

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1112
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-02.1-01, 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-39 of the North Dakota Century Code, relating to licensing and insurance producers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-01. Definitions.

As used in this chapter:

1. "Breach of trust" means any criminal act or an element of a criminal act by a person, including an act that constitutes or involves misuse, misapplication, or misappropriation of the following:
 - a. Anything of value held as a fiduciary, in which "fiduciary" includes a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director, or public service; or
 - b. Anything of value of any public, private, or charitable organization.
2. "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.
3. "Dishonesty" means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.
- ~~2-4.~~ "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.
- ~~3-5.~~ "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.

4-6. "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.

5-7. "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.

6-8. "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing.

- ~~7-9.~~ "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.
- ~~8-10.~~ "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.
- ~~9-11.~~ "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.

SECTION 2. AMENDMENT. Section 26.1-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation, and licensure 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. The commissioner shall deny an application for license under chapter 26.1-26, or shall revoke or shall refuse to renew a license issued under chapter 26.1-26, if the commissioner finds the applicant or licensee has been convicted of a felony involving dishonesty or breach of trust.
- 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.

SECTION 3. AMENDMENT. Section 26.1-26-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-15. License requirement - Character.

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

SECTION 4. AMENDMENT. Section 26.1-26-39 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-39. Refusal of license - Notification of applicant - No refund of fees.

If the commissioner finds that the applicant has not met the requirements for licensing or license renewal, the commissioner shall refuse to issue or renew the license. The commissioner shall, in writing, promptly notify the applicant and the appointing insurer, if applicable, of the refusal, stating the grounds for the refusal. All fees accompanying the application for license are not refundable.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1112 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,
at _____ o'clock _____ M.

Secretary of State