

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 3M



ROLL NUMBER

DESCRIPTION

2144

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2144

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2144

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 22, 2001

Tape Number	Side A	Side B	Meter #
1	x		15.0 to 30
Jan.31/01 3		x	39.2 to 47
Mar. 28/01 1	x		12.5 to 25.3
Committee Clerk Signature <i>Dora E Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB2144 relating to relating to the licensing of insurance producers and to provide a penalty.

LAURIE WOLF, Director of Licensing and Investigations, ND Ins. Dept. Supports this bill.

Written testimony attached. Amendment included.

PAT WARD, ACLI, NAIL, SF, ND Domestics. Strongly support this bill

TERRY WEISS, ND Assn. of Insurance and Financial Advisors. Support this bill. A very reasonable approach.

JIM POOLMAN, ND Insurance Commissioner. Written testimony in favor attached.

JACK MCDONALD, ND Newspaper Assn. Written testimony in favor attached.

LARRY E. KIBBE, VP. Alliance of American Insurers. Support this bill. Written testimony attached.

J. BRUCE FERGUSON, Deputy VP, ACLI, Written testimony attached. Support this bill.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB2144

Hearing Date January 22, 2001.

No opposing testimony. Hearing closed.

Jan. 31/01. Tape 3-B-39.2 to 47. Committee reconvened. All members present. Discussion held with Laurie Wolf regarding proposed amendments.

J MCDONALD: All our questions have been answered in amendments.

SENATOR KLEIN: Motion: do pass on amendments. SENATOR ESPEGARD: Second.

Roll call vote: 7 yes; 0 no. Motion carried.

SENATOR ESPEGARD: Move do pass as amended. SENATOR TOLLEFSON: second.

Roll call vote: 7 yes; 0 no. Motion carried. Carrier: SENATOR KLEIN.

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Senate Industry, Business and Labor Committee
Bill/Resolution Number SB2144
Hearing Date January 22, 2001.

March 28/01 Tape 1-A-12.5 to 25.3

Committee reconvened. All members present. Committee studied and discussed House amendments.

Laurie Wolf, ND Insurance Dept., House amendments are due to the fact that when the NAIC legal team reviewed the bill, they felt some technical changes were needed throughout the code for reciprocity and conformity with GLB. Amendments were set out with division a (Representative Kaspers', failed) and b, which were the ones we presented and passed the House unanimously. Most were needed technical corrections and language clarifications.

Senator Klein: Page 32 line 20, was that already there?

L Wolf: It was already in the bill that passed the Senate. Because it was in a certain section that would have caused problems with reciprocity, we moved it and had to call it "continuation fee" and not tie it to continued education requirements.

Jim Poolman, ND Insurance Commissioner. NAIC reviewed the bill to make sure it is GLB compliant. Some of the other changes are compromise with the industry, for example child support and non payment of taxes. Industry agents were concerned we would have too much authority to tamper with a license, the administrative order was of concern to them. Even if facts were in dispute, the administrative order would allow us to take action, they wanted to tighten that up a bit. Some of the fees were not necessarily GLB compliant so we had to move them and basically change what we call them. These are basically benign amendments and don't change the substance of the bill.

Senator Klein: Motion to concur. **Senator Krebsbach:** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Klein.**

FISCAL NOTE
 Requested by Legislative Council
 12/26/2000

Bill/Resolution No.: SB 2144

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No financial impact on agency appropriation is anticipated.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	12/28/2000

VR
3/22/01
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2144

Page 14, line 24, remove "insurance producers" and overstrike "- Residence requirements" and insert immediately thereafter "insurance producers"

Page 14, line 25, overstrike "residents of this state and must"

Page 14, line 26, overstrike "be"

Page 16, line 30, overstrike "resident"

Page 17, line 20, overstrike "resident"

Page 18, line 27, overstrike "negotiated with and"

Page 27, line 25, replace "Employees" with "An employee" and replace "respond" with "responds"

Page 27, line 26, remove "those"

Page 27, line 27, replace "employees are" with "employee is"

Page 27, line 28, after "services" insert "and provided that employee does not sell, solicit, or negotiate insurance"

Page 32, after line 20, insert:

"6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars."

Page 44, line 26, after "licensee" insert "knowingly" and replace "an administrative or" with "a"

Page 44, line 28, after "licensee" insert "knowingly" and replace "any" with "a"

Page 44, line 29, remove "administrative or"

Page 45, line 17, replace "of the initial pretrial hearing date" with "after a criminal conviction"

Page 45, line 18, replace "prosecution" with "conviction"

Page 45, line 20, replace "resulting from" with "issued by" and replace "hearing" with "court"

Page 45, line 26, replace "26.1-26-20.1" with "26.1-26-20"

Page 46, line 2, remove "However, a nonresident insurance producer shall pay a"

Page 46, remove lines 3 and 4

Page 50, line 25, overstrike "Resident Insurance" and after "agents" insert "Insurance"

Renumber accordingly

Date: 1-31-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

Senate Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt amendments by Insurance Dept

Motion Made By S Klein Seconded By S Espgaard

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	<input checked="" type="checkbox"/>		Senator Every	<input checked="" type="checkbox"/>	
Senator Klein - Vice Chairman	<input checked="" type="checkbox"/>		Senator Mathern	<input checked="" type="checkbox"/>	
Senator Espgaard	<input checked="" type="checkbox"/>				
Senator Krebsbach	<input checked="" type="checkbox"/>				
Senator Tollefson	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Technicalities overlooked

Date: 1-31-01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen Espigard Seconded By Sen Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espigard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Klein

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

REPORT OF STANDING COMMITTEE

SB 2144: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2144 was placed on the Sixth order on the calendar.

Page 1, line 3, after "reenact" insert "subdivision n of subsection 1 of section 10-04-11,"

Page 2, after line 20, insert:

"SECTION 1. AMENDMENT. Subdivision n of subsection 1 of section 10-04-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an ~~agent, broker~~ insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02."

Page 3, line 31, overstrike "broker,"

Page 8, line 13, remove "producer" and overstrike ", limited insurance representative," and insert immediately thereafter "producer"

Page 30, line 13, after "licensed" insert "individual"

Page 36, line 10, overstrike the comma and insert immediately thereafter "and"

Page 36, line 12, overstrike ", and whose commissions from new"

Page 36, line 13, overstrike "business each year do not exceed ten thousand dollars"

Page 40, line 15, after "commissioner" insert an underscored comma

Page 40, line 16, remove "by law" and remove ", is not subject to section 6 of"

Page 40, line 17, remove "article XI of the Constitution of North Dakota and chapter 44-04"

Page 41, line 22, remove "pursuant to section 6 of article XI of the Constitution of"

Page 41, line 23, remove "North Dakota and chapter 44-04"

Page 44, line 25, replace "producer" with "producer's license"

Renumber accordingly

Date: 3/28/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken *Concur*

Motion Made By Sent Klein Seconded By Sentrebsach

[illegible]

Total (Yes) 1 No 0

Absent 0

Floor Assignment Sen Heim

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

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2144

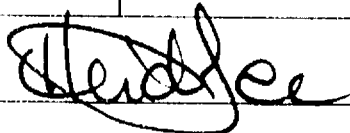
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2144

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 7, 2001

Tape Number	Side A	Side B	Meter #
1	X		0
		X	-15.35
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Jim Poolman: *ND Insurance Commissioner* Sponsor of bill to regulate the licensing of insurance producers. **Written testimony.**

Rep Thorpe: Are you redoing the whole code?

Poolman: Yes, all aspects of the code dealing with producers.

Laurie Wolf: *Director of Agent Licensing* **Written testimony and amendments.**

Vice-Chairman Keiser: What happens to the other states that don't adopt this?

Wolf: Their agents won't be able to do business across state lines. This is a streamlining maneuver.

Larry Kibbee: *Alliance of American Insurers* Support bill as

presented. This establishes a system of reciprocity and is needed in order to have uniformity and to satisfy the NARAB provisions of GLB. This bill will provide out producers with a level playing field.

Rep Severson: No other state has CSR?

Kibbee: No, other states have looked at this and are working with it.

Vice-Chairman Keiser: What can CSR do?

Poolman: It says you can not market and you can give information. A bulletin with all the guidelines would be sent out.

Rep Kasper: What is the concern with telemarketing insurance?

Poolman: Any marketer has to be licensed, on phone or in person. Yes, it's rock solid right now as to what is and what isn't allowed.

Pat Ward: *ND Domestic Insurance Companies* **Written testimony** in support.

Kent Olson: *NDPIA* From the agents perspective we support the bill and amendments.

Terry Weis: *NDAFIA* We support this bill and amendments wholeheartedly.

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2144

Hearing Date March 7, 2001

Rep Jim Kasper: Supplied amendments 18171.0203.

Vice-Chairman Keiser: We'll close the hearing on SB 2144.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2144(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 20, 2001

Tape Number	Side A	Side B	Meter #
1		X	58.9
2	X		-38.8
Committee Clerk Signature <i>Robin H. Small</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G.

Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang,

Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Severson: Overview bill and supplied amendments .0208. These are the counsel staff amendments that actually is what the Insurance Commissioner brought to us. His sheet was just one page that dealt with a few of the changes that they found coming from the Senate to the House. Everything that he submitted to us is on this sheet and nothing more. To start on page 14, line 24 in bold print, we have the licensing of insurance producers and then residence requirements for removing that because there's a portion down here that the Insurance Commissioner wanted taken out for the striking of resident requirements in bold print. Line 25 we're striking out "must be residents of this state and must be". So that would read "all insurance producers of a benevolent society licensed in the same manner as insurance producers for insurance companies generally are licensed. Page 16 line 30 again because of the next

amendment and again because of the lasting of it we're removing the resident as well as on page 17 line 20 we're also removing resident there because the word is before agent. Then on page 18 line 27, the second sentence "The contract must be negotiated with and" we're taking out 'negotiated with and' so it says a contract must be countersigned by a licensed ND, that's why we're doing that there. Then we jump forward all the way to page 27 and down on line 25 the first word it says Employees, we're going to replace that with An employee and then change respond to responds. Line 26 we'll remove those and line 27 we'll remove employees are to employee is. Then on line 28 at the end of services, we'll add in "and provided that employee does not sell, solicit or negotiate insurance." Remember that was the employee that was in from an insurance firm that they can not sell, negotiate or solicit anything. Then we go to page 32, we are dealing with, after line 20, it just refers to 26.1-.26-11. We are putting just putting 6. Which says a nonresident insurance producer shall pay a biennial continuation fee of \$45.00. Which just puts that fee in there for nonresidents for the state of North Dakota to be licensed. Then we jump to page 44, I believe this is one of those changes that Rep. Kaspers', he removed this portion. I will say that line 24 through 29, are in fact precedent in other laws, within the insurance industry. So this isn't something new to just this state. Rep. Kaspers' amendments do remove this portion. But on page 44, line 26, after licensee we are going to put in the word knowingly, and then replace administrator of, with just the letter a. An applicant or licensee knowingly fails to comply with a court order inputting child support obligations. Line 28, we are doing the same thing that with the word licensee putting in knowingly, and then in the place of the word any, we are putting the letter a, and removing administrative or court order on the bottom. So it then will read an applicant or licensee knowingly fails to pay state income tax or comply with a court order

directing a payment of state income tax. Page 45, is just a catch in the law, they had the wrong section in there. They are replacing 26.1-26 to 20.1 with 26.1-26,20. That is just a technical change there. Page 46, line 2, they are actually removing lines 2,3 and 4. Where staring with the word however, so all of those are gone. Then on page 50, line 25, where it says residents insurance, we are over striking that and just inserting the a capital I, insurance producers, licenses and commissioners. So those are the ones that were presented to us at the time. In the essence of speed I will move the adoption of the amendment as presented, the motion was then seconded.

Rep. Berg: I want to try to make sure that as we go through this, everyone is clear on what we are voting on and dealing with.

Rep. Kasper: Gives the committee written information and amendments.

Rep. Kasper: My amendments incorporate almost all, but a little bit different. Is it appropriate to adopt these amendments, then to adopt me amendments? Because they do conflict somewhat.

Rep. Berg: I guess what I would like to do is adopt the things that, well there are two ways of this. One would be to go through Rep. Kaspers' amendment section by section, if the committee wants to. Then vote on each section. Or we could adopt these and then look at those sections that are not covered in these amendments. Then vote on those.

Rep. Kasper: I think that it would be wise for the committee to just see the differences, There are not awhile lot of differences, but a couple of major differences. Before we do some voting.

Rep. Berg: There is one conflict these amendments on page 44, so other than that I think that part is the same with both amendments.

Rep. Severson: All of these amendments, with the exception of those on page 44, are in

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2144(B)

Hearing Date March 20, 2001

Rep. Kaspers' amendments, but he has several new ones. My effort is to make sure that we get with the insurance commissioner while it is right up front. I would like to address

Rep. Kaspers', maybe section by section, then we can adopt any of those if we choose.

Rep. Berg: Let's do this, why don't we go through Rep. Kaspers' amendments then we'll just take up those sections. Then we can take a vote on it. The votes will be more of a straw vote as we go through them. Then we will have one motion at the end to adopt the amendments. I guess what I am saying is on Rep. Kasper, Wald, Monson and Tieman amendments, the first issue will really be section 54. Is that correct?

Rep. Kasper: No. If you look on the amendments that have the two pages, which have the four of our names on it, first difference is the first line on the bigger amendments which is page 1, line 1. That adds the section that we are adding, 26.1-26-0.41, that is the rest of them down through page 24, on the bottom of the first page, all of those are the same in both amendments. If you go to page 24, after line 4, insert the section 54, that is the area that allows the fees in the commissions with an insurance broker. There is a major difference in this language as opposed to the first language I presented to the committee during the hearing.

Rep. Berg: Let's do this, let's just take up this section 54. If you want to explain it

Rep. Kasper: Then we can take a vote on that section

Rep. Kasper: The section 54, allows full disclosure from the insurance broker, for there to be written contract with the insurance broker and the client. That a fee would be paid in addition to a commission. In the handout that I gave you, which is about the six or eight page handout, on item one, the research that we have done, shows that there are 26 states across the United States that allow agents, brokers or a combination to charge fees and commissions. Like we would

allow in here under North Dakota statute. Now the distinction difference between an insurance agent and an insurance broker, the insurance agent under current statute represents the insurance company. The insurance broker represents the insured client. So under the amendment that we have before us we are only allowing an insurance broker to charge a fee. The wording that Jennifer used was, if you look at the bottom of page 1, under .1, except as provided in sub-section 2, an insurance producer acting as an agent of an insured. That means you are the broker, because we have changed the North Dakota way we call the agents, now we are called producers. Either acting as representing the insured or the insurance company. So that makes it a broker only. The rest of the language just discusses what that disclosure must be to the client.

Rep. Berg: Maybe you just want to explain the difference between the broker and an agent.

Rep. Kasper: Again the insurance agent represents the insurance company. So in any dispute, if there was a dispute the insurance agent is on the side of the company. The insurance broker on the other hand represents the client. The insured. So when we as brokers negotiate for benefits or insurance products with insurance companies, we are on the same side of the table as our client, looking out at all the possibilities of insurance that we can find for them. Bringing them to the table, and sitting down and saying here is what we found. What would you like to do? And here are our recommendations.

Rep. Berg: The insurance broker is really the insurance producer in the new language in the new bill?

Rep. Kasper: We are an insurance producer acting as an agent of an insured, that defines us an insurance broker.

Rep. Berg: An agent needs to be employed by a broker?

Rep. Kasper: No, you get a license from the insurance department as the agent or the broker.

Rep. Berg: So it's the license that you buy?

Rep. Kasper: Correct. Then that distinguishes who you are representing, the insurance company or the insured client.

Rep. M. Klein : The consumer then pays both a fee and a commission? So they then end up on the short end of the stick?

Rep. Kasper: The fee is disclosed to the consumer under, A, it outlines a fee and the insurance producer is entitled to receive a commission, whatever that may be, under B, the fee is not and can not be calculated as a percentage of the premium. The fee can not be refunded or given away to offset a reduced binding commission. The amount of the fee in the consumers obligation to pay the fee are not conditioned upon an occurrence of a future event or condition such as a purchase, cancellation, lapse, declination or non-renewal of insurance. The insurance producer stress or discloses to the consumer that the fee is being charged any the insurance producer not by the insurance company. Neither state law or the insurance company requires that the insurance producer charge the fee. The consumer can sense in writing to the fee, so there is full disclosure, full discussion and then a written contract. The insurance producer in charge of the fee may not discriminate and the basically discusses the areas of the fee. Then under time 2, the insurance producer is specifically excluded from charging a fee on certain types of products. You can see there all listed there A-F. Those are the individual products that we buy in the course of our daily business of auto insurance, home owners insurance, individual life, etc., etc. This will come in play only in the area of commercial line of insurance and group insurance. As I shared

Rep. Severson, going through some of the work that we do for some of our clients, we looked up some group life insurance and some group short term and long term disability. I have the book here, you go through a tremendous amount of work and you may have a commission of \$4.00 a month or somewhere like that. So when you work with your client and you are talking to them about the fact here is a whole lot of work. My commission will be very, very low, I would like to charge you a fee, would you consent. If a client says yes, then you sign your contract, and you go about it. Remember this it is always up to the choice of the client to say that I accept that or I won't accept that.

Rep. Severson: That information you showed me, that we were just talking about now, you are currently arguing that. You are able to charge that fee, how do you do it now?

Rep. Kasper: We have a cooperation that we have, that is licensed. Also a producer, as a broker that is licensed. So under current circumstance if you have two separate licenses doing different business different ways, you are then able to do it. When we instituted the flexible benefit plan for the state of North Dakota, back in 1989-1991, we actually charged a fee for that work. We had agents that were enrolling and making commissions. We had an attorney general opinion that allowed it. So there is history here, but there has always been conflict. The attorney general's opinion where you can not charge a fee and a commission. Deals with an insurance agent. In the attorney generals opinion that we heard about earlier, the insurance broker was not and never has been addressed, as far as fee and commission. It's always been, as I understand under current North Dakota law, that an insurance broker can accept a fee and a commission.

Rep. Jensen: Has there been a change in the commission structure, that would inspire you to introduce this stability to charge a fee? Also on page 1 of your amendment item D, the amount of

the fee, not in addition upon the occurrence of a future event. So a consumer would have to pay the fee even if they were turned down, if their application was turned down?

Rep. Kasper: Yes, that is part of what you have to disclose, whether you buy or not, if we do the work, we will have fee paid. It can not offset of the commission either. So there is no offset and full disclosure.

Rep. Jensen: the commission is paid by the insurance company. My first question was has there been a change in the commission structure that has expired this request?

Rep. Kasper: Over the years the area of group insurance, particularly group life, group short term disability, group long term disability. Commissions have varied from anywhere like a 10% commission, sometimes an 8% commission all the way up to fifteen or twenty percent commission. When you get into the area of health insurance, group health insurance, they are all across the board. Depending upon the size of the premium, the insurance companies will set your commissions. The larger the premium, the smaller the commissions. You might in some cases get all the way down to a percent or two for commission depending upon the size of the premium. So they have been sort of tending downwards.

Rep. Jensen: So that would be part of why this would be good for insurance producers?

Rep. Kasper: I think that again when you look at all the work, if Rep. Wald was able to testify, he uses an example that when he tries to find a bond for a client, that is trying to salvage some property, like metal material, that is a very dangerous job. It is very hard to find that type of product any place. You generally go to a Lloyds of London or something special like that. You might have a \$25.00 or a \$30.00 commission, you might put in 15 or 20 hours worth of work. But you do that because you want to serve your client and get the protection for them.

Rep. Jensen: What was that percentage commission, how many dollars would that equate to?

Rep. Kasper: I couldn't say in that particular case, because I do not sell that type of insurance. But it is very, very small. Generally it is a flat fee or something like that I believe.

Rep. Jensen: I don't really have quarrel with the ability to impose a fee, as long as there the disclosures that have been indicated, I am however questioning, I am feeling sensitive and uncomfortable doing it, but it is on my mind and I have to say it. It seems to me that since insurance agents are proposing this, that this is a conflict of interest. That this probably should be done at the third party objective observer or something. I guess maybe as they say that out loud, I can also see who else is going to do it. No one else is going to do it for them. It does have the appearance of being self serving.

Rep. Kasper: That term conflict of interest comes up a lot, particularly in the attorney general's opinion on an insurance agent may not charge a fee. When you look upon where the bonus of the insurance agent that is representing the insurance company, compared to the insurance broker that is representing the client. We are over here doing the best we can for the client. Our job is to find the best product we can, disclose what we found out, help them make a decision and the place insurance in force. Again, if that client wishes to say for your work, because I know the type of work that you are going to go through, I would like to pay a fee in addition to the commission. We feel that ought to be between the client and us. That should be full disclosure.

Rep. M. Klein: Are there many case where the insurance broker and the insurance agent is the same operation? I really have a problem.

Rep. Kasper: When you become licensed by the insurance department, you either become licensed as an insurance agent or an insurance broker. So your licensing determines who you are.

So within a n insurance organization where you have many producers, you could have some that are insurance agents, you could have some that are insurance brokers. It all depends on the type of license that you have chosen to be licensed under in the North Dakota

Rep. Berg: I think that to be fair someone can be an insurance agent and you can be an insurance broker and you are selling the same product, and you are selling the same products and receiving a commission from those products that you sell.

Rep. Kasper: Yes.

Rep. Berg: It's not that a broker is one hundred percent lined with the consumer, and the agent is hundred lined with the company.

Rep. Kasper: I can not address how someone else does there business, but I can address under the licensing, we are by licensed to represent the client.

Rep. Berg: Asks for a different way to here the definition of an insurance broker and an insurance agent as it relates to licenser.

Laurie Wolf: *Insurance Department* Rep. Kasper is correct when he defines that role of the insurance producer when they are representing the insured they are acting the capacity as a broker. Negotiating and looking for the best possible market. Under the law though the insurance producer is dully licensed, They can both be an agent and a broker. What draws that distinction is what's called the appointment. Your contract that the producer has, under current law, the agent has with the company. They get appointed, contracted, submitted paperwork to the department and that would withdraw that distinction When they are acting like a broker they don't necessarily have that company appointment. They don't represent or are not contracted as an agent for that company. They may go seek out various companies to get the quote, place the risk. But they are

not necessarily an agent of the company. Then when they place that risk, acting as a broker in their broker capacity, they will still get a commission. Just like if they would have been an agent of that company placing that risk .

Rep. M. Klein: Aren't there in many agencies you have the broker's and the agents, and they are working out of the same office?

Wolf: You are correct. They are doing licenses.

Rep. Berg: Asks if there are any other questions. Stating that in our business and in the brokered side of our company a person can make an agreement and a contract with a business that is not a commission to pay a certain fee. It's disclosed and that person may also receive a fee from the owner. So I guess that from my perspective I would support this. I think that we each need to make our decision on it. I think that having it narrowed to group insurance commercial, you know that there maybe some merit to that.

Rep. Keiser: I also support this. Because of the limitations. It doesn't apply to the individual policies. As a purchaser of commercial insurance, I would gladly, through a negotiation process, be willing got pay a fee. Because I think that ultimately, that this change will unfortunately will provide the potential for a better product to be developed. If you were the broker and you were going out and getting bids on a product, there is a limitation to how many bids you are going to seek, based on the potential commission from the job. This is a business enterprise. In our particular business every time that we negotiate, every time we renew our contract, I am amazed by the new things that are being added to the perplexity of our insurance program today. I have more insurance on computer parts and on electrical malfunction, than I ever dreamt that I would have. I didn't have those thing s a few years ago. I didn't worry about that. But I do today, and so

there is a lot of research done and the agent does get a big commission. But I want to encourage my agent to be diligent and do shop around, and do the best job that they can for me. Since it is a mutual agreement, that has been reached between the two parties, I think that its reasonable. I really don't know, But I have heard a lot of discussions about when you go to the Lloyd's of London, where a bid that is an entirely different issue. It is an insurance product but it is a different kind of insurance product entirely. If you are going to do that kind of business, imagine the long distance phone calls and the expenses incurred in establishing that, I think that this is reasonable.

Rep. Kasper: The fee id for the first year, it does not get added the next year. It's just that one time fee when you are doing the upfront work. After the first year there is no fee that is on going fee.

Rep. Severson: I have to be in opposition of the fee, simply because I think that right now they can do it. Rep. Kasper did show me the documentation where he was doing it currently, he went through a few more hoops to go through. I don't know that it necessarily has to be within this bill. For that reason I think that they are really committed if that is what they want to do. From a separate cooperation. I would probably rather see it done the way it is currently done.

Rep. Keiser: If they are already doing it, and I have to jump through a lot of hoops, aren't we going to be pro-business and eliminate some of the hoops. I mean if they are doing it already, why do we want to set up all of these artificial barriers that they have to overcome to do it? Is that what our state wants to do? For business? I would argue that point.

Rep. M. Klein: I also have some of those some same concerns that Rep. Jensen has. If we bring this to the floor, with these names and the interests involved, I don't feel comfortable it.

Rep. Berg: Let's take a roll call vote on this section and then we will move on to the other amendments. Its not a formal vote, its just a straw vote so that we can work through these amendments.

Rep. Thorpe: Which one we are on?

Rep. Berg: The Kasper, Wald, Tieman, Monson amendments. Severson amendments are on hold for the moment. We are going to take a vote and kind of walk through these and kind of vote on each section. Then when we are done we will have another amendment.

Rep. Pietsch: Adding section 54 to the amendments that Rep. Severson brought? They are all included, and this is just an elaboration of section 54?

Rep. Severson: These are Rep. Kaspers' amendments they are not in the original request from the insurance commissioner. So these are separate.

Rep. Berg: So in essence what we are doing is we are voting whether or not we want these included in the bill, so if you vote yes then we would include in our final vote on the amendments. If you vote no, we will not consider these as part of our final amendment.

Rep. Jensen: With the ability to charge a fee.

Rep. Berg: Only this section 54, we will take this up one time.

The clerk then takes the roll,

Add Section 54 to .0208 amendment. Passed 9-4-2. The motion carries.

Rep. Severson: If we look at the rest of Rep. Kaspers' amendments, page 2, line 25, an employee, the other ones that I don't have an explanation for at the bottom of page 31, line 5, where we replaced ten working with thirty, I don't know why that is necessary.

Rep. Kasper: That is just to give a little more time for notification. We thought ten days was a little bit too quick, thirty days was a little more reasonable. That's all it is, just time for paperwork to go back and forth. It's not a big deal but it helps you not to violate the law if you don't hit the ten day deal.

Rep. Keiser: This is the one that I disagree with. I think that ten days is adequate. Several times notified to correspond with the insurance department.

Rep. Berg: The status of the principal insured producer changes. So we are saying if there is someone that is no longer with the company or the ownership of the company changes, that they would need to notify within ten days. What is the current statute on that?

Rep. Kasper: I think that this is new.

Wolf: The current requirement is the notification done within ten days, that's the current statute.

Rep. Berg: Let's take a voice vote on that then.

The majority motioned for a fail of the amendments.

Add Section 62. Failed 2-11-2

Rep. Severson: Page 31, line 17, has to put the word fee in there, because it deals with that. So that would have to stay in there. Page 32, line 20, the next one is the same as that we had in the other one. Page 44, the insurance, they remove all of those lines. I think that those should stay in. So that is one of those differences right here. So I don't know how you want to act on that, but I would just as soon, I think that we should leave those in there, that is just protection.

Rep. Berg: Let's jump back to your amendments, that you brought forth from the department. They change lines 26, 28, 29. The two alternatives that we are looking at is either go with page

44, line 26, after licensee, we would add knowingly. Replace an administrative or with a. Then would do the same so. Let's vote on this.

Rep. Kasper: I would like to comment on that. I don't know of any other professional license in the state of North Dakota that requires these types of contingencies for an opportunity to move your license. If you want do it with the insurance professionals let's do it with the doctors, the dentists, the chiropractors, the real estate people, lets do it with everybody. There is other places in state law that provides protections for these areas. I just think that its not needed in an insurance statue. It is to stringent.

Rep. Berg: We will take the amendments from Rep. Severson, if you vote no we will take the amendments that would delete those lines. Yes, is fro Severson, which would keep the license revoked if they knowingly fail to comply with court order or fail to pay income tax.

Rep. Ruby: I why is this added to this license?

Wolf: I am not entirely sure that its no applicable to other professional licenses. We only regulate insurance producers, so I can not really speak for the other professions. If there was an attorney in the room perhaps he can speak whether or not. Whether or not they can take disciplinary action taken if they fail to comply with a court order involving pay income tax, or a court order involving the seller to pay child support obligations. These are provisions from the agency uniform producer model act. We incorporated those into the bill that is before you.

Rep. Ruby: I am just thinking that there would be some actions that could be taken, I guess under just basically not court order, rather than have that license. I guess I am just wondering why just pick one license from one profession. I haven't heard one good reason why this would necessarily effect other professions.

Rep. Severson: Unfortunately we are not dealing with anyone else, but the insurance people right now.

Rep. Berg: I think that there are grounds in all licenses to have some, what we are talking about is allowing them to place on probation instead of just revoke.

Rep. M. Klein : Isn't this the model that all the other states are using though?

Wolf: That is correct.

Amendments to page 44 from .0208. Failed 5-8-2, amendment .0207 accepted.

Rep. Berg: We take the language that Rep. Severson proposed in his amendments, and not remove those.

Rep. Severson: The only other thing on Kaspers' amendment, they forgot page 45, line 26. That technical correction. That is from the insurance commissioners office. Page 45, line 17, 18, 20, actually deals with the portion of statute of new law, that deals with criminal prosecution and Rep. Kaspers' language actually changes it instead of a initial free trial hearing date on line 17, we will replace that with after a criminal conviction. So basically what the amendment does, is it provides that there has to be conviction verses just prosecution. I guess I really don't have any heartache with that. I think that is appropriate, rather than just prosecution. We should use conviction, so I would move that we adopt those amendments.

Rep. M. Klein: So those are all four of those on page 45?

Rep. Severson: Those are three of them.

Rep. Kasper: I would happily second something here.

Rep. Berg: We will just take a voice vote. Voting yes we are saying that we will require conviction rather than just a pretrial prosecution.

Page 45 amendments. Passes 13-0-2.

Rep. Berg: On page 46, remove lines 3 and 4.

Rep. Severson: Those are the same as what the insurance commissioner, I would move that we don't have those two adopted.

Rep. Berg: Let's take a vote on these amendments as we have gone through them now, I would like to act on the bill. Then when we get the amendments combined I will ask Rep. Severson and Rep. Kasper to go through them to make sure that they are correct. So we need a motion on the amendments that we have adopted.

Rep Kasper: I move the amendments.

Rep Pietsch: I second.

Passed

Rep Ekstrom: I move a do pass as amended.

Rep Kasper: I second.

The clerk then take the roll call vote with 13 YES, 0 NO and 0 ABSENT AND NOT VOTING.

The carrier of the bill is Rep. Severson.

13 yea, 0 nay, 0 absent Carrier Rep Severson

March 20, 2001

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2144

Page 1, line 1, after "sections" insert "26.1-26-04.1,"

Page 14, line 24, overstrike "- Residence requirements"

Page 14, line 25, overstrike "residents of this state and must"

Page 14, line 26, overstrike "be"

Page 16, line 30, overstrike "resident"

Page 17, line 20, overstrike "resident"

Page 18, line 27, overstrike "negotiated with and"

Page 24, after line 4, insert:

"**SECTION 54.** Section 26.1-26-04.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-04.1. Fees.

1. Except as provided in subsection 2, an insurance producer acting as an agent of an insured as provided under section 26.1-26-07 may charge a consumer a fee if:
 - a. The fee is disclosed to the consumer in a manner that separately identifies the fee and the premium and states that the insurance producer is entitled to receive a commission from the insurer for selling, soliciting, or negotiating the insurance;
 - b. The fee is not calculated as a percentage of the premium;
 - c. The fee is not refunded, forgiven, waived, offset, or reduced by any commission earned or received for any policy or coverage sold;
 - d. The amount of the fee and the consumer's obligation to pay the fee are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, lapse, declination, or nonrenewal of insurance;

- e. The insurance producer discloses to the consumer that the fee is being charged by the insurance producer and not by the insurance company, neither state law nor the insurance company requires that the insurance producer charge the fee, and the fee is not refundable;
 - f. The consumer consents in writing to the fee; and
 - g. The insurance producer, in charging the fee, does not discriminate on the basis of sex, race, national origin, religion, disability, health status, age, marital status, or geographic location and does not unfairly discriminate between individuals of essentially the same class and of essentially the same hazard or expectation of life.
2. An insurance producer acting as an agent of an insured as provided under section 26.1-26-07 may not charge a fee for taking or submitting an initial application for coverage or processing a change to an existing policy, cancellation, claim, or renewal in connection with any of the following personal lines policies:
- a. Private passenger automobile.
 - b. Homeowners, including coverage for tenants or condominium owners; owner-occupied fire, dwelling, or property coverage; personal umbrella liability; or any other personal lines-related coverage whether sold as a separate policy or as an endorsement to another personal lines policy.
 - c. Individual life insurance.
 - d. Individual sickness or accident insurance.
 - e. Disability income policies.
 - f. Credit insurance products.
3. Notwithstanding any other provision of this section, an insurance producer acting as a broker for the insured under section 26.1-26-07 may charge a fee for insurance producer services in connection with a policy issued if the producer provides the consumer with prior disclosure of the fee and of the services to be provided.
4. In the event of a dispute between an insurance producer and a consumer regarding any disclosure required by this section, the insurance producer has the burden of proving that the disclosure was made."

Page 27, line 25, replace "Employees" with "An employee" and replace "respond" with "responds"

Page 27, line 26, remove "those"

Page 27, line 27, replace "employees are" with "employee is"

Page 27, line 28, after "services" insert "and provided that employee does not sell, solicit, or negotiate insurance"

Page 31, line 5, replace "ten working" with "thirty"

Page 32, after line 20, insert:

"6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars."

Page 44, remove lines 26 through 29

Page 45, line 17, replace "of the initial pretrial hearing date" with "after a criminal conviction"

Page 45, line 18, replace "prosecution" with "conviction"

Page 45, line 20, replace "resulting from" with "issued by" and replace "hearing" with "court"

Page 45, line 26, replace "26.1-26-20.1" with "26.1-26-20"

Page 46, line 2, remove "However, a nonresident insurance producer shall pay a"

Page 46, remove lines 3 and 4

Page 50, line 25, overstrike "Resident insurance" and after "agents" insert "Insurance"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2144

Page 14, line 24, overstrike "- Residence requirements"

Page 14, line 25, overstrike "residents of this state and must"

Page 14, line 26, overstrike "be"

Page 16, line 30, overstrike "resident"

Page 17, line 20, overstrike "resident"

Page 18, line 27, overstrike "negotiated with and"

Page 27, line 25, replace "Employees" with "An employee" and replace "respond" with "responds"

Page 27, line 26, remove "those"

Page 27, line 27, replace "employees are" with "employee is"

Page 27, line 28, after "services" insert "and provided that employee does not sell, solicit, or negotiate insurance"

Page 32, after line 20, insert:

"6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars."

Page 44, line 26, after "licensee" insert "knowingly" and replace "an administrative or" with "a"

Page 44, line 28, after "licensee" insert "knowingly" and replace "any" with "a"

Page 44, line 29, remove "administrative or"

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Renumber accordingly

Date: 3 20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2144

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended.

Motion Made By Eklstrom Seconded By Hager

[illegible]

Total (Yes) 13 No 0

Absent 

Floor Assignment Rep Stevenson

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

REPORT OF STANDING COMMITTEE

SB 2144, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2144 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "26.1-26-04.1,"

Page 14, line 24, remove "insurance producers" and overstrike "- Residence requirements" and insert immediately thereafter "insurance producers"

Page 14, line 25, overstrike "residents of this state and must"

Page 14, line 26, overstrike "be"

Page 16, line 30, overstrike "resident"

Page 17, line 20, overstrike "resident"

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 - c. The fee is not refunded, forgiven, waived, offset, or reduced by any commission earned or received for any policy or coverage sold;
 - d. The amount of the fee and the consumer's obligation to pay the fee are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, lapse, declination, or nonrenewal of insurance;
 - e. The insurance producer discloses to the consumer that the fee is being charged by the insurance producer and not by the insurance company, neither state law nor the insurance company requires that the insurance producer charge the fee, and the fee is not refundable;
 - f. The consumer consents in writing to the fee; and
 - g. The insurance producer, in charging the fee, does not discriminate on the basis of sex, race, national origin, religion, disability, health status, age, marital status, or geographic location and does not

unfairly discriminate between individuals of essentially the same class and of essentially the same hazard or expectation of life.

2. An insurance producer acting as an agent of an insured as provided under section 26.1-26-07 may not charge a fee for taking or submitting an initial application for coverage or processing a change to an existing policy, cancellation, claim, or renewal in connection with any of the following personal lines policies:
 - a. Private passenger automobile.
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 - c. Individual life insurance.
 - d. Individual sickness or accident insurance.
 - e. Disability income policies.
 - f. Credit insurance products.
3. Notwithstanding any other provision of this section, an insurance producer acting as a broker for the insured under section 26.1-26-07 may charge a fee for insurance producer services in connection with a policy issued if the producer provides the consumer with prior disclosure of the fee and of the services to be provided.
4. In the event of a dispute between an insurance producer and a consumer regarding any disclosure required by this section, the insurance producer has the burden of proving that the disclosure was made."

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Page 46, remove lines 3 and 4

Page 50, line 25, overstrike "Resident insurance" and after "agents" insert "Insurance"

Renumber accordingly

2001 TESTIMONY

SB 2144

SENATE BILL NO. 2144

Presented by: Laurie A. Wolf
Director of Licensing and Investigations
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 22, 2001

TESTIMONY

Good morning, Mr. Chairman and members of the Senate Industry, Business and Labor Committee:

For the record, my name is Laurie Wolf and I am the Director of Agent Licensing and Investigations for the North Dakota Insurance Department. I am appearing before you today in support of Senate Bill No. 2144 and to urge its favorable consideration by this committee.

As Commissioner Poolman mentioned earlier, Senate Bill No. 2144 amends several sections of Chapter 26.1-26 of the North Dakota Century Code, relating primarily to insurance agents. It has had widespread support and input from industry. The written testimony before you today includes a short summary of the bill and a section-by-section explanation of Chapter 26.1-26 which is the chapter that relates to the licensing of insurance producers.

The first 19 pages and the last 21 pages of the bill are technical changes to Title 26.1 relating to insurance agents and brokers by changing the words "agent" or "broker" to "insurance producer".

Overall Summary

As mentioned earlier by Insurance Commissioner Poolman, Senate Bill No. 2144 incorporates the NAIC Producer Model Act provisions into our existing agent licensing statutes. It also repeals current laws that do not comply with the requirements of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB). The main purpose of the bill is to bring uniformity to the licensing process and to streamline the process to make it more efficient for the industry.

I have summarized below some of the substantive changes to Chapter 26.1-26.

Section 50 - Amendment

Section 26.1-26-02 - Definitions. This section defines key terms used throughout Chapter 26.1-26. It creates new definitions such as "sell", "solicit", and "negotiate" which determine when someone needs to obtain an insurance producer license.

Section 52 - Amendment

Section 26.1-26-04 - Commissions. This section clarifies who may and may not receive commissions generated from the sale of insurance policies. It also allows for the payment of a referral fee provided the payment does not violate the North Dakota rebate laws.

Section 56 - Amendment

Section 26.1-26-09 - Exceptions to the licensing requirements. This section sets forth uniform exceptions as to the producer licensing requirements. These exceptions are found in the NAIC Producer Model Act and includes an exception for customer service representatives which is not in the current NAIC Producer Model Act.

Section 59 - Amendment

Repeals the old appointment language and incorporates a new Section 26.1-26-13.1 - Appointments. This section establishes uniform procedures for the appointment of producers and helps clarify when an appointment needs to be filed with the state.

Section 60 - Amendment

Section 26.1-26-13.2 - Application for examination. This section specifies that an individual applying for an insurance producer license must pass a written examination unless exempt pursuant to Section 26.1-26-25.

Section 61 - Amendment

Section 26.1-26-13.3 - Application for license. This section sets forth the application procedures and identifies the core requirements for a resident, individual, or business entity producer license.

Section 62 - Amendment

Section 26.1-26-17 - License requirement - Surplus lines insurance producer. This section allows for both resident and nonresident insurance producers to act as surplus lines insurance producers and is required under GLB.

Section 63 - Amendment

Section 26.1-26-20 - Nonresident licensing. This section identifies procedures for obtaining a nonresident insurance producer license in the state. It establishes a system of reciprocity for the licensing of nonresident producers and is needed in order to have uniformity among the states and to satisfy the NARAB provisions of GLB.

Section 64 - Amendment

Section 26.1-26-25 - Exemptions from examination. This section makes changes to existing statutes to comply with the uniform standards found in the NAIC Producer Model Act.

Section 65 - Amendment

Section 26.1-26-25.1 - Assumed names. This section states that a producer doing business under any name other than the producer's legal name is required to notify the Insurance Commissioner prior to using the assumed name.

Section 66 - Amendment

Section 26.1-26-26 - Temporary license as an insurance producer. This section states that an individual may be issued a temporary insurance producer license, under limited circumstances, for a period not to exceed 180 days. A temporary license may be issued to a person without having to complete an examination if the Insurance Commissioner deems that the issuance of a temporary license is necessary for the servicing of existing insurance business.

Section 68 - Amendment

Section 26.1-26-30.1 - Vendor authority. This section allows for the Commissioner to enter into contracts to perform ministerial insurance producer licensing functions.

Section 70 - Amendment

Section 26.1-26-31.1 - Continuing education required - Exceptions. This section eliminates continuing education requirements for an insurance producer who is at least 62 years of age, who has a combined total years of continuous licensure as an insurance producer and years of age which equals 85. It essentially allows for all agents who meet the Rule of 85 to be exempt from continuing education requirements.

Section 74 - Amendment

Section 26.1-26-34 - Notification to commissioner of termination. This section establishes uniform procedures for "terminations for cause" and "terminations without cause". This section includes immunity language for entities reporting terminations and also establishes confidentiality provisions.

Section 77 - Amendment

Section 26.1-26-42 - Licensing suspension, revocation, or refusal - Grounds. This section identifies the reasons the Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license. It includes various reasons included in the NAIC Producer Model Act in order to have uniformity among the states.

Section 79 - Amendment

Section 26.1-26-45.1 - Reporting of actions. This section requires a producer to report any administrative action or criminal prosecution against him or her to the Insurance Commissioner.

Section 80 - Amendment

Section 26.1-26-47.1 - Reciprocity. This section establishes a system of reciprocity for the licensing of insurance producers and is needed to bring uniformity among the states to satisfy the NARAB provisions of GLB.

AMENDMENT

The amendments before you are primarily technical changes with the exception of the amendment found on page 36, lines 12 and 13, which eliminates the requirement of the "\$10,000 in aggregate commissions" for agents who meet the continuing education Rule of 85 exemption. This change is being incorporated into Senate Bill No. 2144 so that House Bill No. 1057 can be withdrawn.



Bruce Ferguson
Deputy Vice President, State Relations
202.624.2385

January 20, 2001

Via Facsimile

Ms. Laurie Wolf
State of North Dakota
Department of Insurance
600 E. Boulevard Ave., Dept. 401
Bismarck, North Dakota 58505-0320

Re: Producer Licensing Legislation (S. 2144)

Dear Ms. Wolf:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association whose 435 members hold 73.2 percent of the legal reserve life insurance in force in the United States. Of these members, 342 are licensed to do business in North Dakota, accounting for more than 80 percent of the life insurance in force in the state. Our members, and the producers who represent them, help individuals provide for their financial security through life insurance, annuities, disability income and long-term care insurance.

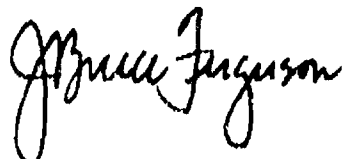
As you know, ACLI strongly supports state enactment of the NAIC Producer Licensing Model Act. We believe it is imperative that uniform standards for all aspects of the producer licensing process be implemented across the nation, and state enactment NAIC Model Act is a major step toward that goal.

Accordingly, we are pleased to lend our support for Senate Bill 2144, which would amend North Dakota's producer licensing laws to conform with the NAIC Model Act. ACLI applauds the Department for pursuing legislation that would help achieve the national licensing standards we seek, and for actively participating in the programs being developed by the National Insurance Producer Registry.

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Ms. Laurie Wolf
January 20, 2001
Page 2

Thank you for the opportunity you have given us to review and comment on this important legislation. If you have any questions or need additional information, please do not hesitate to contact me or Joe Testa, the ACLI's legislative director for the State of North Dakota.

Very truly yours,



J. Bruce Ferguson

cc: Mr. Joe Testa
Mr. Patrick Ward
Mr. Greg Morris

PROPOSED AMENDMENTS TO SENATE BILL NO. 2144

Page 1, line 3, after "reenact" insert "subdivision n of subsection 1 of section 10-04-11,"

Page 2, after line 20, insert the following:

"SECTION 1. AMENDMENT. Subdivision n of subsection 1 of section 10-04-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking the registration as an ~~agent, broker~~ insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02."

Page 3, line 31, overstrike "broker,"

Page 8, line 13, overstrike ", limited insurance representative,"

Page 30, line 13, after "licensed" insert "individual"

Page 36, line 12, overstrike "and whose commissions from new"

Page 36, line 13, overstrike "business each year do not exceed ten thousand dollars"

Page 40, line 15, after "commissioner" insert an underscored comma

Page 40, line 16, remove "by law" and ", is not subject to section 6 of"

Page 40, line 17, remove "article XI of the Constitution of North Dakota" and "chapter 44-04,"

Page 41, line 22, remove "pursuant to section 6 of article XI of the Constitution of"

Page 41, line 23, remove "North Dakota and chapter 44-04"

Page 44, line 25, replace "producer" with "producer's license"

Renumber accordingly

SENATE BILL NO. 2144

Presented by: Jim Poolman
Commissioner
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 22, 2001

TESTIMONY

Good Morning, Mr. Chairman and members of the committee.

For the record, my name is Jim Poolman, North Dakota Insurance Commissioner. I am appearing before you today to introduce Senate Bill No. 2144 and to urge its favorable consideration by this committee.

Senate Bill No. 2144 is a rather lengthy bill amending several sections of Chapter 26.1-26 of the North Dakota Century Code relating primarily to insurance agents. It is a bill which the Insurance Department spent considerable time in drafting and has had widespread support from the insurance industry including our domestic insurance companies, local and national agent and company trade associations, and NCOL.

The producer bill before you today will create a system of reciprocity for insurance producer licensing and creates uniform standards for several key areas which will be summarized for the committee by one of my staff - Laurie Wolf. Senate Bill No.

2144 incorporates the NAIC Producer Model Act provisions into North Dakota's existing agent licensing statutes. It also repeals current provisions that do not comply with the requirements of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB). This bill is necessary to preserve the authority of states to license insurance producers.

GLB mandates that a majority of states must enact uniform laws and regulations governing the licensure of individuals and business entities authorized to sell and solicit the purchase of insurance within the state. If the states do not enact uniform licensing laws or, at a minimum, enact a system of reciprocal licensing by November 12, 2002, the National Association of Registered Agents and Brokers will be established as set out in GLB. We strongly believe that the functional regulation of insurance should remain with the states and the passage of Senate Bill No. 2144 will preserve the state's authority to regulate the business of insurance and do it in a more streamlined and efficient manner.



RECEIVED

JAN 11 2001

Commissioner of Insurance
State of North Dakota

January 8, 2001

Hon. Jim Poolman
Insurance Commissioner
600 East Blvd.
Bismarck, ND 58505-0320

Dear Commissioner Poolman:

Please accept the congratulations of the Alliance of American Insurers on your election as Insurance Commissioner in North Dakota. We are an association representing over 325 property/casualty insurance companies. Many do business in your state.

I specifically want to advise you of our support for the producer licensing reform package that you have presented to the legislature. We have reviewed SB 44 and are very enthused about the fact that you have chosen to include in the legislation the reciprocity and uniformity concepts contained in the Producer Licensing Model Act adopted by the National Association of Insurance Commissioners (NAIC). You have our commitment to work for passage of SB44 as the legislative session goes forward.

The Alliance does not retain local counsel in your state. I will be representing the association during the session, and plan to be an active participant in Bismarck on insurance-related bills.

In addition to the producer licensing bill, we have reviewed SB 2127 and are supportive of the regulatory decision to establish rules for disclosure of non public personal information. We will look for an opportunity to discuss with you Alliance member company views on information privacy components related to the Gramm-Leach-Bliley Act.

It has been a pleasure for me to work at the NAIC with members of your staff on issues relating to producer licensing and the National Insurance Producer Registry (NIPR). I look forward to working with you and your staff in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry E. Kibbee".

Larry E. Kibbee
Vice President - Public Affairs

LEK:jar
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cc - Laurie Wolf
Director of Agent Licensing and Investigations

January 22, 2001

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE SB 2144
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SENATOR MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association, the North Dakota Broadcasters Association, and R.L. Polk, Inc., the company that puts out the Polk city directories. We do not oppose SB 2144 since it keeps confidential on page 40 records that are already confidential under state law.

However, the new language starting on page 40, lines 12 through 21, are a bit unclear as to whether the confidentiality is for ALL records in the Insurance Commissioner's office, or just the records involved with the investigation and termination under Section 26.1-26.34. We'd like this to be part of the legislative history that it is our understanding that the confidentiality extends only to the records involved with Section 26.1-26.34 activities.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

March 7, 2001

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2144

Page 1, line 1, after "sections" insert "26.1-26-04.1,"

Page 24, after line 4, insert:

"SECTION 54. Section 26.1-26-04.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-04.1. Fees.

1. Except as provided in subsection 2, an insurance producer may charge a consumer a fee if:
 - a. The fee is disclosed to the consumer in a manner that separately identifies the fee and the premium and states that the insurance producer is entitled to receive a commission from the insurer for selling, soliciting, or negotiating the insurance;
 - b. The fee is not calculated as a percentage of the premium;
 - c. The fee is not refunded, forgiven, waived, offset, or reduced by any commission earned or received for any policy or coverage sold;
 - d. The amount of the fee and the consumer's obligation to pay the fee are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, lapse, declination, or nonrenewal of insurance;
 - e. The insurance producer discloses to the consumer that the fee is being charged by the insurance producer and not by the insurance company, neither state law nor the insurance company requires that the insurance producer charge the fee, and the fee is not refundable;
 - f. The consumer consents in writing to the fee; and
 - g. The insurance producer, in charging the fee, does not discriminate on the basis of sex, race, national origin, religion, disability, health status, age, marital status, or geographic location and does not unfairly discriminate between individuals of essentially the same class and of essentially the same hazard or expectation of life.
2. An insurance producer may not charge a fee for taking or submitting an initial application for coverage or processing a change to an existing policy, cancellation, claim, or renewal in connection with any of the following personal lines policies:
 - a. Private passenger automobile.
 - b. Homeowners, including coverage for tenants or condominium owners; owner-occupied fire, dwelling, or property coverage; personal

umbrella liability; or any other personal lines-related coverage whether sold as a separate policy or as an endorsement to another personal lines policy.

- c. Individual life insurance.
 - d. Individual sickness or accident insurance.
 - e. Disability Income policies.
 - f. Credit insurance products.
3. Notwithstanding any other provision of this section, an insurance producer may charge a fee for insurance producer services in connection with a policy issued on a no-commission basis if the producer provides the consumer with prior disclosure of the fee and of the services to be provided.
4. In the event of a dispute between an insurance producer and a consumer regarding any disclosure required by this section, the insurance producer has the burden of proving that the disclosure was made."

Page 31, line 5, replace "ten working" with "thirty"

Page 44, remove lines 26 through 29

Page 45, line 17, replace "of the initial pretrial hearing date" with "after a criminal conviction"

Page 45, line 18, replace "prosecution" with "conviction"

Page 45, line 20, replace "resulting from" with "issued by" and replace "hearing" with "court"

Renumber accordingly

SENATE BILL NO. 2144

Presented by: Laurie A. Wolf
Director of Licensing and Investigations
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Representative Rick Berg, Chairman

Date: March 7, 2001

TESTIMONY

Good morning, Mr. Chairman and members of the House Industry, Business and Labor Committee:

For the record, my name is Laurie Wolf and I am the Director of Agent Licensing and Investigations for the North Dakota Insurance Department. I am appearing before you today in support of Senate Bill No. 2144 and to urge its favorable consideration by this committee.

Senate Bill No. 2144 amends several sections of Chapter 26.1-26 of the North Dakota Century Code, relating primarily to insurance agents. It has had widespread input and support from industry including our domestic insurance companies and both agent and company trade associations. The written testimony before you today includes a short summary of the bill and a section-by-section explanation of Chapter 26.1-26 which is the chapter that relates to the licensing of insurance producers.

The first 19 pages and the last 21 pages of the bill are technical changes to Title 26.1 relating to insurance agents and brokers by changing the words "agent" or "broker" to "insurance producer".

Overall Summary

Senate Bill No. 2144 incorporates the NAIC Producer Model Act provisions into our existing agent licensing statutes. It also repeals current laws that do not comply with the requirements of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB). The main purpose of the bill is to bring uniformity to the licensing process and to streamline the process to make it more efficient for the industry. This bill is necessary to preserve the authority of states to continue to license insurance producers.

I have summarized below some of the substantive changes to Chapter 26.1-26.

Section 51 - Amendment

Section 26.1-26-02 - Definitions. This section defines key terms used throughout Chapter 26.1-26. It creates new definitions such as "sell", "solicit", and "negotiate" which determine when someone needs to obtain an insurance producer license.

Section 53 - Amendment

Section 26.1-26-04 - Commissions. This section clarifies who may and may not receive commissions generated from the sale of insurance policies. It also allows for the payment of a referral fee provided the payment does not violate the North Dakota rebate laws.

Section 57 - Amendment

Section 26.1-26-09 - Exceptions to the licensing requirements. This section sets forth uniform exceptions as to the producer licensing requirements. The language codifies and helps clarify the existing licensing exemptions currently found in statute. This section does include an exception for customer service representatives which is not in the current NAIC Producer Model Act.

Section 60 - Amendment

Repeals the old appointment language and incorporates a new Section 26.1-26-13.1 - Appointments. This section establishes uniform procedures for the appointment of producers and helps clarify when an appointment needs to be filed with the state.

Section 61 - Amendment

Section 26.1-26-13.2 - Application for examination. This section specifies that an individual applying for an insurance producer license must pass a written examination unless exempt pursuant to Section 26.1-26-25.

Section 62 - Amendment

Section 26.1-26-13.3 - Application for license. This section sets forth the application procedures and identifies the core requirements for a resident, individual, or business entity producer license.

Section 63 - Amendment

Section 26.1-26-17 - License requirement - Surplus lines insurance producer. This section allows for both resident and nonresident insurance producers to act as surplus lines insurance producers and is required under GLB.

Section 64 - Amendment

Section 26.1-26-20 - Nonresident licensing. This section identifies procedures for obtaining a nonresident insurance producer license in the state. It establishes a system of reciprocity for the licensing of nonresident producers and is needed in order to have uniformity among the states and to satisfy the NARAB provisions of GLB.

Section 65 - Amendment

Section 26.1-26-25 - Exemptions from examination. This section makes changes to existing statutes to comply with the uniform standards found in the NAIC Producer Model Act.

Section 66 - Amendment

Section 26.1-26-25.1 - Assumed names. This section states that a producer doing business under any name other than the producer's legal name is required to notify the Insurance Commissioner prior to using the assumed name.

Section 67 - Amendment

Section 26.1-26-26 - Temporary license as an insurance producer. This section states that an individual may be issued a temporary insurance producer license, under limited circumstances, for a period not to exceed 180 days. A temporary license may be issued to a person without having to complete an examination if the Insurance Commissioner deems that the issuance of a temporary license is necessary for the servicing of existing insurance business.

Section 69 - Amendment

Section 26.1-26-30.1 - Vendor authority. This section allows for the Commissioner to enter into contracts to perform ministerial insurance producer licensing functions.

Section 71 - Amendment

Section 26.1-26-31.1 - Continuing education required - Exceptions. This section eliminates continuing education requirements for an insurance producer who is at least 62 years of age, who has a combined total years of continuous licensure as an insurance producer and years of age which equals 85. It essentially allows for all agents who meet the Rule of 85 to be exempt from continuing education requirements.

Section 75 - Amendment

Section 26.1-26-34 - Notification to commissioner of termination. This section establishes uniform procedures for "terminations for cause" and "terminations without cause". This section includes immunity language for entities reporting terminations and also establishes confidentiality provisions.

Section 78 - Amendment

Section 26.1-26-42 - Licensing suspension, revocation, or refusal - Grounds. This section identifies the reasons the Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license. It includes various reasons included in the NAIC Producer Model Act in order to have uniformity among the states.

Section 80 - Amendment

Section 26.1-26-45.1 - Reporting of actions. This section requires a producer to report any administrative action or criminal prosecution against him or her to the Insurance Commissioner.

Section 81 - Amendment

Section 26.1-26-47.1 - Reciprocity. This section establishes a system of reciprocity for the licensing of insurance producers and is needed to bring uniformity among the states to satisfy the NARAB provisions of GLB.

PROPOSED AMENDMENTS

The amendments before you are primarily technical changes which are necessary in order to comply with GLB. The exceptions would be the amendment found on page 27, line 28, regarding a licensing exception for customer service representatives. The other amendment is found on page 44, lines 26-29, which relate to reasons the Commissioner may deny or suspend a license.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2144

Page 14, line 25, overstrike "must be residents of this state and"

Page 16, line 30, overstrike "resident"

Page 17, line 20, overstrike "resident"

Page 18, line 27, overstrike "negotiated with and"

Page 27, line 28, after "services" and before the period insert "and provided those employees do not sell, solicit, or negotiate insurance"

Page 32, after line 20, insert:

"6. The nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars."

Page 44, line 26, after "licensee" insert "knowingly" and replace "an administrative or" with "a"

Page 44, line 28, after "licensee" insert "knowingly" and replace "any" with "a"

Page 44, line 29, remove "administrative or"

Page 45, line 26, replace "26.1-26-20.1" with "26.1-26-20"

Page 46, line 2, remove "However, a nonresident insurance producer shall pay a"

Page 46, remove lines 3 and 4

Page 50, line 25, replace "Resident insurance" with "Insurance"

Renumber accordingly

SENATE BILL NO. 2144

Presented by: Jim Poolman
Commissioner
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Representative Rick Berg, Chairman

Date: March 7, 2001

TESTIMONY

Good Morning, Mr. Chairman and members of the House Industry, Business and Labor Committee.

For the record, my name is Jim Poolman, North Dakota Insurance Commissioner. I am appearing before you today to introduce Senate Bill No. 2144 and to urge its favorable consideration by this committee.

Senate Bill No. 2144 is a rather lengthy bill amending several sections of Chapter 26.1-26 of the North Dakota Century Code relating primarily to insurance agents. It is a bill which the Insurance Department spent considerable time in drafting and has had widespread support from the Insurance industry including our domestic insurance companies, and the local and national agent and company trade associations.

The producer bill before you today will create a system of reciprocity for insurance producer licensing and creates uniform standards for several key areas which will be summarized for the committee by one of my staff - Laurie Wolf. Senate Bill No.

2144 incorporates the NAIC Producer Model Act provisions into North Dakota's existing agent licensing statutes. It also repeals current provisions that do not comply with the requirements of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB). This bill is necessary to preserve the authority of states to license insurance producers.

GLB mandates that a majority of states must enact uniform laws and regulations governing the licensure of individuals and business entities authorized to sell and solicit the purchase of insurance within the state. If the states do not enact uniform licensing laws or, at a minimum, enact a system of reciprocal licensing by November 12, 2002, the National Association of Registered Agents and Brokers will be established as set out in GLB. We strongly believe that the functional regulation of insurance should remain with the states and the passage of Senate Bill No. 2144 will preserve the state's authority to regulate the business of insurance and do it in a more streamlined and efficient manner.

ZUGER KIRMIS & SMITH

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National Board of Trial Advocacy

March 5, 2001

Testimony of Patrick J. Ward In Support of SB 2144

Dear Chairman Berg and members of the House IBL Committee:

I represent the North Dakota domestic insurance companies.

We support the uniform enactment of the NAIC Producer Licensing Model Act.

The model act is prompted by the threat of federal regulation of insurance producers under the Graham-Leach-Bliley financial services modernization act. The model act contains provisions designed to permit states to grant producer licenses to non-resident applicants under a reciprocal basis. One of the provisions of Graham-Leach-Bliley gives states three years in which to achieve uniform standards for producer licensing or reciprocity. If a majority of states fail to do so by November of 2002, a national association of registered agents and brokers (NARAB) will be created to issue non-resident licenses which states would be forced to honor.

Commissioner Poolman and his office have done a commendable job of attempting to comply with the model act, but still allow flexibility for customer service representatives and smaller offices.

We urge a Do Pass on SB 2144.

From: Representative's Jim Kasper, Frank Wald, Dave Monson, Wayne Tieman

Date: Monday, March 12, 2001

Re: SB 2144, Amendments

The following information is important in the consideration of the amendments we introduced for SB 2144.

1. The Council of Insurance Agents and Brokers (CIAB), has informed us that the following states permit agents, brokers, or both to charge fees under certain circumstances; AL, AK, AZ, AR, CA, CO, CT, DE, IL, KS, MN, MS, NV, NH, NJ, NY, NC, OK, OR, PA, SC, TX, UT, VT, WA, WI.
2. Under current ND law an Insurance Agent is defined as representing the insurance company, and an Insurance Broker as representing the client. We have amended the amendment, so that only an **INSURANCE BROKER**, may charge a fee and a commission, with full disclosure and a written agreement signed in advance with the client. **INSURANCE AGENTS** would not be allowed to charge a fee.
3. The wording of the Amendment to allow fees and commission with full disclosure, has been taken verbatim from the Ohio law state law.
4. Fees will only be allowed on group products and commercial lines products , not individual policies.
5. Securities law in North Dakota does not restrict a fee from being charged. As a matter of fact, under NASD Rules of Fair Practice, paragraph 2154, a securities representative is allowed to charge a fee and receive a commission in all 50 states.
6. Regarding the revocation of an insurance agents license due to failure to pay child support or file state income tax, under Section 12. 1-33-02.1, Prior Conviction of a Crime not bar to state (licensure-exceptions), the law states in sub paragraph one:
 1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has direct bearing upon a person's ability to serve the public in the specific occupation, trade or profession.

Therefore, it appears that the removal of the language on page 44, lines 26-29, coincide with the laws of ND under Section 12.1-33-02.1.

7. When examining the Attorney General's opinion, dated February 26, 1999, regarding fees and commissions under North Dakota statutes, it is dealing only with an **INSURANCE AGENT** and did not address on **INSURANCE BROKER**. This is a very important distinction in this Attorney General's opinion.

Virginia Statutes - Insurance Laws
TITLE 38.2 -- INSURANCE
Chapter 18 -- INSURANCE AGENTS
Article 1. Definitions and General Provisions

Virginia

Title 38.1, Insurance, consisting of §§ 38.1-1 to 38.1-971, was repealed by 1986, c. 562.

38.2-1812.2 Illegal compensation

A. Notwithstanding the provisions of § 38.2-310 and Article 4 (§ 38.2-1837 et seq.) of this chapter, no agent shall charge, or demand or receive from, an applicant for insurance or a policyholder any consideration in return for rendering services associated with a contract of insurance, when the consideration is in addition to the premium for such contract, unless:

1. The applicant or policyholder consents in writing before any services are rendered. Consent shall be provided on a form that includes the applicant's or policyholder's signature, the duration of services and amount of fees to be charged, the services for which the fees are charged, and a statement that the agent is entitled to receive a commission from the insurer for soliciting, negotiating, procuring or effecting the insurance; and

2. A schedule of fees and documentation for services rendered is maintained in the agent's office and is made available to applicants or policyholders upon request.

B. This section shall not apply to charges for services described in subsection C of § 38.2-4608 when provided by title insurance agents.

C. This section shall apply to new and renewal policies issued or renewed on or after July 1, 1999.

HISTORY 1999, c. 2, eff. 7-1-99.

DATE NEW 1999

CATEGORY 400 - Insurance representatives
700 - Trade practices

INDEX

Agents and Illegal compensation and Service charges
Written consent and Service charges and Agents
Records maintenance and Service charges and Agents

INFORMATION TYPE TEXT

DOCUMENT ID VA STAT IC 38.2-1812.2

(4) The amount of the fee, and the consumer's obligation to pay the fee, are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, apportionment, or nonrenewal of insurance.

(5) The agent discloses to the consumer that the fee is being charged by the agent and not by the insurance company, that neither state law nor the insurance company requires the agent to charge the fee, and that the fee is not refundable.

(6) The consumer consents to the fee.

(7) The agent, in charging the fee, does not discriminate on the basis of race, sex, national origin, religion, disability, health status, age, marital status, or geographic location, and does not unfairly discriminate between persons of essentially the same class and does not present a same hazard or expectation of life.

(B) A fee may not be charged for taking or submitting an initial application for coverage with any one insurer or different programs with the same insurer, or processing a change to an existing policy, a cancellation, a claim, or a renewal in connection with any of the following personal lines policies:

(1) Private passenger automobile.

(2) Homeowners, including coverage for tenants or condominium owners, owner-occupied fire or dwelling property coverage, personal umbrella liability, or any other personal lines related coverage whether sold as a separate policy or as an endorsement to another personal lines policy.

(3) Individual life insurance, including coverage for dependent children.

(4) Individual sickness or accident insurance.

(5) Disability income policies.

(6) Credit insurance products.

(C) Notwithstanding any other provision of this section, an agent may charge a fee for agent services in connection with a policy issued on a non-commission basis if the agent provides the consumer with prior disclosure of the fee and of the services to be provided.

(D) In the event of a dispute between an agent and a consumer regarding any disclosure required by this section, the agent has the burden of proving that the disclosure was made.

(E) No person shall fail to comply with this section.

(2) Whoever violates division (E) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

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(10) Whoever violates division (E) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

3905.64 Notice of controlling relationships

Library References

Klein & Darling, *Baldwin's Ohio Practice: Civil Procedure* § 3905.64 (1997).

Section 3905.64 of the Revised Code requires an insurer to disclose to its policyholders the names of all persons who have a controlling interest in the insurer.

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least two years since any previous request for a modification was made;
burden of proof is on the person requesting the modification;
modification of an order issued or consent agreement entered into under section of the Revised Code is at the discretion of the superintendent. The superintendent may such an order or agreement if the superintendent finds all of the following:
least five years have elapsed since the date of the administrative action;
person is of good business repute and is suitable to be an insurance agent;
person has made restitution for all pecuniary losses suffered by any person as a result of the administrative action;
person has not been convicted of any felony or of any misdemeanor described in section 3905.49 of the Revised Code, unless the conviction was the subject of an administrative action by the superintendent;
circumstances surrounding the previous violation are such that it is unlikely the person will commit such offenses in the future;
person's character has been rehabilitated;
issuance of any license pursuant to a modification under this section shall be conditioned upon the successful completion of all prelicensing education and examination requirements.

§ 154, eff. 6-30-98; 1997 H 248, eff. 3-17-98)

Uncodified Law

§ 154, § 8, eff. 6-30-98, reads:
Sub. H.B. 248 is enacted by the 122nd General Assembly, sections 3905.49 and 3905.491 of the Revised Code, as the sections result from this act, supersede the same sections as they result from Am. Sub. H.B. 248.

Cross References

Insurance corporations, licensing of agents, 1751.38

Confidentiality of records

All records and other information obtained by the superintendent of insurance or the superintendent's deputies, examiners, assistants, or other employees, or agents relating to the investigation of an applicant for licensure under this chapter, or of an agent, solicitor, or other person licensed under this chapter or Chapter 3951., 3957., or 3959. of the Revised Code, are confidential and are not public records as defined in section 149.43 of the Revised Code until the applicant or licensee is provided notice and opportunity for hearing to Chapter 119. of the Revised Code with respect to such records or information. If an administrative action is initiated with respect to a particular matter about which the superintendent has obtained records or other information as part of an investigation, all such records and information relating to that matter shall remain confidential for three years after the matter is closed.

Division (A)(1) of this section applies only to investigations that could result in a civil action under Title XVII or XXXIX or Chapter 119. of the Revised Code. The records and other information described in division (A) of this section shall be confidential for all purposes except when it is appropriate for the superintendent and the superintendent's deputies, examiners, assistants, or other employees, or agents to take action regarding the affairs of the applicant or licensee or in connection with actual or potential criminal proceedings.

Employees or agents of the department of insurance shall not be required by any court to testify in a civil action, if such testimony concerns any matter related to records

Revised Code
(1998) eff. 6-30-98)

Cross References

Health insurance corporations, licensing of agents, 1751.38

3905.50 Termination of contract of agency between insurer and independent insurance agent; notice; activity during notice period; review by superintendent

Cross References

Health insurance corporation agents, 1751.38

Notes of Decisions and Opinions

Procedural issues 1

1. Procedural issues
An independent insurance agent who is terminated by the insurance company he represents who contends that his termination constitutes a breach of contract between the parties is barred by the doctrine of failure to exhaust administrative remedies in bringing his claims where he contends that RC 3905.50 means an agent aggrieved "may" file with the superintendent a request to review the action or, he may forego taking any further action on the matter, because of the doctrine of administrative exhaustion the agent may not by-pass administrative review and file his claim directly in the common pleas court. *Pappas & Associates/Agency, Inc. v State Automobile Mutual Insurance Co., No. 18458, 1998 WL 15805 (9th Dist Ct App, Summit, 1-7-98)*

3905.53 License holders in default on child support orders

On receipt of a notice pursuant to section 2301.373 of the Revised Code, the superintendent of insurance shall comply with that section with respect to a license issued pursuant to this chapter.
(1995 H 167, eff. 11-15-96)

(1995 H 167, eff. 11-15-96)

3905.54 Reports to superintendent; felony conviction; disciplinary action in another state
Each agent licensed under this chapter shall notify the superintendent of insurance in writing of all of the following, as applicable:

(A) Any change in the agent's address, within thirty days after the change occurs. For purposes of this division, "address" means residential address, business address, and any other address or addresses the superintendent requires by rule adopted in accordance with Chapter 119. of the Revised Code.

(B) Any felony conviction, or any misdemeanor conviction described in division (B)(7) of section 3905.49 of the Revised Code, within thirty days after sentencing. The notice shall include the name of the court having jurisdiction over the matter, the case number, the offense charged, the sentence imposed, and a copy of the judgment entry.

(C) Any disciplinary action taken by the insurance authority of another state, within sixty days after the action is taken.

(1998 S 154, eff. 6-30-98)

3905.55 Fees charged to consumers

(A) Except as provided in division (B) of this section, an agent may charge a consumer a fee if all of the following conditions are met:

- (1) The fee is disclosed to the consumer in a manner that separately identifies the fee and the premium.
- (2) The fee is not calculated as a percentage of the premium.
- (3) The fee is not refunded, forgiven, offset, or reduced by any commission earned or received for any policy or coverage sold.

Colorado

Regulation 1-2-9

[Have a Question?](#)

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Regulation 1-2-9

FEES CHARGED BY AGENTS/BROKERS

I. AUTHORITY

This regulation is promulgated under the authority of Section 10-1-109, 10-4-404 and 10-16-107(1), C.R.S.

II. BASIS AND PURPOSE

The purpose of this regulation is to implement rules which prohibit agents/brokers from charging insurance applicants and policyholders certain fees for which they are already compensated through commissions and to clarify which fees may be charged.

III. RULES

A. Fees Prohibited

Agreements between the insurer and insurance agents/brokers include a commission schedule which lists the agent/broker's compensation for soliciting and acquiring insurance business. Insurers subsequently include these commissions and/or other acquisition expenses in their comprehensive rate filings and must justify these expenses to the Commissioner of Insurance. If insurance agents/brokers charge a separate fee in addition to those included as commissions in the insurers' rate filings, then premiums charged to the policyholders could be considered excessive.

Therefore, insurance agents/brokers are prohibited from charging separate fees in addition to those contemplated in the rate filing and included in their commissions for the solicitation and procurement of insurance products and for servicing existing insurance policyholders. These services may include, but are not limited to: inspections; quoting premiums; issuing policies; signing policies; examining and mailing policies, applications and daily reports; compiling figures for accounts current and mailing billing notices; correspondence and other bookkeeping and clerical work; issuing certificates of insurance and endorsements; issuing proof of insurance cards and notices (SR-22's); making copies of insurance documents; and taking loss information. Insurance agents/brokers are also prohibited from charging fees for purchasing new computer equipment, extending business hours,

adding new sales facilities, or other overhead expenses associated with the solicitation or procurement of insurance products or the servicing of existing insurance policyholders.

The prohibition in this section shall not apply to insurance wholesale intermediaries; however, insurance wholesale intermediaries must advise the insurance agent/broker, as the representative of the consumer, in writing, that "the cost of the insurance coverage provided herein includes a fee to a wholesale intermediary in addition to the premium charges."

Insurance agents/brokers may not condition the placement of insurance upon the provision of other services for which fees may be charged.

B. Fees Allowed

Insurance agents/brokers may charge fees for specific services which are beyond the scope of services pertaining to acquiring and/or maintaining specific insurance policies, including, but not necessarily limited to, risk management services, financial planning, investment counseling, qualified retirement plan design or administration, estate planning, third party employee benefit plans, or any other service for which the insurance agent/broker does not receive a commission from an insurance company. Such fees may be charged only under the following circumstances:

1. When the client signs a disclosure statement in advance of the performance of the specific services, which states that the client is under no obligation to purchase any insurance product through the insurance agent/broker in exchange for receiving the specific services. This requirement may be met by including the disclosure language in any disclosure statement required by federal or state securities law.
2. In those cases where it is clear from the outset that no insurance product sale related to the specific services rendered will occur through the insurance agent/broker.

C. Maintenance of Records\

The insurance agent/broker shall retain a copy of the disclosure statement for not less than three (3) years after completion of services and a copy shall be available to the commissioner upon request.

IV. ENFORCEMENT

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines and/or suspension or revocation of an insurance agent's/broker's license.

V. SEVERABILITY

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision shall not be affected thereby.

VI. EFFECTIVE DATE

The effective date of this regulation is June 1, 1994.

(b)(1) No person shall willfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to such insurance in accordance with the applicable classifications and rates as filed and approved if necessary by the commissioner; or, in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, the premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer.

(3) Nor shall it be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(4) Nor shall it be deemed to prohibit a property and casualty agent from charging and collecting interest upon premiums and charges which remain unpaid for a period of thirty (30) days beyond the date that the original premium was due, subject to the supervision of the commissioner, but the interest shall not exceed the maximum rate prescribed by the Arkansas Constitution.

(5) Nor shall it be deemed to prohibit the collection of membership dues by a property and casualty agent when membership of the applicant in an organization is a prerequisite of the insurer to the issuance of coverage.

(6) Nor shall it be deemed to prohibit the charging of a fee by a licensed consultant if the fee is not excessive.

(c) Any fee charged by a licensed insurance agent for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance contract shall not be deemed to be a premium or a charge for insurance, and therefore the charging of the fee shall not be deemed prohibited by the provisions of subsection (b) of this section if all the following conditions are met:

(1) The fee must be based upon a written agreement which is signed by the party to be charged in advance of the performance of services under the agreement, and a copy of the agreement must be provided at that time to the party to be charged;

(2) The services for which the fee is to be charged must be specifically stated in the agreement, and services for which the fee is charged must be other than those which are customarily associated with the solicitation, negotiation, or servicing of an insurance contract;

(3) The amount of the fee to be charged must be specifically stated in the agreement;

(4) The agreement must contain a statement that if an insurance product is purchased through the agent, the agent will receive a commission in connection with the sale, that the fee charged is unrelated to any compensation received by the agent for the sale of any insurance product, and that the fee may not be waived under any circumstance; and

(5) The agent must retain a copy of the agreement for not less than three (3) years after completion of the services, and the copy shall be available to the commissioner upon request.

(d) Nothing shall prohibit a duly licensed property or casualty agent or broker from charging a fee to the insured in addition to the premium properly charged for a policy or contract according to the insurer's rate and rule filings with the department provided that:

- (1) Each such fee is separately disclosed on the invoice or billing statement mailed or delivered to the insured; and
- (2) The aggregate sum of such fees and all producers' commissions or other compensation due and owing for that policy or contract does not exceed twenty percent (20%) of the total gross premium charged the insured by the insurer for that policy or contract.

History. Acts 1959, No. 148, § 230; 1979, No. 731, § 4; 1981, No. 809, § 12; 1985, No. 1059, §§ 1, 2; A.S.A. 1947, § 66-3023; Acts 1987, No. 927, § 3; 1989, No. 772, §§ 9, 10.