

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1092

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1092
1/12/2021

Civil & administrative remedies used to combat insurance fraud

Chairman Lefor opened the HB 1092 (8:48).

Representatives	Attendance
Representative Mike Lefor	P
Representative George Keiser	P
Representative Mary Adams	P
Representative Pamela Anderson	P
Representative Jared C. Hagert	P
Representative Jim Kasper	P
Representative Scott Louser	P
Representative Dave Nehring	P
Representative Emily O'Brien	P
Representative Mitch Ostlie	P
Representative Dan Ruby	P
Representative Austen Schauer	P
Representative Greg Stemen	P
Representative Paul J. Thomas	P

Discussion Topics:

- Insurance fraud
- Education
- Low level insurance fraud
- Civil accountability

J Dale Pittman ~ Director Fraud Division-ND Insurance (8:48): Introduced the bill & submitted testimony # 481.

Laney Heroff~Office Prosecutor-ND Insurance Dept (9:22): Clarified questions for the committee.

Pat Ward~ND Domestic Insurance Companies (9:31): Testified in favor.

Chairman Lefor (9:38): Closes the hearing.

Rep D Ruby (9:38): Moved amendment 21.8073.01001

Rep Kasper: Second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call vote-motion passed 14-0-0.

Rep Kasper (9:40): Do Pass as Amended.

Rep Schauer: Second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call vote-motion passed 14-0-0 & Rep Hagert is the carrier.

End time 9:41

Ellen LeTang, Committee Clerk

January 12, 2021

qj
1/12/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1092

Page 2, line 23, replace "claim" with "insurance act"

Page 3, line 7, remove "An insurance carrier that is the victim of a"

Page 3, remove line 8

Page 3, line 9, replace "reward under this subsection for reporting fraud associated with that carrier" with "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"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1092: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1092 was placed on the Sixth order on the calendar.

Page 2, line 23, replace "claim" with "insurance act"

Page 3, line 7, remove "An insurance carrier that is the victim of a"

Page 3, remove line 8

Page 3, line 9, replace "reward under this subsection for reporting fraud associated with that carrier" with "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"

Renumber accordingly

HOUSE BILL 1092

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

Before: **House Industry, Business and Labor Committee**

Date: **January 12, 2021**

TESTIMONY

Chairman Lefor and members of the committee, my name is Dale Pittman and I am the director of the North Dakota Insurance Department's Fraud Division. I've been with the North Dakota Insurance Department for over ten years and have investigated hundreds of cases of insurance fraud. The purpose of this bill is to enhance the fight against insurance fraud with a new tool that focuses on education and personal accountability over criminal sanctions. Understand, criminal investigations and prosecutions will still take place. The most egregious violators will still be pursued in the criminal arena, just as they are today. This bill will focus on the remainder—those who commit low level insurance fraud out of a sense of panic or ignorance rather than greed.

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

Since I have been working for the Department insurance fraud cases have risen steadily. Cases have become more complex and Camp-1 fraudsters have become increasingly wiser in avoiding detection. We have been forced to ignore many of those cases that fall into Camp-2 so that we can concentrate on Camp-1. We close Camp-2 cases as "Investigator Criteria Not Met" (ICNM),

usually the same day we receive them. In 2019 37% of cases were closed for ICNM and in 2020 40% were closed for that reason. This is the population of fraudsters that this bill will concentrate on.

Section 1 of this bill addresses the process by which Camp 2 cases will be pursued. The Commissioner and the Fraud Division director will review the case and decide upon the fine level based upon the specific circumstances of that case. If the violator fails to pay the fine the Department can file for a civil judgement with the court.

Section 1 also allows the department the option of collecting costs the Department incurs up to fifteen percent of the fine amount. This option is at the discretion of the Commissioner. The Commissioner can order restitution to insurers or self-insured employers for any claims that they have paid to the violator.

Subsection 5 of Section 1 explains what the Department will do with any fines or expenses collected. The money will be deposited into the Insurance Regulatory Trust Fund (26.1-01-07.1) and used for education and enforcement of insurance fraud.

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

An amendment to this bill was attached and submitted with this testimony that more clearly explains who is not eligible to collect the reward. Under 26.1-02.1-06, subsection 1 anyone engaged in the business of insurance is required to report insurance fraud to the Department. Anyone who falls under this requirement would not be eligible to collect a reward.

Subsection 6 further addresses what the fines and expenses will be used for. The primary plan for this money is to develop a public education campaign to help reduce fraud at the onset. We have found that many people don't understand the prevalence of insurance fraud and more concerning, that it is largely considered a "victimless crime." It is the Department's hope that a

public education campaign will help curb that mentality. Secondly we would use this money for training and equipment to stay ahead of the Camp-1 fraudsters. At this time, we do not have any data that would give us an estimate as to how much money we would be collecting. I personally do not believe we will collect much. It is not the intent of the Department to profit through the collection of fines. Personal accountability and education are the primary focus.

Restitution moneys collected must be deposited into the Insurance Regulatory Trust fund and these will be paid to the insurer as specified under subsection 4.

Section 2 authorizes the Department to settle the cases through a Consent Order where the violator legally agrees to settle the case as a civil matter.

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

With the passing of this bill a non-sworn investigator will be tasked with investigating the Camp-2 cases and offer a settlement through a Consent Order to the fraudster to settle the case civilly. A fine may be assessed and restitution ordered. The bill offers a remedy should the fraudster not honor the agreement in the Consent Order.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1092

Page 3, line 7, replace "An insurance carrier that is the victim of fraudulent insurance act is not eligible to receive a reward pursuant to this subsection for reporting fraud associated with itself" with "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"

Renumber accordingly

2021 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1092

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1092
2/16/2021

relating to civil and administrative remedies used to combat insurance fraud
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Chair Klein opened the hearing at 10:58 a.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Insurance Fraud
- Need for insurance

Dale Pittman, Fraud Division for ND Insurance Department introduced bill, testified in favor, and submitted testimony #6648 [10:58].

Megan Hoan, Blue Cross Blue Shield testified in favor [11:15].

Additional written testimony: 6516

Senator Burckhard moved a DO PASS [10:24].
Senator Larsen seconded the motion [10:24]

[10:24]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Burckhard will carry the bill
[10:25].

Chair Klein ended the hearing at 10:25 a.m.

Isabella Grotberg, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1092, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1092 was placed on the Fourteenth order on the calendar.

HOUSE BILL 1092

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

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

Date: **February 16, 2021**

TESTIMONY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



February 8, 2021

North Dakota Senate
Industry, Business and Labor Committee

Subject: Support Statement – House Bill 1092

Dear Committee Members:

The National Insurance Crime Bureau (NICB) is a national, not-for-profit organization supported by approximately 1,200 property and casualty insurance companies including many who write business in North Dakota. Working with our member companies and law enforcement, we investigate organized criminal conspiracies dealing with insurance fraud and vehicle crime.

We write in support of House Bill 1092 which seeks to add a civil penalty to the insurance fraud statute. Several states have enacted similar laws that allows for civil actions to be pursued against individuals convicted of violating any provision of state insurance fraud laws.

Often fraud rings and criminal organizations have enriched themselves at the expense of innocent policyholders who pay for the fraud through higher insurance premiums. States with a civil remedy against the criminal organizations and individuals convicted of defrauding the insurance industry have the ability to recoup those funds, which can be used to pay restitution, as well as defray fraud unit investigative and prosecutorial expenses.

One of the more recent states to enact a civil penalty law is the State of Maryland. According to statistics on the Maryland Insurance Administration website, their fraud department over the past few years has sanctioned over 200 individuals with committing insurance fraud in Maryland with penalties totaling \$890,000 and those individuals ordered to pay over \$300,000 in restitution.

We urge the swift passage of HB 1092 to aid the North Dakota Insurance Fraud Unit in their ongoing efforts to combat insurance fraud.

If you have any questions or need any additional information, please feel free to contact me at tlynch@nicb.org.

Regards,

A handwritten signature in blue ink, appearing to read "Tim Lynch", is placed below the "Regards," text.

Tim Lynch, Senior Director of Government Affairs – National Insurance Crime Bureau