

MICROFILM DIVIDER

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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2192

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2192

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2192

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 22, 2001

Tape Number	Side A	Side B	Meter #
1		x	6.4 to 28.8
Jan 23/01 2	x		21.4 to 30
Mar 20/01 1	x		25.3 to 38.1
Committee Clerk Signature <i>Doris E. Perry</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2192 relating to equity indexed life and annuity insurance contracts.

SENATOR TONY GRINDBERG, in favor of this bill.

PAT WARD, ACLI, NAIL, SF, ND Domestics. All insurance companies favor equity indexed life and annuity insurance contracts.

VANCE MAGNUSON, ND Insurance Dept.. This is not a new product, product is already there; it says what happens if company goes belly-up.

SENATOR ESPEGARD: This bill would determine liability based on set index if company goes out of business.

VANCE MAGNUSON: Yes, before, there was no guarantee in variable accounts now there will be.

SENATOR MUTCH: Who manages index or other external references?

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Senate Industry, Business and Labor Committee

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Hearing Date January 22, 2001.

VANCE MAGNUSON: Company could have a subdivision, affiliate or outside entity.

SENATOR MUTCH: Your department not involved in determining accuracy of index?

VANCE MAGNUSON: We are a prior approval state so we review the filings. Problem is this is a variable product not an FTC regulated product.

SENATOR D. MATHERN: What does "impaired" means?

VANCE MAGNUSON: A legal declaration company has fallen below certain requirements like capital/surplus ratio. May not be bankrupt, but impaired.

SENATOR KREBSBACH : Products already approved for sale in state, this only adds them to life and health guarantee association?

VANCE MAGNUSON: Yes.

SENATOR MUTCH: All member companies licensed to do business in ND, are assessed proportionately to make up for the deficiency.

VANCE MAGNUSON: Yes,

PAT WARD, ACLI, NAIL, SF, ND Domestics. In pre-session meeting this idea was discussed. This legislation would be for the benefit of the guarantee association. Earlier testimony was mistaken. Idea here is to repay this annuity contracts people have bought.

SENATOR KREBSBACH: This excludes restrictions for guarantee association?

VANCE MAGNUSON: Yes, they are considered like a life contract or an annuity contract. This policies already covered, lists requirements for coverage.

Hearing concluded pending further testimony in favor of this bill.

January 23, 2001. Tape 2-A-21.4 to 30. Committee reconvened. Discussion held. Written testimony submitted by JAMES C. BECDSTROM, Executive Director, NDL&HIGA

SENATOR KLEIN: Moved do pass. SENATOR TOLLEFSON: Seconded.

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Senate Industry, Business and Labor Committee
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Roll call vote: 7 yes; 0 no; 0 absent. Carrier: SENATOR ESPEGARD.

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Senate Industry, Business and Labor Committee

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Hearing Date January 22, 2001.

March 20, 2001. Tape 1-A-25.3 to 38.1

Committee reconvened. All members present. House amendments to bill studied.

Pat Ward, ND Domestic Insurance Companies, explained intent of amendments presented, to clarify. Urges committee to concur. In the time between the bill leaving the Senate and going to the House we became aware that in order for the bill to do what we wanted it to do some provisions would need to be included. Rather than waiting another session to do it we decided to do it now and these are the House amendments. Written testimony attached.

Discussion held.

Senator Krebsbach: Motion: accede to House amendments. **Senator Mathern**: Second.

Roll call vote: 7 yes; 0 no. Floor assignment: **Senator Espgaard**.

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:40 a.m.

Module No: SR-13-1574
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2192: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the Eleventh order on the calendar.

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2192

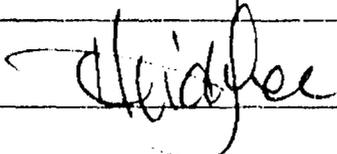
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2192

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 6, 2001

Tape Number	Side A	Side B	Meter #
2		X	20.4-47.2
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Chairman Berg: We'll open SB 2192.

Pat Ward: *ND Domestic Insurance Co.* **Written testimony in support of bill.**

Jim Beckstrom: *ND Life and Guarantee Assoc.* **Written testimony in support of bill.**

Rep Lemieux: How many dollars are in the fund right now?

Beckstrom: At the present time the Life and Health Association has approximately 4 million dollars in our accounts. When I say accounts the act requires us to have assessment accounts for life insurance, annuities, and for health insurance. We are not an advance funded organization similar to the FDIC because we're not a governmental agency. When an insolvency occurs we have authority under the act to assess all of our member companies in relation to the average of their last three years of ND premium. At the moment we have a little bit of a cushion, we have

not had to do an assessment of our member companies now for a couple of years, either from the standpoint of an assessment or from the standpoint of operating funds. Our member companies every year are required by the act of the members of our association.

Rep Lemieux: If you have a company on shaky ground, the assessment doesn't come until after that company goes out of business and it's assessed against all of their competitors.

Beckstrom: That's correct. The industry has an unusual way of doing it. The insurance department does an auditing of us and we are also audited by an outside auditor. The association itself, which was created by the ND Legislature, handles those funds.

Rep Lemieux: Where is the association actually located?

Beckstrom: My office is in Fargo, that's because the three members of the executive committee of the association are all with insurance companies in Fargo. To facilitate the meeting of that organization with their elected officials, the office is in Fargo. The property and casualty association office is in Bismarck.

Vice-Chairman Keiser: How are these moneys being used?

Beckstrom: Myself and the accountant are both independent contractors hired by the association to perform certain services for them. The directors of the association serve without pay and the executive committee does also. Office space is donated by one of the domestic ND companies.

Vice-Chairman Keiser: How will these 4 million potentially be used?

Beckstrom: We are required to use those moneys to fund ongoing and new insolvency's, a certain portion of it relates to health insurance line, annuities, and life insurance all separate. So long as there are annuity contracts out there that are not transferred to another carrier, every year we have to pay the portion of those annuities so that the payments can be made on a monthly

or quarterly or annual basis to the ND residents. We will be using the money in that way and we have no leeway in that regard.

Rep Froelich: How many insolvency's has there been in the last ten years?

Beckstrom: On the life and health side, in terms of the ones that have been licensed in ND and have ND policy holders that we would be protecting, there's probably been 30-40. Some of them are very small companies with only a few policy holders in ND. We are affected to some extent financially by those insolvency's.

Rep Lemieux: The companies that were operating that were selling products that were shaky, that have created these insolvency's, this fund you reassess, who pays the premiums? The average policy holder in ND?

Beckstrom: It's a national system. Each state has their own Association to protect the residents of that particular state. When an insolvency would occur, we would assess the insurance companies the insurance companies that are licensed in ND to fund the transfer of those policies to a new solvent insurance company. This is viewed as a cost of doing business and as a requirement to maintain the integrity of the life and health insurance industry.

Vice-Chairman Keiser: In trying to place a policy, especially adding this new form, the index policy, do you have the authority to go outside the state to firms that aren't licensed in the state for placement of that policy to get comparable value?

Beckstrom: In a normal situation we work with our national, that acts as an agent for all of the state associations that are affected by that insolvency and it has been very rare in the time I have been associated with the Association that the company that would be proposed to take over the contracts would not be licensed in ND when that has happened on one or two occasions, in one

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2192

Hearing Date March 6, 2001

instance the insurance department okayed it for the transfer because there were only one or two policy holders affected by it and the company may or may not have made a commitment to become licensed in ND. In one other instance the company made an arrangement either with a sister company or a subsidiary that was licensed in ND to take over that contract. By and large the companies we would deal with would be licensed in ND almost exclusively.

Rep M. Klein: You determine what company will take over a contract of a failed business?

Beckstrom: Yes. In a normal situation our national organization which is called National Organization of Life and Health Insurance Associations, has paid staff that go through a search to locate a carrier that would be willing to assume these contracts. Then each state would have to fund the reserves for those contracts and then the new carrier would take them over and the contracts would be almost entirely the same as it was initially issued.

Chairman Berg: We'll close the hearing on SB 2192. What are the committee's wishes?

Vice-Chairman Keiser: I move the adoption of the amendments.

Rep M. Klein: I second.

Motion carries

Vice-Chairman Keiser: I move a do pass as amended.

Rep M. Klein: I second.

13 yea, 0 nay, 2 absent

Carrier Rep. Koppang

PROPOSED AMENDMENTS TO SENATE BILL NO. 2192

Page 1, line 1, after "to" insert "create and enact a new subsection to section 26.1-38.1-05 of the North Dakota Century Code, relating to the powers and duties of a life and health insurance guaranty association; and to"

Page 1, line 12, overstrike "it" and insert immediately thereafter "the portion of the policy or contract" and after "based" insert "or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value"

Page 3, after line 24, insert:

"SECTION 2. A new subsection to section 26.1-38.1-05 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Subject to approval of the receivership court, the association, in carrying out association duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, may issue substitute coverage for a policy or contract that provides a rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value by issuing an alternative policy or contract if:

- a. Instead of the index or other external reference provided in the replaced policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or different method for calculating interest or changes in value;
- b. There is no requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and
- c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms."

Renumber accordingly

Date: 3-6-01
 Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2192

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Keiser Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux	✓	
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby		
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Koppang

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

REPORT OF STANDING COMMITTEE

SB 2192: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2192 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 26.1-38.1-05 of the North Dakota Century Code, relating to the powers and duties of a life and health insurance guaranty association; and to"

Page 1, line 12, overstrike "it" and insert immediately thereafter "the portion of the policy or contract" and after "based" insert "or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value"

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- a. Instead of the index or other external reference provided in the replaced policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or different method for calculating interest or changes in value;
- b. There is no requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and
- c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms."

Renumber accordingly

2001 TESTIMONY

SB 2192

S.B. # 2192

PROPOSED UPDATE TO NORTH DAKOTA LIFE AND
HEALTH INSURANCE GUARANTY ACT
2001 LEGISLATIVE SESSION

James C. Beckstrom, Executive Director
North Dakota Life and Health Insurance
Guaranty Association

Background

The North Dakota Life & Health Insurance Guaranty Act creating the Life and Health Insurance Guaranty Association was first adopted by the 1983 Legislature. It was updated by the 1989 and 1999 Legislatures. North Dakota's law has always closely followed the NAIC (National Association of Insurance Commissioners) Model Act.

Each state plus the District of Columbia and Puerto Rico have Guaranty Associations. Life and Health Insurance and Property and Casualty Insurance have separate guaranty acts in each state.

The current Life and Health Insurance Act is set forth in N.D.C.C. Chapter 26.1-38.1. It provides a statutory umbrella of continuing benefits to North Dakota residents when life and health insurance companies go into receivership or liquidation. Our Association has provided over \$20 million in benefits to North Dakota residents from 1983 to mid-year 2000.

Although similar in concept to the FDIC, all funding for the Association's policyholder benefits and administrative expenses are provided by member insurers. All life and health insurers licensed in North Dakota (subject to limited statutory exceptions) are required to be members. There is no state or federal government funding, and there is no funding request for this requested update legislation.

Current Update Proposal

The current bill results from new life and annuity insurance products developed and marketed by the life and annuity insurance industry since the 1999 legislative session referred to as equity indexed life and annuity policies. An equity indexed insurance product earns increases in policy or contract values based upon the performance of a predetermined external index, typically a stock market index such as the S & P 500. The policyholder's rate of return depends upon the performance of this external index, which may be up or down, but subject to guaranteed minimum non-forfeiture values by the Standard Nonforfeiture Law and the North Dakota Insurance Department. There is opportunity for participation in the upside potential of the equity market with downside protection.

This bill sets forth the Guaranty Association protection that will be provided for these products. It is the joint work product of the American Council of Life Insurance, private insurers, our

National Guaranty Association Organization (NOLHGA) and the NAIC. It has also been reviewed and approved by representatives of the North Dakota domestic life and annuity insurance companies and the North Dakota Insurance Department.

The update makes no changes to the core benefits previously established for North Dakota residents, but adds specific coverage protection for policyholders who have purchased these new products.

The Board of Directors of the Association and its Executive Committee have reviewed the change proposed in this legislation and believe that the North Dakota Guaranty Act should be updated by having the 2001 North Dakota Legislature adopt Senate Bill 2192.

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Thomas O. Smith, P.C.
Lance D. Schreiner, P.C.
James S. Hill, P.C.*[^]
Patrick J. Ward**[^]
Rebecca S. Thiem, P.C.*
Daniel S. Kuntz, P.C.
Brenda L. Blazer, P.C.
Jerry W. Evenson, P.C.*[^]
Lawrence A. Dopson

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

Lawrence E. King, P.C.*
Tracy Vigness Kolb
Shawnda R. Rold

Of Counsel
John A. Zuger

Also licensed in
Minnesota *
Montana/Illinois **

[^]Certified Civil Trial Specialist
National Board of Trial Advocacy

March 5, 2001

Testimony of Patrick J. Ward in Support of SB 2192

Dear Chairman Berg and members of the House IBL Committee:

I represent the North Dakota domestic insurance companies.

SB 2192 relates to equity indexed life and annuity insurance contracts.

The North Dakota Life and Health Insurance Guaranty Act creating the Life and Health Insurance Guaranty Association was first adopted by the 1983 Legislature. It has been updated by the 1989 and 1999 Legislatures. North Dakota's law has always closely followed the NAIC Model Act.

Every state plus the District of Columbia and Puerto Rico have Guaranty Associations.

The current life and health insurance guaranty act is set forth in N.D. Cent. Code Chapter 26.1-38.1. It provides a statutory umbrella of continuing benefits to North Dakota residents when life and health insurance companies go into receivership or liquidation. The North Dakota association has provided over \$20

Testimony of Patrick J. Ward In Support of SB 2192

March 5, 2001

Page 2

million in benefits to North Dakota residents since 1983.

Although similar in concept to the FDIC, all funding for the association's policyholder benefits and administrative expenses are funded by member insurers. All life and health insurers licensed in North Dakota are required to be members. There is no state or federal government funding involved and no funding is requested.

The version of SB 2192 passed by the Senate refers to equity indexed life and annuity products. The products give the participant an opportunity for participation in the upside potential of an equity market with downside insurance protection. SB 2192 sets forth the guaranty association protection that would be provided for these products. It is the joint work product of the American Council of Life Insurers, private insurers, the National Guaranty Association and the NAIC. It has been approved by the North Dakota Insurance Department and the North Dakota domestic life and annuity insurance companies.

The senate bill makes no changes to the core benefits previously established for North Dakota residents. It does add specific coverage protection for policyholders who have purchased these new products.

Testimony of Patrick J. Ward in Support of SB 2192

March 5, 2001

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We are also proposing two amendments to this committee. The first amendment can be inserted into the existing version of SB 2192. It is intended to make clear that the existing interest rate roll back goes into effect on policies of an insolvent insurer, would also apply to those products which have policy additions calculated by an index rather than an interest rate.

We are also proposing as an additional amendment, a new subsection to make clear that the court supervising liquidation of the insurer has the power to amend these types of policies, just as they would with older life insurance products, in order to transfer the policies to a new solvent insurer.

There was a numbering mix-up last session and two subsection 18s were left in the statute. That mix-up will be fixed. Existing subsection 23 will now be subsection 24. The new subsection will be subsection 25. The new subsection 25 will make clear that the court supervising liquidation has the power to amend the policies just as they would older life insurance products in order to transfer the policies to a new and solvent insurer.

We urge you to adopt the amendments we are proposing. We urge you to recommend a Do Pass as amended with those amendments to SB 2192.

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Thomas O. Smith, P.C.
Lance D. Schrelner, P.C.
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Jerry W. Evenson, P.C.^
Lawrence A. Dopson

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

Lawrence E. King, P.C.*
Tracy Vigness Kolb
Shawnda R. Reid

Of Counsel
John A. Zuger

Also licensed in
Minnesota *
Montana/Illinois **

^Certified Civil Trial Specialist
National Board of Trial Advocacy

March 20, 2001

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Dear Chairman Mutch and members of the Senate IBL Committee:

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SB 2192 relates to equity indexed life and annuity insurance contracts.

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The senate bill makes no changes to the core benefits previously established for North Dakota residents. It does add specific coverage protection for policyholders who have purchased these new products.

Testimony of Patrick J. Ward in Support of SB 2192

March 20, 2001

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The House has approved and we are also proposing two amendments to this committee. The first amendment is inserted into the existing version of SB 2192. It is intended to make clear that the existing interest rate roll back goes into effect on policies of an insolvent insurer, would also apply to those products which have policy additions calculated by an index rather than an interest rate.

We are also proposing as an additional amendment, a new subsection to make clear that the court supervising liquidation of the insurer has the power to amend these types of policies, just as they would with older life insurance products, in order to transfer the policies to a new solvent insurer.

There was a numbering mix-up last session and two subsection 18s were left in the statute. That mix-up will be fixed. Existing subsection 23 will now be subsection 24. The new subsection will be subsection 25. The new subsection 25 will make clear that the court supervising liquidation has the power to amend the policies just as they would older life insurance products in order to transfer the policies to a new and solvent insurer.

We urge you to adopt the amendments we are proposing. We urge you to recommend a Do Pass as amended with House amendments to SB 2192.