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2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2168

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2168**

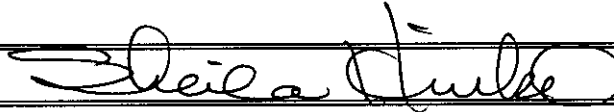
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 15, 2007**

Recorder Job Number: **#1094**

Committee Clerk Signature



Minutes:

**Claus Lembke – Executive VP, ND Association of Realtors - In Favor**

**TESTIMONY #1** State wide trade organization. Judy Lee, Prime and Co-Sponsors of bill.

Follow Testimony.

**S Klein:** With all the sponsors holding a Real Estate License, we're not to assume it is not self-serving?

**C Lembke:** As you will hear in the testimony, serves the consumer.

**S Heitkamp:** the bill is removing the \$125, it gives the discretion, it gives it to the RE commission to determine what is unreasonable as far as the premium?

**C Lemkbe:** It removes the limit, no authority of discretion.

**S Potter:** What is your communication about the upper limit? \$200 or something like that?

**C Lembke:** We address that in the additional testimony. We want to tell you why we're doing it that way.

**S Andrist:** Quite clear that this is optional coverage. Isn't it?

**C Lembke:** No it isn't, it is required for everyone to carry it?

**S Heitkamp:** to carry your plan?

**C Lembke:** No, the commission bids for a group plan and you can do your own or do the group plan, whatever you choose.

**S. Andrist:** So if the price goes up more than I like, I can find someplace cheaper I can do it.

**C Lembke:** Yes

**Daryl Brahm – Prudential L RES Realty, Fargo – *In Favor***

**TESTIMONY #2 M 5:52**

We were notified by E&O insurance underwriter who does the insurance for the state, in a letter sent to the ND Real Estate Commission and NDAR that they would provide coverage under current \$125 cap through 2007, but felt [see paragraph 2] In 2008 it could pose a problem. Looked into other states, options, doing nothing or increasing our maximum or eliminate maximum all together, depending on what happens in the future. Best thing, eliminate a maximum. Show research for a dozen states for E&O insurance. 50% now do not have a cap on what the insurance rate is. Best way to resolve is to maintain law way it is, remove line that puts in the mandatory cap for \$125. Very competitive industry, best for legislators, don't want you to every couple years having to come back and having to set new limits because of what the industry is doing from their standpoint. Self governing.

**S Potter:** Currently every Real Estate Agent has to buy insurance if available under \$125? If not, then they're not required to buy it?

**D Brahm:** It is mandatory that every agent must have E&O insurance up to that maximum \$125. If they can get it for less, but have to have E&O insurance up to this maximum \$125 breakdown.

**S Potter:** So if the premium is \$150, then real estate agents would not have to buy E&O coverage in ND.

**D Brahm:** That is why we're proactively dealing with this before that happens.

**S Potter:** are there real estate agents who are  $\frac{3}{4}$  retired from this business who will be burdened if the rates go up if required to pay whatever the market will bear. \$217, \$256, ex.

**D Brahm:** It could be possible. As we launched this as a mandated requirement for RE agents, we have gained more than 30% of our statewide body of agents that have joined that have this coverage. [11:30]

**S Wanzek:** Doesn't stop agent from getting private insurance?

**D Brahm:** Yes. We did this as a service for the consumer in order to provide agents from across the state to be able to get this insurance. Lots of agents had no method of getting insurance, when getting not on a group plan, very cost prohibitive. For us to create this program, it enabled them to go through our program, or if they can get it less, they can get it elsewhere.

**S Klein:** Idea is so that everybody has insurance, it's required, this bill provided an opportunity that was affordable,

**D Brahm:** Yes

**S Klein:** so this would allow you to charge above \$125 if it went above \$125.

**D Brahm:** Yes, based on the industry.

**S Klein:** So your agency doesn't take \$20 for every premium that's written?

**D Brahm:** No.

**S Behm:** Proposing cost can't go any higher?

**D Brahm:** No, what we're proposing in the law that states every agent has to have E&O insurance to a maximum of \$125 premium, and what we are proposing is that we remove simply those lines that say "to a maximum of \$125 premium" in order to make our rates available if our rates to change in 2008.

**S Behm:** I would think every agent would be ok to pay \$125 premium.

**D Brahm:** that is why the reason why the state promoted this.

**S Hacker:** If you take this number off of there, for an Insurance Agent, for a portfolio for 1000's of individuals, it's a lot, is there an indicator that's going to be sent that those providers might say it's just one less hurdle that they have to get around to keep your premiums down. Might they say, "there is no limitation on how high the premiums are going to get, but we're only one of the companies can handle a large portfolio like that, so maybe Rice is one of a few insurance providers in the state that can provide insurance, "You know what, it was going to be \$150, but since we don't have any limitation now, why don't we give them a quote of \$225 a piece."

**D Brahm:** That is the discussion that we had in roundtables. Discussion was: Why don't we just we just raise the limits so we can cap them in? Flip side was if they raise the limit, they'll just go to that limit and we'll be back again. Did research in other states. In some states, their cap versus premium, over 300% spread in what they're paying, what they're charge from the insurance company to what the cap is. Almost 50% of the states don't have any cap at all, their premiums are very consistent with the market. [16:15]

**S Hacker:** If I were a realtor, as an agent of a company, do I still need the insurance?

**D Brahm:** Yes

**S Hacker:** So it doesn't matter if you're purchasing or brokering transactions between buyer and seller of which you are the buyer?

**D Brahm:** If you are a licensee, if you hold your Real Estate license, this is to make sure you have your E&O insurance.

**S Wanzek:** Under current law, if the costs exceeds \$125 and under conditions you are unable to provide it at that rate, you have a bunch of agents that are exempted from e&o.

**D Brahm:** We have coverage through '07, but through this note from insurance provider being concerned they can stay at that rate.

**S Klein:** Mr. Maulberg generally he's here when there is an issue, He represents the rural realtors.

**S Andrus:** Requirements? Up to a certain amount of liability, you're saying the level of liability isn't changed, it is the level of the premium?

**D Brahm:** In years previous we wanted to have a group program for the consumer at a reasonable rate. The program is excellent, if it goes above \$125 level, we get rid of the program that has worked so well for last 4 years.

**S Andrus:** How much coverage do you get for \$125?

**D Brahm:** Have a hand out for this as well. \$100,000 limit with a \$500,000 aggregate limit, with \$1000 deductible, \$1000 for damages for \$125.00. Compare other states, we've been very successful.

**S Andrus:** Why don't you specific every agent has to have \$100,000/\$500,000 coverage?

**D Brahm:** There are minimum requirements within the law. You have to at least get this.

**S Andrus:** You said you don't have to buy this if it's over \$125? Doesn't make sense.

**D Brahm:** That's why we want to take out that line. We encourage, we support this change, so we don't hit that limit. When it started it was originally \$95.00. Only come up to \$125 based on our industry and marginally an increase.

**S Klein:** So if it went over \$125, Real Estate agents would have no insurance.

**D Brahm:** I believe there would be some in business that would carry E&O insurance because it is a good business practice, but no longer required or mandated, which is what we are trying to avoid.

**Denise Vormestrand – Broker with Brokers 12, Inc in Minot - In Favor**

[m 22:40]

**TESTIMONY #4**

The program works, need a Do Pass.

**S Potter:** What have premiums been?

**D Vormestrand:** Referred question to Claus Lembke.

**C Lembke**

**TESTIMONY #5 [m24:39]**

Referred to enrolled

**S Klein:** So we're negative balance real estate agents in ND?

**C Lembke:** This was total years.

**S Klein:** Not a poor risk.

**Q? Favor? Opposition?**

**CLOSED**

**M Do Pass – S Wanzek**

**2 – S Andrus**

**S Hacker –** My concern is if we take the cap off, will that raise the cap?

**S Potter:** I have the same concerns, good risk, I'd support \$125 or \$200

**S Wanzek:** I think it's a good risk, I'm assuming our realtors are doing a very good job, very professional and on the other hand, there are 871 here in the 3<sup>rd</sup> Qtr that I'm sure we'll hear from every one of them if someone gets out of line and unreasonable. I have no problem giving the flexibility and trust that they will make sound decisions about this area of decision in this industry.

**S Klein:** Over the years we've had a lot of discussion, and we bring up Mr. Malburg who's been here to have discussions on continuing ed. Or any other issues. As they travel about the



state, I don't see anyone who says they didn't listen to them. Having a good feeling the way they're running the business.

**S Andrus:** Understand it correctly, the board is not making the profit over price of the premiums, this is what the insurance company is charging them, so it's no incentive to raise the price higher. Correct?

So if we move the cap, then everyone has to have \$100,000 in insurance, and if that is what we need, they can do it.

**S Klein:** Unusual to me that it is written that if it goes over \$125 they don't have to have it.

**S Potter:** Because it is a requirement, someone who sells a house every other year, that might be too much for them, if it is written this way in the past, I defer to the judgment of the previous legislature that the limit is necessary and suggest we move.

**S Heitkamp:** Put in because it was a complete change. There were people who were against the mandate and change, but taking it up to a level, making sure the consumer had that protection, so a compromise was put in place [m 30:36] Reviewed that if you can find insurance at a better rate, you can purchase it.

**S Hacker:** Looked on the list for benefits based on premium paid, ND seems to be the best deal going on, best benefits and lowest premiums. Suggesting that it's a big deal for the company that provides that insurance, they want to keep premiums down so they get the business. We don't know what Rice wants to do, they want to move their premiums up, if they can move them up as high as they can and strive as high as we can as long as the market will bear; are we able keep the premiums low? What I'm hearing is that it is a group plan, and group rate...

**S Wanzek:** Sitting on some boards, we needed the E&O and we were able to find some pretty competitive markets and rates. Question if \$125 or \$150 will put a burden, why does everyone

want to be a real estate agent? Apparently, there are pretty slim pickin's, Because there is RE insurance, health insurance, property insurance, life insurance, it just doesn't seem like those numbers are unreasonable. Good market out there, very competitive, very reasonable.

**S Klein:** Is that the only insurance you have to buy? Any other requirements?

**C Lembke:** No.

**S Klein:** That covers you on the insurance side?

**S Heitkamp:** There is also heard continuing ed, number of other issues and a number of the people that S Potter has, we put grandfather clauses in. To me it is a pool. If you can't afford a pool, buy it somewhere else.

**S Potter:** The group plan is going to be cheaper than what you are going to be able to get as an individual. Good deal. They didn't want to come back every 2 years and discuss this with us. [Good citizenship training to come back]

**S Klein:** Motion for a **Do Pass 2168 by S. Wanzek, Second by Andrist**

**Roll Taken:** 6-1 Carried

**Carrier:** **S Potter**

Date: 1-15-07

Roll Call Vote: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2168

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Wanzek Seconded By Andrist

| Senators                   | Yes | No | Senators              | Yes | No |
|----------------------------|-----|----|-----------------------|-----|----|
| Chairman Jerry Klein       | ✓   |    | Senator Arthur Behm   | ✓   |    |
| Vice Chair Nicholas Hacker |     | ✓  | Senator Joel Heitkamp | ✓   |    |
| Senator John Andrist       | ✓   |    | Senator Tracy Potter  | ✓   |    |
| Senator Terry Wanzek       | ✓   |    |                       |     |    |
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Total Yes 6-1 No Carried

Absent \_\_\_\_\_

Floor Assignment Potter

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2168: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2168 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2168

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2168

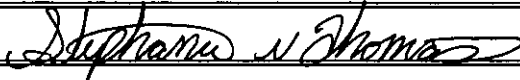
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3936

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on SB 2168.

**Claus Lembke, ND Association of Realtors:** Support SB 2168. See written testimony #1.

**Daryl Braham, Fargo-Moorhead Association of Realtors, Prudential LRES Realty:**

Support SB 2168. See written testimony #2. See handout A.

**Rep. Ruby:** I remember when this was put in place. It was sold as reason to pull all the realtors in to require them to have insurance once to get a lower rate. That's why it was put in, now all of a sudden it's higher than anyway. Why did it work for a short time, but now all of a sudden it's going to be higher then this cap?

**Daryl:** From our standpoint, you're correct. By having our group insurance we're able to negotiate better rates. What we have in the current law is that as long as those rates are not above \$125.00 you're required to be part of this group. Within the current law if the rate goes to \$130.00 it's no longer required by law, which means we no longer have that group. Right now anybody can go, and get their own insurance from anywhere, but they just get the advantage of working within our group to get that better rate. The issue is there was over \$300,000 that was spent in consumer protection by our insurance over the last couple of

years, which we see this as a huge benefit for the consumer, and we want to eliminate that cap, so we continue to mandate that our group is going to have to have insurance.

**Rep. Ruby:** The people who were opposed to it were somewhat placated by the fact that there was that amount that was maximized. Has anybody voiced their opposition?

**Daryl:** When Claus mentioned the caravan that went around the state, we went to every association that has been involved through the association so that as many of the 1400 members that we have in our association are aware of it. We've had no word of any opposition from any of the leadership, as well as from members, because they realize that this is a benefit for them to have this insurance protection to protect the consumer. So, I think this is something the realtors realize is a very good thing to have, and we see that as the reason why we want to make sure we keep it.

**Rep. Dietrich:** The reason that the association is looking for insurance in groups is to help cover a lot of independents with 1-4 people, the small shops that are unable to purchase at a reasonable cost, and a lot of the large firms 30-60 often carry their own and have been for many years, therefore then utilize the group. Now, because of usage the premiums have exceeded the ones that are accumulating \$125.00 a gap. Is that the purpose of the bill?

**Daryl:** We have only just heard word that it's possible that they could exceed in 2008, and what we're trying to do is be as proactive as possible for our members. What we don't want to see happen is in 2008 they come and tell us that it is \$130.00, and our current law in place says that it is up to a max of 1.5, and now 50% of our members no longer have insurance.

**Rep. Dietrich:** Being I'm in the business, and I'm a broker I shopped for errors in omission insurance, hoping that I would catch something more reasonable, and it couldn't be done. My operations are going to run about \$230.00 per person in my operation. So, I considered this a bargain at the time, and still would consider it a bargain, because I have to carry error of

omission to have my license renewed. Approximately, a month prior to renewing my license I receive the premium, and have to pay it at that time. This is a benefit at the premium rate I'm paying now.

**Daryl:** Our rates dropped by about 90% from the coverage that we had to when this group coverage came out. It was a huge benefit for us. From our realtor association, we want to insure that remains and that is the reason why we want to remove this cap.

**Rep. Ruby:** Why do you believe the 40% of the members drop out of the group?

**Daryl:** From our standpoint, and the research that we've done is as soon as you create a rule, or something that has to happen as a benefit of the whole, it seems to work very well within our association. As soon as somebody gets an opportunity to have that out, you will have a lot of members that may not do a lot of business that will say I don't need this. From our research, we estimated that we can get anywhere up to as many as 40% that may not have this, because of the amount of money we have now through our group insurance. In the end this is consumer protection, and that's why we want to make sure that we continue to enforce to have that consumer protection in place.

**Rep. Ruby:** Has there been payouts on errors of omissions insurance since this time? Have there been several claims that are causing the group to go up into the higher list?

**Daryl:** There has been over \$300,000 in payouts, and legal costs incurred by our group insurance provider, since we have had our errors in omission insurance in place.

**Rep. Amerman:** I'm not really familiar with E&O insurance, so where I work we have a big group under Blue Cross Blue Shield for health insurance, and our premiums go up even though we have this benefit of having this big group, and have lower premiums than a lot of people are afforded. It still goes up, because of usage and other factors that we can't control. Whenever we have an opportunity to keep our premiums down, we can take a lesser benefit



plan, so to speak, instead of this deductible and this co pay at this level, we'll raise our deductible and raise our co pays, and bring the premium down. Is this something that the organization can do, to shop around, or take a less premium that you're not going to get quite the coverage you would under a higher premium? Is this kind of how it works in E&O insurance?

**Daryl:** Through our research, we looked at other states to see what they've done historically where they're at. From our standpoint, we feel that we have very adequate insurance, and we're at a point now where the insurance is a very good benefit for the consumer at a very good rate. We don't lock in any of our members to have to take this group insurance, they can go shopping, and if they can get a better rate on their own, they certainly can.

**Rep. Kasper:** What is your group deductible for a covered employee, and is there a maximum benefit per a covered employee? What are your group amounts?

**Daryl:** I believe our group deductible is \$500, and the amount per claim is \$1000 deductible, and up to \$100,000 per claim.

**Rep. Keiser:** I think this bill does just the opposite of what you want it to do. What we did before was in section of code if the real-estate commissioner is unable to obtain the insurance, then you're exempted, you don't have to buy it. We then went on to say at a reasonable premium, we state this in the bill, but in the original language define what a reasonable premium was. We said reasonable is not to exceed \$125. So, now we take that out, and you go out shopping, and because ND is a smaller state there are fewer people in the plan, and the charge is \$160, and that's the best we can get. I'll come back to you and say based on your information, I can get it for \$135 in Nebraska, which would have been reasonable. I can get it for \$148 in Idaho, which would have been reasonable. Kentucky \$140, and they are not

reasonable; therefore I'm not buying it. Now, we've lost the protection for the consumers.

What's your reaction to that?

**Daryl:** From our standpoint, it is such a highly competitive industry in the insurance industry right now, based on what we've seen from the other states. We have a lot of confidence in our real-estate commission to be able to negotiate, and continue to make sure that they are bringing the best foot forward for our real-estate agents, and for our profession.

**Keiser:** This bill should then say not to exceed \$160. We need to leave that in, or it becomes very subjective, at a reasonable premium.

**Daryl:** Our response as an association is very much that we don't see it as a benefit to you as lawmakers for your time to take that rate from \$125 to \$150. None of us can know what is going to happen in the insurance industry in the future, and considering what is happening in the rest of the insurance industry, what we don't want to do is put a cap in there, and then have to come back to you and say the industry has changed again, and we want to keep on raising this.

**Rep. Keiser:** The way this is structured is with a cap. The right solution is to rewrite the entire section of this code, and say we don't care what the price is; you must have E&O insurance.

**Rep. Ruby:** If you have a disagreement of what's reasonable, what would the penalty for not be, to consider pulling their license?

**Daryl:** That would be up to the ND Real-estate Commission.

**Rep. Kasper:** If this bill were passed, currently, the law does not say but then I must go buy my own E&O, does it? When you leave the word reasonable in there without a cap that is exactly what could happen.

**Daryl:** The current law is to require members of the ND Association of Realtors to have E&O insurance. It does not exceed \$125 in coverage. Our whole issue is to ensure that if it does

exceed \$125 in coverage, this law does not force the members to be able to say, I don't want to have coverage anymore. We see that as a negative for the consumer.

**Rep. Ruby:** It seems to me that whatever they can negotiate as the price is what they consider reasonable, and that could cause some real problems.

**Daryl:** It is our intention that it is not the Association of Realtors that is going to be negotiating the prices; it is the ND Real-estate Commission that will be negotiating this on their behalf.

**Rep. Johnson:** The group that determines reasonable premiums is the Real-estate Commission, but it wouldn't be your association if some other approved it?

**Daryl:** That's correct, and that is where we have a lot of faith, and ability in our Real-estate Commission to be able to make sure that they do what is best for consumer protection in real-estate in ND.

**Rep. Zaiser:** Understanding that we see the trends line differently then members of our committee are suggesting, what clearly is the most important objective with this piece of legislation?

**Daryl:** Our biggest issue with this legislation is to ensure that it is a requirement for members of our association to have E&O insurance.

**Rep. Zaiser:** Under the way you're proposing it, there's a way that people won't be required to have it, and then you're not meeting your objective.

**Arne Kosobud, ND Association of Realtors:** Support SB 2168. We feel that if the premium exceeds \$125 and this requirement is lifted for such here, we expect that maybe up to 40% or more of the licensees may not purchase the E&O insurance. That is not acceptable to those of us who continue to purchase E&O insurance, and in our minds it's not an acceptable situation for our consumers that we work with. We believe every licensee needs to provide E&O insurance coverage for the protection of their clients and customers. Secondly, we know that

this ND program is working well to benefit the consumer. Since the program started in 2002, claims were made, and paid to the consumer in the amount of \$132,000. Claims were made, and paid to the consumer in the amount of that amount, and the insurance company also provided legal support in defense of such claims to \$96,000. That means a total of nearly \$230,000 has been paid since 2002 to handle claims, and to cover losses experienced by ND consumers. We do not want to lose this excellent program, and we're here to ask you for your help.

**Rep. Keiser:** To you see our dilemma?

**Claus:** It is our interpretation that the decision of what's reasonable is the Real-estate Commission. We feel we need that reasonable word in there, because that \$10,000 is not reasonable. We are looking at alternative ways to do this, including self insurance.

**Rep. Kasper:** How many members are covered under the group plan?

**Claus:** We have about 1400 members, and there's an additional 600 licensees out there, so there's about 2,000 licensees licensed by the Real-estate Commission. 871 of them in the 3<sup>rd</sup> quarter of 2006 were enrolled in this program, but it is steadily increasing.

**See handout B.**

**Rep. Keiser:** I remember when we first passed this legislation, and I also remember I think there were two people here who strongly oppose to it. The language that is crafted is going to give them the option to opt out. I think we just need to find a way to tweak this, so that we define the best rate available through the commission.

**Claus:** We don't object to looking for an amendment that clearly puts us under the umbrella of the Real-estate Commission. They are the ones that have to determine a reasonable rate.

**Rep. Kasper:** You've had roughly and average of a little over 800 insured since the beginning of 2005. That brings in \$100,000 premiums per year. You're total cost for the last two years is

a little over \$100,000, so you've had \$200,000 in premium, and about \$104,000 of costs. That is about a 50% loss ratio. I don't why you're even concerned about a rate increase.

**Claus:** The second paragraph on the first page is the one that alerted us to the possible increase, and that's what we read into it. ND is one of the best ratios of all of the states. They have to look at the pool as a whole, and they have to be healthy on it.

**Rep. Kasper:** The fact of the matter is if there is competition in the marketplace for E&O insurance, the insurance company tells you one thing, there could be another company out there that would be happy to take your group. Are there not a lot of group carriers that you can choose from?

**Claus:** There was not in 2002, but there is competition today.

Hearing closed.

**Chair Keiser** reopened the hearing on SB 2168.

**Rep. Dietrich:** The amendment proposed, Rep. Kasper and I met with the realtors, and we simply would take on line 8 move after the word coverage move at a reasonable premium in that area to ensure all licensees who choose to participate in the group program, the Errors and Omissions insurance requirements to this section would not apply within the year that the coverage could not be obtained. So, it is simply moving at a reasonable premium right after coverage.

**Rep. Keiser:** So, the bill would then read if the Real-estate Commission is unable to obtain Errors and Omissions insurance coverage at a reasonable premium to ensure all licensees who choose to participate in the program through Errors and Omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

**Rep. Ruby:** How does that change that?

**Rep. Dietrich:** I believe what that would do is that would put the reasonable coverage under the Real-estate Commission. They would find a reasonable coverage to ensure all licensees.

**Rep. Dosch:** Then in line 8, are we still then giving them the option as to all licensees who choose to participate in the program? It's not mandatory?

**Rep. Keiser:** I think you could strike to ensure all licensees who choose to participate in the group program. I think that makes it work actually better.

**Rep. Amerman:** It probably does work better, but without a number the word reasonable still comes into play.

**Rep. Keiser:** I concur with that concern, but I do think that Rep. Kasper is absolutely right. By moving it up as he has suggested, reasonable is now going to be defined by the Real-estate Commission, versus the individual.

**Rep. Johnson:** If the insurance coverage premium isn't reasonable to a lot of the membership, the Real-estate Commission is going to hear about it.

**Rep. Zaiser:** Still it doesn't guarantee that there's going to be an Errors of Omission policy, and I think that's what they wanted, and I think that's what we want.

**Rep. Keiser:** The previous bill providing you could say under \$125 required that's the rules that require you to do it. This says you're required to do it unless it's not required.

**Rep. Zaiser:** It fits the objective of the speakers, because they wind up putting more power into their commission, but I'm not so sure it's the best for the people, because it doesn't require Errors of Omissions.

**Rep. Ruby:** It seems like we talk about the few who might not want to participate, but it seems like the Realtors Association has put an awful lot of trust into the commission. What if the commission says the cheapest we can buy is \$5,000, now the association as a whole would say that isn't reasonable, the commission would say that 's as low as we can get. I'm

struggling with the language of reasonable term, and that language being in there without having some cap.

**Rep. Kasper:** We could add another phrase that would read if the Real-estate Commission is unable to obtain an Errors and Omissions insurance coverage at a reasonable premium as determined by the Real-estate Commission, the Errors and Omissions insurance requirement of this section does not apply.

**Rep. Amerman:** Where is the requirement?

**Rep. Johnson:** I think it's really covered, and I think that's the interpretation. The legislature meets again in 2 years, so if this Real-estate Commission isn't being reasonable, we have another shot at it.

**Rep. Dietrich:** The Real-estate Commission is made up of licensed realtors except one is at large, and they really have their finger on the pulse of what their member's needs, and wants are. I strongly feel that if they step out of bounds, so to speak, they'll really hear about it from their fellow brokers, and also the sales staff that work for them, because ultimately the salespeople are the ones that pay for the coverage.

**Claus:** See handout C.

**Rep. Zaiser:** I understand that the Real-estate Commission is responsible, but I understood that the realtor's primary objective was the consumer in this case. If there is no requirement for them to have it, I see a gap where small firms can't afford to pay it, and some people won't carry it.

**Rep. Keiser:** You are technically correct. The only way you could preclude that is to remove the language at a reasonable premium.

**Rep. Gruchalla:** I'm just wondering why that exists in this real-estate section, that requirement for that exception for that.

**Rep. Keiser:** This whole thing was crafted for that small minority of realtors who are very opposed to having the requirement for E&O insurance.

**Rep. Amerman:** What would happen if this 42-23.23 went away? Would they have to carry insurance? What if we repeal it?

**Rep. Keiser:** If we did nothing, the existing law remains in effect. If you repeal it, then they have to carry E&O insurance.

**Rep. Ruby:** Is every agent required to pay the same rate, regardless of their current risk?

**Claus:** That's correct.

**Rep. Dietrich:** Errors of Omission insurance is more than protection of the consumer, it is also a protection for other realtors who may have a problem dealing with another agent who did not have errors in insurance.

**Rep. Zaiser:** I think the realtors need protection to, and therefore having Errors and Omissions for everybody, consumers and those agents alike is the appropriate thing. I just assume there not be any holes in the process.

**Rep. Ruby:** With the exception, the commission and the realtors have somehow, lets say right now there is competitive market, but in the future maybe there won't be, and it gets where it's going to price them out of business, then they have an out. I think they want some exception as well.

**Rep. Zaiser:** I can understand why they'd want that out if the rates would be too high, but I still think the danger is too great. I don't think in terms of the numbers they're not going to go to \$1000 or \$1500 when you're talking about an annual premium, and I didn't see any of those that were out of line.

**Rep. Johnson:** I would move the amendment striking to ensure all licensees.

**Rep. Dosch:** Second.



**Rep. Johnson:** I think the law in place says they need to have Error and Omissions, and if by some fluke the price goes up to \$10,000 for each one. I think the commission is interested in the Errors in Omission coverage also, and so I think they're going to work very hard to get premiums that they trust, and that's why I'm supporting that.

**Rep. Amerman:** I see no problem with the amendment. I think maybe the realtors, and the commission in an upcoming session if there could be language once you opt out of that group, you'd still have to have insurance. If these amendments are doing that, then I'd feel pretty good on that.

**Rep. Kasper:** I still believe that is in law, because it says it's the condition of licenser that you must have Errors of Omission first. It does not say unless you have an out in 43-23-.23. The group plan is just an option to be able to buy the Errors of Omission insurance at a lower premium then if you go and buy it on your own.

**Roll call vote was taken, amendment adopted.**

**Rep. Johnson:** I move a do pass, as amended.

**Rep. Dietrich:** Second.

**Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Dietrich**

Hearing closed.

70551.0101  
Title.0200

Adopted by the Industry, Business and Labor  
Committee

February 27, 2007

**House Amendments to SB 2168 (70551.0101) - Industry, Business and Labor  
Committee 02/27/2007**

Page 1, line 8, overstrike "to insure all licensees who choose to participate in the group  
program"

Renumber accordingly

Date: 2-27-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2168

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move adopt amendment

Motion Made By Rep Johnson Seconded By Rep. Dosch

| Representatives       | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman Keiser       | X   |    | Rep. Amerman    | X   |    |
| Vice Chairman Johnson | X   |    | Rep. Boe        | X   |    |
| Rep. Clark            | X   |    | Rep. Gruchalla  | X   |    |
| Rep. Dietrich         | X   |    | Rep. Thorpe     | X   |    |
| Rep. Dosch            | X   |    | Rep. Zaiser     | X   |    |
| Rep. Kasper           | X   |    |                 |     |    |
| Rep. Nottestad        | X   |    |                 |     |    |
| Rep. Ruby             | X   |    |                 |     |    |
| Rep. Vigesaa          | X   |    |                 |     |    |
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|                       |     |    |                 |     |    |

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Dietrich.

If the vote is on an amendment, briefly indicate intent:

Date: 2-27-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2168

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO pass, as Amended

Motion Made By Rep. Johnson Seconded By Rep. Dietrich

| Representatives       | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman Keiser       | X   |    | Rep. Amerman    | X   |    |
| Vice Chairman Johnson | X   |    | Rep. Boe        | X   |    |
| Rep. Clark            | X   |    | Rep. Gruchalla  | X   |    |
| Rep. Dietrich         | X   |    | Rep. Thorpe     | X   |    |
| Rep. Dosch            | X   |    | Rep. Zaiser     | X   |    |
| Rep. Kasper           | X   |    |                 |     |    |
| Rep. Nottestad        | X   |    |                 |     |    |
| Rep. Ruby             | X   |    |                 |     |    |
| Rep. Vigesaa          | X   |    |                 |     |    |
|                       |     |    |                 |     |    |
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|                       |     |    |                 |     |    |

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Dietrich

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2168: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2168 was placed on the Sixth order on the calendar.**

Page 1, line 8, overstrike "to insure all licensees who choose to participate in the group program"

Renumber accordingly

2007 TESTIMONY

SB 2168



# North Dakota Association of REALTORS®

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Candice Dempsey, GRI

**Minot:**  
Judy Hoskin, GRI  
Carrie Montoya

**Williston:**  
Burnetta Fagerland, ABR, ABRM, GRI

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[Moni@ndrealtors.com](mailto:Moni@ndrealtors.com)

**January 15, 2007  
Testimony on SB 2168**

**TO:** Senate Industry, Business and Labor Committee

**FROM:** Claus Lembke, Executive Vice President  
North Dakota Association of REALTORS®

Mr. Chairman and Members of the Senate IBL committee, my name is Claus Lembke. I am the Executive Vice President representing the North Dakota Association of Realtors (NDAR). We are a state wide trade Association with over 1400 members. There are 8 Local Boards of Realtors in ND.

We appreciate Senator Judy Lee's efforts in being the prime sponsor of this legislation and all the Co-sponsors. Each of them have Real Estate licenses. This Bill deals with an amendment to the ND Century code section 43-23-19. This section of the code requires that each real estate salesperson and brokers alike must carry a minimum type of Errors and Omissions (E&O) Insurance policy. This law has been in effect since 2002. It also carries a clause that states if the annual insurance premium exceeds \$125 salespersons and brokers are no longer required to carry E&O insurance for that year.

This bill before you, SB 2168 removes that limitation by the overstrike of words on line 9 of the bill. Our State President and I traveled last fall to every local Board of Realtors to discuss the issues of this bill with local leadership. The meetings were held in an open round table style that was advertised and open to any member. The collection of all those discussions and recommendations were then presented to our state Political Affairs committee and Board of Directors for the adoption of a final policy and plan of action which is this introduction and promotion of Senate Bill 2168.

We are proud to present to you, members of our Leadership team that would like to detail to you the reasons why we are seeking your support on this legislation.

With your permission, Mr. Chairman, I would like to introduce these 2 individuals:



January 15, 2007  
Testimony on SB 2168

**TO: Senate Industry, Business and Labor Committee**

**FROM: Daryl Braham**  
**Prudential LRES Realty, Fargo**

**Mr. Chairman, and Members of the Senate IBL Committee, my name is Daryl Braham, I am the Broker and owner of Prudential LRES Realty and a partner in a construction Company in Fargo. I am also the President of the Fargo-Moorhead area Association of Realtors and a member of the Board of Directors of NDAR.**

The reason for us to seek this change in our law started from a note from the ND Group E&O Insurance underwriter Rice Insurance Services Company (RISC) that was sent to the ND Real Estate Commission (REC) and to NDAR as well, earlier last year. The note informed us that RISC would be able to provide E&O group coverage at the \$125 annual premium for 2007. They also told us (and I quote) "that they are concerned that the \$125 maximum premium may be problematic in future years, if the actuaries determine that a premium increase is necessary."

In our discussions at the many local and state meetings we looked at what other states have experienced. We looked at many options ranging from doing nothing or asking you, the legislature, to increase the maximum. Research and the experience in other states made us realize that the total removal of any maximum dollar amount is the best solution. We have prepared a handout that shows how some other states are dealing with this issue and Claus will pass this out to you now.

This handout shows you 12 sample States and what they are doing. Five of those do not have a dollar maximum and none of those that have a ceiling still show very reasonable premiums. We also learned that there is good competition among E&O insurance providers which is the reason for these relatively low premium rates.

We feel that the removal of any premium limits is the best solution for us based on the experience and history of other states. Secondly we like to avoid coming back to you every few years as we are doing here today.

Please give this bill 2168 your favorable consideration and I invite any questions that you may have of me.



**Real Estate Errors and Omissions Program  
Mandatory State Programs  
Maximum Annual Premium and Current Group Program Premium  
September 2006**

| <u>State</u> | <u>Maximum Annual Premium</u>                           | <u>Group Premium as of 1/1/2007</u> |
|--------------|---|-------------------------------------|
| Colorado     | Not Applicable  | \$239                               |
| Idaho        | \$200   | \$148                               |
| Iowa         | Not Applicable  | \$150                               |
| Kentucky     | \$200   | \$140                               |
| Louisiana    | \$500   | \$217                               |
| Mississippi  | \$250   | \$170                               |
| Nebraska     | \$500   | \$135                               |
| New Mexico   | \$200 (effective 1/1/06)                                | \$195                               |
| North Dakota | \$125   | \$125                               |
| Rhode Island | Not Applicable  | \$160 (2-year premium)              |
| South Dakota | Not Applicable  | \$140                               |
| Tennessee    | "reasonable" as determined<br>by Real Estate Commission | \$256 (2-year premium)              |

January 15, 2007  
Testimony on SB 2168

**TO: Senate Industry, Business and Labor Committee**

**FROM: Denise Vormestrand  
Brokers 12, Inc., Minot**

**Mr. Chairman, Members of the Senate IBL committee, my name is Denise Vormestrand;** I am a Broker with Brokers 12, Inc. in Minot. I am a past President of the Minot Board of Realtors and currently a member of the ND Political Affairs committee of the NDAR.

We are asking for a Do Pass on this bill for the following reasons:

1: We feel that if the premium exceeds the \$125 ceiling and this requirement is lifted for such year we expect that 40% or more of the licensees will not purchase E&O Insurance. That is not acceptable to those of us who will continue to purchase E&O Insurance and in our minds it is not an acceptable situation for the consumer. We believe every licensee needs to provide E&O insurance coverage for the protection of their clients and customers.

2: We know that this ND program is working well to the benefit of the consumer. Since the program started in 2002, claims were made and paid to the consumer in the amount of \$132,000. During the same time, the Insurance Company provided legal support in the process or defense of claims in the amount of \$96,000. That means that a total of nearly \$230,000 has been paid out to handle claims and or cover the losses experienced by ND consumers. In our opinion this program is working and working especially well for the consumer. We don't want to lose this excellent program and we are here to ask for your help.

Please vote for a Do Pass on this bill and I am open for any questions that you may have of me.

# RISC Rice Insurance Services Company, LLC

4211 Norbourne Blvd.  
Louisville, KY 40207  
Phone: 502-897-1876  
Fax: 502-897-7174

October 6, 2006

Email [claus@ndrealtors.com](mailto:claus@ndrealtors.com) and US Mail

Mr. Claus Lembke  
North Dakota Association of Realtors  
318 W. Apollo Ave.  
Bismarck, ND 58502

Re: Maximum Premium Issue

Dear Claus:

It is good to hear from you! We are pleased that we are the provider of the group real estate errors and omissions insurance program for North Dakota Real Estate Commission and its licensees. The group program ensures coverage is available at a reasonable price to all real estate licensees. A benefit of the group program is that the Commission is able to negotiate affordable group coverage for all North Dakota licensees and ensure that all licensees are able to obtain insurance.

The premium for this program has been \$125 per licensee since January 2003. CNA and its actuaries have expressed concern that due to inflation and rising costs of defending claims, we may need to increase this price in the future. We are pleased that we will be able to continue offering a group program within the statutory cap for 2007. However, we are concerned that the \$125 maximum premium may be problematic in future years, if the actuaries determine that a premium increase is necessary.

The North Dakota claims experience is summarized by policy year below:

| Policy Number | Open   | Incurred | Incurred | Total   |          |
|---------------|--------|----------|----------|---------|----------|
| Year          | Claims | Claims   | Loss     | Expense | Incurred |
| 2002          | 10     | 0        | 8,000    | 8,723   | 16,723   |
| 2003          | 11     | 4        | 29,750   | 32,458  | 62,208   |
| 2004          | 10     | 0        | 26,000   | 20,098  | 46,098   |
| 2005          | 9      | 3        | 37,000   | 25,125  | 62,125   |
| 2006          | 9      | 6        | 31,575   | 11,000  | 42,575   |

Enrollment numbers for each year are listed below:

| Policy Year | First Quarter | Second Quarter | Third Quarter | Fourth Quarter |
|-------------|---------------|----------------|---------------|----------------|
| 2002        | 575           | 649            | 707           | 741            |
| 2003        | 695           | 728            | 763           | 770            |
| 2004        | 741           | 783            | 815           | 826            |
| 2005        | 780           | 802            | 824           | 848            |
| 2006        | 817           | 851            | 871*          |                |

\* as of September 30, 2006

We are committed to providing quality coverage at a reasonable price. We are committed to working closely with the North Dakota Real Estate Commission to ensure a stable, long-term, successful insurance program.

## MANDATED PROGRAM CHART

### Group Program Effective January 1, 2007

| STATE        | LIMITS    | AGGREGATE   | DEDUCTIBLE                         | POLICY PERIOD                | PREMIUM      | WHO COLLECTS |
|--------------|-----------|-------------|------------------------------------|------------------------------|--------------|--------------|
| Colorado     | \$100,000 | \$300,000   | \$0 defense<br>\$1,000 damages     | 1 year<br>1/1/06 - 1/1/07    | \$239        | Company      |
| Idaho        | \$100,000 | \$300,000   | \$0 defense<br>\$1,000 damages     | 1 year<br>10/1/05 - 10/1/06  | \$148        | Company      |
| Iowa         | \$100,000 | \$100,000   | None                               | 1 year<br>1/1/06 - 1/1/07    | \$150        | Company      |
| Kentucky     | \$100,000 | \$1,000,000 | None                               | 1 year<br>4/1/06 - 4/1/07    | \$140        | Commission   |
| Louisiana    | \$100,000 | \$300,000   | \$0 defense<br>\$1,000 damages     | 1 year<br>1/1/06 - 1/1/07    | \$217        | Commission   |
| Mississippi  | \$100,000 | \$500,000   | \$1,000 defense<br>\$1,000 damages | 1 year<br>7/1/05 - 7/1/06    | \$170        | Company      |
| Nebraska     | \$100,000 | \$300,000   | \$0 defense<br>\$1,000 damages     | 1 year<br>1/1/06 - 1/1/07    | \$135        | Company      |
| New Mexico   | \$100,000 | \$500,000   | \$0 defense<br>\$1,000 damages     | 1 year<br>1/1/06 - 1/1/07    | \$195        | Company      |
| North Dakota | \$100,000 | \$500,000   | \$1,000 defense<br>\$1,000 damages | 1 year<br>1/1/06 - 1/1/07    | \$125        | Company      |
| Rhode Island | \$100,000 | \$500,000   | \$1,000 defense<br>\$1,000 damages | 2 years<br>4/30/06 - 4/30/08 | \$160/2 year | Company      |
| South Dakota | \$100,000 | \$500,000   | \$500 defense<br>\$1,000 damages   | 1 year<br>1/1/06 - 1/1/07    | \$140        | Commission   |
| Tennessee    | \$100,000 | \$300,000   | \$0 defense<br>\$1,000 damages     | 2 years<br>1/1/05 - 1/1/07   | \$256/2 year | Company      |

*Klauss  
#5*



# North Dakota Association of REALTORS®

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#1

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[Moni@ndrealtors.com](mailto:Moni@ndrealtors.com)

## February 27, 2007 Testimony on SB 2168

TO: House Industry, Business and Labor Committee  
 FROM: Claus Lembke, Executive Vice President  
 North Dakota Association of REALTORS®

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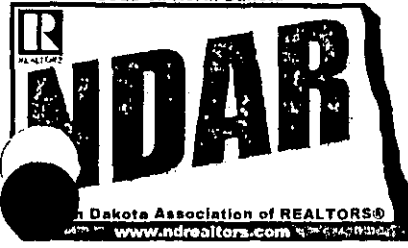


REALTOR

EQUAL HOUSING  
OPPORTUNITY

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February 27, 2007  
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**TO:            House Industry, Business and Labor Committee**

**FROM:        Daryl Braham**  
**Prudential LRES Realty, Fargo**

**Mr. Chairman, and Members of the House IBL Committee, my name is Daryl Braham, I am the Broker and owner of Prudential LRES Realty and a partner in a construction Company in Fargo. I am also the President of the Fargo-Moorhead area Association of REALTORS® and a member of the Board of Directors of NDAR.**

The reason for us to seek this change in our law started from a note from the ND Group E&O Insurance underwriter Rice Insurance Services Company (RISC) that was sent to the ND Real Estate Commission (REC) and to NDAR as well, earlier last year. The note informed us that RISC would be able to provide E&O group coverage at the \$125 annual premium for 2007. They also told us (and I quote) “that they are concerned that the \$125 maximum premium may be problematic in future years, if the actuaries determine that a premium increase is necessary.”

In our discussions at the many local and state meetings we looked at what other states have experienced. We looked at many options ranging from doing nothing or asking you, the legislature, to increase the maximum. Research and the experience in other states made us realize that the total removal of any maximum dollar amount is the best solution. We have prepared a handout that shows how some other states are dealing with this issue and Claus will pass this out to you now.

This handout shows you 12 sample States and what they are doing. Five of those do not have a dollar maximum and none of those that have a ceiling still show very reasonable premiums. We also learned that there is good competition among



E&O insurance providers, which is the reason for these relatively low premium rates.

We feel that the removal of any premium limits is the best solution for us based on the experience and history of other states. Secondly we would like to avoid coming back to you every few years as we are doing here today.

Please give this bill 2168 your favorable consideration and I invite any questions that you may have of me.





# North Dakota Association of REALTORS®

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February 27, 2007  
Testimony on SB 2168

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

**FROM:** Arnie Kosobud  
Alliance Real Estate

Mr. Chairman, Members of the House IBL committee, my name is Arnie Kosobud; I am a REALTOR® associated with Alliance Real Estate. I am currently the Vice Chair for the Grievance Committee of the Bismarck Mandan Board of REALTORS® and have served in several positions of leadership with the Board.

We are asking for a Do Pass on this bill for the following reasons:

- 1: We feel that if the premium exceeds the \$125 ceiling and this requirement is lifted for such year we expect that 40% or more of the licensees will not purchase E&O Insurance. That is not acceptable to those of us who will continue to purchase E&O Insurance and in our minds it is not an acceptable situation for the consumer. We believe every licensee needs to provide E&O insurance coverage for the protection of their clients and customers.
- 2: We know that this ND program is working well to the benefit of the consumer. Since the program started in 2002, claims were made and paid to the consumer in the amount of \$132,000. During the same time, the Insurance Company provided legal support in the process or defense of claims in the amount of \$96,000. That means that a total of nearly \$230,000 has been paid out to handle claims and or cover the losses experienced by ND consumers. In our opinion this program is working and working especially well for the consumer. We don't want to lose this excellent program and we are here to ask for your help.

Please vote for a Do Pass on this bill and I am open for any questions that you may have of me.



A

Real Estate Errors and Omissions Program  
Mandatory State Programs  
Maximum Annual Premium and Current Group Program Premium  
September 2006

| <u>State</u> | <u>Maximum Annual Premium</u>                           | <u>Group Premium as of 1/1/2007</u> |
|--------------|---|-------------------------------------|
| Colorado     | Not Applicable  | \$239                               |
| Idaho        | \$200   | \$148                               |
| Iowa         | Not Applicable  | \$150                               |
| Kentucky     | \$200   | \$140                               |
| Louisiana    | \$500   | \$217                               |
| Mississippi  | \$250   | \$170                               |
| Nebraska     | \$500   | \$135                               |
| New Mexico   | \$200 (effective 1/1/06)                                | \$195                               |
| North Dakota | \$125   | \$125                               |
| Rhode Island | Not Applicable  | \$160 (2-year premium)              |
| South Dakota | Not Applicable  | \$140                               |
| Tennessee    | "reasonable" as determined<br>by Real Estate Commission | \$256 (2-year premium)              |

# 8 C  
NDAR Legislative proposal

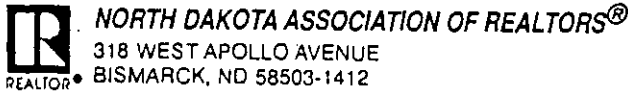
**43-23-19. Errors and omissions insurance required of salespersons and brokers - Rules.** The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that, effective January 1, 2002, and thereafter, all real estate salespersons and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

**43-23-20. Group insurance coverage authorized - Independent errors and omissions coverage.** The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

**43-23-21. Commission to determine conditions of errors and omissions coverage.** The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

**43-23-22. Notice of terms and conditions of errors and omissions - Certificate of coverage.** Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

**43-23-23. Errors and omissions coverage not required if premium limit unobtainable.** If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium ~~not to exceed one hundred twenty five dollars~~, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.



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