CHAPTER 26.1-02.1
INSURANCE FRAUD

26.1-02.1-01. Definitions.

As used in this chapter:

1. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or who are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf. The term does not include the activities of the North Dakota life and health insurance guaranty association or the North Dakota insurance guaranty association.
2. "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.
3. "Fraudulent insurance act" includes the following acts or omissions committed by a person knowingly and with intent to defraud:
   a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer, or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:
      (1) An application for the issuance or renewal of an insurance policy or reinsurance contract;
      (2) The rating of an insurance policy or reinsurance contract;
      (3) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
      (4) Premiums paid on an insurance policy or reinsurance contract;
      (5) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
      (6) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
      (7) The financial condition of an insurer or reinsurer;
      (8) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
      (9) The issuance of written evidence of insurance;
      (10) The reinstatement of an insurance policy; or
      (11) The formation of an agency, brokerage, or insurance producer contract.
   b. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
   c. Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance.
   d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.
   e. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions specified in this section.
4. "Insurance" means a contract or arrangement in which one undertakes to pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance; pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies; pay an annuity to another; or act as surety. The term does not include a debt cancellation contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor and does not include a debt suspension contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor.

5. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subsection 4, whether the person has or is required to have a certificate of authority or denies being an insurer. The term does not include the North Dakota life and health insurance guaranty association, the risk management fund, a bank, credit union, or savings association as a party to a debt cancellation contract or debt suspension contract, or the North Dakota insurance guaranty association.
6. "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing.
7. "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
8. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.
9. "Reinsurance" means a contract, binder of coverage including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

26.1-02.1-02. Insurance fraud.
Repealed by S.L. 2003, ch. 235, § 11.

26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation of convicted felons prohibited.
1. A person may not commit a fraudulent insurance act.
2. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
3. a. A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance.
   b. A person in the business of insurance may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

26.1-02.1-03. Disclosure of information.
Repealed by S.L. 2003, ch. 235, § 11.

26.1-02.1-04. Immunity.
1. A person when acting without malice is not subject to liability by virtue of filing reports, or furnishing orally or in writing other information concerning any suspected, anticipated, or completed fraudulent insurance act, when the reports or information are provided to or received from the commissioner; federal, state, or local law enforcement or regulatory officials; the national association of insurance commissioners; or any other not-for-profit organization established to detect and prevent insurance fraud and any employee or agent of any of these entities.
2. Except in prosecution for perjury or insurance fraud, and in the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides or receives information regarding any suspected fraudulent insurance act to or from the commissioner; federal, state, or local law enforcement or regulatory officials; the national association of insurance commissioners; or any not-for-profit organization

established to detect and prevent fraudulent insurance acts and any employee or agent of any of these entities who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to provide evidence or testimony is not subject to a criminal proceeding or to a civil penalty with respect to any act concerning which the person testifies to or produces relevant matter.

3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides information regarding any suspected fraudulent insurance act to the commissioner; federal, state, or local law enforcement or regulatory officials; the national association of insurance commissioners; or any not-for-profit organization established to detect and prevent fraudulent insurance acts and any employee or agent of any of these entities who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to furnish evidence or provide testimony, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against the person, for filing reports, providing information, or otherwise cooperating with an investigation or examination of any of these entities.
4. The commissioner; federal, state, or local law enforcement or regulatory officials; the national association of insurance commissioners; or any not-for-profit organization established to detect and prevent fraudulent insurance acts and any employee or agent of any of these entities, when acting without malice is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature will lie against the person by virtue of the execution of official activities or duties of the entity by virtue of the publication of any report or bulletin related to the official activities or duties of the entity.
5. This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity.

26.1-02.1-05. Penalties - Restitution.

1. a. A violation of section 26.1-02.1-02.1 is:
   (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 class B felony if the value of any property or services retained exceeds ten thousand dollars 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 class C felony if the value of any property or services retained exceeds one thousand dollars but does not exceed ten thousand dollars; and
   (6) A class A misdemeanor in all other cases.

   b. For purposes of this section, the value of any property and services must be determined in accordance with section 12.1-23-05.
2. In the event that a practitioner is adjudicated guilty of a violation of section 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.
3. In addition to any other punishment, a person who violates section 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any other person for any financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The court shall determine the extent and method of restitution.

26.1-02.1-06. Mandatory reporting of fraudulent insurance acts.

1. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
2. Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
3. A person who provides nonpublic personal information to the commissioner pursuant to this section does not violate the insurance privacy law under section 26.1-02-27.

26.1-02.1-07. Confidentiality.

1. Any documents, materials, or other information in the possession or control of the commissioner which are provided pursuant to section 26.1-02.1-06 or obtained by the commissioner in an investigation of suspected or actual fraudulent insurance acts are confidential by law and privileged, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
2. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.
3. In order to assist in the performance of the commissioner's duties, the commissioner may:
   a. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1 with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with local, state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
   b. Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
   c. Enter into agreements governing sharing and use of information consistent with this subsection.
4. A privilege or claim of confidentiality in the documents, materials, or information is not waived as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.
5. Any investigative information gathered under section 26.1-02.1-06 or 26.1-02.1-08 is criminal investigative information and may not be disclosed except as provided under section 44-04-18.7.

26.1-02.1-08. Creation and purpose of the insurance fraud unit.

1. The North Dakota insurance fraud unit is established within the insurance department. The commissioner may appoint the full-time supervisory and investigative personnel of the insurance fraud unit, who must be qualified by training and experience to perform the duties of their positions. The commissioner may also appoint clerical and other

staff necessary for the insurance fraud unit to carry out its duties and responsibilities under this chapter.

2. The insurance fraud unit shall:
   a. Initiate independent inquiries and conduct independent investigations when the insurance fraud unit has cause to believe that a fraudulent insurance act may be, is being, or has been committed;
   b. Review reports or complaints of alleged fraudulent insurance activities from federal, state, and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and
   c. Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.
3. The insurance fraud unit may:
   a. Inspect, copy, or collect records and evidence;
   b. Serve subpoenas;
   c. Administer oaths and affirmations;
   d. Share records and evidence with federal, state, or local law enforcement or regulatory agencies;
   e. Execute search warrants and arrest warrants for criminal violations of this chapter;
   f. Arrest upon probable cause without warrant a person found in the act of violating or attempting to violate a provision of this chapter;
   g. Make criminal referrals to prosecuting authorities; and
   h. Conduct investigations outside of this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate a representative, including an official of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to a similar request from an official of another state.

26.1-02.1-09. Peace officer status.

A fraud unit investigator has all the powers conferred by law upon any peace officer of this state when making arrests for criminal violations established as a result of an investigation pursuant to this chapter. The general laws applicable to arrests by a peace officer of the state also apply to a fraud unit investigator. A fraud unit investigator may execute an arrest warrant and search warrant for the same criminal violation; serve subpoenas issued for the examination, investigation, and trial of all offenses identified through an investigation; and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

26.1-02.1-10. Other law enforcement or regulatory authority.

This chapter does not:

1. Pre-empt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
2. Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law enforcement or regulatory agency other than the insurance fraud unit; or
3. Limit the powers granted elsewhere by the laws of this state to the commissioner or the insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

26.1-02.1-11. Rules.

The commissioner may adopt rules determined necessary by the commissioner for the administration of this chapter.