

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1092
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact three new sections to chapter 26.1-02.1 of the North Dakota Century Code, relating to civil and administrative remedies used to combat insurance fraud; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 determined to be in violation of this chapter and that by order of the commissioner a specified monetary penalty had been assessed against the defendant, that all rights of appeal have been waived or exhausted, and that payment in full has not been made in accordance with the terms of the consent order or other order of the commissioner. The insurance department shall attach to the complaint a certified copy of that consent order or other order of the commissioner.
 - b. The court shall enter judgment in favor of the department for the amount specified in the complaint if the department establishes:
 - (1) The defendant is the same person against which the consent order or other order of the commissioner applies; and
 - (2) Payment in full has not been made by or on behalf of the defendant according to the terms of the consent or other order of the commissioner.
 - c. Except as otherwise provided in this section the North Dakota Rules of Civil Procedure govern the civil proceedings.
3. A person that is found to have committed a fraudulent insurance act and assessed an administrative penalty or a person that violated an order of the commissioner pursuant to a hearing or consent order in relation to an administrative penalty associated with a fraudulent

insurance act, may be liable for expenses incurred by the insurance department at the discretion of the commissioner. The assessment for costs may not exceed fifteen percent of each penalty assessed under this section.

4. The commissioner may order restitution to the insurer or self-insured employer of any insurance proceeds paid pursuant to a fraudulent insurance act. Restitution ordered must be paid by the owing party to the insurance regulatory trust fund under section 26.1-01-07.1 and from that fund be paid to the victim insurer or self-insured employee.
5. The expenses or administrative penalties collected by the commissioner under this chapter are appropriated to the insurance department in accordance with this section and section 26.1-01-07.1. All such moneys that are deposited in the insurance regulatory trust fund under this chapter may be appropriated for use in the education and enforcement of insurance fraud, except funds ordered as restitution to a victim. Restitution funds must be reallocated to the victim. In the discretion of the department, the department may pay a reward drawn from the assessed administrative penalty to an individual who reports to the insurance department an incident of fraudulent insurance act that results in either an admission or finding of fraud. The reward may not exceed the lesser of the assessed administrative penalty or twenty-five thousand dollars. In order to be eligible to receive a reward under this subsection, a reporting individual shall sign a written complaint that subjects the person to the sanctions of section 26.1-02.1. Persons required to report fraudulent insurance acts under subsection 1 of section 26.1-02.1-06 are not eligible to receive a reward pursuant to this subsection.
6. The insurance department may collect moneys for use by the department for fraud education and enforcement purposes.
 - a. The following amounts must be deposited in the insurance regulatory trust fund for use by the department for fraud education and enforcement purposes, all sums received from:
 - (1) Fines assessed in accordance with this chapter; and
 - (2) Assessment of department costs under subsection 3.
 - b. The moneys received under this subsection are reserved for the use by the insurance department to defray the expenses of the department in the performance of the various functions and duties associated with fraud enforcement, fund specialized training of department personnel tasked with working within fraud enforcement, and provide the funding for specialized equipment, specialized technology, and insurance fraud public service and prevention campaigns and rewards.
 - c. The moneys deposited for this purpose are subject to the provisions of section 26.1-01-07.1.

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

Consent orders.

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

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

Criminal prosecution.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1092.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State