



North Dakota  
Insurance Department  
Adam W. Hamm, Commissioner

**SUMMARY OF INSURANCE LEGISLATION  
(WITH NORTH DAKOTA CENTURY CODE REFERENCES)**

**62<sup>nd</sup> LEGISLATIVE ASSEMBLY  
EFFECTIVE AUGUST 1, 2011<sup>1</sup>**

**Financial Examinations**

**HB 1083 – Risk-based capital reports (26.1-03.1-03(1), 26.1-03.2-03(1)).** This bill adds a trend test to the Company Action Level requirements for property and casualty insurers and for health organizations. The change will cause the RBC Company Action Level for property and casualty insurers to be triggered when the RBC ratio is between 200%-300% and the insurer's combined ratio (i.e., loss ratio plus expense ratio) is greater than 120%. For health organizations, the Company Action Level would be triggered with an RBC ratio between 200%-300% and a combined ratio greater than 105%. Current law already has a trend test for life insurers and property and casualty insurers writing only accident and health coverage.

**HB 1121 – Confidentiality of actuarial opinion support documents (26.1-03-11.1(3)).** This bill provides confidentiality for the Actuarial Opinion Summary, Actuarial Report and supporting work papers underlying a Company's required Statement of Actuarial Opinion. Current law already provides this confidentiality for life insurers' actuarial documents; this bill extends that confidentiality to non-life insurers as well.

**SB 2111 – Life and Health Insurance Guaranty Association (26.1-38.1-01, 26.1-38.1-02(12), (20) and (23), 26.1-38.1-05(1)(b), 26.1-38.1-05(2)(b)(4), 26.1-38.1-06(3), 26.1-38.1-06(14)(e), 26.1-38.1-07(4), 26.1-38.1-08(4), 26.1-38.1-11, 26.1-38.1-15, 26.1-26.1-38.1-17).** The key change in this bill will increase the benefit limits for specific lines of business that the North Dakota Life and Health Insurance Guaranty Association is obligated to pay in the event of an insurance company insolvency. The limits were increased from \$100,000 to \$300,000 for long-term care and disability insurance; from \$100,000 to \$500,000 for basic hospital, medical, surgical, and major medical policies; and from \$100,000 to \$250,000 for annuities, government retirement benefit plans and structured settlement annuities. The Guaranty Association limits for life insurance were not changed. Also, the bill specifies that Medicare Part C and Part D policies are not covered by the Guaranty Association; removes the annual \$150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority; requires the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association; and requires the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

<sup>1</sup> Some bills were effective earlier than August 1, 2011. Earlier effective dates are noted where applicable.

## Legal

**HB 1162 – Administrative rules (28-32-08.2, 28-32-03(5), 28-32-10(1), 28-32-18(2)).** An administrative agency shall attempt to make interim final rules known to every person who the agency can reasonably be expected to be affected by them. In addition to the existing notice requirements, an agency adopting emergency rules shall also provide notice to the chairman of the Administrative Rules Committee of the emergency rules. The Legislative Council shall publish the notice and emergency rules on its website. When an agency presents rules for Administrative Rules Committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect.

## Producer Licensing

**HB 1123 – Surplus lines insurance (26.1-44-01, 26.1-44-01.1, 26.1-44-02, 26.1-44-03, 26.1-44-03.1, 26.1-44-04, 26.1-44-05, 26.1-44-06, 26.1-44-06.1, 26.1-44-08, 26.1-44-10, 26.1-44-11).** This bill revised the law relating to surplus lines insurance to conform to requirements of the United States Nonadmitted and Reinsurance Reform Act of 2010 (NRRA). The law now applies only to the placement of surplus lines coverage, the regulation of surplus lines producers and the taxation of surplus lines premiums if the insured's home state is North Dakota. The new provisions address:

- Definition of home state
- Changes in qualifications of eligible surplus lines insurers
- Definition of exempt commercial purchasers and exemption from due diligence search requirements
- Changes to the recordkeeping and reporting requirements of surplus lines producers
- New consumer notice
- Taxation of multi-state policies

Federal law allows states to enter into a compact to allocate premium tax on multi-state policies. This bill adopts the Surplus Lines Insurance Multistate Compact (SLIMPACT) to allocate among the states the premium tax paid to the insured's home state. Ten states must adopt SLIMPACT before the compact is implemented.

This law became effective on April 19, 2011.

**HB 1160 – Annuity suitability (two new sections to 26.1-34.2, 26.1-34.2-02, 26.1-34.2-03, 26.1-34.2-04).** This bill is based on a recently-passed model law of the National Association of Insurance Commissioners (NAIC). It requires that in recommending to a consumer the purchase or exchange of an annuity, the insurance producer or the insurer must have reasonable grounds for believing that the recommendation is suitable for the consumer, which includes ensuring that the consumer has been reasonably informed of various features of the annuity, such as the surrender period, surrender charge, potential tax penalty, and expense fees. An insurer is required to establish a supervision system that is reasonably designed to achieve the insurer's and the insurer's insurance producers' compliance with these annuity suitability requirements. This law also requires every insurance producer engaged in the sale of annuity products to complete a one-time, four-hour training course to ensure that they are only recommending annuities that are suitable for the consumer based on the consumer's particular needs. The training must include information on the topics set out in the bill and must be completed by August 1, 2012. Insurers must verify that the producer has completed the training. Satisfaction of substantially similar requirements in another state will satisfy these requirements.

**HB 1175 – Rebating (26.1-04-03(8), 26.1-04-06, 26.1-25-16).** This law allows a limited exception to the state’s anti-rebating laws. If the cost does not exceed an aggregate retail value of \$50 per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. The term "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. 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. An insurance producer may make a donation in any amount to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code Section 501(c)(3) as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

**Life and Health**

**Health Care Reform Bills**

**HB 1125 – Health care reform enforcement (new section to 26.1-02).** This bill makes clear that the Commissioner has the authority to administer and enforce the provisions of the Patient Protection and Affordable Care Act (PPACA). The bill also requires the Commissioner to provide regular updates to Legislative Management during the 2011-12 interim and submit any proposed legislation to Legislative Management for consideration at the special session.

**HB 1126 – Health care reform exchanges (26.1-54).** This bill requires that the Commissioner and the Department of Human Services plan for the implementation of an American health benefit exchange in North Dakota. The Commissioner may seek federal grant funds for the planning and implementation and adopt rules as necessary or desirable. The bill also requires the cooperation of other state agencies to ensure the success of the exchange. The bill also requires regular updates to Legislative Management.

**HB 1127 – Health care reform external review, utilization review, and grievance procedures (26.1-03-01, 26.1-26.4-01, two new sections to 26.1-36, 26.1-36-44).** This bill requires that health insurers must provide a utilization review (UR), grievance, and external review process that meets the minimum requirements of PPACA and its implementing regulations. If federal laws or rules relating to these processes are amended, repealed, or otherwise changed, the Insurance Commissioner shall adopt rules to ensure the process is in compliance with and equivalent to the federal requirements. The bill also provides that existing UR law applies only to grandfathered plans unless an insurer decides to apply PPACA requirements to a grandfathered plan. For independent external review, the bill provides application only to grandfathered plans. The bill also requires the Commissioner to provide regular updates to Legislative Management and submit proposed legislation at the special session.

**HB 1165 – Health care reform insurance coverage not required (new section to 26.1-36).** This bill provides that an individual cannot be required to obtain or maintain individual health insurance coverage, with some exceptions, unless required by a court. It is a response to the individual coverage mandate of PPACA.

**HB 1252 – Health care reform study.** This bill requires the Legislative Council to monitor the impact of PPACA, rules adopted by federal agencies as a result of that legislation, and any amendments to that legislation.

**HB 1267 – Health care reform in special legislative session.** This bill includes health care reform as a topic to be addressed in a special legislative session in November (along with redistricting).

**HB 2309 – Health care reform PPACA likely unconstitutional (new section to 54-03).** This bill declares that PPACA is likely not authorized by the U.S. Constitution, and that the Legislative Assembly shall consider enacting any measure to prevent its enforcement.

**HCR 3015 – Health care reform sovereignty reaffirmed.** This concurrent resolution reaffirms the state's sovereignty under the 10th Amendment to the Constitution and demands the federal government halt its practice of assuming powers and imposing mandates on the states for purposes not enumerated in the Constitution.

**HCR 3016 – Health care reform repeal.** This concurrent resolution urges Congress to repeal PPACA.

**SCR 4005 – Impact of PPACA on CHAND.** The Comprehensive Health Association of North Dakota (CHAND) is the high risk pool currently in place in North Dakota. Under PPACA, beginning in 2014, everyone will be eligible to purchase health insurance, so the necessity of the CHAND program is uncertain. This concurrent resolution directs a study of the impact of PPACA on CHAND, with a report to be provided to Legislative Management prior to when the 63<sup>rd</sup> Legislative Assembly convenes.

#### **Non-Health Care Reform Bills**

**HB 1135 – Trustees have insurable interest (59-09-13).** This bill created N.D.C.C. § 59-09-13, which clarifies that a trustee has an insurable interest in the life of another if the other person was the person who settled or created the trust, or if the person whose life was insured was a person for whom the settlor (the person who created the trust) could have obtained life insurance. The proceeds of the life insurance must be primarily for the benefit of trust beneficiaries who have an insurable interest in the life of the insured or who are closely related to the subject of the life insurance. The law is a product of the National Conference of Commissioners on Uniform State Laws.

**HB 1160 – Annuity suitability (two new sections to 26.1-34.2, 26.1-34.2-02, 26.1-34.2-03, 26.1-34.2-04).** This law is based on a recently passed National Association of Insurance Commissioners (NAIC) model law and requires that in recommending to a consumer the purchase or exchange of an annuity, the insurance producer or the insurer must have reasonable grounds for believing that the annuity is suitable for the consumer, which includes ensuring that the consumer has been reasonably informed of various features of the annuity, such as the surrender period, surrender charge, potential tax penalty, and expense fees. An insurer is required to establish a supervision system that is reasonably designed to achieve the insurer's and the insurer's insurance producers' compliance with these annuity suitability requirements. This law also requires every insurance producer engaged in the sale of annuity products to complete a one-time, four-hour training course to ensure that they are only recommending annuities that are suitable for the consumer based on the consumer's particular needs. The training must include information on the topics set out in the bill and must be completed by August 1, 2012. Insurers must verify that the producer has completed the training. Satisfaction of substantially similar requirements in another state will satisfy these requirements.

**SB 2075 – Excess assets in pre-need funeral service contracts (50-24.1-02.3).** This law provides that any amounts in a pre-need funeral service contract that are not used for funeral or burial expenses must be returned to the estate of a Medicaid recipient, and are subject to recovery by Medicaid.

**SB 2237 – Domestic abuse (26.1-04-03(7)).** This law prohibits an insurer's consideration of an individual's history or status as a victim of domestic abuse in underwriting a risk or in paying a claim.

**SB 2276 – Vaccine fund (new section to 23-01).** This law created a program through which the state purchases vaccines through the federal vaccine purchasing contract which then furnishes the vaccines to public health units. A public health unit that receives the vaccines must administer them to program-eligible children and may not bill an insurer for the cost of the vaccine but may charge an administration fee.

**Property and Casualty**

**HB 1142 – Agritourism liability (new chapter to Title 53).** A new chapter of the North Dakota Century Code was created that provides that an agritourism participant assumes all inherent risks and permits agritourism operators the ability to use the defense of assumption of risk (for inherent risks) if registered with the Division of Tourism. Registration is effective for five years. Notice must be posted in a conspicuous place on the operator's premises and in the agritourism operator's contract that the operator is not liable for any injury to or for the death of a participant if the injury or death results from inherent risk.

**HB 1174 – Medical records and bills cost (23-12-14, 26.1-41-12).** This law sets new caps on what a medical provider may charge for electronic copies of records and bills. A person may not charge more than \$20 for the first 25 pages and 75 cents per page for every page beyond 25 pages for providing a copy of medical records or medical bills in paper or facsimile format to a basic no-fault insurer. If providing an electronic, digital, or other computerized format, a person may charge \$30 for the first 25 pages and 25 cents per page after 25 pages for providing a copy of medical records or medical bills to a basic no-fault insurer. This charge includes any administrative fee, retrieval fee, and postage expense.

**HB 1195 – Texting and driving (39-06.1-06(2), 39-06.1-09, new section to 39-08).** This law prohibits texting while driving. It provides that a driver who is part of traffic may not use a wireless communications device to compose, read, or send an electronic message. This prohibition includes email, text, and instant message.

**HB 1256 – Graduated drivers license system (39-01-01, 39-06-03(1), 39-06-04, 39-06-17, 39-06.1-09, 39-06.1-10(3)(b), new section to 39-08).** Beginning January 1, 2012, this law provides that an individual who is not yet 18 years of age is not eligible for a license until that individual has had a learner's permit issued for at least 6 months or at least 12 months if under age 16. A restricted license is issued if the minor has successfully completed an approved driver's education course and has 50 hours of supervised driving in various driving conditions and situations that include night driving; driving on gravel, dirt, or aggregate surface road; driving in both rural and urban conditions; and winter driving conditions. Drivers with a restricted license may not drive between sunset or 9:00 p.m., whichever is later, and 5:00 a.m. with exceptions given for work, school, or religious activity. Individuals under age 18 may not operate an electronic communication device to talk, compose, read, or send an electronic message while driving except in emergencies or to prevent a crime.

**HB 1308 – Rental car insurance secondary (26.1-40-17).** This law provides that a person's own auto policy is primary when a vehicle is rented in North Dakota. Previously, the rental car company's insurance was primary.

**HB 1452 – Injury to trespassers (new).** This law provides immunity for landowners for injury to trespassers with exceptions. Exceptions include willful injury, knowledge of the trespasser's presence and artificial attractive nuisance.

**SB 2062 – Certificates of insurance (new chapter to Title 26.1).** This law relates to property and casualty certificates of insurance, requiring filing of forms with the Commissioner and setting parameters for use of certificates of insurance for producers. Producers may sign only certificates of insurance that are filed and approved by the Commissioner. A person may not demand, require, or issue a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate makes reference. Producers may not knowingly prepare or issue a certificate that purports to alter, amend, or extend the coverage provided by the policy.

**SB 2222 – Crop insurance proposals, development grants (new).** This bill creates a new chapter that creates a crop insurance development board consisting of seven individuals to assess the feasibility and desirability of proposals submitted by individuals and public and nonpublic entities pertaining to the development and implementation of crop insurance instruments. The board may award grants to assist with future actuarial and development costs.

**SB 2258 – Child support data match (new section to 14-09, 26.1-02-28, 34-15-03, 34-15-04, new section to 35-34, 35-34-02, 35-34-03, 35-34-04, 35-34-06(1), 35-34-09, 35-34-10).** Insurance companies may coordinate with the Department of Human Services to exchange insured information for the purpose of liens against claimants owing child support. Some of the sections of this Act become effective on January 1, 2012, and others become effective on August 1, 2013.

**SB 2295 – Recreational immunity (53-08-01, 53-08-02, 53-08-03(2)).** This bill clarifies a landowner's duty of care for recreational events. Subject to certain exceptions, a land owner owes no duty to keep premises safe for recreational purposes regardless of the location and nature of the recreational purposes and whether the entry or use by others is for their own recreational purposes or is directly derived from the recreational purposes of other persons, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Does not apply to persons entering land to provide goods or services, and does not apply to for-profit business ventures that directly or indirectly invite members of the public onto the premises for commercial purposes.

**SB 2346 – Restricted licenses for minors (39-06-17(3)).** This bill provides that a minor with a restricted license or permit may drive not only a parent's car but also a grandparent's, sibling's, aunt's, or uncle's car. The parent, guardian, grandparent, sibling, aunt, or uncle at all times is responsible for any damages growing out of the negligent operation of the car by the child.

**Special Funds**

**SB 2064 – Boiler inspection fees (26.1-22.1-01, 26.1-22.1-09, 26.1-22.1-10).** This legislation increases the fee cap for any one boiler inspection from \$150 to \$200. The fee cap for inspections of steam traction engines (hobby boilers) was eliminated and is now treated as a boiler. It increases the fee cap for special inspections requested by the owner/user and for shop reviews and surveys from \$350 per day and \$200 for half-days to a maximum of \$500 per day and \$300 per half-day. It also changes the Certificate of Inspection fee from \$20 per certificate to \$20 per year of certificate and increases the annual fee for the issuance of a reciprocal commission card for a special inspector from \$20 to \$40 and the annual fee for the issuance of a welder-qualified card from \$10 to \$20.

*The complete text of all legislative bills, resolutions, and journals is available at [www.legis.nd.gov](http://www.legis.nd.gov).*