

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1175

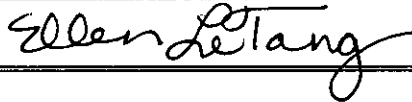
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1175
January 17, 2011
12976

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution: Limitations on insurance rebates.

Minutes:

Chairman Keiser: Opens the hearing on HB 1175.

Patrick Ward~Attorney for State Farm Insurance Company: (see attached testimony).

Vice Chairman Kasper: On page two, line 15, do you read that to state that a rebate is tied to offering parts of the premium as opposed to the gifts you just handed out?

Patrick Ward: Yes, I would like to read it that way. This issue has come up in a number of states and process for clarifying it has been to suggest putting a dollar limit on such promotional items in order to eliminate any confusion or disagreement. I think the department has a different interpretation of what that means to what my opinion is.

Vice Chairman Kasper: I friend of mine sent me an email that he had had with the insurance department on charitable contributions. He indicated that there is a certain charitable organization in North Dakota that he makes contributions to and he does insurance business with them. It appears that he is going to be barred from making that contribution because he does business with that organization and earns a commission. Is that anywhere in this statute intended to have that ramification?

Patrick Ward: I would have to look at the details a little bit more, but based on my understanding, no I don't see how that would be tied together.

Vice Chairman Kasper: You would say that that is not prohibited or would not be considered rebating based upon the current law or any of the amendments that you are purposing?

Patrick Ward: That's correct, but I hesitate because I haven't looked at the details of that situation.

Vice Chairman Kasper: Playing golf and he came to work with me and we decided to work with high worth individuals, to attempt to work on their estate and financial planning.

Our approach to opening a business situation was to play round of golf. Sometimes we would pay for that round of golf and sometimes pay for drinks and supper. After that we would discuss doing business and set up a formal meeting. Would you consider that rebating under this law or amendments?

Patrick Ward: I'm hesitant to speak, that the department would take a different opinion than mine.

Vice Chairman Kasper: I'm concerned about that. I don't know if this bill could be amended to that address that or if it should even be touched. We need clarification.

Patrick Ward: Your question could be better addressed by Larry Malslowski who will testify next.

Chairman Keiser: I feel that Vice Chairman Kasper is on track and causes us some concern.

Patrick Ward: Glass repair is illegal in other parts of the code. It's difficult to prosecute.

Chairman Keiser: State Farm has the good driver program where you get a rebate.

Representative Boe: What you are alluding to is a rebate off your deductible, not premium.

Patrick Ward: You can have certain provisions within a filing your forms and a good student discount and that's approved by the commissioner.

Larry Malslowski~Senior Analyst & Director of the Consumer Protection Property & Casualty Division of North Dakota Insurance Department: (see attached testimony).

Vice Chairman Kasper: Go to page 2, on lines 14-18, how do you interpret that?

Larry Malslowski: You would need to continue to read the whole thing and that's where the catch all is.

Vice Chairman Kasper: Is buying lunch over \$25 if this bill passes a violation?

Larry Malslowski: Yes.

Vice Chairman Kasper: It is your opinion a golf match is potential an illegal inducement?

Larry Malslowski: Yes.

Vice Chairman Kasper: Even though no business has transacted.

Larry Malslowski: I'm not an attorney, we were advised of the action, a give back of any value and I don't have an answer for that.

Vice Chairman Kasper: Sale is not made at a golf match, a sale is made what the needs are and you make a presentation. The customer says "let's do that", that could be months from that golf match. How do we tie that or you may not sell them anything?

Larry Malslowski: It's a difficult scenario, at the time of sale, that's an obvious scenario that you are looking. What about the other things that you do during the course of that year to insure that you get that person's homeowner's policy now that you have the car's?

Vice Chairman Kasper: Let's talk after a sale made, a premium is paid and commissions are paid, 6 months later can I take them to lunch?

Larry Malslowski: Not limited only to the sale in terms of that date, probably not.

Vice Chairman Kasper: You are reducing commerce, telling them who they can and cannot eat with and who does or does not pay the tab. So the presumption is that you are guilty by the fact of having lunch.

Larry Malslowski: I don't know how to respond to that one.

Chairman Keiser: The language here is 25 dollars a year, is that going to be equally difficult to regulate as the current law is? I'm concern about semi-annual promotions and inadvertently falls into the condition of \$25, collectively?

Larry Malslowski: It's something you face where ever you put this mark.

Vice Chairman Kasper: What if we amended to bill to apply to all business transactions not just insurance products?

Larry Malslowski: I guess a body you could legislate that. I would first stipulate that the insurance industry is regulated significantly different than those other industries. Our mission statement is to make sure that those insurance companies have money to pay claims. We extend further, that authority to code and review to have filings for rates to make sure that they are adequate and not unfairly discriminatory. We are the highest regulated industry and the issue of the rebate, the idea of rebates, ties in directly with premiums. When you expand the concept of rebating, you can get crazy on this and somewhere along the line, that is coming out of premiums and claim costs. We would argue and that why the lid is put on that particular industry.

Representative Nathe: Question on the enforcement, how will you know they go over the \$25 limit, how does that work?

Larry Malslowski: We would have to receive a complaint and then we would have investigators look into that.

Representative Nathe: Do most complaints come from competitors.

Larry Malslowski: Yes.

Representative Boe: What about the scenario, what if it was an insurance & pro shop. The pro shop was giving a free round of golf. Are we ok?

Larry Malslowski: Maybe.

Representative Clark: Could we say that these are advertisement expenses?

Larry Malslowski: I suppose, our legal counsel advised us otherwise.

Vice Chairman Kasper: From studying the history of insurance law, the original rebate statues were implements because, to avoid an inducements for the agent or the company to pay the premium, all or part of it, I can understand the tight line on a premium, I agree with that, but when we get into the social issues and limiting \$25 of this, you are getting beyond the US Constitution. I would like a bill that would zero in on the premium rebating. Would you agree with that.

Chairman Keiser: I think there was a question in that. Anyone here else to testify in support, in opposition?

Vice Chairman Kasper~District 46-Fargo: You have heard the discourse and discussion, I feel strongly about what this bill does. I feel strongly about the fact that we should not allow rebating, which are premiums. I feel equally strong about the freedom of that business and individual can have to run their lives they way they desire under the constitutional guarantee's we have. I think this bill is getting into an unconstitutional situation. I would hope that this committee might consider narrowing the scope of this bill to deal with premium payments and premium inducements, whether it's from an agent, broker or an insurance company. This is actually dear to my heart, this bill needs a lot of work.

Chairman Keiser: What's the penalty for a violation of this section? Is it a graduated penalty based on?

Larry Malslowski: A hand slap, we would not revoke a license.

Chairman Keiser: What if they do a system wide distribution of 2 items a year and everybody they send it to was in excess and they sent it to 2000 different customers?

Larry Malslowski: They would have to investigate all offenses and see what the impact is. The maximum fine is 10,000 dollars.

Chairman Keiser: Anyone else here to testify in opposition to HB 1175, neutral?

Norbert Mayor~North Dakota Association of Insurance & Financial Advisors: What I do like about the bill is that it does finally legalize the fact that I can give this pen to my clients without fear of being drawn aside. I know as I work with the co-horts, it's very easy

to go over the \$25 expense limit. In the securities world, they have a \$100 limit and I believe they consider those dinners as a business expense not necessarily a gift. I too, have a concern, are we looking here as a rebate when in fact it probably isn't a rebate. It's a normal cost of doing business, just like any other business would do. There are some good points in the bill but it needs some work to be done to broaden that opportunity.

Chairman Keiser: Anyone else here to testify in a neutral position? Closes the hearing on HB 1175.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1175
February 16, 2011
14599

☐ Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Limitations on insurance rebates.

Committee Work Session Minutes:

Chairman Keiser: Opens the committee work session on HB 1175.

Vice Chairman Kasper: Representative Clark and I had two or three meeting with the department to come to a resolution and we have come to that position. I believe that the insurance companies and agents are happy with this amendment. It clarifies the language of what is not rebating and we have compromised at a \$50 limit for what is not rebating. (Reads the attached amendment).

Chairman Keiser: What are the wishes of the committee?

Vice Chairman Kasper: Moves the amendment 11.0183.01004

Representative Ruby: Second.

Chairman Keiser: Further discussion?

Voice vote, motion carried.

Representative Clark: Moves a Do Pass as Amended.

Representative Ruby: Second.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass as Amended on HB 1175 with 14 yeas, 0 nays, 0 absent and Representative Clark is the carrier.

YIC
2/17/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1175

Page 1, line 2, remove "and a new subsection to section 26.1-26-04"

Page 1, replace lines 8 through 13 with:

"Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Page 2, replace lines 4 through 9 with:

"2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Page 2, remove lines 29 through 31

Page 3, replace lines 1 through 11 with:

"2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Renumber accordingly

Date: Feb 16, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1175

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0183.01004

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carries

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: Feb 16, 2011Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1175House House Industry, Business and Labor Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt AmendmentMotion Made By Rep Clark Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 14 No 0

Absent _____

Floor Assignment Rep Clark

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

REPORT OF STANDING COMMITTEE

HB 1175: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1175 was placed
on the Sixth order on the calendar.

Page 1, line 2, remove "and a new subsection to section 26.1-26-04"

Page 1, replace lines 8 through 13 with:

"Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Page 2, replace lines 4 through 9 with:

"2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Page 2, remove lines 29 through 31

Page 3, replace lines 1 through 11 with:

"2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly in connection with marketing, promoting, or advertising business for the sale or retention of contracts of insurance. However, a reduction or discount in premium or a giving of cash or cash equivalent is prohibited under this section."

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1175

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1175
March 8, 2011
Job Number 15090

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to limitations on insurance rebates

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing on House Bill 1175.

Representative Keiser: Stated that they did a lot of work on this bill and currently in code everything is considered a rebate. This is a concern on regulating rebates and insurance agents have said that they need to address this. They want to establish what a rebate is and say that fifty dollars per person per year maximum may be given as a gift, prize, promotional article, logo merchandise, and meal and entertainment activity directly or indirectly in connection with marketing or promoting. This is what they came up with and put it before the companies and agents and brokers. They strongly support this in the house. The one thing they did address was what about a golf tournament for a charity, can a hole be bought at a golf tournament. He said he wanted it to go on the record that he had a conflict because he is the Chairman of the Ronald McDonald golf tournament and he would like to get more sponsors for holes. They don't support a cash rebate.

Senator Nodland: Asked if this was one time per year.

Rep. Keiser: No in the aggregate it can't exceed fifty dollars per person per year.

Senator Murphy: Asked if they were making legal what is a common practice now.

Rep. Keiser: Said that he doesn't think it is as common as they might think. What does happen is competitors in the insurance industry would file a complaint with the department.

Senator Andrist: Asked if the committee talked about a different trigger mechanism other than fifty dollars which is subject to inflationary changes. He said maybe one percent of the premium value.

Rep. Keiser: Said that they did not talk about that but he would have a problem with that because one percent of a ten million dollar policy. The agents would be thrilled with this

kind of flexibility. He said it might be happening in some cases and was illegal and was being deemed a rebate.

Senator Andrist: Stated that he didn't necessarily mean one percent, just an example.

Pat Ward, Zuger Kirmis & Smith, Representing State Farm Insurance Company and PCI: Written Testimony and Proposed Amendment.

Senator Nodland: Stated that it said per person then per producer. He asked if they had a firm with ten producers can you multiply that by ten with one customer, talking about large contracts.

Pat: That was not the idea. The intention was for it to be fifty dollars per person per year and not to be multiplied. That is one of the issues that need to be addressed; it wasn't intended for group policies.

Senator Andrist: In Representative Keiser's case would buying a sponsorship of a hole, for example, under present law be prohibited if the insurance agent had the policy for the golf course or would it apply for everyone playing in the golf tournament?

Pat: Said that was a good question and it might be better to direct that to the department for their interpretation. There is a concern of not being able to write a charitable contribution to a customer charity.

Steve Becher, Executive Director of the Professional Insurance Agents of North Dakota: Written Testimony. He stated that the Insurance Department still has some issues with the wording and it could potentially be problematic. They are working on a compromise and there will be more amendments coming. They would reserve the right to oppose or support the bill based on those amendments. As it is right now they support the bill.

Senator Murphy: Said he had a lot of phone calls on the amendments.

Steve: Said that the amendments are a concern to some agents but some of the issues have been ironed out.

Larry Maslowski, Senior Analyst and Director, Consumer Protection Property and Casualty Division, North Dakota Insurance Department: Written Testimony.

Senator Schneider: Asked what the penalty was for issuing an illegal rebate.

Larry: Said it could go as high as ten thousand dollars, generally wouldn't reach that.

Chairman Klein: Said that it sounds like they are continuing to work on this proposed language. They are two issues, whether it is per policy or per person and the second is how we address the charitable giving portion which isn't in here at all.

Senator Nodland: Asked why this industry has this type of rules but other industries in the state do not.

Larry: The insurance industry is a highly regulated industry. One of the primary responsibility of the Insurance Commissioner is to make those insurance companies are able to pay claims when the time comes. He said that historically the concept of giving rebates, while innocent enough upfront in small amounts, can turn into an ugly thing real quick. He talked about a life insurance company that had on their policy been giving to agents a commission of 125% of the first year's premium. There were some problems with that. The company wasn't receiving a dime for the insuring of that person and someone is paying for that. He said that it has a potential negative impact to companies. He said that he would think that even with fifty dollars it would be hard for some smaller agents to do and can't even compete with that. It goes back to the financial integrity of the business we regulate. The primary responsibility is that the insurance company being able to pay claims when the time comes.

Norbert Mayer, North Dakota Association of Insurance and Financial Advisors: In support of bill. He said that there is an importance to the insurance rebating law. He said insurance is different from other businesses. He said he hopes they can work on this and make some refinements.

Cal Rolfson, Anne Carlson Center: In support of the bill. He talked the insurance agent for the center wanted to give a donation to the foundation and couldn't. He said that wasn't right. He then gave examples of what he thought would be appropriate. He said that he hopes this committee will consider and manage this issue appropriately.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1175
March 21, 2011
Job Number 15734

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to limitations on insurance rebates

Minutes:

Discussion and Vote

Chairman Klein: Handed out an amendment.

Larry Maslowski, Senior Analyst and Director, Consumer Protection Property and Casualty Division, North Dakota Insurance Department: He said that they had a meeting with a representative of the insurance industry, PIA, Life and Health agent groups, and Cal Rolfson from the Anne Carlson School they all discussed this and worked through the various issues that were on the table. They came to an agreement with the language they submitted to the committee.

Pat Ward, Representing State Farm Insurance Company and PCI: He is representing the insurance industry. He said that they all agree on the language that is before them now and said it was a good compromise.

Senator Larsen: Asked if it was a fifty dollar value.

Larry: That is correct.

Senator Murphy: Moved to adopt the amendment.

Senator Laffen: Seconded the motion.

Senator Nodland: Asked if they were just saying it is for the insured person, policy owner, could you describe that a little more.

Larry: The terms named insured and policy owner are terms in the industry, so it would be those persons named on the actual policy or in most case that will be the same.

Senator Nodland: If you are working with a large firm that you are insuring, the business manager might be the person you are working with because the firm is owned by a multitude of people. He asked if they could spend the fifty on that individual.

Larry: You could because the named insured on that would be that policy owner for that business, so you could one time for that business person.

Chairman: The clerk will call the roll for a do pass on the amendment.

Roll Call Vote: Yes-7 No-0

Senator Murphy: Moved a do pass on engrossed bill 1175 as amended.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Murphy to carry the bill

March 18, 2011

4/2
3-21-11
10/2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1175

Page 1, line 9, after "year" insert an underscored comma

Page 1, line 11, after "indirectly" insert "to a person"

Page 1, line 12, after "advertising" insert "the"

Page 1, line 12, remove "for the sale or retention of contracts of"

Page 1, remove line 13

Page 1, line 14, remove "cash equivalent is prohibited under this section"

Page 1, line 14, after the underscored period insert "As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 6, after "year" insert an underscored comma

Page 2, line 8, after "indirectly" insert "to a person"

Page 2, line 8, after "advertising" insert "the"

Page 2, remove line 9

Page 2, line 10, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 2, line 10, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 31, after "year" insert an underscored comma

Page 3, line 2, after "indirectly" insert "to a person"

Page 3, line 2, after "advertising" insert "the"

Page 3, remove line 3

Page 3, line 4, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 3, line 4, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Renumber accordingly

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed HB 1175

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11. 0183. 02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Murphy Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/21/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Eng. HB 1175

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Murphy Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

HB 1175, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1175 was placed on the Sixth order on the calendar.

Page 1, line 9, after "year" insert an underscored comma

Page 1, line 11, after "indirectly" insert "to a person"

Page 1, line 12, after "advertising" insert "the"

Page 1, line 12, remove "for the sale or retention of contracts of"

Page 1, remove line 13

Page 1, line 14, remove "cash equivalent is prohibited under this section"

Page 1, line 14, after the underscored period insert "As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 6, after "year" insert an underscored comma

Page 2, line 8, after "indirectly" insert "to a person"

Page 2, line 8, after "advertising" insert "the"

Page 2, remove line 9

Page 2, line 10, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 2, line 10, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Page 2, line 31, after "year" insert an underscored comma

Page 3, line 2, after "indirectly" insert "to a person"

Page 3, line 2, after "advertising" insert "the"

Page 3, remove line 3

Page 3, line 4, remove "premium or a giving of cash or cash equivalent is prohibited under this section"

Page 3, line 4, after the underscored period insert "As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance."

Renumber accordingly

2011 TESTIMONY

HB 1175

TESTIMONY IN SUPPORT OF HOUSE BILL 1175

Chairman Keiser and Members of the House IBL Committee:

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck. I represent State Farm Insurance Company in support of this bill.

North Dakota has several code sections which place limitations on insurance rebating. The gist of these laws is that an insurance agent or insurance company is not allowed to give a customer any rebate of premium or any part thereof or any other "valuable consideration or inducement other than such as may be specified in an insurance policy, except as provided in an applicable filing." Likewise, an insured person "may not accept or agree to accept a rebate of premium or any part thereof."

It is a fairly common practice in the insurance business, as in any other sales related profession, to give promotional items or trinkets as gifts to customers. Insurance agents, like other businessmen, do this. These trinkets can include items such as pens, calendars, road atlases, gas coupons, or items of nominal value. Some agents have Christmas cards. Some have a picnic.

I believe there is some uncertainty in North Dakota law as to whether or not such trinkets are permitted under the rebating statutes. While I would argue that these items are promotional items or gifts and not "valuable consideration" or an "inducement to insurance," it is sometimes difficult to know where to draw the line between something of nominal value and something having real value.

We have worked with the Insurance Department on this draft bill. Our intention in HB 1175 is to make clear that as long as such promotional items have a value of less than \$25 per person per year, the giving of such an item by an insurance agent to a customer would not be in violation of the anti-rebating laws.

We hope that you will agree with what we believe to be a practical solution to this issue. We urge a Do Pass on HB 1175.

HOUSE BILL NO. 1175

Presented by: **Larry Maslowski**
 Senior Analyst and Director, Consumer Protection Property
 and Casualty Division
 North Dakota Insurance Department

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

Date: **January 17, 2011**

TESTIMONY

Good afternoon, Chairman Keiser and committee members. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you in support of House Bill No. 1175.

Current statute considers the offering or giving to a client or prospective client anything of value an inducement to purchase insurance and, therefore, an illegal rebate. This has been interpreted to include such items as calendars, pens, atlases, caps, gifts, coupons and other similar promotional items. To avoid violating the statute insurance companies and agents have been permitted to offer such items only if they make the items available to any and all persons who ask for the promotional item.

As you might imagine, it can be difficult and time-consuming for the Department to discern whether a company or agent is in compliance or is in fact offering an illegal rebate. Frequent calls to the Department by competing companies or agents utilize the Department's resources as we attempt to investigate each situation.

The bill proposes to change the current statute by allowing the giving of promotional items to a client or prospective client as long as the value of the items given do not exceed \$25 per person per year.

The Department met with the bill's designers and did give input into the crafting of the bill with the intent of avoiding any unintended consequences.

The Department is comfortable with the change as proposed. Setting the threshold low, however, is key to our support. It is felt that keeping the limit low ensures that the value of promotional items offered would not be of sufficient value to constitute a serious inducement to buy.

TESTIMONY IN SUPPORT OF ENGROSSED HOUSE BILL 1175

March 8, 2011

Chairman Klein and Members of the Senate IBL Committee:

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck. I represent State Farm Insurance Company and PCI (Property & Casualty Insurance Association of America) in support of this bill.

North Dakota has several code sections which place limitations on insurance rebating. The gist of these laws is that an insurance agent or insurance company is not allowed to give a customer any rebate of premium or any part thereof or any other "valuable consideration or inducement other than such as may be specified in an insurance policy, except as provided in an applicable filing." Likewise, an insured person "may not accept or agree to accept a rebate of premium or any part thereof."

It is a fairly common practice in the insurance business, as in any other sales related profession, to give promotional items or trinkets as gifts to customers. Insurance agents, like other businessmen, do this. These trinkets can include items such as pens, calendars, road atlases, gas coupons, or items of nominal value. Some agents have Christmas cards. Some have a picnic.

I believe there is some uncertainty in North Dakota law as to whether or not such trinkets are permitted under the rebating statutes. While I would argue that these items are promotional items or gifts and not "valuable consideration" or an "inducement to insurance," it is sometimes difficult to know where to draw the line between something of nominal value and something having real value.

We have worked with the Insurance Department on this draft bill. Our intention in HB 1175 is to make clear that as long as such promotional items have a value of less than \$50 per person per year, the giving of such an item by an insurance agent to a customer would not be in violation of the anti-rebating laws. We would suggest one simple amendment to Engrossed HB 1175. In each section of new language, after the word "gift," add insert including "gift cards for meals or gasoline," or something to that effect so that gift cards can be distinguished from other "cash equivalents" in the following sentence.

We hope that you will agree with what we believe to be a practical solution to this issue. We urge a Do Pass on Engrossed HB 1175 with the suggested amendments.

Proposed amendments to Engrossed HB 1175

Page 1, Line 10, after “gift” insert “including a gift card for specific merchandise or services such as a meal, gasoline or car wash but not cash, a cash card, a refund, a discount of premium or any other form of currency,”

Page 1, line 13, remove “However, a reduction or discount in premium or a giving of cash or”

Page 1, Remove line 14

Page 2, line 7, after “gift” insert “including a gift card for specific merchandise or services such as a meal, gasoline or car wash but not cash, a cash card, a refund, a discount of premium or any other form of currency,”

Page 2, line 9 remove “However, a reduction or discount in”

Page 2, remove Line 10

Page 3, line 1, after “gift” insert “including a gift card for specific merchandise or services such as a meal, gasoline or car wash but not cash, a cash card, a refund, a discount of premium or any other form of currency,”

Page 3, line 3 remove “However, a reduction or discount in”

Page 3, remove line 4.

Testimony for HB 1175 – Senate

Senator Klein and members of the North Dakota Senate Industry, Business, and Labor Committee my name is Steve Becher, Executive Director of the Professional Insurance Agents of North Dakota. PIA of ND is an association of well over 1,000 main street insurance agents from over 300 agencies across the entire state of North Dakota. I am providing testimony today in support of the basic premise of HB 1775 and asking for time from the committee to work out the issues that various groups such as the Insurance Department, NAIFA, State Farm, Big I, and PIA have with the bill in its present form. We all have agreed on what we would like the bill to accomplish, but the recent problem has been coming up with the correct wording so we don't have unintended consequences and more confusion for our agents than the present statute.

To give you some background on anti-rebating statutes, forty-eight states and the District of Columbia all prohibit insurers and agents from giving an insured or prospective insured anything of value not specified in the policy as an inducement to the purchase of insurance. There are two important public policy reasons for the anti-rebating statutes — to prevent the creation of a competitive disadvantage or unlevel playing field for other agents, brokers and agencies in the market and to protect consumers and others from unfair and deceptive trade practices, discriminatory rates, etc. These statutes ensure that a policy's written terms are applied consistently to all policy holders who have been issued similar or identical policies and that some policy holders are not given preferential treatment. This is good public policy; however, there are many good business

practices that an agent employs or would like to employ that can cause some confusion or issues with the anti-rebating statute when the practice is interpreted by the Insurance Department.

For example, it is good business practice to advertise an agency to prospective clients in the area as well as to your present clients through the use of logo or promotional items such as pens, calendars, hats, atlases, etc. Under the current anti-rebating statute these items would be considered a rebate to the agent's present clients or prospects unless the items were made available to anyone that asked for them. An agent could not send a calendar to all of his clients at Christmas to show appreciation for their business, or give a hat to anyone who bought a policy in a certain month as presently that is a rebate. Another good business practice is for an agent to build a personal relationship with his clients or prospective clients outside of the sales relationship. An agent could build this relationship by taking the client out to lunch, having a day at the ballgame for clients, buying a round of golf, or showing appreciation with an occasional small gift. Under our present anti-rebating statute, all of these activities could be prohibited unless the agent was willing to provide them to the general public. This is not feasible for most agents so they either skirt the current law or refuse to provide anything for their clients. Imagine meeting a client for lunch to talk about their present insurance policies and then telling them that they have to pay for their own meal so it is not rebating! That's a pretty tough sell to most clients.

The intent of House Bill 1175 is to help agents promote their agencies and build personal relationships with their clients without running afoul of the current anti-rebate statutes by adding a de minimus exception to the law. The bill would

allow agents to provide small gifts, promotional items, meals, or entertainment to clients or potential clients as long as the total value of these items does not exceed \$50 per person per year. There would still be prohibitions for discounting premiums, providing cash or other currency, or gift cards that are used the same as cash. The bill is not meant to provide agents with a means to induce consumers to purchase a policy from them, but to allow them the opportunity to show their appreciation for their customer's business and to promote their agency to others.

At this time, we support House bill 1175 as written and would support the amendment proposed by Mr. Ward with a minor change but do understand that there are issues with the bill from the standpoint of the Insurance Department as well as other groups and that there will be other amendments forthcoming. We reserve the right to re-evaluate our support or opposition to the bill once all of the amendments have been proposed.

HOUSE BILL NO. 1175

Presented by: Larry Maslowski
Senior Analyst and Director, Consumer Protection Property
and Casualty Division
North Dakota Insurance Department

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

Date: March 8, 2011

TESTIMONY

Good morning, Chairman Klein and committee members. My name is Larry Maslowski and I am the Senior Analyst and Director of the Consumer Protection Property and Casualty Division of the North Dakota Insurance Department. I appear before you in general support of Engrossed House Bill No. 1175.

Currently statutes consider the offering or giving to a client or prospective client anything of value to be an inducement to purchase insurance and, therefore, an illegal rebate. This has been interpreted to include such items as calendars, pens, atlases, caps, gifts, coupons and other similar promotional items. To avoid violating the statute insurance companies and producers have been permitted to offer such items only if they make the items available to any and all persons who ask for the promotional item and do not tie the item to the receipt of a quote or the sale of an insurance policy.

As you might imagine, it can be difficult and time-consuming for the Department to discern whether a company or agent is in compliance or is in fact offering an illegal rebate. Frequent calls to the Department by competing companies and producers utilize the Department's resources as we attempt to investigate each situation.

The sponsors of the bill originally approached the Commissioner to determine whether the Department would support an exemption to the rebate statute. The Commissioner

cautiously agreed to support an exemption on the following conditions: that the exemption would be for promotional items mentioned above, that the amount of the exemption be of de minimis value (not be so high as to create an inducement to buy), and that the exemption would establish a bright line as to what is legal and what is not so that producers understand clearly what is acceptable and so as not to increase the Department's workload.

After introduction and in the course of debate in the House it became evident that not all in the insurance industry were in agreement with what the exemption should look like. A number of the various insurance producer groups, insurance companies and the Department attempted to and did reach some degree of compromise resulting in the first engrossment to House Bill No. 1175.

However, even with those amendments and since the passage in the House, more concerns and issues have been raised to the Department. Based upon these unresolved concerns and the Commissioner's desire to create an exemption in keeping with his original conditions that will not create unintended consequences, there is more work to do on this bill.

In particular, the issue of "stacking" is of great concern. If we are going to be true to creating an exemption that will be of de minimis value, changes must be made to more narrowly describe to whom and how many times a producer may give an exempted inducement. For example, under the language of the current bill, a producer may argue he can give a \$50 gift to a client and another \$50 gift to the client's wife and each of their two children if they are all covered under the same auto policy. May a producer who has a health policy on a business with 30 employees give \$50 to each employee for a total of a \$1,500 inducement? We want to ensure this stacking of gifts does not happen because that goes beyond the token thank you gift for doing business that was originally intended with the bill and crosses the line into being an inducement to buy insurance. The Department feels that if this issue cannot be adequately addressed in

the final version of the bill, the Department would not be able to continue to support the bill.

There are other unresolved issues having to do with when can you give an inducement, can it be given to a prospect or just to a current customer, where does charitable giving fit in the exemption, if at all, and whether the exemption should apply to companies are items that have not been determined or agreed to.

Therefore, while the Commissioner feels that the general concept of making an exemption to the current rebate statute is an idea he can support, there are issues that if not resolved may lead to unintended consequences.

This concludes my testimony. I would be happy to try to answer any questions the committee members may have. Thank you.

Mike Rud

From: CO-Kindred, Dale Beck <Dale.Beck@chsinc.com>
Sent: Monday, March 21, 2011 12:25 PM
To: Mike Rud
Subject: Info

Please forward this to the appropriate list of Senators for me. Thank you

Dale Beck, Energy Dept. Mgr.
Dakota Ag Cooperative
5324 165th Ave SE
Kindred, ND 58051
Ph. 701-428-3134
1-800-427-3134
Cell 701-361-2031
Fax 701-428-3137

Good Morning Dale!

Based upon the data that I was able to pull back to CHS' fiscal year 1999 (9/1/1998 and forward), we have had 49 claimants for a total of \$11.6 million paid out in propane claims. That averages just over \$237,000 per claimant. I can't find specific details on fault nor whether the claim went to court or was settled out of court. The highest paid out in that frame was just under \$3.5 million to one claimant and the lowest paid out was \$26.00, so there is a wide range.

As far as a specific case to reference, I would suggest that you provide the Tara Groenewald v. Propane Continental Case, which was an accident where an appliance was removed from a building and the line left uncapped and open upon a tenant change. The new tenants moved into the place, and turned the gas on. As you can imagine, gas escaped from the open line and found an ignition source which severely injured a young girl in an explosion. In that claim, the retailer paid \$2 million, the wholesaler paid \$15 million and some upstream suppliers paid \$20K-\$50K each for a claim that was caused by something unknown to the retailer, wholesaler, etc.

Let me know if that information is helpful.

Have a great week,
Bryan Lewis
Manager-Propane Risk Management
CHS Propane

 CHS

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