

2019 SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

SB 2077

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2077
1/7/2019
Job # 30487

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the penalties and restitution for insurance fraud; to provide a penalty; and to provide and effective date.

Minutes:

Att. # 1 – Helene Herauf

Chairman Klein: Opened the hearing on SB 2077. All members were present.

Helene Herauf, Legal Counsel, North Dakota Insurance Department: See Attachment #1 for testimony in support of the bill.

(5:46) Senator Piepkorn: Do the counties reimburse you for your time? The state is just taking it over. So we're also relieving them of a lot of cost in addition to?

Helene: The way our memorandums of understanding are written, there is no cost transfer. The department is just taking over the prosecution of those cases, for the benefit of the counties.

Chairman Klein: Somebody has to report something, does the company blow the whistle or how do you get started in this?

Helene: Based on a law you passed last session, if the company notices something like this and they suspect fraud, they are required to contact the department and let us know so we can investigate. Oftentimes, it is where the company will notice if somebody gets into an accident two hours after they get auto coverage then that's kind of suspicious. Oftentimes police reports will denote the time of the accidents, so when an insurance company gets the report and it's like the accident happened an hour before they obtained coverage. Two investigators here with us today. They investigate these claims of insurance fraud. Oftentimes we get it from companies, sometimes from citizens. People can refer to us about insurance fraud.

Senator Roers: \$1,000 per family seems to be a huge number, what is that extrapolate into dollars per year in insurance fraud? Cause if its resulting in increased premiums for us, somebody is getting paid.

Helene: I don't have the numbers for insurance fraud, perhaps Deputy Commissioner Ubben does.

Senator Piepkorn: Is there a fiscal note attached to this? Is this going to cost the state nothing?

Helene: There is no fiscal note attached. It doesn't change anything other than the way that I am able to prosecute.

Senator Kreun: What load will this take off of the judges and the counties' attorneys and state's attorneys?

Helene: The fraud prosecution program is currently already in place. We are already prosecuting the insurance fraud cases, there wouldn't be any change based on this legislation. We're only in eight counties, so as we have insurance fraud pop up in different counties, we're approaching those county state's attorneys to ask them to appoint me as a special assistant in that county so I can prosecute them as well. So if there are counties that I'm not appointed in yet, its likely because they haven't had an insurance fraud case in the last year and a half.

Chairman Klein: So the plain is for you to be in all 53 counties?

Helene: That is a question for the commissioner.

Chairman Klein: Asked Jeff Ubben, Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department to answer questions for the committee.

Senator Roers: \$1,000 per family for increased insurance premiums, if it's that much of an impact to each individual family, how many dollars are we talking about statewide that drive that increase? It would be nice to know how big of a fraud concern we have as a state.

Jeff: The national number that the National Insurance Crime Bureau has put on this is roughly \$80 billion, per year. I don't have that extrapolated down to the state but if you did some math you could figure out that the number is likely a little less than \$1 billion for the state of North Dakota. But even so that's still an extremely large number and thus the reason we started this fraud prosecution program.

Chairman Klein: Is this individuals or groups? Do we know if its just big numbers that get us to this \$1,000?

Jeff: It's a variety of sources. In Fargo we've seen accident rings where multiple individuals are involved with staging accidents on the same vehicle. I hate to single Fargo out, but that's quite honestly where the majority of them have been. However, we do also see insurance fraud committed by individuals all across the state. The west really picked up especially during the boom, and a little bit after. We saw folks committing arson to burn their property down and collect the insurance proceeds. We see a lot of arson related insurance fraud as well. That's been the number one area of growth in the crime of insurance fraud is folks that

have gotten upside down on a loan or mortgage, a business, they burn their building to the ground to collect the insurance money and get out from under it.

Chairman Klein: Closed the hearing on SB 2077.

Senator Burckhard: Moved a Do Pass.

Senator Piepkorn: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absents.

Motion Carried.

Senator Burckhard will carry the bill.

Date: 1/7
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2077**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Burckhard Seconded By Piepkorn

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Burckhard

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

REPORT OF STANDING COMMITTEE

SB 2077: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2077 was placed on the Eleventh order on the calendar.

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2077

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2077
3/5/2019
33182

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Penalties & restitution for insurance fraud.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on SB 2077.

Helene Herauf~Helene Herauf: Attachment 1.

7:00

Rep D Ruby: When I read the current language, why do we have so subjective when it comes time for court to do what they thought they might be trying to get away with? It's clear, it's based on the value.

Helene Herauf: The word attempted is what that defense attorneys seem to be hinging on.

Rep D Ruby: To me, it's the value of the property or services, that they are attempting to take. It almost seems separate from what they thought. It's not that they attempted to do fraud, but based on the value of the property. The word "imply" means intended & seems confusing to me.

Helene Herauf: Those are the arguments that we are making. It should be the value of the property. They are finding the loophole & I'm not sure we will win.

Rep Schauer: What is the difference between the Class A & B felony?

Helene Herauf: Class A, you received the money & Class B is before you receive any money.

Rep Schauer: You are working with 8 counties, give us some background.

Helene Herauf: It's counties that came from the counties that had cases when we started the fraud prosecution program. We go to the prosecution attorney.

Chairman Keiser: Subsection 2 & 4, we are changing into the same language. What is the difference between the acts associated with or directly related with?

Helene Herauf: I don't know if there is necessarily a difference between the two. Associated is more encompassing.

Chairman Keiser: Then should we strike "directly related to the fraud" or leave it in?

Helene Herauf: I would like to leave it in.

Rep D Ruby: Would that be somebody that is assisting in the fraud, somebody filing a claim or they are associated with?

Helene Herauf: That is not the intent of this specific language.

Rep D Ruby: Number 4 & 5 in subsection, is those putting in the statute of limitations that don't exist.

Helene Herauf: There currently is a statutes of limitations but it doesn't not from the day of the discover but from the day of the act. The statute of limitations is in the 12.1 section & it says all misdemeanors & felonies.

Chairman Keiser: This goes from the discovery of the act in fraud.

Helene Herauf: Sometime we don't know & it's 2 years later.

Dennis Pathroff~ State Farm & Association of ND Domestic Insurers: We stand in support of SB 2077 in stamping out insurance fraud. We believe this bill takes the step towards that.

Chairman Keiser: What is your opinion in that language?

Dennis Pathroff: I agree with Helene, we should keep it in.

Chairman Keiser: Anyone else here to testify on SB 2077. Closes the hearing. What are the wishes of the committee?

Vice Chairman Lefor: Moves a Do Pass.

Rep Bosch: Second.

Chairman Keiser: Further discussion?

Roll call was taken on SB 2077 for a Do Pass with 10 yes, 0 no, 4 absent & Rep Richter is the carrier.

Date: Mar 5, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2077

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Refer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- _____

Motion Made by Rep Lefor Seconded By Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	Ab	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep D Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	Ab		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	Ab		Rep M Nelson	Ab	

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep Richter

REPORT OF STANDING COMMITTEE

SB 2077: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING).
SB 2077 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2077

SENATE BILL NO. 2077

Presented by: Helene Herauf
Legal Counsel
North Dakota Insurance Department

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

Date: 1/7/2019

TESTIMONY

Mr. Chairman and members of the committee, my name is Laney Herauf and I am legal counsel for the North Dakota Insurance Department. I handle the insurance fraud prosecutions under the Department's fraud prosecution program. The Department investigates cases of insurance fraud for the state, but prior to the implementation of the fraud prosecution program, the Department would turn these cases over to the county state's attorney's office for prosecution. These cases are often highly complex and very paper intensive cases. We all know that the State's Attorney's offices have high caseloads and often times the insurance fraud cases were not a top priority.

Insurance fraud is a serious crime with serious consequences – the crime of insurance fraud costs every North Dakota family on average almost \$1,000 per year in the form of increased insurance premiums. It is also the second most profitable crime in America today behind only illegal drug sales. Therefore, it was decided to bring the prosecution of this crime in-house by having Insurance Department attorneys work under the authority of the county state's attorneys as a special assistant state's attorney. We currently have agreements with eight counties in North Dakota to perform this work. These agreements allow me, with the County State's Attorney's permission, to prosecute those cases on their behalf. As we've been handling these cases, we've noticed what we believe to be a loophole in the law or a perceived loophole that we are hoping to close with this piece of legislation.

SB 2077 1/7/19 attach #1 pg 1

SR 2077 1/7/19 Attach #1 pg 2

It is easiest to explain using an example. Let's say there is a car accident and the party at fault does not have car insurance so immediately after the accident he or she obtains car insurance, claims there is no damage to their car and 2 hours later files a claim with their company saying that they got into a car accident after they obtained coverage. This is a scenario we see frequently. The way the penalty level is currently written is this act would be "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." It is a class A misdemeanor if the value of any property or services attempted to be obtained is ten thousand dollars or less. To illustrate, some defense attorneys are arguing a loophole is - what if the defendant believed his or her vehicle is worth \$8,000, but the insurance adjustor comes back saying that the vehicle is worth \$13,000? We are charging out that crime at the \$13,000 level – a C felony because if the defendant had been successful in his or her fraud, \$13,000 is the amount of money they would have received from the insurance company. Some are arguing the crime should be at the Class A misdemeanor level because when the defendant perpetrated the fraud, they only believed they were entitled to \$8,000. You can see how this could be problematic. On a grander scale, it is a class B felony if the value of any property or services attempted to be obtained exceeds fifty thousand dollars. What if a defendant lies to obtain a medical procedure that would have cost \$150,000, but claims that he or she believes that it would cost \$5,000? How can we prove what a defendant thought or rebut what they claim?

Changing the law to read, "the act associated with the fraud or directly related to fraud," we believe the language makes it clear that the value of the claim is the determining factor as to penalty level. To be clear, this would apply only in cases where the defendant had not been paid and where the fraud was discovered prior to any claim payment. If a claim has been paid, the amount of money they receive determines the penalty level.

The other part of this bill that changes existing law is the statute of limitations. Currently the statute of limitations for insurance fraud is 2 years from the date of the act for misdemeanors and 3 years for felonies. The inherent nature of the crime of insurance fraud is that it is hidden or deceptive. As Commissioner Godfread has articulated in the past, "the better you are at insurance fraud, the better you are at hiding it." Unfortunately, this means that we have been unable to prosecute some cases because the act was not discovered until after the statute of limitations had already run. By changing the statute of limitations from the date of the act to the date of discovery of the act, we are able to prosecute these cases, if the evidence is still reliable.

For clarification purposes, as well, this would only apply to our criminal prosecutions. As you are aware, the department also takes regulatory action against agents and companies to violate the law as it pertains to producer licensing or other areas within 26.1. This statute of limitation change only applies to our criminal statutes and criminal prosecutions.

In conclusion, this bill will assist the Department in cracking down on insurance fraud by bringing those who commit this crime to justice and in turn, help the Department prevent our insurance rates from increasing due to the costs of fraud. 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.

SR 2077 1/7/19 Attach #1 pg 3

SENATE BILL NO. 2077

Presented by: Helene Herauf
Legal Counsel
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Representative George Keiser, Chairman

Date: March 5, 2019

TESTIMONY

Mr. Chairman and members of the committee, my name is Helene Herauf and I am legal counsel for the North Dakota Insurance Department. I handle the insurance fraud prosecutions under the Department's fraud prosecution program. The Department investigates cases of insurance fraud for the state, but prior to the implementation of the fraud prosecution program, the Department would turn these cases over to the county state's attorney's office for prosecution. These cases are often highly complex and very paper intensive cases. We all know that the State's Attorney's offices have high caseloads and often times the insurance fraud cases were not a top priority.

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SB 2077

Attachment 1
Mar 5, 2019

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