

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of the Promulgation)	REGULATORY ANALYSIS, SMALL
of Proposed Rules Regarding:)	ENTITY ECONOMIC IMPACT
Defense Expenses Within The Limit of)	STATEMENT AND SMALL ENTITY
Liability Provisions)	REGULATORY ANALYSIS
)	
)	FILE NO. RU-14-486

I. **REGULATORY ANALYSIS**

The North Dakota Insurance Department issues this regulatory analysis as required by N.D.C.C. § 28-32-08. An agency must issue a regulatory analysis if a written request for an analysis is filed by the Governor or a member of the Legislative Assembly or a proposed rule being adopted by the agency is expected to have an impact on the regulated community in excess of \$50,000. *Id.*

The proposed rule may have an impact on the regulated community in excess of \$50,000.

A. **Classes of Persons Who Probably Will be Affected by the Proposed Rule**

The classes of persons who may be affected by the proposed new rule are private persons and consumers who choose to purchase the included types of insurance policies and insurance companies. The consumers will benefit from the new rule and the insurance companies will potentially bear the burden as well as the benefit of the proposed new rule.

B. **Description of the Probable Impact Including the Economic Impact of the Proposed Rule**

The probable impact, including economic impact, on the insurers is expected to be minimal. There may be a slight cost for insurers to include required provisions and bring the policies into compliance with the rules. The purpose of the rule is to protect consumers from unreasonable defense expenses within limits of coverage provisions and to ensure that consumers are aware of, and understand the provisions.

C. Probable Costs to the Agency of Implementation and Enforcement of the Proposed Rule and Any Anticipated Effect on State Revenues

The probable cost to the agency of implementation and enforcement is expected to be of minimal impact on the Department's operations and expenditures. The Department currently reviews all insurers' policy forms and will continue to do so under the proposed rule. There will be little, if any, effect on state revenues from the proposed rule.

D. Description of Any Alternative Methods for Achieving the Purpose of the Proposed Rule That Were Seriously Considered by the Agency and the Reasons Why the Methods Were Rejected in Favor of the Proposed Rule

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The rule implements current Department practice and its aim is to protect consumers from unknowingly agreeing to defense expenses within limits provisions in their policies. The Department did not identify any alternative method of achieving the purpose which would have been as effective and less intrusive or costly.

II. SMALL ENTITY ANALYSES

N.D.C.C. § 28-32-08.1 requires that an agency prepare a regulatory analysis and an economic impact statement of the impact of the rule changes on a small entity. "Small entity" is defined by state law to include small businesses, small organizations, and small political subdivisions. *Id.* "Small business" is defined to mean a business entity, including its affiliates which is independently owned and operated and employs fewer than 25 full-time employees; or has gross annual sales of less than \$2,500,000. *Id.* "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. *Id.* "Small political subdivision" means a political subdivision with a population of less than 5,000. *Id.*

A. Small Entity Economic Impact Statement

1. Small entities subject to the proposed rule

The small entities that may possibly be subject to the proposed rule are insurance producers and insurance companies which meet the statutory definition of "small entity."

2. Administrative and other costs required for compliance with the proposed rule

The administrative and other costs required for compliance with the proposed rule are expected to be minimal.

3. Probable cost and benefit to private persons and consumers who are affected by the proposed rule

It is possible, but unlikely, that there would be some cost to private persons or consumers since the proposed rule is directed to insurance companies. Any cost to private persons and consumers would be indirect and not capable of measurement. The rule would benefit private persons and consumers by ensuring that they are aware of any defense expenses within limits of liability provisions in insurance policies and limiting the types of policies in which those provisions are allowed.

4. Probable effect of the proposed rule on state revenues

The probable effect of the proposed rule on state revenues is minimal to nonexistent.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule

The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The purpose of the rule is to protect consumers. The rule codifies current Department practice. Therefore, no less intrusive or less costly alternative method was identified.

B. Small Entity Regulatory Analysis

1. Establishment of less stringent compliance or reporting requirements for small entities

There are no reporting requirements found in the proposed rule, therefore, less stringent requirements for small entities are not appropriate.

2. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities

The Commissioner considered less stringent schedules or deadlines for compliance or reporting requirements for small entities and found them not appropriate. The purpose of the rule is the protection of private persons and consumers.

3. Consolidation or simplification of compliance or reporting requirements for small entities

Compliance and reporting requirements are not different depending on the size of the entity. The purpose of the rule is protection of private persons and consumers and distinguishing between entity size is not appropriate.

4. Establishment of performance standards for small entities to replace design or operational standards required in proposed rule

Small entities were not given different operational standards or design standards than large entities. This would not be appropriate considering the purpose of the rule is to protect private persons and consumers.

5. Exemption of small entities from all or any part of the requirements contained in the proposed rule

Small entities were not given different standards to comply with than large entities.

DATED this 8 day of October, 2014.



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