

June 2009

TITLE 26.1

Insurance

Summary of Bills Enacted by 2009 Legislative Assembly

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code Title 26.1. Bills primarily affecting other titles may also affect this title but those bills are not summarized in this memorandum.

The legislation relating to insurance may be classified in these subject areas: insurance producers, state bonding fund, health, Insurance Commissioner, automobiles, insurance companies, and miscellaneous.

INSURANCE PRODUCERS

House Bill No. 1141 increases the fee for a surplus lines insurance producer's or insurance consultant's license from \$10 to \$100 and the fee for annual renewal of the license from \$10 to \$25.

House Bill No. 1142 provides a grandfather provision allowing insurance producers and insurance consultants who are at least age 62 as of January 1, 2010, who have combined total years of continuous licensure that equals 85 years, to be exempt from continuing education licensure requirements.

House Bill No. 1192 modifies the law relating to insurance producers doing business in North Dakota, including modifying the period of time within which a producer shall complete continuing education and clarifying that all insurance producers, regardless of the type of lines they sell, shall file a license continuation every two years; revises the maximum and minimum civil penalty for violation of the insurance producer law; and repeals the law that requires the Insurance Commissioner to hold a hearing if a producer's license is canceled for failure to file or pay the license fee.

Senate Bill No. 2380 amends the state's annuity suitability law providing fixed index annuities and variable annuities must be supervised for suitability by a broker dealer, clarifies the chapter of law addressing annuity transaction practices does not preempt any other securities law of the state, and updates a statutory reference to the National Association of Securities Dealers to the Financial Industry Regulatory Authority.

STATE BONDING FUND

House Bill No. 1294 authorizes the Insurance Commissioner to issue bonds in the amount necessary to carry out the purposes of the state bonding fund; clarifies the chapter of law dealing with the state bonding fund does not prohibit state agencies or political subdivisions from purchasing bonds issued by duly authorized surety companies; however, if such a bond is purchased, evidence of that bond must be filed with the Insurance Commissioner; and replaces the duties of the State Treasurer with the Office of Management and Budget as they relate to the insurance regulatory trust fund and removes the duties of the State Treasurer relating to the state bonding fund.

Senate Bill No. 2144 modifies when and how the State Auditor shall investigate the account of a public employee or public official who defaults or creates a liability against the state bonding fund, providing the State Auditor may arrange to have an investigating firm conduct the audit and providing all reasonable audit costs incurred must be paid out of the state bonding fund.

Senate Bill No. 2300 modifies the minimum amount of state bonding fund coverage for state agencies and political subdivisions, providing the coverage must be based upon the amount of money or property handled and the opportunity for defalcation, but the amount must at least equal the amount of money or property actually handled or \$10,000, whichever is less.

HEALTH

House Bill No. 1010 expands Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) health insurance coverage as provided under the federal American Recovery and Reinvestment Act of 2009 and provides for the statutory annual salary for the Insurance Commissioner of \$83,550 beginning July 1, 2009, and \$87,728 beginning July 1, 2010.

House Bill No. 1204 expands group and individual health insurance coverage minimums to require coverage of illness or loss that is a consequence of intoxication or being under the influence of any narcotic and provides that group health insurance coverage may exclude coverage of a loss to which a contributing cause was the insured's

commission of a crime or the insured's engagement of an illegal occupation, except a crime under Section 39-08-01, relating to driving under the influence.

Senate Bill No. 2214 makes several changes to the Comprehensive Health Association of North Dakota (CHAND) law, including revising CHAND eligibility requirements for Health Insurance Portability and Accountability Act of 1996 (HIPAA) applicants to address residency issues and relocation issues; implements resident dependent and resident spouse eligibility provisions from the Model High Risk Pool Act; clarifies limitation of CHAND coverage of newly born children; clarifies waiting period coverage under CHAND; and streamlines the eligibility process for CHAND applicants who have reached a lifetime maximum under a private health insurance policy.

Senate Bill No. 2274 provides a health insurance provider may not use an independent external review unless the provider first has exhausted all internal appeal processes offered by the insurance company, nonprofit health service corporation, or health maintenance organization.

Senate Bill No. 2318 defines "qualified program of all-inclusive care for the elderly" and provides there is a \$250,000 surety bond requirement for a qualified program of all-inclusive care for the elderly operating in the state.

INSURANCE COMMISSIONER

House Bill No. 1136 authorizes the Insurance Commissioner to charge a processing fee for electronic filings and removes the Insurance Commissioner's authority to charge a fee for a written licensee's examination administered by the office of the commissioner.

House Bill No. 1196 removes the requirement that the Insurance Commissioner annually report to the Legislative Assembly or the Legislative Council the commissioner's findings relating to the use of modified community ratings for hospital and medical insurance.

AUTOMOBILES

House Bill No. 1158 expands the current automobile insurance and warranties law by providing that all persons, other than original equipment manufacturers, which issue a written automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract, shall maintain a policy of insurance which provides coverage for the person's contractual obligation.

House Bill No. 1245 eliminates the requirement that a request for suspension of automobile insurance coverage be a signed, written request.

INSURANCE COMPANIES

House Bill No. 1175 provides that before paying a claim under a contract of insurance issued in the state, an insurer or government self-insurance pool may exchange information about a claimant with the Department of Human Services.

Senate Bill No. 2104 provides it is an unfair or deceptive act or practice in the business of insurance to base compensation of claims employees or contracted claims personnel on the number of policies canceled, the number of times coverage is denied, use of a quota limiting the number of claims, or the use of an arbitrary quota or cap limiting the amount of claims payments without due consideration to the merits of the claim.

Senate Bill No. 2109 broadens an insurer's trade secret protection for scoring models for insurance scores used for underwriting or rate risks to include protection of all related scoring models, scoring processes, and information related to the scoring models or processes.

MISCELLANEOUS

House Bill No. 1284 repeals the existing law relating to viatical settlement contracts and replaces it with a new body of law based on the National Conference of Insurance Legislators Life Settlement Model Act.

House Bill No. 1436, as part of the bill that changes the name of the Legislative Council to the Legislative Management and retains the name Legislative Council as it pertains to the Legislative Council staff, corrects a reference to the Legislative Council.

Senate Bill No. 2181 corrects a 2005 legislative drafting error relating to contracts of reinsurance.