

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1274

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1274

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1274

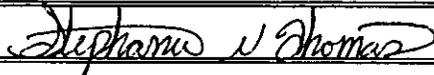
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1490

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing in HB 1274.

Rebecca Ternes, Deputy Insurance Commissioner: See written testimony #1

Rep. Kasper: On this bill the way we strike out the words pay dividends, how does that striking out have to do with any non profit retail company moving dividends from one of the subsidy areas to another subsidy area, opposed to the intent of the bill to being able to pay it off to members who overpaid their premiums?

Rebecca: I don't believe it does that.

Chuck Johnson, ND Insurance Department: We only have one non profit digital company here in ND, so this bill does not affect it, so there aren't any others that would be affected. With respect to other mutual companies, and if they have affiliates, those companies just can't push money around and distribute it from one entity to another, especially an affiliate. Mutual companies are owned by the members, so the monies in them, the mutual company would have to go to the members.

Rep. Kasper: If a non profit mutual owns a for-profit, this would not allow dividends to be moved from one slightly non profit to a for-profit, which then the dividends could go some other place, as opposed to the intent of the bill.

Chuck: That is correct.

Rep. Keiser: At the commissioner's instructions, they were able to pay a premium refund, but not a dividend. What is the advantage of them not continuing to pay a premium refund, versus a dividend?

Rebecca: It is a bit of semantics, and that is one of the reasons we asked for the opinion, to say that this isn't a dividend in the same meaning as a true definition of a dividend, which is cooperation to stockholders. That's why you kept hearing the term refund versus dividend. We have pretty specific statutes. We prefer the term refund, so that it is very clear that it is going back to the people who help to build the surplus, and there would be nothing to prohibit them from continuing to do this in the future.

Rep. Nottestad: If this new language would have been in place, would it have in any way changed the groups that you see the refunds? I know many senior citizens who have supplemental expected a refund, and obviously did not get it.

Rebecca: No, it would not have changed who got the refund. We did get some questions about that, and most of those questions we did get to the company directly to answer them. In simple terms, the groups that received the refunds were those that contributed to the surplus, and depending on the product, they may not have contributed to the surplus.

Rep. Keiser: Can the company treat money differently with a premium refund from a dividend? Is there any flexibility with one versus the other, or are they in fact the same thing, except that are code says dividend and not premium refund?

Rebecca: I would say yes, it's the definition.

Rep. Kasper: If this amendment had said, acceptance provided in subsection 5 of non-profit mutual insurance company may pay a dividend in the event the surplus has grown to a point

that a dividend would be good business, or something like that, would that have messed up what you're concerned about on the rebate area?

Rebecca: I believe the intent would be the same.

Rep. Johnson: I move a do pass.

Rep. Clark: Second.

Roll call vote was taken. 10 Yeas, 0 Nays, 4 Absent, Carrier: Rep. Kasper

Hearing closed.

Date: 1-22-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1274

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep. Johnson Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch			Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby					
Rep. Vigasaa	X				

Total Yes 10 No 0

Absent 4

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE (410)
January 22, 2007 12:04 p.m.

Module No: HR-14-0941
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1274: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING).
HB 1274 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1274

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1274

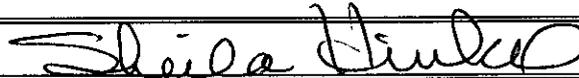
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4148**

Committee Clerk Signature



Payment of dividends, Nonprofit Mutual Insurance Company:

Jim Poolman – Insurance Commissioner - In Favor

TESTIMONY # 1 *Covered Testimony*

1274 changes the statute changes the not-for-profit insurance companies to pay out for business ____.

S Klein: So all we're doing is addressing the issue that came up with blue Cross and this would have taken care of it if it were more clearly stated in the statute.

Jim P: That is correct.

S Potter: If they were to give back dividends, would those go to, how about those that lapsed their coverage? Would this be current policy holders, previous?

Jim P: Under the premium refund that was given, it was decided by BC/BS to give those premiums back if you were a policy holder in August of 2006, so the same issues apply under that situation that they would apply under the dividends situation.

S Potter: There's no nose under the tent here, we can't end up with them....

Jim P: The only nose under the tent is MINE, who believes that those dollars are the premium payers, the company ought to have the ability to give some back.

S Potter: Through the rate authority, do you have any rate authority over these guys, couldn't you order reductions, or not?

Jim P: I have a LOT of rate authority over BC/BS and I could have artificially suppressed rates. If we were to suppress the rate, the rates still go up, once it was used up, you have a large increase.

S Heitkamp: The genesis of this bill didn't begin in your office?

Jim P: It did from the standpoint, we believe that there ought to be other options other than a premium refund back to consumers and it makes sense. If Farmers Union can give back a dividend to policy holders, then there is no other difference in this side of the business.

S Heitkamp: You are usually pretty good on the minority party on the bills.

Jim P: That is not on purpose, it is because we put this bill in at the very last minute.

S Potter: The point on dividends or premiums, I heard from the Blues the same thing. "We give back the dividend, but that's money that would have been used in the future to pay for these higher health care costs, and keep premiums from going up." I don't see the difference between reducing the premiums and paying the dividends.

Jim P: I disagree. Basically, if BC/BS were giving their financial outlook relating to their goal is, their goal is to have an underwriting gain every year to add dollars to surplus. To maintain that surplus, if the surplus grows because people didn't utilize healthcare, the goal is not to lose money or lose surplus, it's to maintain a surplus so if there is an unforeseen circumstance, there are dollars to pay claims. If that surplus grows to a level or as a regulator sees necessary, they need to give some back.

S Potter: I agree, but I don't see the difference in your scenario. What you're suggesting is we suppress premiums or lower premiums, they're going to go back up later, people are going to be unhappy because they jumped up, isn't that the same true with dividends?

Jim P: There is a disconnect. It is in the fact that you still have to increase premiums even with the premium refund we gave back in 2006. There still was a premium increase given to BC/BS for 2007, because you still have increasing costs of healthcare that you have to meet under the premiums coming every year to meet those offsets. The surplus is another separate issue.

S Andrist: What would be the difference between the premium refund and a dividend?

Jim P: A premium refund can be a flat amount. A formula would be different.

S Andrist: So this is more flexibility. They could still give a premium refund if they wanted to?

Jim P: Absolutely

S Heitkamp: We've heard that healthcare costs are going out of control, but yet we've had BC in front of us, that we've got some of the most affordable healthcare in ND compared to other areas and yet, there's a bill in front of us for putting money back. Are we all right when we stand up and say that we say we are out of control?

Jim P: I think you're accurate. There are two different issues. Meeting the yearly costs under the premiums that are collected and then transferred out into claims, those are constantly going up in multiples, double digits, for that. So the premium levels are going up to meet the increased costs of healthcare and you look at the surplus, as in 2005 you have projected health care costs the people of ND did not use healthcare as projected, then that money is added to surplus in an underwriting gain. We ought to have the ability to give some of that back to the consumers. Premiums will have to go up to cover costs, on the flip sides, if they don't meet those projections, people need to get something back.

S Behm: Am I accurate in saying that the insurance company has to have a certain level of surplus or percentage to draw out of?

Jim P: Yes, BC/BS is a not-for-profit insurance company, the standard that was used, they couldn't have more than 4 months of protected claims in reserve. Now changed the corporate

structure under the law, but if you were to use that same benchmark in 2006, giving money, they were at the four month levels of claims..

S Potter: In the bottom line of 2 months, how are they doing?

Jim P: Yes, almost 3. Companies say, what do you want us to have?

S Potter: Do we need any language in here or does state law somehow regulate the payment of dividends so we don't end up with Mike Ungent getting all of it?

Jim P: I'm not going to touch the last part of it. We regulate the payment of the dividend because we regulate the surplus.

S Potter: Is there some way to make sure the dividends are paid out equitably to all policy holders based on premium levels...

J Potter: When Farmers Union did it, they checked with our office to find out how to do it before it was going to be done.

S? O? N?

Rod St. Auben – Blue Cross/Blue Shield – Neutral

On the House side, we have the ability to clarify the refund, we had questions on doing the refund as if it was considered a dividend, it was specifically disallowed in the law. To my knowledge, we never intend to do a dividend. The "premium refund" is fine. The code says we can't issue a dividend. A refund is NOT considered a dividend. It is not intended to do dividends, but premium refunds.

S Klein: Are you asking one of us? We don't know.

Rod S: I wasn't here for the first part of the discussion.

S Klein: It was probably the same on the House side. Is this a bad thing?

Rod S: I don't think it's a bad thing. We have the Attorney General's opinion that the premium refund is not considered a dividend. So, we were allowed to do that. If this allows us to do dividends, I don't think we intend to do dividends. If that is what the intent is....

S Heitkamp: Let's make an assumptions that you don't want to pay dividends, you'd like to do it some other way, one day you find yourself with more money than you need and you need a vehicle to go back and give the money back to the people who sent it to you, would it be wrong to pass this bill and have this tool at your where-with-all to do it?

Rod S: No, I don't think there's anything wrong with passing the bill, I'm just not sure if the intent is is to allow us to do a dividend, I would question if we could do a dividend with this option.

S Heitkamp: The legal question, clearly the intent is to allow you to pay dividends, right? No questions about that. Point is, you don't have a problem sending out dividends if that's a tool in your tool kit?

Rod S: No we don't intend, we do not intend on doing dividends. Premium refunds, that might be a possibility. We hope that we don't get into that situation. This is the first year that we've budgeted that we'll be losing money based on the rates now. Claims VS Premiums.

The cost of a broken leg today is not going to be the same as 2 years from now, so that's why you have to build reserves up so you can meet that imaginary 2-4 month total.

S Andrist: I hear what Rod is saying, and I'm under the impression that a non-profit corporation issue dividends. We're passing a piece of useless legislation.

Jim Poolman responds.

If you look at what the Attorney General specifically states, there are several different ways to give back money and I don't want to have to contact the AG every time that BC wants to give money back or they're encouraged to give money back to the ND Insurance Dept. and get an

Attorney General opinion and rely on that opinion of whether or not it violates state law, THAT's why this piece of legislation is NOT useless. If it bumps up against the not-for-profit act, we still allow more flexibility and how Blue Cross gives more money back because the Attorney General at some point in time could declare that as a dividend and then we would be in trouble.

S Potter: This is to give you an opportunity commissioner, Rod St. Auben said that they're projecting a loss, what's your take on that?

Jim P: We're now in the month of February. 2 months does not make a year. You can budget however you want, but when we looked at the rates they applied for, they applied for an 11% rate increase, they got 7.____ for underwriting loss. That's why they're budgeting for an underwriting loss.

Rod St. Auben: This may solve this. If it's a situation where we want to refund money, why don't we just state in there, "can't pay dividends, but can refund excess reserves." We don't have any objections to what was done, and what the commissioner is saying is exactly right. What if we have another Attorney General come 20 years from now who comes 20 years from now and say, "no, now we are considering this a dividend." We don't know if this will take care of it.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1274 B

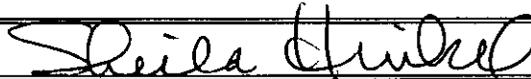
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4150**

Committee Clerk Signature



Minutes:

Motion for a DO PASS by S Andrist

S Potter: I really do think they could write it better. What don't they mean what they say. You can refund excess reserves to paid up policy holders, or something like that. I don't know enough about the dividends, what that means, "payment of dividends."

S Behm: Dividend to me always has meant that the company that's paying you the dividend made a good profit, then it should be called a dividend. If they're collecting too much premium, you just give them back the premium, I don't care.

S Potter: My question was about the level of dividends. The equity of dividends. How are they sorted out, and the word from the insurance department was, well the commissioner will have the approval over that, when did we ever give the commissioner approval over the dividends of this organization, and we're not doing it in this code, it's been prohibited until now and now we're passing this, but there doesn't seem to be any guidelines.

S Heitkamp: Go back to your local REC, there goes our dividends at the end of the year when you get a \$100 check at the end of the year, it isn't profit from the company, you spend \$200 on your electric bill, they're going to send you a check for it.

S Andrist: Capital Credit

S Heitkamp: That's a whole different thing,. I think S Potter's right. This is only as good as an Attorney General's opinion.

S Klein: The commissioner's last comments about whether or not; they went to the Attorney General's opinion on this last issue, if this squares it away so they don't have to go for another Attorney General's opinion, it doesn't do that much, I'm certainly in favor of supporting it because I still believe we're going to cut some of those corners and DON'T have to through the Attorney General's issues as they explained, that's why I'm supporting it.

S Potter: I'd vote for the bill as it is, I would, I don't see harm in it, but I really do think they could do better. I don't know if we shouldn't wait a day to do that, or is there a hurry to get it to the floor?

S Klein: No hurry to get it to the floor, I just everyone feels it's going to get better with age.

S Heitkamp: Maybe we should have S Potter go up and make a stand. Sit down with him and suggest to him what might happen, come back and make it better.

S Behm: Let him come back with a black eye.

S Heitkamp: I think he's enjoy it quite frankly.

Retraction on Bill

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1274 C**

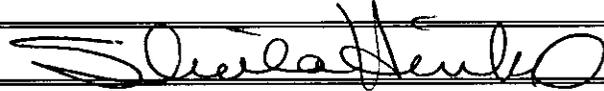
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 7, 2007**

Recorder Job Number: **4571**

Committee Clerk Signature



BC/BS Payment of Dividends:

S Potter: I was assigned as the committee of one to go and meet with the Insurance Commissioner and the question that I had...

S Heitkamp: What kind of mood was he in?

S Potter: He was jumpy. My question on the dividends for BC/BS dividends, my question, "is there regulation on those dividends?" Is there anything that they're not going to give all the dividends to the president of BC/BS or board of directors, or how are they going to do it in an equitable fashion. He assured me that he would run it by the attorneys and they said, "No, the commissioner has the authority on the distribution on the dividends; not that he can order them, but that before any non-profit or mutual pays out dividends, he gets to approve that order, so that part of the thing was fine. That's ok, but then BC/BS caught me in the hall and so I brought you this piece. What they're saying, is they can't give out dividends anyway, cause it's contrary to other sections in the code and offered an amendment. Personally, I would just say kill the bill. From my point of view, there's really no reason to do dividends or paybacks. It's not getting at anything substantial, then they'll raise your rates the very next year. If reserves reach a certain level, the commissioner doesn't give them the increases they want. We know

the cost of healthcare isn't going to start dropping. We don't need to force them to give the money back anyway.

S Heitkamp: One thing that's pretty clear is that the bill doesn't do anything at all. After talking to the folks from Blue Cross, then upstairs, I'm not sure they can even do this. So then it becomes, "Ok, if we don't pass this bill, have we empowered BC more and taken away some of that authority that the commissioner does use?" And the answer I got is, "no." The commissioner has the same ability to do what he did. "You've got enough cha-ching, here's where we need to be." I think for BC's problem is all that confluctuated like this and here we sit. How do you go through that process. When you start going down this...the reason I liked the bill in the beginning is, this seemed to me, most common sense way of doing it. Unless you can get a different opinion from the intern or the boys upstairs.

S Klein: I had a sense that BC and the Commissioner have been a little sideways since some issues and I didn't sense the testimony was for or against the bill, was like muddying the water, I explained that to the BC guys. What I heard is that this would provide the Insurance Commissioner that opportunity that we needed when he had to go get an Attorney General's opinion. The Blues say it doesn't, the Commissioner says it does. I guess I'm coming down on the side of the Commissioner only because I think he did a good job by saying, "you better give some of those dollars back," and they weren't happy with the way he handled that probably. We're going to let this one.... There's no fiscal note on it, we'll let her hang out there a little bit. I think what you said is correct. What are we really doing? It would provide us not having another Attorney General's opinion so they can do this again.

S Heitkamp: Can we NOT get someone from the commissioner's office, and not the Blue's in, but get someone from the LEGAL side of it. Someone from the AG's office (Attorney General's)

S Klein: We'll do that next week one day.

S Heitkamp: OK

S Behm: They will take a premium or bonus or something back there's lots of ways they can get around that, the Blues.

S Heitkamp: The biggest problem is that the Blues, if they have to reduce rates, and the next year and health care costs go up drastically, now we're sitting here with double digit plus rate increase, everybody hates the blues, when in fact they might have found themselves with one day with just a couple extra bucks in her pocket.

S Potter: That's my point, they gave \$26 million bucks in August and then rates went up an average of 7% in January.

S Hacker: I'm not THAT familiar with the way the rates have changed, but I do recall them standing there and saying, "Rates are going up double digits in some areas." He did not say "across the board." So, I don't think we were getting all the information of where the rates are going up, how much. It's group plans, single plans, they probably adjust differently.

S Potter: They do.

S Hacker: Maybe one went up a lot and one didn't go up and they took the average between the two and said, "Oh, 7%."

S Heitkamp: You don't have to go far back in history where it was double digit plus, to EVERYBODY

S Behm: Oh, yeah.

S Heitkamp: I remember when we were all like, "hmmmph."

S Klein: Didn't Sparb just stand up there the other day on the discussion on retired legislator issue and said we would have 20% increase on Blue Cross rate? I thought he said that, that day. For the next go-round.

 **CLOSE**



2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1274 D**

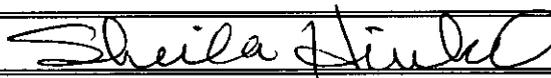
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 14, 2007**

Recorder Job Number: **5042**

Committee Clerk Signature



Insurance Commissioner's Bill – Payment of dividends:

S Klein: The Insurance Commissioner was pretty adamant that he wanted those words relating to the fact that he needed the Attorney General's (AG) opinion to make Blue Cross pay out to what they paid out last summer. They came up neutrally saying, I sense neutral really and then we sent Senator Potter to have a special meeting with the Insurance Commissioner (IC) and that's where we're at now.

S Potter: The results were, I was worried about them being able to pay dividends and without any guidelines that they could make them distribute the dividends in some way that was not fair. They could give them to the Board of Directors or staff. They assured me that that was not the case, that the has control over the dividends that they had given out. You all have that memo where they came from BC/BS, it doesn't matter whether you change this, we still can't pay dividends from this session of code. We'll prevent them from doing so.

We can fix it, they suggested amendments that allowed them to pay out from their reserves if there bottom of the report. I vote a DO NOT PASS on the bill.

S Klein: I sense there's a little friction between IC and Blue Cross. I have been visiting with them on how we are doing on that. I'm going to hang in there with the commissioner, he brought the bill forward to get him that flexibility he thought he needed which he didn't have

last summer that he had to go through, I'm going to be supporting the bill, in whatever way the committee would decide.

S Andrist: I think it's another solution looking for a problem, why should we want to restrain a non-profit mutual insurance company from paying the dividend if they choose to do so?

I move a DO NOT PASS by S Potter

Second by S Heitkamp

S Potter: The reason for a DO NOT PASS motion is that in this instance, this bill is wrong in a couple of ways. They still can't do it, they still won't be able to do dividends. The good intension that the IC had in bringing this forward is that he wants to be able to use the bully pulpit to force BC/BS to give refunds which they will then turn around and increase premiums. Unless the cost of health care starts going down, BC/BS premiums are always going up and for them to give a refund to one category of policy holders or another is just a shell game. It's not doing anything for the policy holders. They should keep the money and reduce the premiums in the future on the future policy holders.

S Behm: That's my opinion too.

S Klein: That is not the intent of the bill. I think Senator Heitkamp hit on that when we previously discussed it. It's all about actuary and where you think you need to be.

S Heitkamp: The only problem I have with it, whatever system that is in place, now worked last time. He made his point and did very well. I'm almost certain this is not something they can do, pay dividends. If the law lends people to believe that they could, then I got a problem. Is this a dangerous gate we're going down by putting it in there?

S Klein: As North Dakotans and we change the way we did business in '97, there were things that didn't get fixed quite the way we needed to. That's the only thing. Sitting through some of this insurance stuff is about as exciting You wonder why someone would want to do that

for a living. It certainly is lot more fun if you're an insurance salesman who has customers and deals with it.

S Potter: Serious comment, yes, the Commissioner was able to force a 26 million dollar rebate in some way to policy holders. Then Blue Cross/Blue Shield turned around and raised rates 7% in January on everybody. It's really just a political game being played there in getting that refund, that money would have just reduced the amount of increase we all paid in January.

S Heitkamp: I'm not as convinced of that. Because actuarially, it's all up to the bean counters anyway when it comes to that. I don't think they'd look at necessarily cash in the bank, they say they do as much as I'm convinced that they look at the increased costs from the healthcare industry, because it's such a crap shoot anyway. I'm going to support the motion that is on the floor which is on the floor which I didn't think I'd support. They flat out said, "We can't do this." Until someone can convince me that they can, I think they are sending out false hope.

S Behm: I think that's why the commissioner's face got awfully red that day.

S Andrist: I agree more with S Heitkamp. I think S Potter doesn't understand what's happened. They decided they collected too much money from these rate payers from one year and so they decided, maybe with pressure from the IC, that they ought to give some of it back. That doesn't change the fact that their actuarial studies indicated they were going to need an increase the following year. Now if they make a mistake in that, I suspect there would be a rebate again. I don't find this a shell game of any sort, just a pretty effective way of doing business in charging their customers who should be paying and not the customers who shouldn't.

S Hacker: Outside of this issue, if a company decided that they wanted to give a dividend some day, I think they understand the environment that was working and providing a tool that at some point the other non-profit loss changed, this would be changed.

S Andrist: If a company pays a dividend, can you imagine the trouble they'd be in if they started picking out some customers would get it and some customers weren't. This just doesn't happen in the world of business.

S Potter: In reference in your comment about anyone would want to be an insurance regulator, in 1984 when I was running for insurance commissioner, I listened to Buckshot Hofner each time get up and speak how how it had been his boyhood dream, and so I started each of my comments with, "it was not my boyhood dream" to becoming insurance commissioner.

Roll vote on HB 1274 DO NOT PASS – 5-2-0 Fails

S Klein: Would you like the commissioner out here for more information?

S Andrist: I move a **DO PASS**

Second from S Wanzek

Vote for DO PASS ON HB 1274 – 5-2-0 Passes

Date: 2.28.07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1274

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Andrist Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry			Senator Behm, Arthur		
Senator Hacker, Nick VC			Senator Heitkamp, Joel		
Senator Andrist, John			Senator Potter, Tracy		
Senator Wanzek, Terry					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 11:34 a.m.

Module No: SR-48-5281
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1274: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1274 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1274

#1

HOUSE BILL NO. 1274

Presented by: Rebecca L. Ternes
Deputy Commissioner
North Dakota Insurance Department

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

Date: January 22, 2007

TESTIMONY

Good morning, Chairman Keiser and members of the committee. My name is Rebecca Ternes and I am the Deputy Insurance Commissioner.

House Bill No. 1274 removes the provision that prohibits a nonprofit mutual insurance company from paying a dividend.

At this time, the bill will only affect the operation of Noridian Mutual Insurance Company dba Blue Cross Blue Shield of North Dakota, the only nonprofit mutual insurance company organized in North Dakota.

If you recall, not long ago, and at Commissioner Poolman's urging, Noridian announced that it had sufficient surplus to make a partial premium refund to certain policyholders. In November, the company refunded approximately 80 percent of the August premium payment. The refund was limited to fully-insured groups, bank depositor groups and student policyholders. The total refund resulted in \$26.6 million being returned to the organizations and people that helped to build the company's surplus.

Because North Dakota law (N.D. Cent. Code § 26.1-17-33.1) prohibits nonprofit mutuals from paying a "dividend," it was necessary to ask the Attorney General for an opinion as

to whether or not the premium refund was in effect a dividend and, therefore, prohibited or whether the payment was a legal premium refund.

The Attorney General determined that the premium refund was legal and was not a dividend.

This bill will allow nonprofit mutuals to distribute excess surplus in the future without a concern as to whether the payment is a legal premium refund or a prohibited dividend.

The provision in question became law in 1997 when Noridian converted from a nonprofit health service corporation to a nonprofit mutual insurance company.

The Attorney General's opinion, a copy of which is attached, discusses the concerns addressed by the law on pages 2 and 3. The concern was that Noridian might eventually convert to a for-profit company and that the assets in the nonprofit company would be distributed to stockholders, rather than to policyholders.

N.D. Cent. Code § 26.1-17-33.1 was passed preventing the converted Noridian from paying dividends to stockholders.

The last paragraph of the Attorney General's letter reads:

The intent of the Legislature in prohibiting a nonprofit mutual insurance company from paying dividends was to prohibit such a company from being able to pay dividends to stockholders that constituted a return on their investments. It was not intended to prohibit a nonprofit mutual insurance company from paying the kind of "dividends" that constitute a reduction in premiums as a result of distributing the surplus of the mutual insurance company. It is therefore my opinion that a nonprofit mutual insurance company may make a premium refund to its policyholders.

It should be noted that a for-profit mutual company such as Nodak or State Farm, is allowed to pay a dividend to its members.

This bill will allow a nonprofit mutual company to distribute its excess surplus to its members without question as to whether or not the payment is a prohibited dividend or an allowed premium refund.

I ask for a favorable recommendation from your committee.

Thank you. I will be happy to answer any questions that you might have.

LETTER OPINION
2006-L-30

September 14, 2006

The Honorable Jim Poolman
Commissioner
North Dakota Insurance Department
State Capitol
Bismarck, ND 58505

Dear Commissioner Poolman:

Thank you for asking whether a nonprofit mutual insurance company may make a premium refund to its policyholders. It is my opinion that a nonprofit mutual insurance company may make a premium refund to its policyholders.

ANALYSIS

Section 26.1-17-33.1(3), N.D.C.C. provides:

The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive. Except as authorized in subsections 4 and 5, a nonprofit mutual insurance company may not sell, lease, transfer, or dispose of all or substantially all property or assets, and may not merge or consolidate with, or acquire, a stock insurance company or agency, for-profit subsidiary, or any other corporation. Except as provided in subsection 5, a nonprofit mutual insurance company may not pay dividends or issue stock.¹

You ask whether a premium refund would be considered a dividend which nonprofit mutual insurance companies are prohibited from paying.

The meaning of "dividend" is ambiguous. "A dividend [in the insurance industry] is commonly considered a reduction of premium."² A dividend from a stock corporation is

¹ (Emphasis added).

² 5 Steven Plitt, Daniel Maldonado & Joshua D. Rogers, Couch on Insurance § 80:50 at 80-54 (3d ed. 2005).

considered a payment to the stockholders as a return on their investments.³ As one court noted with approval "while a dividend from a stock corporation represents profit, a dividend from a mutual insurer represents not a profit but a reduction in the amount of the premium to reflect the difference between the estimated cost and the actual cost of providing insurance."⁴ While the initial premium paid by a policyholder usually represents a somewhat inflated estimate of the cost of the policy, it is contemplated that when the cost is actually ascertained, the mutual insurance company will refund to the policyholders the excess premium, that is, the amount in excess of the company's actual cost.⁵ "[W]e agree that the distribution of divisible surplus by a mutual insurer differs from the payment of a dividend by a stock company. . . ."⁶

When a statute is ambiguous, the statutory rules of construction permit the use of extraneous sources, including the legislative history, to determine legislative intent.⁷ In addition, a court may consider the object sought to be attained, the circumstances under which it was enacted, and the consequences of a particular construction.⁸

The law prohibiting nonprofit mutual insurance companies from paying dividends and issuing stock was enacted in 1997. At the time, Blue Cross Blue Shield of North Dakota was planning to convert from a nonprofit health service corporation to a nonprofit mutual insurance company.⁹ There was a concern that Blue Cross Blue Shield could then convert to for-profit status.¹⁰ The North Dakota Medical Association's legal director testified that the 1997 changes proposed in S.B. 2270 would prohibit Blue Cross Blue Shield from accomplishing any form of conversion that would result in Blue Cross Blue Shield using its assets in a manner inconsistent with its nonprofit status.¹¹ The legal director later stated that the bill would clarify that the nonprofit corporation laws would

³ 18B Am. Jur. 2d Corporations § 998 (2d ed. 2004).

⁴ Spence v. Medical Mut. Liability Ins. Soc. of Maryland, 500 A.2d 1066, 1069 (Md. App. 1985).

⁵ Id.; Penn Mutual Life Insurance Co. v. Lederer, 252 U.S. 523, 525-26 (1920) ("It is of the essence of mutual insurance that the excess in the premium over the actual cost as later ascertained shall be returned to the policyholder.").

⁶ Spence v. Medical Mut. Liability Ins. Soc. of Maryland, 500 A.2d 1066, 1069 (Md. App. 1985).

⁷ N.D.C.C. § 1-02-39; N.D.A.G. 2006-L-03.

⁸ N.D.C.C. § 1-02-39(1), (2), and (5).

⁹ Hearing on S.B. 2270 Before the Senate Industry, Business, and Labor Committee, 1997 N.D. Leg. (Jan. 28) (testimony of Bruce Levi, legal director for the North Dakota Medical Association).

¹⁰ Id.

¹¹ Id.

LETTER OPINION 2006-L-30
September 14, 2006
Page 3

apply to a nonprofit mutual insurance company.¹² He stated "[t]he present nonprofit corporation laws prohibit dividends and the issuance of stock."¹³ The president of Blue Cross Blue Shield also testified that the board of Blue Cross Blue Shield believed that "net income should remain in the company for the benefit of our policyholders, not dispersed [sic] as stockholder dividends as it would under a for-profit stock structure."¹⁴

The intent of the Legislature in prohibiting a nonprofit mutual insurance company from paying dividends was to prohibit such a company from being able to pay dividends to stockholders that constituted a return on their investments. It was not intended to prohibit a nonprofit mutual insurance company from paying the kind of "dividends" that constitute a reduction in premiums as a result of distributing the surplus of the mutual insurance company. It is therefore my opinion that a nonprofit mutual insurance company may make a premium refund to its policyholders.

Sincerely,

Wayne Stenehjem
Attorney General

jak/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁵

¹² Hearing on S.B. 2270 Before the House Industry, Business, and Labor Committee, 1997 N.D. Leg. (Mar. 11) (testimony of Bruce Levi, legal director for the North Dakota Medical Association).

¹³ Id. The purpose of this prohibition is to assure that the corporation retains its non-profit status. N.D.A.G. Memorandum to Jenkins (Apr. 8, 1991).

¹⁴ Hearing on S.B. 2270 Before the Senate Industry, Business, and Labor Committee, 1997 N.D. Leg. (Feb. 5) (testimony of Michael Unhjem, President and CEO of Blue Cross Blue Shield).

¹⁵ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

HOUSE BILL NO. 1274

Presented by: Jim Poolman
Commissioner
North Dakota Insurance Department

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

Date: February 28, 2007

TESTIMONY

Good afternoon, Chairman Klein and members of the committee. My name is Jim Poolman and I am the Insurance Commissioner.

House Bill No. 1274 removes the provision that prohibits a nonprofit mutual insurance company from paying a dividend.

At this time, the bill will only affect the operation of Noridian Mutual Insurance Company dba Blue Cross Blue Shield of North Dakota, the only nonprofit mutual insurance company organized in North Dakota.

If you recall, not long ago, and at my urging, Noridian announced that it had sufficient surplus to make a partial premium refund to certain policyholders. In November, the company refunded approximately 80 percent of the August premium payment. The refund was limited to fully-insured groups, bank depositor groups and student policyholders. The total refund resulted in \$26.6 million being returned to the organizations and people that helped to build the company's surplus.

Because North Dakota law (N.D. Cent. Code § 26.1-17-33.1) prohibits nonprofit mutuals from paying a "dividend," it was necessary to ask the Attorney General

#1
1274

for an opinion as to whether or not the premium refund was in effect a dividend and, therefore, prohibited or whether the payment was a legal premium refund.

The Attorney General determined that the premium refund was legal and was not a dividend.

This bill will allow nonprofit mutuals to distribute excess surplus in the future without a concern as to whether the payment is a legal premium refund or a prohibited dividend.

The provision in question became law in 1997 when Noridian converted from a nonprofit health service corporation to a nonprofit mutual insurance company.

The Attorney General's opinion, a copy of which is attached, discusses the concerns addressed by the law on pages 2 and 3. The concern was that Noridian might eventually convert to a for-profit company and that the assets in the nonprofit company would be distributed to stockholders, rather than to policyholders.

N.D. Cent. Code § 26.1-17-33.1 was passed preventing the converted Noridian from paying dividends to stockholders.

The last paragraph of the Attorney General's letter reads:

The intent of the Legislature in prohibiting a non profit mutual insurance company from paying dividends was to prohibit such a company from being able to pay dividends to stockholders that constituted a return on their investments. It was not intended to prohibit a nonprofit mutual insurance company from paying the kind of "dividends" that constitute a reduction in premiums as a result of distributing the surplus of the mutual insurance company. It is therefore my opinion that a nonprofit mutual insurance company may make a premium refund to its policyholders.

It should be noted that a for-profit mutual company such as Nodak or State Farm, is allowed to pay a dividend to its members.

This bill will allow a nonprofit mutual company to distribute its excess surplus to its members without question as to whether or not the payment is a prohibited dividend or an allowed premium refund.

I ask for a favorable recommendation from your committee.

Thank you. I will be happy to answer any questions that you might have.

RE: 1274

Written by S. Potter

3-7-07

This is the memo I sent to the insurance department. Since drafting that memo, I have since found out that our Articles of Incorporation, when we mutualized, prohibit us from issuing dividends.

I would still argue that this bill would not allow us to pay dividends because of the fact that we must abide by the nonprofit corporation laws which strictly prohibits paying dividends. As I recall, the issue of paying dividends was a one of several major concerns at the time of mutualizing by the ND Medical Association. I assume that is one of the reasons our Articles of Incorporation were drafted to prohibit paying dividends and also because of the law.

Memo sent to the Insurance Commissioner and Deputy Commissioner, February 28, 2007

As per your suggestion I am including the Century Code references, which I feel conflict with your bill, if your intent is to allow BCBSND to pay dividends. As I indicated, I was concerned because the testimony in the Senate IBL committee was significantly different than what I had heard in the House IBL. When you testified in the House IBL committee, there was no discussion that this bill will specifically allow dividends. In fact in your testimony you stated "This bill will allow nonprofit mutuals to distribute excess surplus in the future without a concern as to whether the payment is a legal premium refund or a prohibited dividend." Nowhere in the testimony did you state that this bill will allow nonprofit mutuals to pay dividends.

Today, I was about 5 minutes late for the testimony because of another hearing I was testifying on. As I walked in, the Commissioner and the committee were discussing distributing dividends. I simply asked the question if the intent was to allow BCBSND to pay dividends, because we never have advocated this and gave previous assurances that this was not the intent when we mutualized. The Commissioner indicated that this would allow us to pay dividends. I then tried to clarify that I feel that there would still be a conflict in law because the Nonprofit Corporation laws specifically prohibit paying dividends. The Nonprofit Mutual statute states that nonprofit mutuals must also comply with the nonprofit corporation laws. As a result, removing this language may not accomplish what you intend. With that being said, I was still surprised because previously there was never any mention of allowing nonprofit mutuals to pay dividends. Instead, previously it was presented that the bill was to clarify what the Attorney General's opinion had concluded - that the legislative intent was not "to prohibit a nonprofit mutual insurance company from paying the kind of "dividends" that constitute a reduction in premiums as a result of distributing the surplus of the mutual insurance company."

The nonprofit mutual insurance statute states (Subsection 3 of section 26.1-17-33.1):

3. The nonprofit corporation laws apply to the operation and control of a nonprofit mutual insurance company converted from a nonprofit health service corporation under this section and supersede any conflicting provisions in title 26.1 unless title 26.1 is more restrictive. Except as authorized in subsections 4 and 5, a nonprofit mutual insurance company may not sell, lease, transfer, or dispose of all or substantially all property or assets, and may not merge or consolidate with, or acquire, a stock insurance company or agency, for-profit subsidiary, or any other corporation. Except as provided in subsection 5, a nonprofit mutual insurance company may not pay dividends or issue stock. (emphasis and underlined language added)

The nonprofit corporation laws state (Subsection 2 of section 10-33-04):

*2. A corporation may be incorporated under this chapter for any lawful nonprofit purpose, unless another statute requires incorporation under a different law. A corporation of this type engaging in conduct that is regulated by another statute is subject to the limitations of the other statute, **except it may not:***

a. Be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations, subdivisions, units, or agencies of the United States, a state, or a local government; or

*b. **Pay dividends or other pecuniary remuneration, directly or indirectly, to its members, excluding members that are nonprofit organizations or subdivisions, units, or agencies of the United States, a state, or a local government.** (emphasis added)*

My point was taking out the language "pay dividends or" in HB 1274 does not accomplish what was presented to the committee today - that being allowing nonprofit mutual insurance companies to pay dividends.

If you simply want to clarify that distributing excess premium reserves is not a dividend, I think you could simply accomplish this by changing the last sentence of HB 1274 to:

Except as provided in subsection 5, a nonprofit mutual insurance company may not pay dividends or issue stock, but is permitted to distribute excess premium reserves.

However, if your intent is to allow for dividends, I would argue that current law prohibits that and HB 1274 will not correct that because of the language in NDCC 10-33-04 and the fact that this bill will not make 26.1 **more restrictive**, but actually **less restrictive**. NDCC 10-33-04 says no dividends, while HB 1274 allows for the dividends.

One of our lawyers suggested slightly different language than I had offered in the memo and to your committee if it is your desire to clarify that we be allowed to refund excess premium reserves. It has the same effect as my offered suggestion. His suggestion is as follows:

Page 1, line 15, remove overstrike over "pay dividends or" and after the period add "As used in this subsection, the term "dividends" does not include the distribution of excess or surplus premium reserves held by the nonprofit mutual insurance company."