

2021 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2072

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

SB 2072
1/12/2021 AM

Relating to North Dakota Century Code, relating to unfair trade practices and the use of rebates in the business of insurance; and to declare an emergency
--

Chairman Klein called the meeting to order at 8:32 a.m. All members were

present. Senators: Klein, Larsen, Burckhard, Kreun, Marcellais, Vedaa.

Discussion Topics:

- Life insurance
- Insurance premiums
- Use of the word "free"

John Godfread, Insurance Commissioner [8:32] testified in favor and submitted testimony #547.

Steve Schneider, American Property Casualty Insurance Association [8:43] testified in favor and submitted testimony #473 and proposed an amendment #472.

Steve Becker, Director of Insurance Adjuster [8:49] testified in favor of Bill and Amendments.

Megan Hoan, BCBS [8:42] testified in favor of Bill and Amendments.

Chair Klein ended hearing on SB 2072 [8:57 A.M.]

Gail Stanek, Committee Clerk

SENATE BILL NO. 2072

Presented by: **Jon Godfread**
North Dakota Insurance Commissioner
North Dakota Insurance Department

Before: **Senate Industry, Business and Labor**
Senator Jerry Klein, Chairman

Date: **January 12, 2021**

Good Morning Chairman Klein and members of the committee. My name is Jon Godfread, North Dakota Insurance Commissioner. I appear before you in support of Senate Bill No. 2072.

Senate bill 2072 changes the anti-rebating laws to allow for companies to offer value-added products or services to their consumers.

Senate Bill 2072 comes before this committee after a long and intensive review process from the National Association of Insurance Commissioners. At the NAIC, I serve as the chairman of the Innovation and Technology working group, and one of our charges last year was to develop a draft model law update to modernize the rebating laws across the country. This language has been reviewed and debated and changed at the national level including at other associations such as the National Council of Insurance Legislators. Proposed Senate Bill 2072 does not adopt the model law in its entirety, but it does contain, what I believe to be all the relevant and important pieces for the North Dakota insurance market. Anti-rebating laws have been around as long as insurance contracts have been in effect. The idea around the anti-rebating was to make sure agents or companies were not buying business or creating an unfair playing field. However, with the explosion of technology the anti-rebating laws have become a deterrent for innovative products and technology.

One key area of technology has been the Internet of Things (IoT devices). The Internet of Things could be anything that connects to the Internet, but more specific in the insurance world it's a device that helps monitor, track and/or educate the consumer about a risk.

These devices, that help monitor, track and/or educate the consumer, have been a win-win for the consumer and the company. The consumer reduces their risk, which in turn reduces the number and severity of claims. Lower risks and reduced claims result in lower premiums for consumers.

Maybe the easiest example that I can give is a water leak detection device. A water leak detection device can be placed either underneath a sink or connected to a main water main for

the purpose of detecting water leaks in a home or business. The leaking water is detected early. Instead of causing hundreds of thousands of dollars of damage a water leak detector may result in a claim of \$1,000 or no claim at all.

And I want to give one other example of an IoT device. I know of an individual who has type one diabetes. Within the last three to six months an IoT device has been created for, and is being used by people, who have diabetes. It is a simple device that connects to the back of their arm which monitors their glucose and insulin levels. Within these last 6 months, this particular individual has lost about 60 pounds since wearing this device. And his cost for insulin per month has reduced dramatically.

Water leak detection devices and glucose/insulin monitors are just a couple of examples of the win-win I previously referred to. Healthier consumers, reduced property damage, lower premiums and less severe and less frequent claims benefit everyone. There are many other examples of these types of value-added products and services.

Insurance companies want to be able to give these devices and services to their consumers, but the way the anti-rebating statutes are written these devices and services fall into the category of prohibited rebates.

I do want to point that it's not just a complete free for all. And that's why the bill is so long. The bill includes safeguards to make sure certain requirements are met before companies can offer these devices and services. The meat of the bill starts on page 3.

Looking at this bill section by section:

Page 3 lines 3-10 clarifies that raffles and drawings are allowed, as long as the prizes are not valued at greater than an amount determined reasonable by the commissioner, which without this bill would be limited to a value of \$100, (see page 2 line 22), and the drawings are open to the public, conducted in a manner that is not unfairly discriminatory. Raffles and drawings is an area where the Insurance Department receives a lot of inquiries. Think of a Facebook ad or drawing which often leads to a situation where one agent contacts our consumer assistance because the agent isn't sure if what another agent is doing is permitted under the anti-rebating laws.

Page 3 section (d) lines 15 through page 4 line 7. This change allows either a company or an agent to give a value-added service or product at a reduced cost or no cost at all to the consumers. A value-added service or product must relate to the insurance policy and also satisfy one or more of the outlined criteria in the bill:

- Provide loss mitigation or loss control
- Reduce claims cost or claim settlement costs
- Provide education about liability risk or risk of loss to persons or property
- Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk

- Enhance health
- Enhance financial wellness through items such as education of financial planning services
- Provide post-loss services
- Incent behavioral changes to improve the health or reduce the risk of death or disability of an individual defined as policy holder, potential policy holder, certificate holder, potential certificate holder, insured, potential insured, or applicant
- Assist in the administration of the employee or retiree benefit insurance coverage.

It short, to be allowed the service or product must either mitigate loss, reduce claims, or provide education.

Page 4 subparagraph (b) lines 8-10 requires that if there is an issue with the product or service that information is provided to the consumer.

Page 4 subparagraph (c) lines 11-13 makes sure that if these products are given away by a company or agents, it is done fairly and not in a discriminatory manner.

Page 4 subparagraph (d) lines 14-15 makes sure that the if an item is given, it is “reasonable in comparison to the insurance premium.”

Page 4 paragraph 2 lines 16-21 permits pilot programs under specific conditions.

Page 3 subdivision e lines 22-25 relates to advertising products and services. Insurers may not use word “free” or “no cost” in advertisements. The products and services are not for the purpose of promotional gimmicks or an inducement to purchase insurance, but rather to reduce risks and educate consumers.

Page 4 subdivision f allows the insurance commissioner to implement rules if need be.

The North Dakota Century Code contains a section regarding property and casualty insurance policy rebates and a section regarding life and health insurance policies rebates. Therefore, to address rebating this bill has two identical sections. This bill was mirrored from half of a NAIC Model Law that was recently revised. The part that was mirrored refers to value added services or value-added products.

The other half of the NAIC model law, which we did not incorporate into this bill, refers to a nominal amount in which agents may provide promotional gifts. The legislative assembly has contemplated this dollar amount over the years. The current value is limited at \$100. The NAIC model differs in that it increases that amount to \$250 or an amount determined to be reasonable by the commissioner. If that's something this committee wants to explore, I can get an amendment ready for you, if not we can keep it at \$100.

Lastly on page 7 lines 27-30, amends a portion of our law for a health insurance policy and health service contract, specifically related to postdelivery coverage for mothers and newborns to

allow for these “rebates” to be offered. This section was discovered when we prepared our update to the rebating law and removal of the words “or rebates” would add clarity to our health insurers.

Thank you, Mr. Chairman, I am happy to stand for any questions.



January 12, 2021

ND Senate Industry, Business and Labor Committee

ND SB 2072

The American Property Casualty Insurance Association (APCIA) is composed of over 1,200 member companies and 330 insurance groups and represents the broadest cross-section of home, auto, and business insurers of any national insurance trade association. In North Dakota, APCIA member insurers provide almost 69 percent of all the insurance purchased by the state's citizens and businesses.

ND Insurance Commissioner Godfread, as chair of the NAIC's Innovation and Technology Task Force, has been a leader on this subject and should be commended for his role in advancing this forward leaning legislation which will benefit insurance consumers.

We urge you to support SB 2072, as amended. This is important legislation that will afford insurers clearer authority to provide insurance consumers with loss control and mitigation products and services without running afoul of any prohibitions regarding the prohibited practice of rebating. In short, without this legislation and its amendments, based upon legislation pending at the National Association of Insurance Commissioners (NAIC), insurers would not be able to easily provide their customers with devices as simple as moisture sensors (which warn a property owner of a leaking hot water heater or similar damage or loss) or similar products for fear of violating the state insurance anti-rebating law which prohibits insurers from providing certain benefits to their customers in connection with their insurance policies.

We propose several amendments to SB 2072 which are largely the product of negotiations between insurance regulators at the NAIC, led by Commissioner Godfread, and insurers. The text of the amendments is attached to this statement.

The essential thrust of these important amendments is to clarify certain terms that might otherwise be interpreted as ambiguous (for example, removing the word "fair" but retaining the phrase "not unfairly discriminatory").

Also, the amendment clarifies that "upon request" the policyholder may obtain additional information regarding the product or service.

The amendment also notes that the insurer or producer may document the criteria used for the product or service, a more inclusive and current term than being required to keep a "written" record of the product or service.

Finally, the amendment addresses the use of pilot programs and specifies that they may only be one year in duration and that the Department must be notified of the pilot program and has twenty-one days to object to it.

The APCIA believes these amendments are important to clarify the intent and enforcement of this new law and ask for your support.

Thank you.

Steve Schneider
Vice President, State Affairs
Midwest Region
APCIA
Steve.schneider@apci.org
312.782.7720

PROPOSED AMENDMENT TO SENATE BILL NO. 2072

Proposed by the American Property & Casualty Insurers of America (APCIA)

Page 3, line 8 remove "fair"

Page 4, line 8 replace "Is" with "When", after the first comma insert "by the insurer or producer," and after "shall" insert ", upon request,"

Page 4, line 11 replace "fair written" with "documented"

Page 4, line 12 replace "written" with "documented"

Page 4, line 19 remove "fair"

Page 4, line 20 replace "a reasonable period of time" with "no longer than one year", after the period insert "An insurer or producer must notify the department of such a pilot or testing program offered to consumers in this state prior to launching and may proceed with the program unless the department objects within twenty-one days of notice.", and overstrike "The pilot must"

Page 4, remove line 21

Page 6, line 6 remove "fair"

Page 7, line 7 replace "Is" with "When", after the first comma insert "by the insurer or producer," and after "shall" insert ", upon request,"

Page 7, line 10 replace "fair written" with "documented"

Page 7, line 11 replace "written" with "documented"

Page 7, line 17 remove "fair"

Page 7, line 18 after "for" insert "no longer than one year. An insurer or producer must notify the department of such a pilot or testing program offered to consumers in this state prior to launching and may proceed with the program unless the department objects within twenty-one days of notice." and remove "a reasonable period of"

Page 7 remove line 19

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

SB 2072
1/12/2021 PM

Relating to unfair trade practices and the use of rebates in the business of insurance
--

Chair Klein called the meeting to order at 2:54 p.m. All members were present. Senators: Klein, Larsen, Burckhard, Kreun, Marcellais, Vedaa.

Discussion Topics:

- Direct buying and selling of goods in relation to insurance companies
- Insurance rates and premiums

Senator Larsen moved the Amendment no. 21.8044.01001 [14:55].

Senator Vedaa seconded the motion [14:55].

[14:55]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Larsen moved a DO PASS AS AMENDED [14:55].

Senator Vedaa seconded the motion [14:55].

[14:55]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Larsen will carry the Bill [14:55].

Chair Klein adjourned the meeting at 2:56 p.m.

Gail Stanek, Committee Clerk

January 12, 2021

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1/12/21
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2072

Page 3, line 8, remove "fair"

Page 4, line 8, replace "Is" with "If"

Page 4, line 8, after "offered" insert "by the insurer or producer"

Page 4, line 8, after "producer" insert ", upon request,"

Page 4, line 11, replace "fair written" with "documented"

Page 4, line 12, replace "written" with "documented"

Page 4, line 19, remove "fair"

Page 4, line 20, remove "a reasonable period of time. The pilot must"

Page 4, line 21, replace "be reviewed and agreed upon by the department" with "no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice"

Page 6, line 6, remove "fair"

Page 7, line 7, replace "Is" with "If"

Page 7, line 7, after "offered" insert "by the insurer or producer"

Page 7, line 7, after "producer" insert ", upon request,"

Page 7, line 10, replace "written objective" with "documented"

Page 7, line 11, replace "written" with "documented"

Page 7, line 17, remove "fair"

Page 7, line 18, remove "for a reasonable period of"

Page 7, line 19, replace "time. The pilot must be reviewed and agreed upon by the department" with "no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2072: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2072 was placed on the Sixth order on the calendar.

Page 3, line 8, remove "fair"

Page 4, line 8, replace "Is" with "If"

Page 4, line 8, after "offered" insert "by the insurer or producer"

Page 4, line 8, after "producer" insert ", upon request."

Page 4, line 11, replace "fair written" with "documented"

Page 4, line 12, replace "written" with "documented"

Page 4, line 19, remove "fair"

Page 4, line 20, remove "a reasonable period of time. The pilot must"

Page 4, line 21, replace "be reviewed and agreed upon by the department" with "no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice"

Page 6, line 6, remove "fair"

Page 7, line 7, replace "Is" with "If"

Page 7, line 7, after "offered" insert "by the insurer or producer"

Page 7, line 7, after "producer" insert ", upon request."

Page 7, line 10, replace "written objective" with "documented"

Page 7, line 11, replace "written" with "documented"

Page 7, line 17, remove "fair"

Page 7, line 18, remove "for a reasonable period of"

Page 7, line 19, replace "time. The pilot must be reviewed and agreed upon by the department" with "no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice"

Renumber accordingly

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2072

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2072
3/9/2021

Unfair trade practices & the use of rebates in the business of insurance.
--

(9:00) Chairman Lefor called the hearing to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

Discussion Topics:

- Anti-rebating laws
- Value-added products or services

Jon Godfread~ND Insurance Commissioner. Attachment # 7871.

Steve Becher~Executive Director of Professional Insurance Agents of ND testified in support.

Jon Godfread answered questions from the committee.

Pat Ward~Representing ND Domestic Insurance companies, State Farm Causality & AFLAC testified in favor.

Megan Blue Cross Blue Shield. Testified in neutral position.

Jon Godfread answered questions.

Chairman Lefor closed the hearing.

Additional written testimony: Attachment # 7823.

(9:42) End time.

Ellen LeTang, Committee Clerk

SENATE BILL NO. 2072

Presented by: **Jon Godfread**
 North Dakota Insurance Commissioner
 North Dakota Insurance Department

Before: **House Industry, Business and Labor**
 Representative Mike Lefor, Chairman

Date: **March 9th, 2021**

Good Morning Chairman Lefor and members of the committee. My name is Jon Godfread, North Dakota Insurance Commissioner. I appear before you in support of Senate Bill No. 2072.

Senate bill 2072 changes the anti-rebating laws to allow for companies to offer value-added products or services to their consumers.

Senate Bill 2072 comes before this committee after a long and intensive review process from the National Association of Insurance Commissioners. At the NAIC, I serve as the chairman of the Innovation and Technology working group, and one of our charges last year was to develop a draft model law update to modernize the rebating laws across the country. This language has been reviewed and debated and changed at the national level including at other associations such as the National Council of Insurance Legislators. Proposed Senate Bill 2072 does not adopt the model law in its entirety, but it does contain, what I believe to be all the relevant and important pieces for the North Dakota insurance market. Anti-rebating laws have been around as long as insurance contracts have been in effect. The idea around the anti-rebating was to make sure agents or companies were not buying business or creating an unfair playing field. However, with the explosion of technology the anti-rebating laws have become a deterrent for innovative products and technology. This is a prime example of modernizing our code versus creating a “sandbox” for the industry to participate in.

I know this committee has had discussions on the creation of regulatory “sandboxes” in the first half of session and I share the similar concerns that were outlined by the committee. When you talk of “sandboxes” the question always remains how you get the company back on the playground when they grow up. Senate Bill 2072 takes the approach of modernizing our laws for the entire industry, with industry support, rather than segmenting out portions of the industry and applying the rules differently.

One key area of technology has been the Internet of Things (IoT devices). The Internet of Things could be anything that connects to the Internet, but more specific in the insurance world it's a device that helps monitor, track and/or educate the consumer about a risk.

These devices, that help monitor, track and/or educate the consumer, have been a win-win for the consumers and the companies. The consumers reduces their risk, which in turn reduces the

number and severity of claims. Lower risks and reduced claims result in lower premiums for consumers.

Maybe the easiest example that I can give is a water leak detection device. A water leak detection device can be placed either underneath a sink or connected to a main water main for the purpose of detecting water leaks in a home or business. The leaking water is detected early. Instead of causing hundreds of thousands of dollars of damage a water leak detector may result in a claim of \$1,000 or no claim at all.

I also want to give one other example of an IoT device. I know of an individual who has type one diabetes. Within the last three to six months an IoT device has been created for, and is being used by people, who have diabetes. It is a simple device that connects to the back of their arm which monitors their glucose and insulin levels. Within these last 6 months, this particular individual has lost about 60 pounds since wearing this device. And his cost for insulin per month has reduced dramatically.

Water leak detection devices and glucose/insulin monitors are just a couple of examples of the win-win I previously referred to. Healthier consumers, reduced property damage, lower premiums and less severe and less frequent claims benefit everyone. There are many other examples of these types of value-added products and services.

Insurance companies want to be able to give these devices and services to their consumers, but the way the anti-rebating statutes are written these devices and services often fall into the category of prohibited rebates.

I do want to point that it's not just a complete free for all. And that's why the bill is so long. The bill includes safeguards to make sure certain requirements are met before companies can offer these devices and services. The meat of the bill starts on page 3.

Looking at this bill section by section:

Page 3 lines 3-10 clarifies that raffles and drawings are allowed, as long as the prizes are not valued at greater than an amount determined reasonable by the commissioner, which without this bill would be limited to a value of \$100, (see page 2 line 22), and the drawings are open to the public, conducted in a manner that is not unfairly discriminatory. Raffles and drawings is an area where the Insurance Department receives a lot of inquiries. Think of a Facebook ad or drawing which often leads to a situation where one agent contacts our consumer assistance because the agent isn't sure if what another agent is doing is permitted under the anti-rebating laws.

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It short, to be allowed the service or product must either mitigate loss, reduce claims, or provide education.

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The other half of the NAIC model law, which we did not incorporate into this bill, refers to a nominal amount in which agents may provide promotional gifts. The legislative assembly has contemplated this dollar amount over the years. The current value is limited at \$100. The NAIC model differs in that it increases that amount to \$250 or an amount determined to be reasonable

by the commissioner. If that's something this committee wants to explore, I can get an amendment ready for you, if not we can keep it at \$100.

Lastly on page 7 lines 27-30, amends a portion of our law for a health insurance policy and health service contract, specifically related to postdelivery coverage for mothers and newborns to allow for these “rebates” to be offered. This section was discovered when we prepared our update to the rebating law and removal of the words “or rebates” would add clarity to our health insurers.

Thank you, Mr. Chairman, I am happy to stand for any questions.

March 9, 2021

ND House Industry, Business and Labor Committee

Chairman LeFor

ND SB 2072

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ND Insurance Commissioner Godfread, as chair of the NAIC's Innovation and Technology Task Force, has been a leader on this subject and should be commended for his role in advancing this forward leaning legislation which will benefit insurance consumers.

We urge you to support SB 2072.

This is important legislation that will afford insurers clearer authority to provide both commercial and personal lines' customers with loss control and mitigation products and services without running afoul of any prohibitions regarding the prohibited practice of rebating. In short, without this legislation and its amendments, based upon legislation pending at the National Association of Insurance Commissioners (NAIC), insurers would not be able to easily provide their customers with devices as simple as moisture sensors (which warn a property owner of a leaking hot water heater or similar damage or loss) or similar products for fear of violating the state insurance anti-rebating law which prohibits insurers from providing certain benefits to their customers in connection with their insurance policies.

Thank you.

Steve Schneider
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Midwest Region
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2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2072
3/16/2021

Unfair trade practices & the use of rebates in the business of insurance.
--

(3:22) Chairman Lefor called the committee work session to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	P	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauert	P
Rep Kasper	P	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

Discussion Topics:

- Committee work

Jon Godfread~ND Insurance Dept. Answered questions.

Chairman Lefor closed the work session.

Rep Stemen moved a Do Pass.

Rep Adams second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 14-0-0 & Rep Stemen is the carrier.

(3:28) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2072, as reengrossed: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2072 was placed on the Fourteenth order on the calendar.