

TESTIMONY SB 2296

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Before: Senate Judiciary Committee and Senator Diane Larson,
Chairman

Date: February 1, 2023

Good morning, Chairman Larson and members of the committee. My name is Jon Godfread, and I am the North Dakota Insurance Commissioner. I am here today in opposition to senate bill 2296.

Administrative Law Judges (“ALJs”) currently issue recommendations to the Insurance Department, not final orders. Insurance regulation is complex. ALJs are not necessarily insurance experts and there is a potential for ALJs to get it wrong, and sometimes even the Insurance Department gets it wrong. Our current law and administrative procedures take into account the possibility of an incorrect recommendation and allows for corrective changes to be made before the order is final. SB 2296 will eliminate this process. Additionally, the remaining provisions included in SB 2296 are already addressed elsewhere in the administrative procedures law. SB 2296 overlaps with the current law and will insert confusing into the established law.

SB 2296 will make all ALJ decisions final and will do away with the Insurance Department’s ability to reject the ALJ’s recommendation. Mandating all ALJ decisions as final will force agencies to unnecessarily drag licensees into district court for appeals. Because doing away with recommendations will force a state court appeal, licensees are free to continue inappropriate activity all the way through the appeal of the administrative decision. This will expose insurance consumers to misconduct by insurance licensees.

I would like to share with you some details from an actual Insurance Department case where SB 2296 would have forced the Department to unnecessarily appeal an ALJ decision to state court.

In 2017, the Office of Administrative Hearings (“OAH”) heard an Insurance Department case where an insurance agent forged the name of an insured. This insurance consumer decided to ask an acquaintance that held an insurance agent’s license to assist her with an automobile insurance claim. The agent agreed to assist her but told her a Change of Agent Form would need to be completed and the form required the signature of the first person named on the insurance policy. In this case the consumer’s name was not the first name on the policy. The first name on the policy was the name of the other person insured. After the agent prepared the form for the signature, this consumer instructed the agent to go ahead and sign the name of the first person listed on the policy, so the agent signed the name.

During the hearing, testimony came out that this other named insured did not want to change insurance agents or move his business to this new insurance agent, and although the new agent thought the two insureds were married, they were not. The agent never received permission from this person to sign this person’s name. This person never consented to moving the insurance policy to this new agent. This person was never consulted by anyone about changing to a new agent or about this new agent signing this person’s name. The new agent admitted to these facts at the hearing. Furthermore, both the insurance agency, where this new agent worked, and the insurance company testified that signing another individual’s name with or without permission is against policy.

This new agent presented this change of agent form to the insurance company as if it were this person’s genuine signature. Our insurance law requires agents to be honest, trustworthy and competent when acting as an insurance agent. The definition of dishonesty in the insurance law includes forging a person’s name. Despite these facts,

the ALJ did not find the agent lacked competence, trustworthiness or honesty, and found the Department lacked sufficient evidence to revoke this agents license.

Now, the findings of this ALJ were a problem for a few reasons. First, the Department never attempted to revoke this agents license. The Department was seeking to put this agent on probation. Second, the ALJ's recommendation stated that because there was no harm or profit by the agent the agent's actions did not demonstrate dishonesty or untrustworthiness. The ALJ's finding failed to take into account that an insurance agent's commissions are directly linked to being the agent connected to the insurance policy. Third, proving harm was not required. Many regulations are meant to prevent against possible future harm. Also, I would argue that signing someone's name without their knowledge and switching their insurance business to an unknown agent is harmful to the consumer and the agent that lost the customer.

Fortunately, in this instance the law permitted us to reject the ALJ's recommendation. The Insurance Department issued new findings and the agent did not appeal to the district court. This agent entered into a probationary license order with the Department. Had SB 2296 been in place the only option would have been an appeal to the district court.

On the flip side, if it is the Insurance Department that gets something wrong, because it is a recommendation and not a final order the Insurance Department has an opportunity to reevaluate its position rather than force the complainant into an appeal to the district court. For example, new facts come out at a hearing and the Department now thinks that license revocation is too harsh. Because the adverse recommendation from the ALJ is not final, the Department and the licensee are able to agree to informally resolve the issue or dismiss the complaint after further discussions with the complainant.

The remaining provisions of this SB 2296 are already in the law. North Dakota Century Code section 28-32-27 allows disqualification of the ALJ for "good cause." "Good cause" would include an agency supervising the ALJ. Section 28-32-27 limits

communication of the agency with the ALJ, which would include attempts to improperly influence an ALJ with improper evidence or arguments. The requirement of findings of fact, conclusions of law, and final orders are addressed throughout NDCC Ch. 28-32. Finally, the burden of persuasion and exercising doubt in favor of liberty, as specified in the bill, are already prescribed in various statutes, rules, and court opinions. Our current process recognizes the rights of license holders and individuals.

The OAH provides a place where licensees of the Insurance Department can give their side of the story to a neutral Administrative Law Judge (ALJ). Notwithstanding the statutory option allowing the Insurance Department to hold administrative hearings in-house, we have used OAH for all licensee hearings for as long as I have served as the Insurance Commissioner, and it is my understanding the previous commissioner used OAH solely as a neutral forum for licensee hearings.

SB 2296 does away with an important step in the administrative hearing process and confuses the current law with duplicative law. I urge the committee to give SB 2296 a do not pass recommendation.