. If the law as put forward where the line is \$1000 between felony and misdemeanor that would raise the number of felonies to 24%. Under our current laws where \$500 is the separation between them that raises it to 25%. So 75% of the cases are going to be misdemeanors regardless of what happens.

Rep. Lois Delmore: I would still like to see Class A, Class B and Class C felonies.

Chairman Kim Koppelman: On my bills we looked at we received a fiscal note to ascertain the costs. Have you done any work on a fiscal note since this apparently came from your department?

Mary Hoberg: I haven't done that I but will.

Vice Chairman Larry Klemin: It does not change the penalties but increases the threshold amounts that are required to be convicted of or for certain crimes like thief.

Jim Pittman: that's correct

Rep. Kathy Hogan: Is insurance fraud theft in other states.

Jim Pittman: I do know that most of the states have very similar laws to what we have.

Rep. Kathy Hogan: Do you know if other states are looking at making them consistent?

Jim Pittman: No, I do not.

Chairman Kim Koppelman: What about consistency between various types of fraud?

Jim Pittman: We are strictly focusing on aligning it with the thief statues. When I investigate an insurance fraud case that I have investigated almost all of them are charged out as thief by deception because the insurance fraud portion is typically almost always a misdemeanor. By changing this statue we can more appropriately charge the crime that occurred. It can be charged out as it actually is and reflect what the actual crime is.

Rep. Gary Paur: Ms. Hoberg did not know why the Senate amended this bill and would like to have it changed back. I would think it would be a good idea to get the written testimony from that.

Mary Hoberg: Which date would you want to have?

Chairman Kim Koppelman: I will ask our Intern to get us the legislative record from the Senate so we can get a sense of their deliberations and why the amendment is there and meet with Legislative Council so we can get a better sense on how this relates to other statues.

Rep. Lois Delmore: From current law we are adding Class A felony and Class B felony. Is that correct?

Joe Pittman: We are asking for alignment between what the current thief is. Currently there is no Class A felony for thief. If the other law goes through then there would.

Rep. Roger Brabandt: Do you have a breakdown between major cities and smaller cities.

Joe Pittman: I have a map with that on and I can get that for you.

Rep. Bill Kretschmar: On the current law as I understand it a Class C felony you need to steal \$5000 and you wanted it at \$1000 in your proposal. Is that right?

Joe Pittman: What we are asking for is alignment.

Rep. Bill Kretschmar: Class C is more than \$5000 to steal and then you want from \$5000 to \$1000. Why do you want to reduce it to \$1000?

Joe Pittman: to create alignment between the statues.

Rep. Bill Kretschmar: Currently for thief you have to steal more than \$5000; now you want it above \$1000.

Joe Pittman: Under the current statue the separation is \$500.-\$10,000.

Chairman Kim Koppelman: How long has it been that we have gone back and looked at the thresholds for inflation standards?

Rep. Diane Larson: We change what the numbers are in the criminal code for the threshold for thief for example. Why would we just take the numbers out altogether and just say that insurance fraud is thief under the criminal code?

Joe Pittman: I am not sure why? It probably would make it easier.

Mary Hoberg: Senate bill 2251 is one and the same. I did obtain some written testimony from that bill and they have an inflation schedule on there.

Rep. Kathy Hogan: There has obviously been a dramatic increase in insurance fraud you are dealing with. Do you see any underlying reasons or trends in those numbers?

Joe Pittman: (See Handout #2.) I don't think the insurance fraud has increased. I think the reporting is getting better.

Chairman Kim Koppelman: Are these typically cases where somebody files a claim and maybe overstates the value of something or are they cases where somebody is out to defraud an insurance company.

Joe Pittman: Most of the cases we get are auto claims. Either someone who doesn't have insurance and they got into a crash and then they go buy insurance and file a claim that the date of the accident happened after they had coverage. Insurance agents who are stealing

hundreds of thousands of dollars from people. Stage accident rings where folks are getting into intentional accidents and adding damage or going to clients to get treatment for medical and getting added dollars to their pockets based upon fictions injuries.

Chairman Kim Koppelman: Where does your office get involved?

Joe Pittman: The insurance companies are required to report fraud when they suspect it. We get on line referrals too and it comes straight to my desk. We also get phone call, letters and emails that come in. I will research the suspect to see if this is a real bad guy or just somebody that is stupid on a particular day and I will rate my cases based upon how bad the bad guy is; how high the claim is; how much money was paid out by the insurance company and how many other claims the person might have. Then I decide which cases I work first etc.

Chairman Kim Koppelman: Insurance agents that steal are that insurance fraud?

Joe Pittman: It is in the insurance fraud statute that it is insurance fraud.

Rep. Lois Delmore: Auto is the leading one. Tell me how that operates with fraud?

Joe Pittman: If it is covered under their auto insurance it would come under the auto portion. Typically they are accidents. Either they are staged accidents where the people intentionally get into a crash so they can add some costs.

Rep. Lois Delmore: this would move the penalty up on those people as we write the law.

Vice Chairman Larry Klemin: On the number of fraud cases reported are there multiple fraud clients and is that one case or three cases?

Joe Pittman: Most of the time I try to count each individual fraud on the statics.

Vice Chairman Larry Klemin: Looking at the chart will tell us how many criminals are involved; it is just the number of reported cases.

Chairman Kim Koppelman: How many are individual cases versus multiple offenders.

Joe Pittman: I can get that information for you.

Chairman Kim Koppelman: Is it common to have a lot of individuals and then once someone that is involved in multiple incidents.

Joe Pittman: Most of the time I have one person committing multiple insurance fraud cases.

Rep. Gary Paur: Why didn't you just phrase this theft so if the law is changed in the future it would still be synchronized?

Mary Hoberg: I can tell you I believe to be the case. The current insurance fraud penalty statute is part of a whole chapter 26-01-2.1 that is part of the insurance title. It has definitions of what a fraudulent act would be and it has this penalty statute. It is possible and I don't believe it has ever been looked at.

Vice Chairman Larry Klemin: The current statute does cross reference 12.12205 which is the statute that has a grading of the thief offences that you want to match. I think what Rep. Paur has raised for a question might be a good match. The thief offence and the insurance fraud offense to be the same and we already cross reference the same statute so rather than us trying to deal with the it or not depending on what happens on 2251 if we just cross reference the two statutes it wouldn't make any difference what happened on 2251.

Mary Hoberg: I think that would be a possibility. We can certainly look at but I cannot answer that.

Chairman Kim Koppelman: We can hold the hearing open if the Insurance Commissioner wants to come and testify.

Mary Hoberg: I will go about getting more information.

Steve Becker, Executive Director of the Professional Insurance Agents of America: We represent about 300 independent insurance agencies and over 1,000 agents across the state. We are in support of this bill. What is the difference if you steal from a local store or from an insurance company? The penalties should match between those two things. Doesn't matter who commits the crime.

Chairman Kim Koppelman: In your experience when you see fraud is it typically multiple offenders or the smaller cases.

Steve Becker: Those numbers correspond to when Mr. Pittman and his other investigators started because prior to that we did not have a full time fraud investigator with the state insurance department.

Norbert Mayer, ND Association of Insurance Financial Advisors: Many fraud cases begin with small amounts of money. Most life and health companies do not permit agents to have checks written to them but most consumers are not aware of that so it is common for them to ask who do I write the check to. If this would help to reduce fraud in North Dakota we support it and encourage your positive support.

Chairman Kim Koppelman: I see a lot of growth investing so you see a lot of it that realm?

Norbert Mayer: We don't see many cases, but unfortunately the ones we do see they get to be large. They are prosecuted as insurance fraud. If it involves securities they can also be prosecuted by the securities department.

Chairman K. Koppelman: Are those penalties aligned?

Joe Pitmann: the securities fraud it a Class B felony at any amount.

Opposition: None

Neutral: None

Chairman K. Koppelman: We want to support your effort and be tough on criminals in all levels. We are taking nonviolent criminals and locking them up with violent criminals and if they aren't violent coming into they probably will be going out. Do you have any thoughts about that and the types of penalties?

Joe Pittman: My experience has been the judicial system pretty much lets that type of information out while they are going through the process. I have seen only three agents who have done prison time. The Judicial system takes that type of information into account. We don't have mandatory sentencing guidelines as far as I know as far as white color crime.

Rep. Lois Delmore: Did people take into account what a \$100 was 20 years ago and what it would be today?

Joe Pittman: We need to take into consideration the amount because inflation has changed a lot over time.

Vice Chairman Larry Klemin: In looking at what you are proposing from current law we are going the other direction on Class C felony because right now it has to be over \$5000; which in 1970 dollars was a lot of money compared to now and reducing it to \$5000 would be a Class C felony which is in some respects were are going higher, but in this particular situation with a Class C felony we are going the opposite direction and it would be \$1001 if we match the 2251 bill.

Joe Pittman: That might be true. We are trying to create alignment. I would like to see a person get charged with the crime they committed not the crime that fits. If we create alignment we can actually charge the appropriate charge.

Vice Chairman Larry Klemin: If we are going to change one side we need to change the other side too.

Chairman Kim Koppelman: Recess the hearing and ask the Insurance Department Chairman.

Recess.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2074
March 25, 2013
Job 20430

Conference Committee

Kristi Helgeson

Explanation or reason for introduction of bill/resolution:

Relating to penalties for insurance fraud; and to provide a penalty.

Minutes:

Chairman Koppelman: Opens hearing. Assigned subcommittee to meet on bills 2074, 2251, 2345 all relating to penalties. Rep Klemin will be Chairman for that subcommittee with Rep. Branbandt and Rep. Hanson serving with him. 7:05

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2074
March 27, 2013
Job 20563

Conference Committee

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:

Relating to penalties for insurance fraud; and to provide a penalty.

Minutes:

Testimony 1

Chairman Koppelman: Opens hearing on SB 2074.

Adam Hamm, North Dakota Insurance Commissioner: Testimony #1, (0:35 to 13:45)
Testified in support.

Chairman Kim Koppelman: We have a subcommittee to study this bill as well as two others.

Rep. Lois Delmore: (15:28) I'm wondering why we are so concerned to move these up to felony convictions when we have so few of them?

Adam Hamm: This is to align insurance fraud with that so we don't have two categories of criminals and two categories of victims. It doesn't make sense to the victim why an insurance fraud crime against them is less severe than if a theft.

Rep. Lois Delmore: (17:27) I also asked that you check into surrounding states and obviously it hasn't been a priority that at least you can track from the information you found. MN doesn't seem to match up at all. Can you tell me how that would compare to the proposals we have in SB 2251, by matching up the numbers and the charge of felony misdemeanor?

Adam Hamm: We can look to do that and provide the information to the subcommittee. Would that be agreeable? Standing here today, I can't provide that.

Chairman Kim Koppelman: (18:21) I assume that the NAIC has a lot of information in terms of what states do, do you have a sense nationally, that this is a trend where most states match up?

Adam Hamm: I don't have a specific answer to if most states match up. We can look more into that. Even if most states don't, I think that is correct answer for ND.

Rep. Randy Boehning: (18:58) We are looking at these felonies out there, out of these nine felonies how much money did you recoup from them?

Adam Hamm: I don't have the exact number but I would say it pretty close to zero.

Rep. Randy Boehning: Out of the misdemeanors is that a way to recoup money out of those for the minor's parts?

Adam Hamm: We can look into this some more and try to get an exact dollar amount. Many times there is no money to get.

Rep. Randy Boehning: On the misdemeanors, the judge would be saying to be paying back restitution on this over time, what happens with that?

Adam Hamm: Restitution is in large part determined by the defendant's ability to pay. If there is no money to get the judges reduce the felons and the restitution which is uncollectable.

Rep. Lois Delmore: (20:53) I still would like a match up with numbers and the penalties. I want to see if there are different thresholds that trigger the penalty.

Rep. Vicky Steiner: Following with Rep. Boehning's question, if the judge gives a misdemeanor and they're allowed to work, wouldn't there be a way for some restitution to be made if they stayed in the working population versus a felony and serving prison time?

Adam Hamm: Yes, once it is a misdemeanor, if they are back at work a certain part of your pay check is going towards the restitution for this victim. I have seen a person serve some time.....they also pay restitution when they got back into the work force. It is often so little paid to the victim that you're never going to be able to make them whole.

Rep. Vicky Steiner: Would you also agree if you have a felony your ability to work is going to be hampered by the state in a sense to pay, are we getting in the way of the restitution to the victims?

Adam Hamm: I don't think so.

Rep. Randy Boehning: Along with Rep. Steiner's question, do you confiscate vehicles, etc. in order to pay restitution back or what happens?

Adam Hamm: If those things are happening, they are not with the authority of the insurance department. You would need criminal judges to answer those questions about the authority in terms of trying to collect on restitution.

Rep. Randy Boehning: There is nothing if a guy has embezzled and he has a 500,000 house setting there, can you go after it?

Adam Hamm: I've never seen it actually occur. If that hypothetical were to happen and if the restitution was reduced to a civil judgement.....when these cases happen there is nothing left for the victims to get.

Rep. Randy Boehning: If you are embezzling that much they have to be spending it on something and it should be available.

Adam Hamm: These folks end up with habits like drugs or other things they spend the money on.

Rep. Diane Larson: Will having that aligned with theft allow you to prosecute some of these cases?

Adam Hamm: When you look at the testimony, page 3 it proves why SB 2074 is necessary and it needs this alignment.

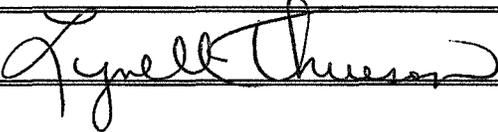
Chairman Koppelman: Closed hearing on SB 2074.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2074
April 1, 2013
Job 20738

Conference Committee



Minutes:



Chairman Kim Koppelman: Opens SB 2074 for committee action.

2:28 Vice Chairman Klemin: Explained the proposed amendments worked on with the sub-committee.

6:18 Vice Chairman Klemin: I move a **Do Pass** on proposed amendments 13.8062.02002 to SB 2074. Seconded by Representative Delmore.

Chairman Koppelman: An issue discussed was harmonizing the penalties. Another issue is whether the dollar amounts should be higher. Did you committee deal with that issue? The question to whether property crime should rise to that same level as violence against someone, etc. Was it about this at all?

Vice Chairman Klemin: We did in SB 2251. We didn't consider that, we accepted the bills as they were and didn't go into the policy decision.

9:04 Representative Paur: In the fifth statute there is a Class A felony for certain levels of theft?

Vice Chairman Klemin: There will be under SB 2251 when we talk about it.

Representative Delmore: I don't understand why we went with under \$1000 rather than \$5000 for a CLASS A felony. Did you talk about the \$5000? Why did you decide the \$1000?

10:06 Vice Chairman Klemin: It was changed from \$5000 to \$1000 to be consistent with the other laws on theft at the request of the insurance commissioner.

Representative Delmore: When we amended those other bills, couldn't we have put that \$5000 in all of them?

Vice Chairman Klemin: Perhaps but that's not the way the others were.

11:23 Representative Delmore: Do you think if it is \$1000 in insurance fraud it may be handled as an A misdemeanor rather than a felony?

Vice Chairman Klemin: The way the law reads it's a Class A misdemeanor in all other cases.

12:14 Chairman Koppelman: What we may want to do is adopt the amendments to the bills but not act on them until all the amendments are adopted and then talk about that policy questions that Representative Delmore raises.

Vice Chairman Klemin: This statute was made into subsections to make it more readable.

A Voice Roll Call vote: on the subcommittee amendments on SB 2074. Motion carries.

13:40 Chairman Koppelman: There has been a motion for **Do Pass as amended** on SB 2074 made by Representative Maragos and seconded by Representative Hanson.

A Do Pass Roll Call vote: on Engrossed SB 2074 as amended. **Yes = 13, No = 0, Absent = 1.**

Carrier: Representative Klemin

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2074
April 02, 2013
Job # No Recoding

Conference Committee

Committee Clerk Signature

Marlye Kneizle

Explanation or reason for introduction of bill/resolution:

Sub Committee meetings for SB 2074, 2345, 2251.

Minutes:

It came to my attention that there were a few revision and another item necessary for the minutes so consider these the revised ones:

Meeting was called to order by Rep. Klemin at 11:00 AM, Reps. Klemin, Brabandt and Hanson were present in addition to Commission Hamm and members of the Insurance Commission staff.

Rep. Klemin presented some background in bills similar to those being discussed and their history in interim studies. Rep. Klemin also presented a chart of where current Century Code has placed levels of criminal designation and penalties incurred along with current proposals for their adjustment.

It was decided that criminal designation levels Class A, B, C Felonies and Class A Misdemeanors should be made uniform within these three bills.

SB 2074: Rep. Hanson moved, seconded by Rep. Brabandt, to amend to "services retained or involved" in lines 7 & 8 of page 1. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, to remove references to subsection 6 in anticipation of potential renumbering due to SB 2251's passage in lines 10 & 11 of page 1. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to add a designation of a class A Felony for theft more than \$50,000.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2345: Motion made by Rep. Hanson moved, seconded by Rep. Brabandt, to remove the word "elderly" from bill. The motion passed 3-0 but was discovered to be too cumbersome to make work with the rest of Century Code and will therefore not be recommended to the full committee. Rep. Hanson moved, seconded by Rep. Brabandt, to change number of Class C

Felony to theft of \$1000 or more. Passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, to create a Class A Misdemeanor designation for theft of \$1,000 or less to preserve uniformity within Century Code.

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

SB 2251: Rep. Hanson moved, seconded by Rep. Brabandt, delete section 3. The committee found exchanging a Class B Felony with a Class AA Felony designation to be extreme and questioned the need given that there was no testimony provided specifically to back it. Motion passed 3-0. Rep. Hanson moved, seconded by Rep. Brabandt, change language on page 8, lines 10 and 26 to "excess of one thousand dollars" to provide unity within Century Code. Motion passed 3-0. Rep. Brabandt moved, seconded by Rep. Hanson, to adopt entirety of Amendment 13.8230.01001, relating to fines. Motion passed 3-0

Rep. Hanson moved, seconded by Rep. Brabandt, to adopt bill as amended to recommend to full committee. Motion passed 3-0.

The following is a summary of the criminal designations as they are proposed by the subcommittee in terms of level of thefts to incur said designation and fine subsequent:

AA Felony: Eliminated

A Felony: \$50,000 or more theft level, \$20,000 maximum fine.

B Felony: \$10,000 or more theft level, \$20,000 maximum fine.

C Felony: \$1,000 or more theft level, \$5,000 maximum fine.

A Misdemeanor: Less than \$1,000 theft level, \$3,000 maximum fine.

For organizations, the theft amount will remain the same as above while the penalties will be as follows:

A Felony: \$100,000 maximum fine.

B Felony: \$70,000 maximum fine.

C Felony: \$50,000 maximum fine.

A Misdemeanor: \$30,000 maximum fine.

B Misdemeanor: \$20,000 maximum fine.

March 28, 2013

VR
4/1/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2074

Page 1, line 6, after "1." insert:

"a."

Page 1, line 6, overstrike "a" and insert immediately thereafter ":

(1) A class A felony if the value of any property or services retained or involved exceeds fifty thousand dollars;

(2) A"

Page 1, line 7, after "retained" insert "or involved"

Page 1, line 7, replace "a" with "but does not exceed fifty thousand dollars;

(3) A"

Page 1, line 8, after "retained" insert "or involved"

Page 1, line 8, overstrike "five" and insert immediately thereafter "one"

Page 1, line 8, replace the underscored comma with "but does not exceed ten thousand dollars."

Page 1, line 8, overstrike "a" and insert immediately thereafter:

"(4) A"

Page 1, after line 9, insert:

"b."

Page 1, line 10, overstrike "subsection 6 of"

Renumber accordingly

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2074

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8062.02002

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote - Carried

Date: 4-1-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2074

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2074, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2074 was placed on the Sixth order on the calendar.

Page 1, line 6, after "1." insert:

"a."

Page 1, line 6, overstrike "a" and insert immediately thereafter ":

(1) A class A felony if the value of any property or services retained or involved exceeds fifty thousand dollars;

(2) A"

Page 1, line 7, after "retained" insert "or involved"

Page 1, line 7, replace "a" with "but does not exceed fifty thousand dollars;

(3) A"

Page 1, line 8, after "retained" insert "or involved"

Page 1, line 8, overstrike "five" and insert immediately thereafter "one"

Page 1, line 8, replace the underscored comma with "but does not exceed ten thousand dollars;"

Page 1, line 8, overstrike "a" and insert immediately thereafter:

"(4) A"

Page 1, after line 9, insert:

"b."

Page 1, line 10, overstrike "subsection 6 of"

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2074

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2074
4/19/2013
Job #21342

Conference Committee

Committee Clerk Signature



Minutes:

Attachment

Conference committee on SB2074

Senators - Armstrong, Sitte, Grabinger
Representatives - Klemin, Brabandt, Hanson

Senator Armstrong asks the House to explain the changes they made to the bill. Rep. Klemin explains the changes they made and why they made them. He hands out a chart with a list of felonies and misdemeanors in Senate bills 2074, 2251, and 2345. **(1)** Senator Sitte worries that many do not know insurance fraud is a crime. Rep. Klemin believes they know it is a crime, he states if you attempt it is still a crime. The Senate members have a problem with having the word, involved, and also the grading level of the thefts. The committee continues to discuss the attempt statute and reducing the grading levels.

Senator Grabinger moves the House recede from the House amendments
Senator Sitte seconded
Senators - 3 yes
Representatives - 3 no
Motion fails

Senator Sitte asks for discussion to drop the word involved. Senator Armstrong is convinced that the way it is currently written, attempt would never be triggered. Rep. Hanson suggests new language but the committee doesn't think it applies. Senator Armstrong thinks an attempt should be a B felony based on the general attempt statute. Rep. Klemin suggests a grading scale with attempt being one step down than the theft charge. Senator Sitte asks if they can't change the word involved, to attempt to retain. Rep. Klemin suggests attempted to obtain. Senator Armstrong said the fines would become more consistent and it would more consistent with how we treat other theft crimes. Senator Armstrong asks Rebecca Ternes, Deputy Insurance Commissioner, Insurance Dept., why the attempt statute as currently written doesn't apply. Ms. Ternes replies that they have never charged anyone with attempted insurance fraud because the definition of insurance fraud includes attempting. She said there are penalties already in the insurance code. Senator Armstrong believes they are getting close and would like to meet again.

Committee recesses

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2074
4/22/2013
Job #21383

Conference Committee

Committee Clerk Signature



Minutes:

Conference committee on SB2074

Senators - Armstrong, Grabinger, Sitte
Representatives - Klemin, Brabandt, Hanson

Rep. Klemin proposes amendment 13.8062.02003.

Rep. Klemin moves the House recede from House amendments and amend as follows
13.8062.02003

Rep. Hanson seconded

Vote 6 yes, 0 no
Motion passes

Conference committee adjourned



4-22-13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2074

That the House recede from its amendments as printed on page 1088 of the Senate Journal and page 1174 of the House Journal and that Engrossed Senate Bill No. 2074 be amended as follows:

Page 1, line 6, after "1." insert:

"a."

Page 1, line 6, overstrike "a" and insert immediately thereafter ":

- (1) A class A felony if the value of any property or services retained exceeds fifty thousand dollars;
- (2) A class B felony if the value of any property or services attempted to be obtained exceeds fifty thousand dollars;
- (3) A"

Page 1, line 7, replace "a" with "but does not exceed fifty thousand dollars;

- (4) A class C felony if the value of any property or services attempted to be obtained exceeds ten thousand dollars but does not exceed fifty thousand dollars;
- (5) A"

Page 1, line 8, overstrike "five" and insert immediately thereafter "one"

Page 1, line 8, replace the underscored comma with "but does not exceed ten thousand dollars;"

Page 1, line 8, overstrike "a" and insert immediately thereafter:

"(6) A"

Page 1, line 9, after the period insert:

"b."

Page 1, line 10, overstrike "subsection 6 of"

Re-number accordingly

Date 4-19-2013

Roll Call Vote # 1

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2074 as (re) engrossed

Senate Judiciary Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Grabinger Seconded by: Senator Sitte

Senators	4/19		Yes	No	Representatives	4/19		Yes	No
Armstrong	X		X		Klemin	X			X
Sitte	X		X		Brabandt	X			X
Grabinger	X		X		Hanson	X			X
Total Senate Vote			3		Total Rep. Vote				3

Vote Count Yes: 3 No: 3 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Fail

Date 4-19-13

Roll Call Vote # 1

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2074 as (re) engrossed

Senate Judiciary Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Klemm Seconded by: Rep. Hanson

Senators	<u>4/22</u>	Yes	No	Representatives	<u>4/22</u>	Yes	No
Armstrong	X	X		Klemm	X	X	
Sitte	X	X		Brabandt	X	X	
Grabinger	X	X		Hanson	X	X	
Total Senate Vote		3		Total Rep. Vote		3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Armstrong House Carrier Klemm

LC Number 13.8062 . 02003 of amendment

LC Number _____ . _____ of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2074, as engrossed: Your conference committee (Sens. Armstrong, Sitte, Grabinger and Reps. Klemm, Brabandt, Hanson) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1088, adopt amendments as follows, and place SB 2074 on the Seventh order:

That the House recede from its amendments as printed on page 1088 of the Senate Journal and page 1174 of the House Journal and that Engrossed Senate Bill No. 2074 be amended as follows:

Page 1, line 6, after "1." insert:

"a."

Page 1, line 6, overstrike "a" and insert immediately thereafter ":

- (1) A class A felony if the value of any property or services retained exceeds fifty thousand dollars;
- (2) A class B felony if the value of any property or services attempted to be obtained exceeds fifty thousand dollars;
- (3) A"

Page 1, line 7, replace "a" with "but does not exceed fifty thousand dollars;

- (4) A class C felony if the value of any property or services attempted to be obtained exceeds ten thousand dollars but does not exceed fifty thousand dollars;
- (5) A"

Page 1, line 8, overstrike "five" and insert immediately thereafter "one"

Page 1, line 8, replace the underscored comma with "but does not exceed ten thousand dollars;"

Page 1, line 8, overstrike "a" and insert immediately thereafter:

"(6) A"

Page 1, line 9, after the period insert:

"b."

Page 1, line 10, overstrike "subsection 6 of"

Renumber accordingly

Engrossed SB 2074 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2074

SENATE BILL NO. 2074

Presented by: Mary Hoberg
Legal Counsel
North Dakota Insurance Department

Before: Senate Judiciary Committee
Senator David Hogue, Chairman

Date: January 9, 2013

TESTIMONY

Good morning Chairman Hogue and members of the Senate Judiciary Committee. My name is Mary Hoberg and I am an attorney with the North Dakota Insurance Department. I am here in support of Senate Bill No. 2074.

The crime of insurance fraud is found in the insurance title of the Century Code. This bill lowers the threshold for felony insurance fraud from \$5,000 to \$500, which aligns with the threshold for felony theft under the criminal code. Currently, the insurance fraud statute has two categories—Class C felony and Class A misdemeanor. Currently, insurance fraud is a Class C felony if the property or services retained are more than \$5,000, and in all other cases it is a Class A misdemeanor. The bill creates a Class B felony if the value involved exceeds \$10,000. The bill resets the Class C felony dollar amount at more than \$500 up to \$10,000. The bill retains the Class A misdemeanor for all other cases. The penalty grading in this bill corresponds to the penalty grading for Class B felony and Class C felony theft in N.D.C.C. § 12.1-23-05 which is located in the criminal code. The result of this bill will be consistency between the criminal penalties of the insurance code and the penalties of the criminal code.

Following is a comparison between current law and how Senate Bill No. 2074 would change the current law:

Penalty Grade	Current Law N.D.C.C. § 26.1-02.1-02.1	Under SB 2074
Class B felony	Does not exist	More than \$10,000
Class C felony	More than \$5,000	More than \$500 up to \$10,000
Class A misdemeanor	All other cases	All other cases

The bill would also change the reference from “value of any property or services retained” to “value of any property or services involved” to reflect the fact that a fraudulent insurance act may be committed without any property or service being kept by the wrongdoer.

The insurance fraud unit of the Insurance Department conducts investigations of alleged insurance fraud. If the facts warrant, the Department will refer a case to the state’s attorney or other appropriate law enforcement officials for a criminal prosecution.

Growth in reported insurance fraud may be attributed to economic situations, better detection by companies and law enforcement and possibly, because the Department has been more proactive in its investigation of suspected cases. Special Investigator Dale Pittman is a member of the insurance fraud unit and can answer specific questions related to our fraud unit.

It is a crime to commit a fraudulent insurance act. Examples of a fraudulent insurance act include making false statements on an application for insurance or on a claim under a policy. Another example is theft of premiums, such as where an insurance producer collects a premium from the policyholder but fails to send it on to the insurance company. The total cost of insurance fraud, not counting health insurance fraud, is estimated to be more than \$40 billion per year. That means insurance fraud costs the average U.S. family between \$400 and \$700 per year in the form of increased premiums.

1

Following are the number of reports of suspected insurance fraud to the North Dakota Insurance Department fraud unit by date reported:

2012	94 cases
2011	126 cases
2010	99 cases
2009	50 cases
2008	25 cases

The Insurance Department is requesting consistency between the penalties in the criminal code and the insurance code to reinforce the severity of the crime of insurance fraud and to discourage additional offenses.

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of Senate Bill No. 2074. I would be happy to answer any questions you may have. Thank you.

2074 ①

January 15, 2013

13.8026.01000

Sixty Third

Legislative Assembly

of North Dakota

PROPOSED AMENDMENT TO SENATE BILL NO. 2074

Page 1, line 8, remove overstrike over "~~thousand~~"

Page 1, line 8, insert overstrike over "hundred"

Renumber accordingly

1

SENATE BILL NO. 2074

Presented by: Mary Hoberg
Legal Counsel
North Dakota Insurance Department

Before: House Judiciary Committee
Representative Kim Koppelman, Chairman

Date: March 19, 2013

TESTIMONY

Good morning Chairman Koppelman and members of the House Judiciary Committee. My name is Mary Hoberg and I am an attorney with the North Dakota Insurance Department. I am here in support of Senate Bill No. 2074. The Insurance Department also has some amendments which would restore the original intent of the bill.

The Insurance Commissioner's intent at all times for this bill has been to make the criminal penalties for insurance fraud in the insurance title match the penalties for theft in the criminal title, because insurance fraud is theft.

It is a crime to commit a fraudulent insurance act. N.D.C.C. § 26.1-02.1-05. Examples of a fraudulent insurance act include deliberately setting fire to your house and claiming it was an accident so you can make a claim on your homeowner's policy. Another example is theft of premiums, such as where an insurance producer collects a premium from the policyholder but fails to send it on to the insurance company. The total cost of insurance fraud, not counting health insurance fraud, is estimated to be more than \$40 billion per year nationwide. Insurance fraud costs the average U.S. family between \$400 and \$700 per year in the form of increased premiums.

Currently, insurance fraud has two criminal penalty categories—Class C felony and Class A misdemeanor. N.D.C.C. § 26.1-02.1-05(1). Insurance fraud exceeding \$5,000

is a class C felony; in all other cases it is a Class A misdemeanor. Currently, theft under the criminal code has four penalty categories: Class B felony, Class C felony, Class A misdemeanor, and Class B misdemeanor. N.D.C.C. § 12.1-23-05. Table 1 shows the disparities between the penalties for insurance fraud and for theft offenses under current law.

Table 1 – Penalties for Insurance Fraud and Theft Offenses Under Current Law

<u>Penalty Grade</u>	<u>Current Insurance Fraud</u>	<u>Current Theft Offenses</u>
Class B felony	Does not exist	More than \$10,000
Class C felony	More than \$5,000	\$501 to \$10,000 + specific facts
Class A misdemeanor	All other offenses	\$251 to \$500
Class B misdemeanor	Does not exist	Up to \$250 + specific facts

The Insurance Department’s goal is to make the penalty grades for insurance fraud and theft offenses align.

After Senate Bill No. 2074 was first heard in the Senate Judiciary Committee, another bill was introduced that makes several changes to the criminal code where a monetary amount triggers the level of penalty. That bill is Senate Bill No. 2251, which passed the Senate and will be heard by you in the future. Section 5 of Senate Bill No. 2251 changes the monetary thresholds for penalties for theft offenses. The amendments we are offering today would make the insurance fraud penalty grades match the theft offense grades under Senate Bill No. 2251 where dollar amounts change the penalty. Table 2 compares the current insurance fraud penalties with what the penalties would be with the Insurance Department’s amendments that match Senate Bill No. 2251.

Table 2 – Penalties for Insurance Fraud Under Current Law and Under SB 2074
With the Insurance Department’s Amendments to Match SB 2251

Penalty Grade	Current Law N.D.C.C. § 26.1- 02.1-02.1	Under SB 2074 With Insurance Department Amendments	Under Section 5 of SB 2251
Class A felony	Does not exist	More than \$50,000	More than \$50,000
Class B felony	Does not exist	\$10,001 to \$50,000	\$10,001 to \$50,000
Class C felony	More than \$5,000	\$1,001 to \$10,000	\$1,001 to \$10,000
Class A misdemeanor	All other cases	All other cases	All other cases except Class B misdemeanor
Class B misdemeanor	Does not exist	Does not exist	Under \$500 + specific facts

Our amendments would also change the reference from “value of any property or services retained” to “value of any property or services involved”. This change reflects the fact that a fraudulent insurance act may be committed without any property or service being retained or kept by the wrongdoer, due to the definitions in N.D.C.C. § 26.1-02.1-01.

The insurance fraud unit of the Insurance Department conducts investigations of alleged insurance fraud. If the facts warrant, the Department will refer a case to the state's attorney or other appropriate law enforcement officials for a criminal prosecution. Growth in reported insurance fraud may be attributed to economic situations, better detection by companies and law enforcement, and possibly because the Department has been more proactive in its investigation of suspected cases. Special Investigator Dale Pittman is a member of the insurance fraud unit and can answer specific questions related to our fraud unit.

Following are the number of reports of suspected insurance fraud to the North Dakota Insurance Department fraud unit by date reported:

2012	94 cases
2011	126 cases
2010	99 cases
2009	50 cases
2008	25 cases

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of Senate Bill No. 2074 with the amendments we offer today. I would be happy to answer any questions you may have. Thank you.

March 19, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2074

Page 1, line 6, after "class" insert "A felony if the value of any property or services involved exceeds fifty thousand dollars, a class"

Page 1, line 7, replace "retained" with "involved" and after "dollars" and before the comma insert "but does not exceed fifty thousand dollars"

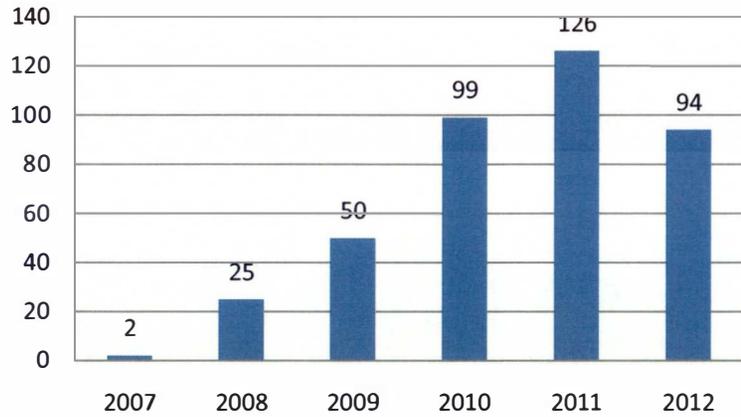
Page 1, line 8, overstrike "retained" and insert immediately after "involved", overstrike "five" and insert immediately after "one", and after "dollars" and before the comma insert "but does not exceed ten thousand dollars"

Renumber accordingly

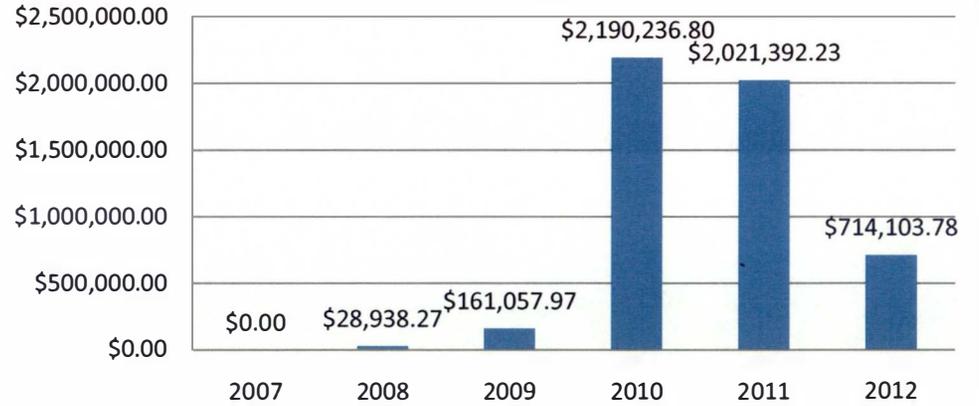
Section 26.1-02.1-05(1) if Senate Bill No. 2074
is enacted with Insurance Department amendments
(matching Senate Bill No. 2251)

1. A violation of section 26.1-02.1-02.1 is a class A felony if the value of any property or services involved exceeds fifty thousand dollars, a class B felony if the value of any property or services involved exceeds ten thousand dollars but does not exceed fifty thousand dollars, a class C felony if the value of any property or services involved exceeds one thousand dollars but does not exceed ten thousand dollars, and a class A misdemeanor in all other cases. For purposes of this section, the value of any property and services must be determined in accordance with subsection 7 of section 12.1-23-05.

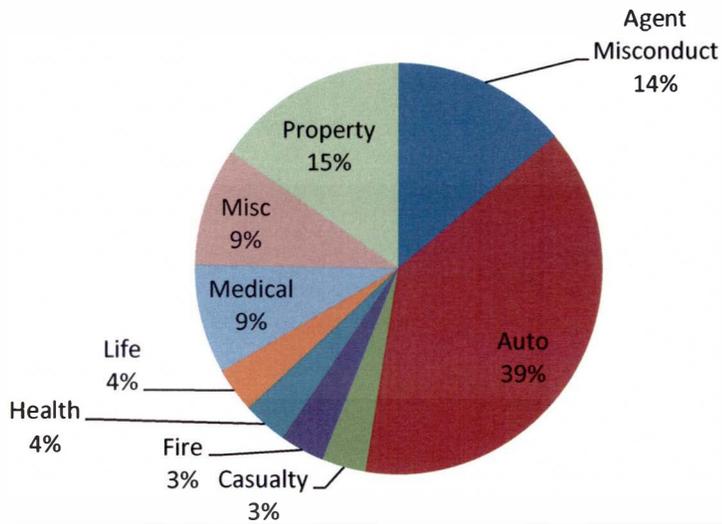
Reports to NDID Fraud Unit By Date Reported



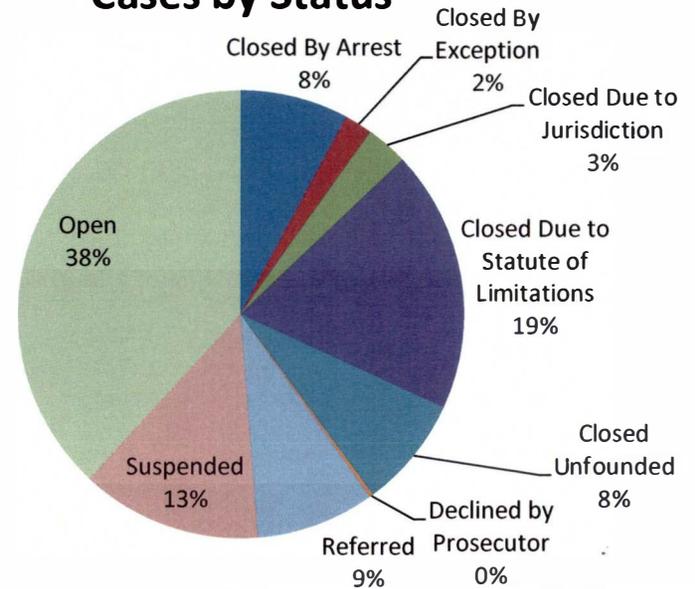
Reports to NDID Fraud Unit Actual Loss Amounts



Percentage of Cases By Case Type



Cases by Status



/

SENATE BILL NO. 2074

Presented by: Adam Hamm
Commissioner
North Dakota Insurance Department

Before: House Judiciary Committee
Representative Kim Koppelman, Chairman

Date: March 27, 2013

TESTIMONY

Good morning Chairman Koppelman and members of the House Judiciary Committee. My name is Adam Hamm and I am North Dakota's Insurance Commissioner. I am here in support of Senate Bill No. 2074.

Senate Bill No. 2074 would bring the penalties for insurance fraud in N.D.C.C. § 26.1-02.1-05 into alignment with the penalties for theft in N.D.C.C. § 12.1-23-05. At the March 19 hearing, you heard from Department staff about how insurance fraud costs North Dakota consumers hundreds of dollars every year in increased premiums. Those are the lucky ones who have not personally been victims of insurance fraud and lost thousands, or hundreds of thousands of dollars, in insurance fraud schemes. Insurance fraud is theft and it should be treated like theft.

Under current law, there are only two classifications for insurance fraud: Class C felony and Class A misdemeanor. The threshold for Class C felony is \$5,000. Senate Bill No. 2074 as it passed the Senate added a Class B felony category at the level exceeding \$10,000. The Senate left the division between Class C felony and Class A misdemeanor at \$5,000.

At the March 19 hearing, the Department proposed amendments that would restore the original intent of Senate Bill No. 2074. The March 19 amendments add a Class A felony

at \$50,000, keep the Class B felony at \$10,000, move the Class C felony to \$1,000, and keep Class A misdemeanor in all other cases. This matches Section 5 of Senate Bill No. 2251 for the felony categories. Our amendments offered March 19 keep Class A misdemeanor as the lowest penalty category for insurance fraud.

The Department's amendments also restore the original bill's use of the term "involved" in the phrase, "A violation of section 26.1-02.1-02.1 is a Class A felony if the value of any property or services ~~retained~~ involved exceeds fifty thousand dollars..." The problem created by the word "retained" is that an insurance fraud crime may be committed even if no property or services are retained by the wrongdoer. A fraud perpetrator may try to collect a \$100,000 death benefit on a life insurance policy by submitting a falsified claim. The crime of insurance fraud is complete upon submitting the false claim to the company. If the insurance company does not pay the claim and the perpetrator is charged criminally, the amount "retained" is zero. This reduces the offense to a Class A misdemeanor. That reduction should not happen.

Changing to the term "involved" would allow prosecutors to charge insurance fraud at the level the perpetrator was trying to achieve. South Dakota uses the term "for an amount", i.e., "Any violation of section 26.1-02.1-02.1 for an amount exceeding fifty thousand dollars is a Class A felony." Another option is "retained or sought."

At the March 19 hearing, the committee asked the Department to do some follow up research on several topics. I have responses for the committee on all topics.

1. The Department opened 94 fraud cases in 2012. The committee asked us to show how those 94 cases would be classified as felonies or misdemeanors if Senate Bill No. 2074 passed with our proposed amendments. Special Investigator Dale Pittman prepared a document with three pie charts showing the breakdown. The proportion of felonies to misdemeanors stays about the same under three scenarios. Most cases would still be misdemeanors.

2. The Department was asked to contact the Department of Corrections and Rehabilitation (DOCR) to explore whether there would be additional costs to the DOCR as a result of changing the penalty classifications. The Department reached out as requested. DOCR reviewed Senate Bill No. 2074 and responded that there would not be any appreciable impact to them from this bill.

3. The Department was asked to research the correlation between insurance fraud penalties and penalties for other types of fraud. The Department's research discloses the following types of fraud. Special Investigator Pittman mentioned at the March 19 hearing that securities fraud is a Class B felony at all dollar amounts. Further inquiry with the Securities Commissioner's office indicates this has been the case since 1979.

Types of Fraud in Century Code and Their Classifications (A Non-Exhaustive List)

Securities § 10-04-15	§ 10-04-18	Class B felony at all dollar amounts
Charitable solicitations § 50-22-04.3	§ 50-22-05	Class C felony to conduct solicitation after person's registration is revoked – Class A misdemeanor other violations of chapter 50-22
Filing fraudulent financial statement § 41-10-02(1)	§ 41-10-02(2)	Class A misdemeanor – Class C felony if person has 2 or more previous convictions
Franchise Investment Law § 51-19-14	§ 51-19-14	Class B felony
Computer fraud § 12.1-06.1-08(1)	§ 12.1-06.1-08(1)	Class C felony at all dollar amounts
Consolidation of theft offenses § 12.1-23-01(1) Theft of property § 12.1-23-02	§ 12.1-23-05	Under current law: Class B felony down through Class B misdemeanor

Senate Bill No. 2074 is generally in line with these fraud penalties frameworks.

4. The Department was asked to give the committee a map showing the number of cases in various cities and areas. Special Investigator Dale Pittman has prepared handouts with this information. The committee also asked what proportion of cases are multiple victim frauds. Attached is a document titled "Cases Closed by Arrest per Defendant" showing single and multiple victim frauds.
5. Some committee members raised the idea that perhaps Senate Bill No. 2074 could simply reference the theft penalty statute § 12.1-23-05 for the penalty levels, thus avoiding stating the various penalty levels in the insurance fraud statute.

The Department studied this proposal for how it would fit into the overall structure of the insurance fraud chapter. The idea is not workable because of the way the criminal theft penalty statute is set up. Section 12.1-23-05 contains many fact scenarios that are unrelated to fraud and are not triggered by a dollar amount. If the insurance fraud statute only says the penalties are the same as for theft under 12.1-23-05, it is arguably void for vagueness. If you try to be more specific by saying, "Follow the provisions of Section 12.1-23-05(1), (2)(a), etc.," you might as well stick with our original idea of listing the various penalty classifications in the insurance fraud statute.

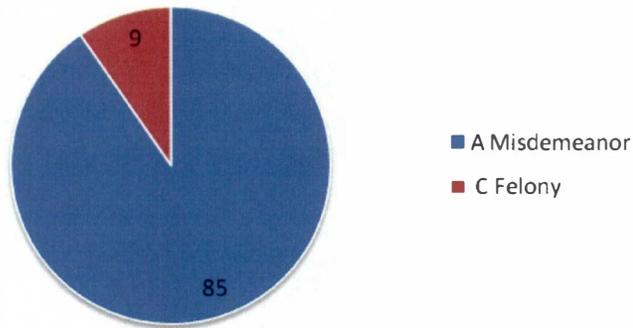
6. The Department was asked to check through the National Association of Insurance Commissioners (NAIC) whether other states are undertaking efforts to align insurance with general fraud, especially our neighboring states.

The NAIC staff responded that there has been no general survey of all the states on this question and no collection of data on point exists.

Department staff reviewed insurance fraud and criminal theft statutes in our neighbors Minnesota, Montana and South Dakota. South Dakota has alignment between the insurance fraud penalties and the theft penalties, listing the various penalty classifications, similar to the intent of this bill. Minnesota and Montana laws do not offer significant improvement over what North Dakota already has in place. Minnesota's highest fine for theft is \$100,000, a figure five times the maximum fine in North Dakota. Minnesota does not use terminology class X felony or misdemeanor; the statute spells out how much jail time and how much fine if the amount stolen is Y dollars or specific circumstances are present. This is not comparable to North Dakota's criminal code, which is built on classifications of offenses. The Montana statutes are structured in a way similar to North Dakota so that emulating Montana would be a move sideways.

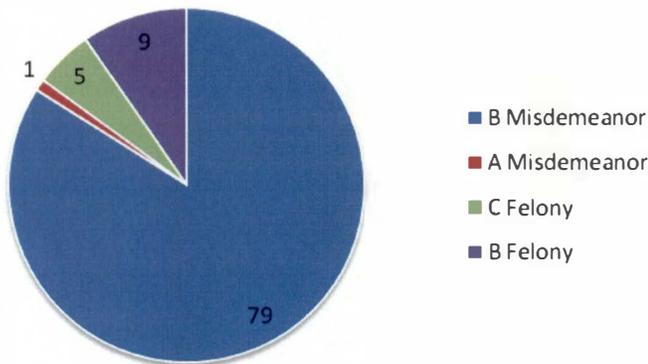
Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of Senate Bill No. 2074. I would be happy to answer any questions you may have. Thank you.

**2012 Insurance Fraud Cases
Under Current Insurance Fraud
Penalties**



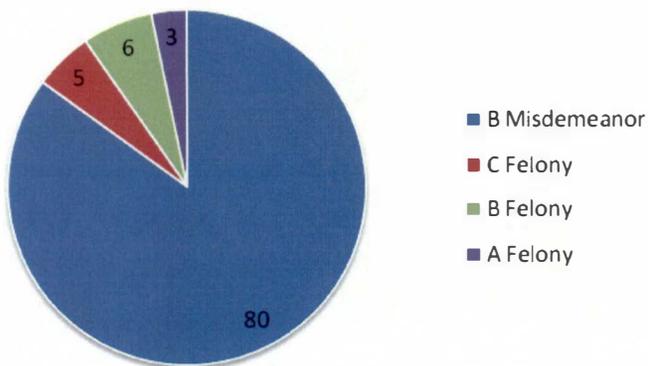
Misdemeanor	85
Felony	9
Total	94

**2012 Insurance Fraud Cases
If Aligned with Current Theft Penalties**



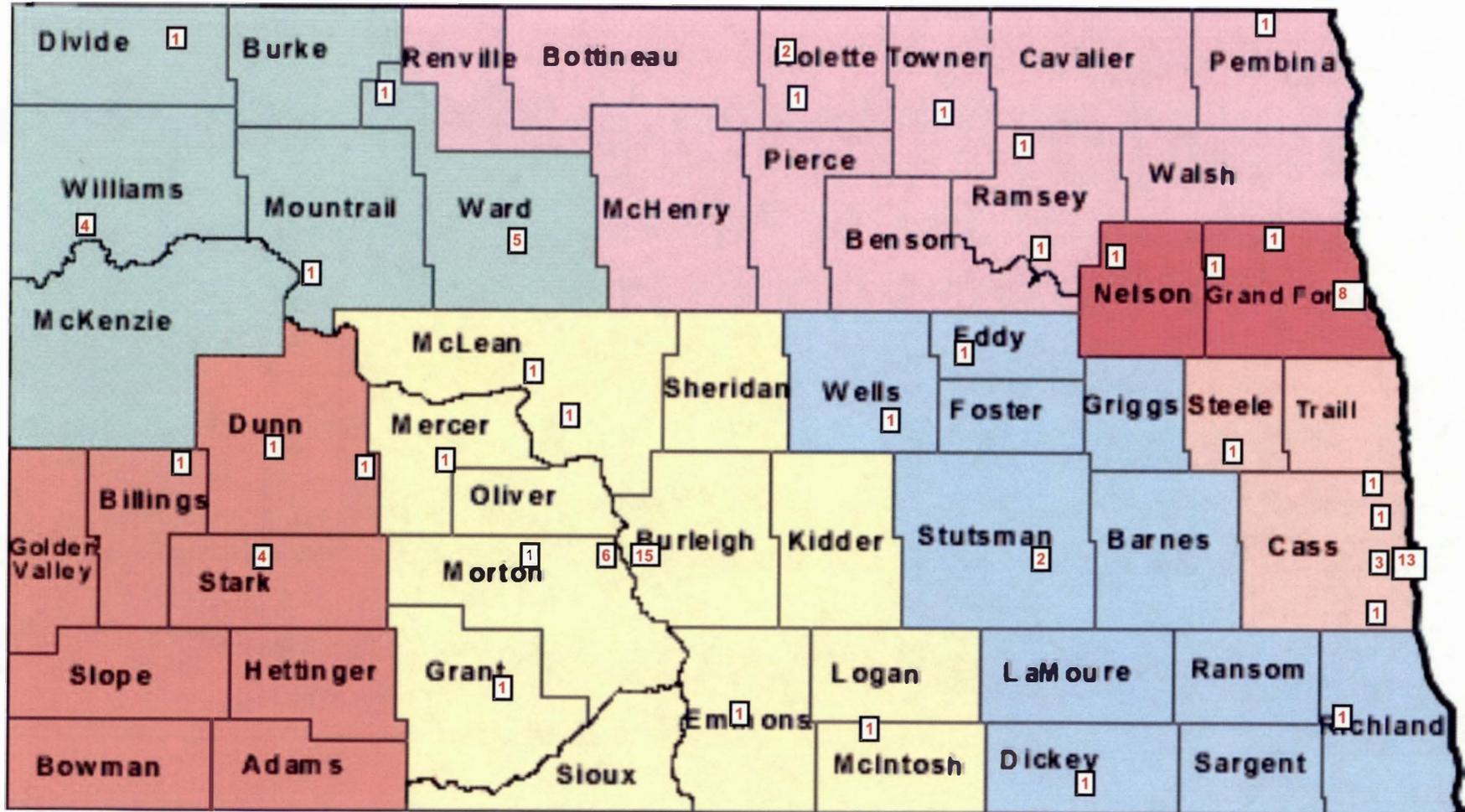
B Misdemeanor	79
A Misdemeanor	1
C Felony	5
B Felony	9
Total	94

**2012 Insurance Fraud Cases
If Aligned with Senate Bill 2251**



B Misdemeanor	80
A Misdemeanor	0
C Felony	5
B Felony	6
A Felony	3
Total	94

2012 Insurance Fraud Cases By Location



County	City	# of Fraud Cases in 2012
Billings	Fairfield	1
Burleigh	Bismarck	15
Cass	Argusville	1
Cass	Fargo	13
Cass	Grandon	1
Cass	Kindred	1
Cass	West Fargo	3
Dickey	Ellendale	1
Divide	Crosby	1
Dunn	Dodge	1
Dunn	Kildeer	1
Eddy	New Rockford	1
Emmons	Linton	1
Grand Forks	Grand Forks	8
Grand Forks	Johnstown	1
Grand Forks	Niagra	1
Grant	Carson	1
McIntosh	Wishek	1
McLean	Garrison	1
McLean	Underwood	1
Mercer	Beulah	1
Morton	Mandan	6
Morton	New Salem	1
Mountrail	New Town	1
Nelson	Lakota	1
Pembina	Neché	1
Ramsey	Devils Lake	1
Ramsey	Starkweather	1
Richland	Wyndemere	1
Rolette	Belcourt	1
Rolette	Dunseith	2
Stark	Dickinson	4
Steele	Hope	1
Stutsman	Jamestown	2
Towner	Cando	1
Ward	Kenmare	1
Ward	Minot	5
Wells	Sykeston	1
Williams	Williston	4
Out of State		3
Total		94

Cases Closed by Arrest (2010 through March, 2013) per Defendant:

Defendant's Initials	# of Cases Closed
T.E	1
D.A.	1
A.H.	1
F.I.	1
L.J.	1
M.K.	1
R.M.	1
J.S.	1
R.S.	1
J.C.	1
L.H.	1
J.N.	2
S.M. & Brother S.M.	4
E.B & G.B.	7
B.K.	10

Note: These numbers represent the number of cases that were closed not the number of criminal counts that were filed by the States Attorney.

House Judiciary Subcommittee - March 28, 2013

	SB 2074 Current Law	Bill	Amend	SB 2251 Current Law	Bill	Amend	SB 2345 Current Law	Bill	Amend
A Felony			>50,000		>50,000		>100,000	>50,000	
B Felony		>10,000			>10,000		>20,000	>10,000	
C Felony	>5,000		>1,000	>500	>1,000		>1,000	>500	>1,000
A Misd	5,000 or less		1,000 or less	>250 - 500	>500 - 1,000				1,000 or less
B Misd				250 or less	500 or less				
Infraction				50 or less	100 or less				

Rep. L. Blaine

Conf. Comm
 17