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MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1061

Yolosta Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1061

6

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1061

House Industry, Business and Labor Committee

❑ Conference Committee

Hearing Date 1/20/03

Tape Number	Side A	Side B	Meter #
2		x	36.-end
3	x		0.00-32.9
Committee Clerk Signature Judith Hammer			

Minutes: **CHAIRMAN KEISER** opened the hearing on HB 1061. This bill relates to long-term care insurance. **INSURANCE COMMISSIONER DOUG HOLLOWAY** introduced **MIKE FIX**, the Director of the Life and Health Division and Actuary for the North Dakota Insurance Department who presented detailed testimony regarding this legislation and walked the committee through the legislation.. (see attached)

CHAIRMAN KEISER Is this the NAIC model?

FIX: Yes.

REP. EKSTROM: What protection will this legislation provide given probable advances in such areas as gene therapy or miracle drugs etc.?

FIX replied that exceptional increase are required by statue, and affect all companies across the board.

REP. KASPER: What happens to the Long Term Care Personal Worksheet you refer to on p.9? What does the Insurance Commissioner do with that information after it's filed with his office?

FIX: It's used to determine that the applicant's ability to pay and his goals and needs are defined and includes a disclosure that if there is a lapse within a 120 day period it's assumed they've elected the paid off option. There is a model worksheet put out by the NAIC puts out, I don't know if we'll require that.

KASPER: So the insurance commissioner will become the final determinant on suitability, someone will look at 2-3 pages of numbers and determine that the insurance agent did the suitable thing?

FIX: Intent is to see if the form will generate the info that the agent or company can decide if the coverage is suitable.

KASPER: Isn't it the obligation of the agent to make that determination? Would the Insurance Dept. override the agent's determination? What happens then?

FIX: It's the form we'd be reviewing, not the policies, I have samples of the form.

KEISER: Can you share the history of availability and policy maintenance of long term care insurance in ND? How many players are in the marketplace? Is the marketplace competitive?

FIX: Claim costs have increased because policy holders are living longer in care facilities, the market has evolved. These contracts are renewable, can't be canceled but premiums can be increased. A correction is necessary.

TIEMAN: How many companies in ND offer this policy now? How many 10 years ago?

FIX: 95 companies currently and 25,000 policy holders. Fewer companies in the past.

FROSETH: How about policies in force sold with guaranteed rates and benefits?

Yes, there are old policies that are noncancelable. They are not subject to increase.

TIEMAN: What are average size of increase in rates?

LR

FIX: Since the end of June, most requested increase is about 30%, varies from 15%-70.

JANIS CHENEY, State Director for AARP in North Dakota, presented testimony strongly supporting HB 1061. (see attached)

HOWARD SNORTLAND: Spoke extemporaneously in strong support of this legislation.

SHELLY PETERSON, President of the North Dakota Long Term Care Association, appeared to offer strong support for HB 1061.(See attached)

REP. FRANK WALD: Spoke extemporaneously in opposition of this legislation, especially Section 7.

KASPER: Referring to Section 9, line 15, what is the differential in premium upon the issue of a contract with a non-forfeiture and a policy without non-forfeiture benefits?

WALD: They Can vary between 30-100%. Nonforfeiture policies are a rip-off.

KEISER: Are there any companies choosing not to offer both options and operating in our state?

WALD: No. Not that I am aware of.

TIEMAN: Are they required to have a client sign a notification in the event of lapse upon the application?

WALD: Most companies have a provision whereby you can choose a third party to also receive a copy of a premium renewal notice to prevent a policy from lapsing.

KASPER: What is your opinion of someone in the Insurance Dept. overseeing and reviewing your paperwork for suitability?

POOLMAN: This is to protect the agent. Suitability standards are already on the books.

WALD: I don't have a problem with a suitability form I I hope the clients have an option not to have their confidentiality breached.

FIX: I want to clarify some of the discussion we've had. Lapse only is triggered with substantial increase in premiums, policy holder has 120 days to decide to pay or not pay the premium. If those two things happen, there has to be a benefit provided.

CHAIR KEISER closed the hearing on HB 1061.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1061

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/22/03

Tape Number	Side A	Side B	Meter #
4	x		36.5-50.1
4		x	0.0-8.0
Committee Clerk Signature Judith Hammer			

Minutes: **Chairman Keiser** called for committee work on HB 1061.

Mike Fix, Director of the Life & Health Division and Actuary for the North Dakota Insurance Department presented written explanation of the amendments proposed in HB 1061 and walked the committee through his testimony. (See attached)

Rep. Klein moved to adopt the new set of amendments. **Rep. Severson** seconded the motion. A voice vote carried the move. **Rep. Kasper** carefully explained the nonforfeiture language for the edification of the committee.

Rep. Froseth moved a **Do Pass As Amended.**

Rep. Klein seconded the motion.

Results of the roll call vote: **8-5-1.** **Rep. Kasper** will carry this bill on the floor.

4R

38120.0101
Title.0200

Adopted by the Industry, Business and Labor Committee

VR 1/24/03

January 22, 2003

HOUSE AMENDMENTS TO HOUSE BILL NO. 1061 IBL 1-27-03

Page 7, line 26, after "approved" insert "and issued"

Page 7, line 27, after "issuer" insert ", directly or through an authorized representative,"

HOUSE AMENDMENTS TO HB 1061 IBL 1-27-03

Page 8, line 9, replace "that" with "as to whether" and remove "not"

Renumber accordingly

Date: 1/22/03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1061

House **Industry, Business & Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0200

Action Taken Do Pass As Amended

Motion Made By Froseth Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Rep.Boe		
Rep.Severson, Vice-Chair		✓	Rep.Ekstrom	✓	
Rep.Dosch		✓	Rep.Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad		✓			
Rep. Ruby		✓			
Rep.Tieman	✓				

Absent

Total (Yes) 8 No 5

Absent 1

Floor Assignment Kasper

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

6

REPORT OF STANDING COMMITTEE (410)
January 27, 2003 1:17 p.m.

Module No: HR-15-1123
Carrier: Kasper
Insert LC: 38120.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1061: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1061 was placed on the Sixth order on the calendar.

Page 7, line 26, after "approved" insert "and issued"

Page 7, line 27, after "issuer" insert ", directly or through an authorized representative,"

Page 8, line 9, replace "that" with "as to whether" and remove "not"

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1061

6

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1061

Senate Industry, Business and Labor Committee

❑ Conference Committee

Hearing Date 02-26-03

Tape Number	Side A	Side B	Meter #
1		XXXXX	3400-end
2	XXXXX		0-200
Committee Clerk Signature			

Minutes:Chairman Mutch opened the hearing on HB 1061. Senator Heitkamp was absent. HB 1061 relates to long-term care insurance.

Testimony in support of HB 1061

Michael Fix, ND Insurance Dept, introduced the bill. See attached testimony. He states that this bill would improve the ability to regulate long-term care insurance. It would create rate stabilization. Also this bill would level the competition field for the agency and the consumer.

Senator Espegard: Could you explain section 7 for the committee.

Michael: It is simply the consumer's choice to buy the policy or not.

Senator Espegard: What is the benefit of nonforfeiture benefits?

Michael: If the customer discontinues the premium, they won't lose money.

Senator Klein: Where are we at with prices and long-term care?

Michael: It is expected that nursing home stays are an average of 24 months. It used to be that that was kind of a "place to die".

Senator Espegard: Does the inflation begin the day you buy the policy?

Michael: Within one year.

Senator Espegard: Is there anything in this bill including in-home care?

Michael: That is included in the current statute.

Janis Cheney, AARP North Dakota, spoke in support of the bill. See attached testimony.

No questions from the committee.

Howard Snortland spoke in support of the bill as well. He states that his insurance premiums went up 40% , forcing them to drop the insurance. When reviewed in court, Howard was awarded his premiums without interest.

No questions from the committee.

Pat Ward, American Council of Life Insurers, spoke in support of the bill. See attached testimony. (end tape 1, side B; begin tape 2 side A)

There was no opposing testimony

Hearing closed.

Senator Klein moved a DO PASS. Senator Espegard seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Carrier: Senator Espegard

Date: 2-26-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1061

Senate ______ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken DoPass-

Motion Made By Klein Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Sen.Jerry Klein, Vice Chairman	X				
Sen.Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	A				
Sen.Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch,Chairman	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Espegard

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

6R

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 1:36 p.m.

Module No: SR-34-3521
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1061, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1061 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

2003 TESTIMONY

HB 1061

CR

HOUSE BILL NO. 1061

Presented by: **Michael Fix**
Director of the Life and Health Division and Actuary
North Dakota Insurance Department

Before: **Industry, Business and Labor Committee**
Representative George Keiser, Chairman

Date: **January 20, 2003**

TESTIMONY

Mr. Chairman and members of the committee:

Good afternoon. My name is Michael Fix and I am the Director of the Life and Health Division and Actuary for the North Dakota Insurance Department. I appear here in support of House Bill No. 1061.

This bill requires changes in the way that long term care insurance policies are developed and priced. It introduces suitability standards and stronger disclosure requirements; and requires the offer of a nonforfeiture benefit to protect policyholders who have paid premiums for a number of years. Consequences for failure to adhere to these requirements are provided. The goal of this legislation is to reduce the level and frequency of long term care insurance rate increases; and to require tools to assist consumers in making good decisions about purchasing long term care insurance coverage. These changes are for the benefit of the long term care policyholder, and help to create a more level competitive environment for companies and agents.

The significant changes that will be implemented as a result of this bill (the "how to") include:

1. Initial Filing Requirements
2. Subsequent Rate Increase Requests
3. The Offer of a Nonforfeiture Benefit
4. Suitability Standards

5. Disclosure Requirements

Initial Filing Requirements

When a company makes an initial filing of a long term care insurance contract, they will be required to include a copy of required disclosure forms, an actuarial certification, and a loss ratio demonstration if requested by the Commissioner. This information must be provided at least 30 days before the product will be made available for sale.

The actuarial certification is a new requirement, and must include the following:

1. A statement that the initial premium schedule is sufficient to cover anticipated costs under moderately adverse experience, and that the premium schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated.
2. A statement that policy design and coverage provided have been reviewed and taken into consideration.
3. A statement that underwriting and claims adjudication processes have been reviewed and taken into consideration.
4. A complete description of the reserve basis, including assumptions used, sample calculations, etc. Included in this description must be statements that:
   a. Assumptions used for reserves contain reasonable margins for adverse experience;
   b. The difference between gross premiums and net premiums after the first year are sufficient to cover expenses, or, if not, in what situations they do not;
   c. Premium rates are not less than premium rates for similar products also available from that insurer, except for reasonable differences attributable to benefits;
   d. Include a comparison of premium schedules with similar policies currently available from the insurer, with an explanation of the differences.

Subsequent Rate Increase Requests

After the product has been made available for sale, if the company requests a premium rate increase, that request must now include the following:

1. A copy of required disclosure forms, as was provided in the initial filing;
2. A certification by a qualified actuary;
3. A new actuarial memorandum;
4. A statement that renewal premium rate schedules are not greater than new policy premium rate schedules except for differences attributable to benefits; unless sufficient justification is provided to the Insurance Commissioner; and
5. Any other information sufficient for the review of the premium rate increase by the Commissioner.

The actuarial certification must be that, if the requested rate increase is implemented, and if the underlying assumptions which reflect moderately adverse experience are realized, then no further rate increases are anticipated.

The actuarial memorandum justifying the rate increase must include:

1. Lifetime projections of premiums and claims that are based on the increased premium schedule; plus the method and the assumptions that were used to determine the projected numbers.
   a. The description of the assumptions must note any assumptions that are different from those used for pricing other policies currently available for sale.
   b. The projections must provide year-by-year values separately for at least 5 years preceding and 3 years following the valuation date.
2. Disclosure of the impact of reserves on the premium rate increase if the increase will trigger a contingent benefit upon lapse.
3. Disclosure of the analysis that was used to determine why a rate increase was necessary, including which of the original pricing assumptions were not realized, and why.
4. A statement that policy design, underwriting and claim adjudication practices have been taken into consideration.

For each rate increase that is implemented, the insurer will have to file each year for 3 years updated lifetime projections, including a comparison of actual results to projected values. If the actual results are not consistent with projected values from prior projections, the Insurance Commissioner can require these filings beyond 3 years.

If any premium rate in an increased premium schedule is more than 200% of the comparable rate in the initial premium schedule, the insurer is required to file updated lifetime projections each year for 5 years beyond the 3 years or more that are required for the lower increase.

If actual experience continues to not match projected experience, and a current projection even under moderately adverse experience demonstrates that loss ratios will not be met (i.e., too small a portion of premiums are paid out in benefits), the Insurance Commissioner can require the insurer to reduce premiums or take other measures to bring actual results closer to expected.

Nonforfeiture Benefits

Insurers that sell long term care policies in North Dakota will be required to offer a product that includes a nonforfeiture benefit in event the policy lapses. The nonforfeiture benefit can be either included directly in a long term care insurance policy; or it may be offered as a rider to a long term care policy that does not itself include a nonforfeiture benefit.

The offer of nonforfeiture benefits must be in writing if it is not otherwise included in an Outline of Coverage or other materials given to an applicant.

The nonforfeiture benefit must be a shortened benefit period, that provides paid-up long term care insurance coverage.

1. The amount of the paid-up benefit (amount and frequency) will not change.
2. The minimum nonforfeiture credit that a company must provide will be 100% of the premiums paid.
    a. The insurer can provide a higher nonforfeiture credit.

b. The minimum nonforfeiture credit that a company provides cannot be less than 30 times the daily nursing home benefit at time of lapse.

c. The nonforfeiture benefit cannot be high to the extent that the total benefits paid by the insurer before and after the policy became paid-up is greater than the maximum benefits that would have been payable if the policy had continued as premium paying.

3. The nonforfeiture benefit must begin no later than the end of the 3rd year following issue of the policy. (The contingent benefit upon lapse would be effective during the first 3 years, and thereafter as well.)
4. The nonforfeiture credits can be used for all the benefits under the policy, up to the limits specified in the policy.

If the applicant does not elect an option providing nonforfeiture benefits, the insurer must provide a Contingent Benefit Upon Lapse in the event of a substantial premium increase. Policyholders must be notified at least 30 days prior to the due date of the premium that reflects that increase.

The Contingent Benefit Upon Lapse is triggered every time:

1. The insurer increases the premium rates to a level resulting in a cumulative increase of the annual premium that equals or exceeds a percentage of the policyholder's initial annual premium (a "substantial premium increase"); and
2. The policy lapses within 120 days of the due date of the premium increase.

The Contingent Benefit Upon Lapse provides that, on or before the effective date of a "substantial premium increase", the insurer must:

1. Offer to reduce policy benefits provided by the current coverage without providing evidence of insurability so that the required premium is not increased.
2. Offer to convert the coverage to a paid-up policy with the same benefits and a shortened benefit period. This option may be elected anytime during the 120 day period following the substantial rate increase.

3. Notify the policyholder that a lapse during the 120 day period following the substantial rate increase without an election of the offer will be deemed to be an election of the paid-up option.

The triggers to determine a substantial premium increase are the following percentages of the initial annual premiums:

Issue Age	% Increase	Issue Age	% Increase	Issue Age	% Increase
29 & under	200%	66	48%	79	22%
30-34	190%	67	46%	80	20%
35-39	170%	68	44%	81	19%
40-44	150%	69	42%	82	18%
45-49	130%	70	40%	83	17%
50-54	110%	71	38%	84	16%
55-59	90%	72	36%	85	15%
60	70%	73	34%	86	14%
61	66%	74	32%	87	13%
62	62%	75	30%	88	12%
63	58%	76	28%	89	11%
64	54%	77	26%	90&over	10%
65	50%	78	24%		

If the majority of policies subject to a rate increase become eligible for the Contingent Benefit Upon Lapse, there are a series of corrective steps that the Insurance Commissioner may take:

A. The insurer can be required to file with the Insurance Commissioner a plan for improved administration or claims processing that is designed to eliminate the potential for further deterioration of the block of policies, which would lead to further premium increases; or, demonstrate that appropriate administration and claims processing have been implemented or are in effect. If this is not done, the Insurance Commissioner may determine that a rate spiral exists. (B)

B. Rate Spiral Actions

1. Determine if the following criteria are met:
   a. The rate increase is not the first rate increase requested on the particular policy form.
   b. The rate increase is not an "exceptional increase".
   c. The majority of the policies to which the increase is applicable are elegible for the Contingent Benefit Upon Lapse.
2. If these criteria are met, the Insurance Commissioner will review projected lapse rates plus lapse rates during the 12 months following each rate increase, to determine if "significant adverse lapsation" has occurred or is anticipated.
3. If significant adverse lapsation has occurred; is anticipated if the filing for the rate increase; or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested premium increase, the Insurance Commissioner may determine that a rate spiral exists.
4. If the Insurance Commissioner determines that a rate spiral exists, the Commissioner may require the insurer to offer, without underwriting, to all the policyholders subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.
5. Such an offer will:
   a. Be subject to approval by the Insurance Commissioner;
   b. Be based upon sound actuarial principles, but not be based on attained age; and
   c. Provide that the maximum benefits under any new policy accepted by a policyholder will be reduced by comparable benefits already paid under the existing policy.
6. For those policyholders that take a replacement policy, the insurer must maintain their experience separate from that of the original insureds.
7. If there is a subsequent rate increase request for the replacement group of policyholders, the rate increase will be limited to the lesser of:

a. the maximum rate increase determined based on the combined experience; and

b. the maximum rate increase determined based only on the experience of the originally issued policyholders, plus 10%.

C. If the Insurance Commissioner determines that the insurer has exhibited a persistent practice of filing inadequate rates for long term care insurance, the Commissioner may, in addition to (B), prohibit the insurer from either of the following:

1. Filing and marketing comparable coverage for up to 5 years; or
2. Offering all other similar coverages and limiting the marketing of new applications to the products subject to recent premium rate increases.

Suitability Standards

Each entity that markets long term care insurance will be required to:

1. Develop and use suitability standards to determine if purchase or replacement of long term care insurance is appropriate for the needs of the applicant;
2. Train its agents in the use of its suitability standards; and
3. Maintain a copy of its suitability standards and make them available for inspection upon request by the Insurance Commissioner.

The agent and the issuer of long term care insurance must develop procedures that take the following into consideration (to determine if the applicant meets suitability standards):

1. Ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
2. Applicant's goals or needs with respect to long term care and the advantages and disadvantages of insurance to meet those goals or needs; and
3. Values, benefits and costs of the applicant's existing long term care insurance, if any, compared to values, benefits and costs of a recommended purchase or replacement.

In order to obtain the information regarding ability to pay, applicant's goals or needs, and existing long term care insurance, the issuer and/or agent must present to the applicant, a "Long Term Care Personal Worksheet"

1. A copy of the Personal Worksheet must be filed with the Insurance Commissioner.
2. The completed Worksheet must be returned to the issuer before the issuer's consideration of the applicant for long term care coverage.
3. Sale or dissemination outside the company or agency by the issuer or the agent of information obtained through the personal worksheet is prohibited.

When the personal worksheet is given to the applicant, they must also receive a disclosure form, "Things You Should Know Before You Buy Long Term Care Insurance".

If the issuer determines that the applicant does not meet the suitability standards; or if the applicant declines to provide the information, the issuer may reject the application.

1. If the applicant declines to provide financial information, the issuer can use some other way to verify the applicant's intent.
2. Correspondence with the applicant must be kept in the applicant's file.

Each year, the issuer must report to the Insurance Commissioner:

1. The total number of applications received from residents of North Dakota;
2. The number of those residents who declined to provide information on the personal worksheet;
3. The number of applicant's who did not meet suitability standards; and
4. The number of applicants not meeting suitability standards who chose to confirm after receiving a suitability letter.

Disclosure Requirements

The insurer is required to disclose to the applicant information regarding their rating practices:

1. A statement that the policy may be subject to rate increases in the future, if that is the case;

2. An explanation of potential future premium rate revisions, and the policyholder's options in event of a premium increase;
3. The premium schedule that will be in effect for the applicant until a request is made for an increase;
4. A general explanation as to how any future premium increases would be applied, including when they would be effective (the next policy anniversary; the next policy billing date, etc);
5. Information regarding each premium increase on the particular or similar policy forms over the past 10 years, for North Dakota or for any other state;
6. A statement as to whether the long term care insurance policy is intended to be a tax-qualified policy; or whether it is intended to be a non-tax-qualified policy.

The applicant must sign an acknowledgement at the time of application that the insurer has made the required disclosures.

If the insurer increases premiums, all policyholders receiving the increase must be notified at least 45 days prior to the implementation of the increase. The notice must include the effective date of the increase.

I would be happy to answer any questions you may have, now or as you continue your consideration of this bill.

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify in support of this bill, HB 1061.

6

AARP North Dakota

House Industry, Business and Labor Committee
January 20, 2003

Regarding HB 1061

Chairman Keiser, members of the committee, my name is Janis Cheney. I am the State Director for AARP in North Dakota. AARP strongly supports House Bill 1061.

My interest in this legislation goes beyond my present capacity, stemming from my work in the North Dakota Insurance Department as director of the Senior Health Insurance Counseling program. As SHIC director, I was involved in discussions among NAIC, AARP and insurance industry representatives that resulted in the NAIC model legislation on long term care insurance.

It was the view of those engaged in that development process as well as of AARP today, that strong consumer protection standards and regulatory oversight provide needed protections to purchasers of LTC insurance.

Issues of particular concern to our members and others who purchase or consider purchase of long term care insurance include rate stabilization and consumer disclosure. In addition, we believe consumers should have access to comparative information regarding rate increase history.

Long term care insurance is an important and appropriate vehicle for some people. The cost and complexity of this insurance mean that prospective purchasers need objective information in order to make appropriate decisions. HB 1061 will provide AARP members and other consumers better access to quality long term care insurance products and the information needed to make informed decisions.

Thank you.

107 West Main Avenue, Suite 125 | Bismarck, ND 58501 | 701-221-2274 | 701-255-2242 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

6

Testimony on HB 1061
House Industry, Business and Labor Committee
January 20, 2003

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify on HB 1061. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent nursing facilities, basic care facilities and assisted living facilities in North Dakota. We are here to urge your support and passage of HB 1061.

North Dakotans lead the nation in planning for long term care. According to a Long Term Care Study commissioned by the North Dakota Department of Human Services and conducted by UND and NDSU it was found:

- Nursing home insurance has been purchased by 25.9% of individuals over age 50.
- Durable power of attorney has been arranged by 39.3%
- Living wills exist for 41.2%

We have many excellent long term care products available in the marketplace today. HB 1061will give the insurance commissioner authority to develop rules that assure continuation of quality products.

Many North Dakotans are relying upon their long term care insurance policy to pay when they find themselves in need of 24 hour care. Two out of five North Dakotans over the age of 65 years old, will need nursing facility care sometime in their lifetime. North Dakota today boasts the highest proportion of residents 85 years of age and older. These are the folks most in need of long term care.

Today, 56 out of every 100 nursing facility residents rely upon Medicaid to pay for their nursing home care. This amounts to over $150 million annually. Medicaid is stretched to the breaking point because of the need for long term care. The more we can encourage individuals to purchase long term care insurance the better financial shape of Medicaid and the State budget. HB 1061 is moving North Dakota in the right direction of telling consumers, quality long term care insurance products are available in North Dakota.

In closing we urge a DO PASS on HB 1061. I would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

HOUSE BILL NO. 1061

Presented by	**Michael Fix** **Director of the Life and Health Division and Actuary** **North Dakota Insurance Department**
Before:	**Industry, Business and Labor Committee** **Representative George Keiser, Chairman**
Date:	**January 22, 2003**

Mr. Chairman and Members of the Committee:

My name is Michael Fix, Life and Health Division Director and Actuary, from the Insurance Department. I appreciate this further opportunity to clarify a couple of matters within House Bill 1061.

<u>PAGE 2, LINE 26</u> (Further explanation)

The language at page 2, lines 21 through 26, is intended to provide that the Act broadly encompasses all Long Term Care Insurance, no matter the legal status of the entity that sells it. Lines 21 through 26 comprehensively enumerate the many, various types of entities that might sell a Long Term Care product and would be subject to the statute. The term broadly includes:

- Long Term Care Insurance companies,
- fraternal benefit societies,
- nonprofit health, hospital and medical service corporations,
- prepaid health plans,
- health maintenance organizations, and
- "similar organizations" that sell life insurance or health insurance.

<u>Some people have expressed concern that, under line 26, all entities that sell Long Term Care Insurance would be required to be licensed to sell life or health insurance</u>. That was

not our intention. We apologize for the confusion. However, we hope that the matter can be resolved through this explanation rather than through an amendment.

The existing phrasing, we believe, is correct. The word "organization" on line 26 refers to "a similar organization" from line 25. The words "authorized to sell life or health insurance" (line 26) refer to the same "organization" referenced earlier on line 26 and on line 25. Through the use of the semicolons throughout this these lines, we believe the phrase "authorized to sell life or health insurance" properly defines only the "similar organizations" and does not refer to the other types of legal entities listed before it. We believe it is written correctly to express our intent; however, again, we apologize for the confusion.

PAGE 7, LINE 27 (Proposed amendment attached):

Concern has been raised that line 27 on page 7 implies companies must always mail policies directly to the consumer and may not have their agents deliver policies. This was not our intent. To clarify, we propose adding, after the word "issuer" the phrase "directly or through its authorized representative." For further clarification, we propose on line 26 adding the phrase "and issued" following the word "approved". Thus, as amended, lines 26-28 would read as follows:

> "4. If an application for a long-term care contract or certificate is approved **and issued**, the issuer, **directly or through an authorized representative**, shall deliver the contract or certificate of insurance to the applicant no lather than thirty days after the date of approval."

PAGE 8, LINE 10 (Proposed amendment attached):

On page 8, lines 9 and 10, the Bill requires certain disclosures be set forth in a policy summary. If inflation protection is not available on the policy, this must be disclosed on the summary. We propose adding, after the word "policy" the phrase "if the option in fact is not available," for clarity.

PAGE 9—NONFORFEITURE BENEFITS AND CONTINGENT BENEFIT UPON LAPSE (Further explanation)

The Bill requires that companies offer the option to purchase a nonforfeiture benefit in a long term care insurance policy. A nonforfeiture benefit provision would provide that, if the policyholder decides to discontinue (lapse) their policy by no longer paying their premiums, there would still be a long term care benefit available. This nonforfeiture benefit comes at a price, as Representative Wald alluded to in his testimony. HB 1061 defines the minimum nonforfeiture benefits that must be offered, but no one is required to purchase those benefits.

If the consumer elects not to purchase the nonforfeiture benefit, they run the risk that if they someday cannot afford to pay an increased premium, they could be forced to let their policy lapse and have nothing to show for it. That is fine – that is a consumer choice issue – so long as consumers know this is a risk they are assuming when they buy the insurance.

But under this Bill, companies' actuaries must certify that their premiums are going to be adequate, even if experience is moderately worse than expected. Consumers rely upon that when making their informed decision whether to buy the insurance.

The Contingent Benefit is only triggered if the company comes back later with a large rate increase and that increase results in the policyholder dropping their coverage. These large rate increases are not supposed to happen. Their actuaries have certified that their initial rates should be adequate.

If the company underpriced its product and is forced to come back for a large rate increase, then there will oftentimes be a lot of policyholders who will find they no longer can afford to pay the increased premium. The Contingent Benefit Upon Lapse is unlike a nonforfeiture benefit which, if included in the policy, can be elected by the policyholder at any time. The Contingent Benefit Upon Lapse is triggered only after (1) there is a substantial premium increase; and (2) the long term care policy lapses within 120 days of the effective date of the increase. It provides a protection against otherwise losing the long term care insurance coverage. If the Contingent Benefit Upon Lapse is triggered, the insurer must offer to the affected policyholder either (1) premiums that are unchanged, but with reduced benefits; or (2) benefit amounts that are unchanged, but for a reduced benefit period, and with no further premium payments required (paid-up).

In theory, the Contingent Benefit Upon Lapse should come at no cost to the consumer. The company is required to price its products sufficiently to make sure they do not have to come back with significant rate increases in the future. So, in theory, the Contingent Benefit Upon Lapse should never be triggered.

When it is triggered, it is triggered in the circumstance in which a lot of people are standing to be adversely affected by a severe rate increase; this is a very valuable consumer protection, for people who need it. The trigger is as follows:

"SUBSTANTIAL" PREMIUM INCREASE TRIGGERS

Issue Age	% Increase	Issue Age	% Increase	Issue Age	% Increase
29 & under	200%	66	48%	79	22%
30-34	190%	67	46%	80	20%
35-39	170%	68	44%	81	19%
40-44	150%	69	42%	82	18%
45-49	130%	70	40%	83	17%
50-54	110%	71	38%	84	16%
55-59	90%	72	36%	85	15%
60	70%	73	34%	86	14%
61	66%	74	32%	87	13%
62	62%	75	30%	88	12%
63	58%	76	28%	89	11%
64	54%	77	26%	90&over	10%
65	50%	78	24%		

These percent increases are cumulative. For example, if there was 25% premium increase on a policy issued at age 75, there would be no "contingent benefit" triggered. If there was a subsequent 5% premium increase, the cumulative increase would be 30%, and the "contingent benefit" would be triggered if the policy were to lapse within 120 days of the effective date of that increase. Any additional increase, regardless of the size of the increase, would trigger the "contingent benefit" because the cumulative increase at that point will always exceed what is allowed.

Because of the regulatory implications of multiple and/or sizeable premium increases that would trigger the Contingent Benefit Upon Lapse, companies will be motivated to pay careful attention to the development of their premium schedules for long term care insurance. This will help to reduce the frequency and magnitude of those increases.

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C. **^
Patrick J. Ward*++^
Rebecca S. Thiem, P.C.**
Daniel S. Kuntz, P.C.
Jerry W. Evenson, P.C.^
Lawrence A. Dopson
Lawrence E. King, P.C.**
Tracy Vigness Kolb, P.C.
Shawnda R. Reid**+
Constance N. Hofland
Paul R. Sanderson

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
fax (701) 223-7387
www.zkslaw.com
email: zkslaw@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

Also licensed in
Illinois *
Minnesota **
Missouri+
Montana++

^Certified Civil Trial Specialist
National Board of Trial Advocacy

January 21, 2003

Honorable George Keiser
Chairman of House IBL Committee
State Representative
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Representative Keiser:

I am writing to provide additional testimony in support of HB 1061, the Insurance Commissioner's long term care insurance bill. I represent the American Council of Life Insurers (ACLI), the nation's largest life insurance trade association, whose 399 member companies account for 76 percent of all the life insurance premiums in force in the United States. The 305 ACLI member companies licensed to do business in North Dakota account for 80 percent of premiums in our state.

We support HB 1061 and, in particular, the nonforfeiture benefit option which is provided in Section 7 of the bill. A nonforfeiture benefit is a benefit provided to a policyholder upon voluntary lapse of premium and it can either be a continuation of lesser benefits or a return of some portion of premiums paid. The purpose of a nonforfeiture benefit is to ensure the policyholder of some value should the insured terminate premium payments at a future date.

Nonforfeiture is not an appropriate benefit for all purchasers, particularly older individual buyers for whom the benefit is a high cost add on and will not likely be used. However, since the average age of the purchaser is dropping to now around 60 years of age, it is a benefit that some individuals may want to consider. No state currently mandates the benefit and many states who have adopted the NAIC model require the benefit to be offered.

With the passage of HIPAA in 1996, Congress has said that a mandated offer of nonforfeiture must be included in all federally tax qualified long term care policies. Over 95 percent of all policies sold are federally tax qualified.

ACLI supports the mandated offer of nonforfeiture provision in the NAIC model and believes consumers should be offered the benefit in order to have the choice of whether to purchase it or not. It DOES NOT force anyone to buy it, it just makes the company OFFER it to the insured.

Let me know if you want to discuss this further or have any questions.

Sincerely,

Pat Ward

Patrick J. Ward

c: Representative Dale Severson
Representative Mark Dosch
Representative Glen Froseth
Representative Nancy Johnson
Representative Jim Kasper
Representative Matthew Klein
Representative Darrell Nottestad
Representative Dan Ruby
Representative Wayne Tieman
Representative Tracy Boe
Representative Mary Ekstrom
Representative Woody Thorpe
Representative Steve Zaiser
Representative Frank Wald
Commissioner Jim Poolman

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Testimony of Patrick Ward in Support of HB 1061

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. I represent the American Council of Life Insurers, the nation's largest life insurance trade association, whose 399 member companies account for 76% of all the life insurance premiums in force in the United States. The 305 ACLI member companies licensed to do business in North Dakota account for 80% of premiums in our state. I also represent the North Dakota Domestic Insurance Companies. The ACLI and North Dakota Domestic Life Insurance Companies support HB 1061.

In particular, we support the nonforfeiture benefit option provided in Section 7 of the bill. A nonforfeiture benefit is a benefit provided to a policyholder upon a voluntary lapse of premium and can either be a continuation of lesser benefits or a return of some portion of premiums paid. The purpose of a *nonforfeiture benefit* is to ensure the policyholder of some value should the insured terminate premium payments at a future date.

Nonforfeiture is not an appropriate benefit for all purchasers, particularly older individual buyers for whom the benefit is a high cost add on and will not likely be used. However, since the average age of the typical purchaser is dropping now to around 60, it is a benefit that some individuals may want to consider. No state currently mandates the benefit and many states who have adopted the NAIC model require the benefit to be offered.

With the passage of HIPAA in 1996, Congress has mandated that an offer of a nonforfeiture benefit must be included in all federally tax qualified long term care insurance policies. Over 95% of all policies sold are federally tax qualified.

ACLI supports the mandated offer of nonforfeiture provision in the NAIC model and believes consumers should be offered the benefit in order to have the choice of whether to purchase it or not. This does not force anyone to buy the benefit, it just makes the company offer the benefit as an option to be selected by the insured.

We urge a Do Pass of HB 1061.

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AARP North Dakota

Senate Industry, Business and Labor Committee
~~January 20, 2003~~

Regarding HB 1061

Chairman Mutch, members of the committee, my name is Janis Cheney. I am the State Director for AARP in North Dakota. AARP strongly supports House Bill 1061.

My interest in this legislation goes beyond my present capacity, stemming from my work in the North Dakota Insurance Department as director of the Senior Health Insurance Counseling program. As SHIC director, I was involved in discussions among NAIC, AARP and insurance industry representatives that resulted in the NAIC model legislation on long term care insurance which is largely encompassed in HB 1061.

It was the view of those engaged in that development process as well as of AARP today, that strong consumer protection standards and regulatory oversight provide appropriate and needed protections to purchasers of LTC insurance.

Issues of particular concern to our members and others who purchase or consider purchase of long term care insurance include rate stabilization and consumer disclosure. In addition, we believe consumers should have access to comparative information regarding rate increase history.

Long term care insurance is an important and appropriate vehicle for some people. The cost and complexity of this insurance mean that prospective purchasers need objective information in order to make appropriate decisions. HB 1061 will provide AARP members and other consumers better access to quality long term care insurance products and the information needed to make informed decisions.

Thank you.

107 West Main Avenue, Suite 125 | Bismarck, ND 58501 | 701-221-2274 | 701-255-2242 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

HOUSE BILL NO. 1061

Presented by:	**Michael Fix** **Director of the Life and Health Division and Actuary** **North Dakota Insurance Department**
Before:	**Industry, Business and Labor Committee** **Senator Duane Mutch, Chairman**
Date:	**February 26, 2003**

TESTIMONY

Good morning, Mr. Chairman, and members of the Industry, Business and Labor Committee. My name is Michael Fix, and I am the Director of the Life and Health Division and the Life and Health Actuary for the North Dakota Insurance Department. I appear here in support of House Bill No. 1061 relating to long term care insurance.

I have witnessed some sizable premium rate increases by long term care companies in my tenure with the Department. Premium increases on any product are painful; on long term care policies, this is particularly so. Based on calls I have received from consumers, long term care insurance policyholders are typically elderly, on fixed incomes, and unable to afford large premium increases. They are then faced with the difficult decision of reducing or dropping their coverage at a time when they probably need it more than ever.

The law regulating long term care insurance in North Dakota was first enacted in 1987. Long term care continues to evolve and numerous changes in coverages, distribution, etc., have occurred over the years. This evolution continues to have significant implications for the long term care insurance market.

Amendments to the original law have been adopted in subsequent sessions of the Legislature to reflect changes and to keep pace with these changes from a regulatory perspective. To the extent it has been prudent, North Dakota's regulation of this important long term care insurance industry has been consistent with that of many other states.

House Bill No. 1061 requires changes in the way that long term care insurance policies are developed and priced.

Through rulemaking authority, this bill authorizes the Insurance Commissioner to implement heightened suitability standards and stronger disclosure requirements.

This bill requires the offer of a nonforfeiture benefit so consumers who desire that added protection and are willing to pay an additional cost for it will have the option to do so.

This bill provides additional protections to policyholders in the event of significant premium rate increases (contingent benefit upon lapse).

The goal of this legislation is premium rate stabilization: to reduce the level and frequency of long term care insurance rate increases, and to provide tools to assist consumers in making good decisions about which long term care products they purchase. These changes are for the benefit of the long term care insurance customer and help to create a more level competitive environment for companies and agents.

Executive Summary

House Bill No. 1061 contains seven sections and the following is a section-by-section "executive summary":

Section 1 amends and updates definitions of "group long term care insurance", "long term care insurance", and "policy".

Section 2 adds a definition of "qualified long term care insurance contracts" which was created by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Section 3 changes the conditions under which an insurer can rescind a long term care policy or certificate. These changes are more favorable to the long term care policyholder.

Section 4 increases the maximum numbers of days of prior institutional stay, if that is a condition in a long term care policy that must be satisfied in order to receive subsequent noninstitutional benefits.

Section 5 adds disclosure requirements for qualified long term care insurance contracts, for the absence of inflation protection in a long term care policy, and for long term care insurance coverages. This section also establishes time limits on the insurer to deliver a long term care policy to the applicant after it is approved, and to respond to a policyholder's questions concerning the resolution of a long term care insurance claim. These changes are favorable to the long term care insurance policyholder.

Section 6 adds to the existing rulemaking authority given to the Insurance Commissioner the authority to promote rate stabilization and to protect the long term care insurance policyholder in the event of a substantial rate increase. This section is a key ingredient of House Bill No. 1061 and will significantly improve existing deficiencies for consumers in the long term care insurance marketplace.

Section 7 adds a requirement that an insurer that sells long term care insurance in North Dakota must provide the applicant with the option to purchase a long term care insurance product that includes a nonforfeiture benefit. If an applicant chooses to not purchase a nonforfeiture benefit, the company will nevertheless be required to provide some protection to the policyholder if there is a substantial premium increase which causes them to discontinue their coverage.

Mr. Chairman and members of the committee, I thank you for the opportunity to provide testimony in support of House Bill No. 1061, and I would be happy to answer any questions you may have now or in your consideration of this bill.