



North Dakota Insurance Department

Jon Godfread, Commissioner

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

66th LEGISLATIVE ASSEMBLY
EFFECTIVE AUGUST 1, 2019¹

HB 1024 – Department of Environmental Quality (DEQ) budget and Insurance Department (Department) restructure (creates new sections to chapter 23.1-12 and chapter 23.1-16; amends chapter 23.1-1 and 23.1-16; repeals chapter 26.1-22.1). This bill transfers the operation of the Petroleum Release Compensation Fund from the Insurance Department to the DEQ and the operation of the Boiler Inspection program from the Insurance Department to the DEQ.

This legislation became law on July 1, 2019.

SB 2010 – Insurance Department budget and restructure (creates 26.1-22-03.1; amends 26.1-01-07(2), 26.1-01-09, 26.1-21-03, 26.1-21-17, 26.1-22-03, and 26.1-23.1-01). The Insurance Department's appropriation bill for the 2019-2021 biennium reduced the number of full-time equivalent (FTE) positions from 46 to 41 and reduced the overall appropriation for salaries, benefits, operating expenses and capital assets from \$10,729,344 to \$9,916,673.

The legislation allows the Commissioner to contract for services of assistants from the North Dakota Insurance Reserve Fund (NDRIF) to operate the State Fire and Tornado Fund and State Bonding Fund and provides a continuing appropriation from the State Fire and Tornado Fund to cover this expense.

This legislation became law on July 1, 2019.

AGENT LICENSING

HB 1219 – Public adjuster licensing (creates chapter 26.1-26.8 and 26.1-39.2; amends 12-60-24). This law requires public adjusters operating in North Dakota to be licensed. There will be resident, non-resident and business entity licenses.

¹ Some bills are effective on a date other than August 1, 2019. Those effective dates are noted where applicable.

Resident public adjusters will be required to submit fingerprints and have a background check done. There is a required exam for the public adjuster license.

Public Adjusters will follow the standard producer Continuing Education Requirements of 24 general and 3 ethics for each reporting period. The bill also governs the relationship between the public adjuster and a potential contractor who may be hired to perform the work.

The commissioner has regulatory authority, including the authority to investigate the actions of public adjusters.

This bill became law on July 1, 2019.

SB 2167 – Insurance producer continuing education credit (creates 26.1-26-31.9; amends 26.1-26-02, 26.1-26-35). - If a producer is an active member of a professional insurance association the commissioner may grant up to four hours of continuing education credit for each two-year reporting period. No more than two credits may be given for each calendar year. One hour of active participation equates to one hour of continuing education credit. This credit does not apply to ethics.

If a producer or consultant claims continuing education hours through active participation, the professional insurance association shall verify the claimed active participation.

COMPANY LICENSING AND EXAMINATIONS

HB 1176 – County mutual insurance companies (amends chapter 26.1-13; repeals certain sections in chapter 26.1-13). This bill made several changes to modernize the statutes governing county mutual insurance companies. The first change was to increase the number of counties that the county mutual can write business in from 30 to 40. The annual meeting language within the statute was updated to allow the meeting to be held at a date and time as prescribed by the company from the second Thursday in March.

In addition, the county mutuals are now allowed to maintain their principal office outside of their approved operating territory.

The language governing the reinsurance of county mutuals was updated to allow county mutuals to enter into negotiated reinsurance agreements between each other. The Commissioner now must approve any reinsurance agreement between county mutuals.

The bill also removed the assessment language from the statute and now includes the county mutuals in the North Dakota Insurance Guaranty Association (NDIGA).

SB 2076 – Corporate governance (new chapter 26.1-10.3). This bill requires all North Dakota domestic insurers to annually provide a disclosure of its corporate governance structure, policies, and practices to the Department. This disclosure will aid the Department in the understanding of an insurer's corporate governance framework.

LEGAL

HB 1137 – Electronic delivery (creates two new sections to chapter 26.1-02; repeals 26.1-39-26). Offers an opt-in feature on all business lines to receive and access policy information through company secure websites and email notifications.

HB 1138 – Annual privacy notices (amends 26.1-02-27(2)). This legislation changes the law concerning the sharing of nonpublic personal information. Insurance companies, nonprofit health service corporations, and health maintenance organizations are not required to send annual privacy notices to consumers as long as the insurer has not changed its policies and practices since the most recent notice sent to consumers.

HB 1139 – Confidentiality of Insurance Department records (creates 26.1-02-31, amends 26.1-02-30). Requires that documents and other information, including the contents of an insurer's claim file submitted to the Department in response to a consumer assistance request or complaint, is confidential and not subject to the state's open records laws. The commissioner may disclose the subject matter of the assistance request or complaint, provide a general description of the disposition of the request or complaint, and use the document or other information for a regulatory or legal action brought as part of the official duties of the commissioner.

HB 1142 – Interpretation of the State's insurance laws (new section to chapter 26.1-02). This legislation states that the courts of North Dakota may not apply, give weight to, or afford recognition to, the American Law Institute's "Restatement of the Law, Liability Insurance" as an authoritative reference regarding interpretation of North Dakota laws, rules, and principles of insurance law.

HB 1144 – Fees for insurance services (creates section 26.1-26-04.1). An insurance producer may collect both a commission and a fee on commercial business. Written disclosure is required disclosing the following:

- (1) The nature of the services for which the fees will be charged along with a separate itemization of the amount of the fees;
- (2) That the fees are charged in addition to any premiums paid;
- (3) That if the insurance producer is also an appointed agent of an insurer with which coverage is being considered for placement, a statement that the insurance producer also represents the insurer in the transaction and owes a duty of loyalty to the insurer; and
- (4) That if the insurance producer is to receive a commission from the sale of an insurance policy related to the services rendered, a statement clearly and completely disclosing that : (a) the insurance producer will receive a commission from the insurer which is paid from the premiums owed for the insurance; and (b) the amount of commission received by the insurance producer may differ depending on the product sold and the insurer.

A producer charging a fee for services rendered for risk management services under this law owes the person to be charged a higher standard of care than the ordinary standard of care otherwise owed by an insurance producer to fully advise the party to be charged as to the party's insurance needs, including the duty to inform the person to be charged as to a potential source of risk and to recommend, if available, insurance coverage for that risk.

The disclosure required by this section must be signed and dated by both the producer and the party to be charged and must be provided on a form approved by the commissioner. The producer shall retain the signed disclosure form required by this legislation for not less than five years following completion of the service.

An insurance producer may charge an individual, for personal or commercial lines, a fee for paying agency-billed premiums and fees by credit card or other electronic means, if the fee is disclosed to the client in writing and agreed to by the client in writing.

SB 2010 – Rebating (amends 26.1-04-03(8)(c), 26.1-04-06(2), and 26.1-25-16(2)). This legislation allows for insurance producers to make gifts to 501(c)(3) charitable organizations even if the gift induces an individual to obtain a quote for an insurance contract from the insurance producer.

This legislation became law on July 1, 2019.

SB 2077 – Insurance fraud (amends 26.1-02.1-05). This bill states that the value of the claim associated with the insurance fraud (what the company would have paid on the fraudulent claim) determines the criminal offense level, as opposed to the amount of money the defendant believed he or she would be obtaining from the fraudulent insurance claim. It also amended the statute of limitations language so the statute of limitations will begin running upon the date the fraud was discovered, as opposed to the date the fraud occurred.

LIFE AND HEALTH

HB 1028– Public Employees Retirement System (PERS) self-insurance plans for health benefits coverage (creates chapter 26.1-36.6 and adds a new section to chapter 54-52.1, amends 26.1-07.1-01, chapter 54-52.1, repeals certain sections of 54-52.1). This legislation outlines the requirements for a self-insured PERS health benefit plan and clarifies that this plan would be regulated by the Department.

The bill contained an emergency clause, and the law became effective March 6, 2019.

HB 1106 – Reinsurance Association of North Dakota (creates chapter 26.1-36.7; amends 26.1-03-07). This legislation creates the Reinsurance Association of North Dakota and establishes an invisible reinsurance pool for the individual health insurance market. Claim years in excess of \$100,000 and less than \$1 million will be paid by the reinsurance pool at 75% and the patient's health insurance company at 25%.

Authorizes the commissioner to assess small and large group health insurance plans written in the state to cover the state's portion of the funding of the reinsurance pool and authorizes insurance companies to deduct these assessments from premium taxes owed to the state.

The bill also requires the legislative management to study ways the state may be able to positively affect the current trend of health insurance premium rates increasing, with a focus on the high-risk and subsidized markets.

The bill had an emergency clause and became effective April 18, 2019. The bill also has an expiration date of December 31, 2021.

HB 1116 – Life and Health Guaranty Association (amends chapter 26.1-38.1 and repeals 26.1-38.1-17). This bill adds accident and health insurers to the assessment base of the North Dakota Life & Health Insurance Guaranty Association (NDLHIGA) in the event a long-term care insurer becomes insolvent and the association becomes obligated to pay the affected claimants or policyholders. In the event of a long-term care insolvency that requires the association to make an assessment, the assessment will be split on a 50-50 basis between the life insurers and the accident & health insurers. Health maintenance organizations (HMOs) were also added as members of the association.

In addition, if the association chooses to offer substitute coverage to policyholders affected by an insolvency, the rates must be actuarially justified and approved by the commissioner.

HB 1468 – Life Insurance policy disclosures (creates a new section to chapter 26.1-33) – A group life insurance policy which insures the life of a newborn child of the certificate holder may not include a provision delaying coverage on the life of the newborn child for a specified period, unless the existence and length of the waiting period is prominently disclosed in the certificate or rider or otherwise disclosed by the group policyholder to a certificate holder at the time the certificate holder becomes eligible or enrolls for the coverage.

An insurer with a life insurance policy issued before August 1, 2019, which contains a waiting period, is required to notify the certificate holder of the existence of that waiting period or notify the group policyholder, which upon receipt of such notice shall notify the certificate holders of the existence of that waiting period.

SB 2102 – Discount plans (creates chapter 26.1-53.1; repeals 26.1-53). This bill gives the commissioner additional regulatory authority in licensing of discount plans. It also requires that all marketing materials be filed with and approved by the Department prior to being used.

SB 2118 – Short term, limited duration (STLD) plans (creates 26.1-36-49, amends 26.1-36.4-02(2)&(3)). This bill further defines STLD plans. These plans can be no longer than six months, but allows for one six-month renewal for a total of up to twelve months with the renewal. Upon a renewal an insurer is not allowed to re-underwrite or apply a new rate/new risk class. A 15-day notification prior to renewal or end date of the policy is required to be sent to the consumer. All marketing materials are required to be filed with and approved by Department (prior approval) and the policy is only allowed to be sold through a licensed insurance agent (i.e.,

no robo call sales). Agents or insurers are required to maintain recorded calls for no less than a year after a policy terminates.

PROPERTY AND CAUSALTY

HB 1123 – Property and casualty risk rating (creates chapter 26.1-39). This bill allows for consumers/agents to assert a fire protection class which may be different than the standard class used by the insurer within 30 days of a quote, issuance, or renewal of a policy. The insured must present the insurer factual and credible information for the assertion. The insurer is obligated to implement this newly asserted class. The insurer then has 90 days to investigate the asserted class and either keep the asserted class or document the basis for reimplementing the original class back to the effective date of policy issuance or renewal. The insurer must inform the insured of its determination.

HB 1140 – Renewal of insurance policy with altered terms (amends 26.1-39-11, 26.1-40-01(4)&(5)). This legislation amends the definition of “renewal” in both the property and casualty insurance chapter (26.1-39) and the auto chapter (26.1-40). The law amended the definition of “renewal” to include a policy renewal where changes to a policy’s deductible, coverage or exclusions results in substantially equivalent coverage and the altered terms of the policy are provided to the insured in the notice of renewal. Further, the law distinguishes that the “renewal” definition does not equate to a “termination” of the policy.

HB 1156 – Inception and Termination times (created 26.1-39-27 and 26.1-39-28). This bill created two new sections in the property and casualty code in chapter 26.1-39. The first new section allows insurance companies to sell specific types of insurance policies with contract periods lasting less than 24 hours. The second new section provides authority for the commissioner to adopt rules for the implementation and administration of the chapter.

The bill creates an exception to the 24-hour policy period requirement for: (1) travel insurance; (2) event cancellation coverage insurance; and (3) unmanned aircraft liability insurance (drones). Unlike automobile and homeowners insurance, for example, these three specific types of insurance policies are not necessarily purchased in immediate succession of one another.

The bill contained an emergency clause and the law went into effect March 13, 2019.

HB 1181 – Guaranteed asset protection (“GAP”) waivers – This law defines “guaranteed asset protection waiver” as a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower’s finance agreement if there is a total physical damage loss or unrecovered theft of the motor vehicle. Essentially, GAP waivers cover the leftover balance you owe your bank on your auto loan that occurs when your auto insurance payment for a total loss or theft is not sufficient to cover the amount of the loan. This resulting gap between the claim payment and the total amount owed is covered by this GAP product.

This bill clarifies that a guaranteed asset protection waiver is not an insurance product and is exempt from North Dakota insurance regulations.

HB 1280 – Inception and expiration of insurance policies (amends 39-16.1-11) – This law prohibits insurance carriers from voiding an in-force policy after an auto accident has occurred. The amendment to subsection 6 of section 39-16.1-11 clarifies that an insurance company has the ability to void a motor vehicle liability policy when that application was made after an auto accident occurred.

HB 1391 – Regulation of self-service storage insurance (creates 26.1-26.9) – This bill creates a limited lines license for selling self-service storage insurance. An owner of a self-storage business may obtain a license from the Department to sell this insurance and the employees of that business can work under that license.

There are certain requirements outlined in the law that must be met for the Department to issue a license. The commissioner has regulatory authority, including investigatory authority, over the business activities relating to self-service storage units. The owner of the license is responsible for the employees' compliance.

This law was effective July 1, 2019.

SURPLUS LINES

HB 1075 – Surplus lines (amends chapter 26.1-44). This bill amends the existing surplus lines chapter in the insurance code in four different ways:

- (1) It changes the surplus lines policy placement, endorsement, audit and cancellation filing requirements from a 60-day rolling deadline to a quarterly deadline. Producers must still make the same filings, but the deadline is now two months after the end of the quarter in which the insurance was conducted. The annual report and deadline for payment of premium tax did not change.
- (2) It replaces the affidavit requirement with a signed statement certifying that the producer conducted the diligent search. Notarization of the diligent search statement is not required.
- (3) It removes the insurance producer's requirement to specify each state's attributable premium in the report of insurance placement. The producer now may report a total of all premium as a single figure in the report of placement.
- (4) It sets a fine cap of \$500 for each individual late filing. (The fine limit was previously \$25 a day and had no limit).

The bill contained an emergency clause, and the law became effective March 8, 2019.

The complete text of all legislative bills, resolutions and journals is available at www.legis.nd.gov.