

2021 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2078

2021 SENATE STANDING COMMITTEE MINUTES

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

SB 2078
1/12/2021

Relating to the licensing of insurance producers

Chair Klein opened the hearing at 2:26 p.m. All members were present. Senators: Klein, Larsen, Burckhard, Kreun, Marcellais, Vedaa.

Discussion Topics:

- Fees as a result of failure to update information
- Exemptions that exist in the bill

John Arnold, Deputy Insurance Commissioner for the North Dakota Insurance Department [14:32] testified in favor and submitted testimony #525.

Steve Becker, PIA of ND [14:44] testified in favor.

Senator Burkhard moved a DO PASS [14:51].

Senator Veeda seconded the motion [14:52].

[14:53]

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 Marcellais will carry the bill [14:54].

Chair Klein closed the hearing at 2:54 p.m.

Gail Stanek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2078: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2078 was placed on the Eleventh order on the calendar.

SENATE BILL NO. 2078

Presented by: **John Arnold**
 Deputy Insurance Commissioner
 North Dakota Insurance Department

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

Date: **January 12, 2021**

TESTIMONY

Good afternoon Chairman Klein and members of the committee. My name is John Arnold and I am the Deputy Insurance Commissioner for the North Dakota Insurance Department. Senate Bill No. 2078, which amends several sections of code pertaining to the licensure of insurance producers, was introduced at the request of Insurance Commissioner Jon Godfread.

Perhaps the most significant change in Senate Bill 2078 is the creation of a process through which individuals with certain felony convictions may be able to become licensed producers. Under 18 United States Code §1033, an individual who is convicted of a felony involving dishonesty or a breach of trust are not eligible to become licensed producers unless their resident state issues the individual a waiver to this exemption. A list of criminal offenses that are considered to involve dishonesty or a breach of trust is included at the end of my written testimony.

The Department is asking to be given the authority to create a §1033 waiver process. This process would allow an individual who is exempt under §1033 to make an application to the Commissioner requesting written consent granting permission to participate in the business of insurance. A committee including the Deputy Commissioner, General Counsel, and the Producer Licensing Division Director will review the application and make a recommendation to the Commissioner. If the Commissioner chooses to give written consent granting permission to

participate in the business of insurance, the individual may then begin the application process in the same manner as any other candidate.

Section one of the bill establishes a \$100 fee for applying for the written consent granting permission to participate in the business of insurance. Section three removes the automatic denial language currently in code for an individual convicted of a felony involving dishonesty or breach of trust and give the Commissioner the authority to give written consent granting permission to participate in the business of insurance. Section six adds the exemption language to another section so that a conflict isn't created where an individual could have their license removed for the same offense for which the Commissioner has granted an exemption.

In addition to §1033 waivers, Senate Bill 2078 also cleans up several other areas of code related to producer licensing. To begin with, section two adds the word "producers" to the definition of "business of insurance." The Department is requesting to clear up possible confusion between the meaning of an agent (already in the definition) and a producer.

Section four allows the Commissioner to designate another entity to collect application fees. In practice, producers pay these fees through the National Insurance Producer Registry (NIPR) which are then remitted to the Department. However, if a producer fails to pay the NIPR and the Department processes the application or renewal the NIPR has no recourse to collect the fee. Allowing the Commissioner to designate the NIPR solve this issue.

Section five allows insurance producers to update their address through the NIPR database rather than submitting a form for Department staff to update the address.

Section seven allows the Department to receive electronic notification that non-resident producers have had their resident state license revoked. This would eliminate the need for the Department to contact states and request certified copies when the documents have already been uploaded by the resident state into a secure, multi-state database.

Section eight exempts individuals who only hold a license to sell portable electronics insurance from the continuing education requirements that insurance producers normally have to meet. These are the individuals at electronics stores that offer limited coverage on items such as smart phones.

Finally, sections nine and ten pertain to self-service storage facilities and their licensed producers selling coverage on those units. When chapter 26.1-26.9 was created by the Sixty-Sixth Legislative Assembly there was no requirement that the owner of the facility name the licensed producer responsible for ensuring that all insurance laws are being followed. This would create a problem if the Department is made aware of regulatory issues but does not have a record of the individual over whom administrative action could be taken. Section nine requires that there be a supervising entity, and section ten removes the reporting of individuals over whom the Department has no regulatory authority and replaces them with the producer responsible for being the supervising entity.

Chairman Klein and members of the committee, I respectfully request a “do pass” recommendation on Senate Bill 2078 and am happy to answer any questions that you may have. Thank you.

Felony offenses that are considered to involve dishonesty or a breach of trust include:

- 1) Any type of fraud
- 2) Counterfeiting or passing counterfeit money
- 3) Bribery or bribe receipt
- 4) Any crime involving false pretenses
- 5) Money laundering
- 6) Extortion
- 7) Forgery
- 8) Embezzlement
- 9) Criminal impersonation
- 10) Theft by deception

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2078

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2078
3/16/2021

Licensing of insurance producers.

(2:56) 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:

- Insurance producer licensure
- Felony convictions licensure

John Arnold~Deputy Insurance Commissioner-ND Insurance Dept. Attachment #9336.

Chairman Lefor closed the hearing.

(3:21) End time.

Ellen LeTang, Committee Clerk

SENATE BILL NO. 2078

Presented by: **John Arnold**
 Deputy Insurance Commissioner
 North Dakota Insurance Department

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

Date: **March 16, 2021**

TESTIMONY

Good afternoon Chairman Lefor and members of the committee. My name is John Arnold and I am the Deputy Insurance Commissioner for the North Dakota Insurance Department. Senate Bill No. 2078, which amends several sections of code pertaining to the licensure of insurance producers, was introduced at the request of Insurance Commissioner Jon Godfread.

Perhaps the most significant change in Senate Bill 2078 is the creation of a process through which individuals with certain felony convictions may be able to become licensed producers. Under 18 United States Code §1033, an individual who is convicted of a felony involving dishonesty or a breach of trust are not eligible to become licensed producers unless their resident state issues the individual a waiver to this exemption. A list of criminal offenses that are considered to involve dishonesty or a breach of trust is included at the end of my written testimony. To be clear, the convictions covered by this process occurred in the past and this does not create a scenario where insurance producers are not subject to administrative action for convictions that occur while licensed.

The Department is asking to be given the authority to create a §1033 waiver process. This process would allow an individual who is exempt under §1033 to make an application to the Commissioner requesting written consent granting permission to participate in the business of insurance. A committee including the Deputy Commissioner, General Counsel, and the Producer Licensing Division Director will review the application and make a recommendation to the

Commissioner. If the Commissioner chooses to give written consent granting permission to participate in the business of insurance, the individual may then begin the application process in the same manner as any other candidate.

Section one of the bill establishes a \$100 fee for applying for the written consent granting permission to participate in the business of insurance. Section three removes the automatic denial language currently in code for an individual convicted of a felony involving dishonesty or breach of trust and give the Commissioner the authority to give written consent granting permission to participate in the business of insurance. Section six adds the exemption language to another section so that a conflict isn't created where an individual could have their license removed for the same offense for which the Commissioner has granted an exemption.

In addition to §1033 waivers, Senate Bill 2078 also cleans up several other areas of code related to producer licensing. To begin with, section two adds the word "producers" to the definition of "business of insurance." The Department is requesting to clear up possible confusion between the meaning of an agent (already in the definition) and a producer.

Section four allows the Commissioner to designate another entity to collect application fees. In practice, producers pay these fees through the National Insurance Producer Registry (NIPR) which are then remitted to the Department. However, if a producer fails to pay the NIPR and the Department processes the application or renewal the NIPR has no recourse to collect the fee. Allowing the Commissioner to designate the NIPR solve this issue.

Section five allows insurance producers to update their address through the NIPR database rather than submitting a form for Department staff to update the address.

Section seven allows the Department to receive electronic notification that non-resident producers have had their resident state license revoked. This would eliminate the need for the Department to contact states and request certified copies when the documents have already been uploaded by the resident state into a secure, multi-state database.

Section eight exempts individuals who only hold a license to sell portable electronics insurance from the continuing education requirements that insurance producers normally have to meet. These are the individuals at electronics stores that offer limited coverage on items such as smart phones.

Sections nine and ten pertain to self-service storage facilities and their licensed producers selling coverage on those units. When chapter 26.1-26.9 was created by the Sixty-Sixth Legislative Assembly there was no requirement that the owner of the facility name the licensed producer responsible for ensuring that all insurance laws are being followed. This would create a problem if the Department is made aware of regulatory issues but does not have a record of the individual over whom administrative action could be taken. Section nine requires that there be a supervising entity, and section ten removes the reporting of individuals over whom the Department has no regulatory authority and replaces them with the producer responsible for being the supervising entity.

Finally, we are offering an amendment to Senate Bill 2078. After Senate Bill 2078's hearing in the Senate an automobile rental company contacted the Department to update the licensed producer with whom they were affiliated. As a result, Department staff found that the cross reference in subsection 1 of section 26.1-26-52 was no longer correct due to an amendment made in Senate Bill 2304 passed by the 63rd Legislative Assembly. Attached is the proposed amendment correcting this cross reference as well as chapter 232 of the 2013 Session Laws.

Chairman Lefor and members of the committee, I respectfully request that the committee adopt the attached amendment and then give a "do pass" recommendation on Senate Bill 2078. I am happy to answer any questions that you may have. Thank you.

Felony offenses that are considered to involve dishonesty or a breach of trust include:

- 1) Any type of fraud
- 2) Counterfeiting or passing counterfeit money
- 3) Bribery or bribe receipt
- 4) Any crime involving false pretenses
- 5) Money laundering
- 6) Extortion
- 7) Forgery
- 8) Embezzlement
- 9) Criminal impersonation
- 10) Theft by deception

PROPOSED AMENDMENTS TO SENATE BILL NO. 2078

Page 1, line 5, after “26.1-26-42.1,” insert “subsection 1 of section 26.1-26-52,”

Page 3, after line 28, insert:

“SECTION 8. AMENDMENT. Subsection 1 of section 26.1-26-52 of the North Dakota Century Code is amended and reenacted as follows:

1. The automobile rental company is appropriately licensed in this state under subsection ~~2~~ 4 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer”

Renumber accordingly

CHAPTER 232

SENATE BILL NO. 2304

(Senators Larsen, Klein)
(Representatives Beadle, Kasper)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to insurance producer criminal history record checks; to amend and reenact section 26.1-26-13.3 of the North Dakota Century Code, relating to insurance producer criminal history record checks; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁵ **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The insurance department for criminal history record checks authorized under chapter 26.1-26.

SECTION 2. AMENDMENT. Section 26.1-26-13.3 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-13.3. Application for license.

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:
 - a. Is at least eighteen years of age;
 - b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;
 - c. Has paid the fees set forth in section 26.1-01-07; and
 - d. Has successfully passed the examinations for the lines of authority for which the individual has applied.
2. An individual applying for a resident producer license shall complete a criminal history record check as provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant. This subsection does not apply to license continuation under section 26.1-26-13.4 or individuals who apply for an insurance producer license within twelve

¹⁰⁵ Section 12-60-24 was also amended by section 7 of House Bill No. 1012, chapter 12, section 1 of House Bill No. 1327, chapter 491, section 1 of House Bill No. 1389, chapter 325, and section 1 of Senate Bill No. 2110, chapter 324.

months following the cancellation or expiration of a valid resident insurance producer license issued by the North Dakota insurance department, unless the license was suspended or revoked.

3. The commissioner may make arrangements, including contracting with an outside service, for the collection and transmission of fingerprints for conducting criminal history record checks.
4. A business entity acting as an insurance producer must obtain an insurance producer license. Application must be made using the uniform business entity application. Before approving the application, the commissioner must find that:
 - a. The business entity has paid the fee set forth in section 26.1-01-07;
 - b. The business entity has designated a licensed individual principal insurance producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
 - c. The individual designated as the licensed principal insurance producer of the business entity has taken the examination required by section 26.1-26-13.2. The business entity may only be licensed for those lines of insurance for which one or more of its principal insurance producers is licensed. The business entity shall inform the commissioner within ten working days of any change in the status of its principal insurance producer or producers.
 - d. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on September 1, 2013.

Approved March 19, 2013
Filed March 19, 2013

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2078
3/23/2021

Licensing of insurance producers.

(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	A
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 Commissioner. Attachment #10508.

Chairman Lefor closed the work session.

Rep Kasper moved amendment to strike the waiver 1033 & add a study.

Rep Nehring second.

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

Vote roll call taken Motion carried 9-4-1 on the amendment.

Vice Chairman Keiser moved a Do Pass as Amended.

Rep Nehring 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	A
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 13-0-1 & Vice Chairman Keiser is the carrier.

(9:32) End time.

Ellen LeTang, Committee Clerk

March 24, 2021

Dr 3/24/21
1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2078

Page 1, line 1, remove "a new subdivision to subsection 1 of section 26.1-01-07"

Page 1, line 2, remove "and"

Page 1, line 4, remove "section 26.1-02.1-02.1,"

Page 1, line 5, replace the first "section" with "sections"

Page 1, line 5, remove ", subsection 5 of section 26.1-26-42"

Page 1, line 5, remove the third "sections"

Page 1, line 7, after "producers" insert "; and to provide for a legislative management study"

Page 1, remove lines 9 through 14

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 27

Page 3, remove lines 10 through 18

Page 4, after line 26, insert:

"SECTION 8. LEGISLATIVE MANAGEMENT STUDY - WRITTEN CONSENT FOR CERTAIN INSURANCE PRODUCERS. During the 2021-22 interim, the legislative management shall consider studying the process for obtaining written consent under the provisions of the Violent Crime Control and Law Enforcement Act of 1994 codified at 18 U.S.C. Section 1033 [Pub. L. 103-322] for individuals otherwise excluded from licensure as insurance producers. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2078: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2078 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new subdivision to subsection 1 of section 26.1-01-07"

Page 1, line 2, remove "and"

Page 1, line 4, remove "section 26.1-02.1-02.1,"

Page 1, line 5, replace the first "section" with "sections"

Page 1, line 5, remove ", subsection 5 of section 26.1-26-42"

Page 1, line 5, remove the third "sections"

Page 1, line 7, after "producers" insert "; and to provide for a legislative management study"

Page 1, remove lines 9 through 14

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 27

Page 3, remove lines 10 through 18

Page 4, after line 26, insert:

"SECTION 8. LEGISLATIVE MANAGEMENT STUDY - WRITTEN CONSENT FOR CERTAIN INSURANCE PRODUCERS. During the 2021-22 interim, the legislative management shall consider studying the process for obtaining written consent under the provisions of the Violent Crime Control and Law Enforcement Act of 1994 codified at 18 U.S.C. Section 1033 [Pub. L. 103-322] for individuals otherwise excluded from licensure as insurance producers. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

2078: 1033 Waiver Information:

The application that individuals wishing to be granted written permission to apply for an insurance producers license is attached. All application packets would include:

1. Completed initial application for written consent. The application should be filled out completely and truthfully. If you have any questions, please contact the Insurance Department.
2. A current credit report, certified by a credit bureau. The report must be certified by them. The report must accompany your application. A current credit report is one that was prepared within thirty (30) days of the date of your application.
3. A copy of the completed form (or letter) requesting release of a complete record of convictions from the [insert appropriate state agency – official state repository of criminal history information]. The original form should be mailed directly to them with a check for (fee charged for service).
4. Two 2" by 2" black-and-white recent passport photographs attached to the upper righthand corner of the first page of the application for written consent.

Factors that the committee would review include, but are not limited to:

1. The nature and severity of the conviction;
2. Date of the conviction;
3. The injury and/or loss caused by the act for which the prohibited person was convicted;
4. Whether the crime related to the business of insurance;
5. Whether the prohibited person received a pardon from the sovereign that convicted him;
6. Whether the prohibited person completed a parole or probation;
7. The nature and strength of any character letters;
8. The prohibited person's business and personal record before and after the commission of the crime;
9. Whether and to what extent the person has made material false statements in an application;
10. Renewal or in other documents filed with the commissioner; and
11. Whether and to what extent the prohibited person has made material false misstatements in applications or other documents filed with other state or federal agencies.

The above information is the relatively standard from states who have implemented the 1033 waivers and is how the process generally works in other states who currently offer those waivers.

Our research has found that 25 states issue 1033 waivers. The nearest states that offer 1033 waivers are Iowa and Wyoming. We used Oklahoma's code as reference when drafting SB 2078.

But as you can see this is an exhaustive and extensive review process, this is not a blowing open of the door to these individuals, but it does set up another process for those individuals who have rehabilitated themselves and righted there wrongs.

Happy to discuss with the committee further, but I would also stress that there are a number of other provisions in this bill, that are of importance as well, so while we would not support amending the bill, if the committee feels it necessary to amend out the 1033 portion to save the remainder of the bill.

However, again, we are comfortable with this review process and are proactively asking for this flexibility. It's also important to note that these issues have been vetted by the industry both companies and agents and they did not feel the need to oppose this provision in either the Senate or in the original House hearing. With that, it would be safe to say the industry, the agents and the department are ok with these changes.