

**2013 HOUSE FINANCE AND TAXATION**

**HB 1098**

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1098  
January 15, 2013  
JB # 17230

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A Bill relating to disclosure of tax return information; relating to insurance producer license suspension, revocation, or refusal.

### Minutes:

*Attached testimony #1*

**Chairman Belter:** Opened hearing on HB 1098.

**Mary Hoberg, Legal Counsel for North Dakota Insurance Department:** See attached testimony #1.

**Vice Chairman Headland:** Does the tax commissioner currently have the ability to take action against an insurance agency for nonpayment of state taxes?

**Mary Hoberg:** I'm not the most knowledgeable person in this room about what the tax commissioner can do. I am going to say yes that there is authority but I would leave it to someone else to expand on that. But it is the law that you must pay your taxes so there is that tax commissioner authority. That would not be an action against the status of the license; it would be against the licensee as a taxpayer.

**Representative Zaiser:** Is there a possibility of abuse and if so is there some sort of checks and balances system within the department to prevent any abuse?

**Mary Hoberg:** Are you looking at possible abuse within the insurance commissioners proceeding against a producer?

**Representative Zaiser:** Correct.

**Mary Hoberg:** There is an extensive process in the insurance department to look at violations by a producer. It is not a decision by any one individual; it goes through several teams of individuals. The insurance commissioner personally makes the ultimate decision about whether or not to bring an action against a license. There are checks and balances and there is a very thorough investigation.

**Chairman Belter:** Does the insurance commissioner have the authority if he suspects that income tax has not been paid to notify the tax department?

**Mary Hoberg:** I am not aware of any restriction on the insurance commissioner's ability to notify another agency. I'm not aware that we have done that as part of our practice. These questions always have to be examined in terms of the laws about passing information. I don't believe that particular issue has come up. I can check more specifically if you would like.

**Chairman Belter:** We'll be asking some questions of the tax department on the issue. Dee, my question would be to the tax department is the insurance commissioner is asking for authority from you whether taxes have been paid or not. If taxes haven't been paid wouldn't you be working with the taxpayer to see that the taxes are paid?

**Donnita Wald, General Counsel for the Office of State Tax Commissioner:** There is authority for us and ability through our IRS exchange of information to obtain income information about particular insurance agents and such who haven't paid state income taxes. What's great about this bill for the tax department is that insurance agents for the most part are self-employed and so if they owe us any state tax and if the insurance department decides to pursue them then this is one way we can get them to start complying and start paying and filing state income tax returns. In the few years that I have been here the insurance department has never provided us with information that they've discovered. But we do have the ability to pursue and obtain information.

**Representative Marie Strinden:** Can you outline who the other government entities are that you can share information with?

**Donnita Wald:** They are in the same section of the code that we are amending today. Off the top of my head they include Workforce Safety, Job Service, law enforcement; the two that Miss Holberg identified in her testimony were unclaimed property, lottery division, and the Bank of North Dakota. All those entities are able to get the information only for limited purposes and only to administer to this section of law. We can also exchange with child support in the child support enforcement tax laws. I assisted Miss Holberg with the drafting of this bill so we are supportive of this bill.

**Chairman Belter:** The legislature has been very careful in keeping tax records confidential. Is there anything in this bill that would change the confidentiality or make it more subject to a loss of confidentiality in this particular legislation than what you are currently doing with these other state agencies you stated?

**Donnita Wald:** For the purposes of this bill the only time this information would become public is if the insurance department decided to take some legal action against that individual and that action ended up occurring in our court system. From what I understand with the complexity and the checks and balances in the insurance department I do believe for the most part a majority of the information will remain confidential. For the Bank of North Dakota's exchange of information that is for the collection of student loans. That information would be open to the public if a lawsuit was filed. Those are about the only times that information would become public. This is the same in the tax department, the

information remains confidential unless we file a lawsuit to enforce our tax laws. In unclaimed property we exchange information for trying to reach taxpayers for refund checks when they have moved and didn't leave a forwarding address.

**Chairman Belter:** But in the situation if this bill passes and you find out a person hasn't paid their state income tax the enforcement of getting the tax would be the responsibility of the tax department and not the insurance department, correct?

**Donnita Wald:** That is correct. That is our job. They just want to have the information so that they can do their job with respect to having their insurance producers comply with the insurance laws. For example, if we have a chronic nonfiler the insurance department asks us information about that insurance producer. The producer states they don't want to lose their license so they want to get into compliance with the income tax laws. This is where it benefits us. In a way they are helping us enforce.

**Chairman Belter:** Mary, could I have you come back up to the podium? Is this information going to impact the insurance agency's ability to do their insurance business? I kind of see a conflict here.

**Mary Hoberg:** I think perhaps this scenario may be in response to your question. A producer who owes state tax may also owe other debts. When a producer has other debts they can be tempted to use the money for the business in other ways other than paying their taxes.

**Representative Dockter:** So they have to be in the process of the insurance commissioner revoking a license and this is just one part in the process to complete an investigation in order to decide if you're going to suspend or revoke an insurance license?

**Mary Hoberg:** Yes it is one part and it doesn't come up in every investigation. I don't think it's our intent that it's going to be our routine. It would come up in limited circumstances where we have a reason to think this might be happening. It's just one part of the total of our enforcement activities.

**Representative Kelsh:** What other professions that require a state sanctioned license can also have their license pulled because they are delinquent on their income tax?

**Mary Hoberg:** I do not know the answer to that question but I believe it has to do with the handling of people's money and personal information. If you want me to get that information I could get back to you.

**Representative Owens:** I read this as I want to get the information from the tax department to share whether or not they've kept up with their state income tax because that associated with some complaints or other things could be symptomatic of elements that could indicate a much broader problem that could affect a number of people that have purchased insurance from this provider. This would greater harm a number of the citizens in North Dakota. Am I incorrect on this?

**Mary Hoberg:** It's probably more likely we would have more information on other violations before we would take up this matter of the possible state but it could work either way. Our inquiry could come at any point in the sequence of the investigation.

**Representative Owens:** That was my point. This isn't solely that they haven't paid their income tax so you're going to revoke their license.

**Mary Hoberg:** No. This is not about a fishing expedition from our department. This is so that we are operating on a full fact base of producers being in compliance or not in compliance with their responsibilities.

**Representative Hatlestad:** Do you need any more information from the tax department other than that a producer owes taxes or doesn't owe taxes?

**Mary Hoberg:** We felt that the information in this bill is enough information.

**Representative Kelsh:** How broad does this go out? Can an attorney who has control over someone's estate and has access to a lot of money as well, could that attorney also have their license suspended for nonpayment of income tax?

**Mary Hoberg:** In the case of attorneys we have the code of professional responsibility there is a possibility of a scenario that could lead to some kind of action of an attorney's license because of failure to pay state income tax. I don't know the specifics on that though.

**Chairman Belter:** Is there any other testimony on 1098? If not we will close the hearing on HB 1098.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1098  
January 23, 2013  
Job # 17611

Conference Committee

Committee Clerk Signature *Mary Brucker*

### Explanation or reason for introduction of bill/resolution:

A Bill relating to disclosure of tax return information; relating to insurance producer license suspension, revocation, or refusal.

### Minutes:

*Attached amendments #1*

**Vice Chairman Headland:** I believe Representative Dockter has amendments.

**Representative Dockter:** Distributed amendments. See attached amendment #1. This is the bill that when the state insurance commissioner wants to revoke or suspend an insurance agent's license they want the authority to be able to contact the tax department to see if they are up to date on their taxes. We wanted to tighten the language a bit. Reviewed amendment.

**Representative Klein:** I'd move the amendments.

**Representative Hatlestad:** Seconded.

**Representative Drovdal:** Are we assured now that there is going to be privacy when this is shared between the insurance commissioner and the tax commissioner that the insurance commissioner has enough controls in place so the records aren't going to accidentally slip out by a subordinate or something?

**Vice Chairman Headland:** I believe that's what the amendments are going to do. I wish somebody from the tax department was here to answer that.

**Representative Owens:** The original bill specifically tells them that the information obtained under this subsection is confidential and may only be used as identified in this section.

**Vice Chairman Headland:** All in favor of the proposed amendment. 14 aye 0 nay  
**MOTION PASSED.** What are the committee's wishes?

**Representative Drovdal:** I move a DO PASS AS AMENENDED.

**Representative Kelsh: SECONDED.**

**Vice Chairman Headland:** Everybody understands the bill or have any questions? If not will the clerk call the roll for a DO PASS AS AMENDED on HB 1098?

**ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT**

**Representative Kelsh will carry the bill.**

13.8063.01001  
Title.02000

Adopted by the Finance and Taxation  
Committee

January 23, 2013

1/23/13  
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1098

Page 1, line 19, after the underscored period insert "The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38 or has started an investigation of a suspected or actual fraudulent insurance act."

Page 2, line 2, after the underscored period insert "For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement."

Renumber accordingly

Date: 1-23-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1098

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By R. Klein Seconded By R. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Verbal  
vote  
PASSED  
Motion Carried.*

Date: 1-23-13  
 Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1098

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Drovdal Seconded By Rep Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	—		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Kelsh

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

**REPORT OF STANDING COMMITTEE**

**HB 1098: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1098 was placed on the Sixth order on the calendar.

Page 1, line 19, after the underscored period insert "The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38 or has started an investigation of a suspected or actual fraudulent insurance act."

Page 2, line 2, after the underscored period insert "For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement."

Renumber accordingly

**2013 SENATE FINANCE AND TAXATION**

**HB 1098**

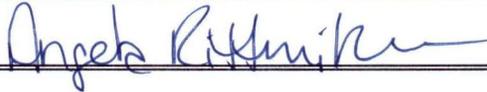
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1098  
3/6/2013  
Job Number 19474

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to disclosure of tax return information; and to amend and reenact subsection 18 of section 26.1-26-42 of the North Dakota Century Code, relating to insurance producer license suspension, revocation, or refusal.

### Minutes:

Testimony Attached

**Chairman Cook** opened the hearing on HB 1098.

**Mary Hoberg, North Dakota Insurance Department** - See attached testimony 1 in favor of HB 1098.

**Vice Chairman Campbell** - What was the reason that the Tax Commissioner couldn't report to the Insurance Commissioner?

**Mary Hoberg** - I do not know for a fact why this has not existed in the past. My point of departure would be that the law is very protective of taxpayer confidentiality.

**Senator Triplett** - You mention a couple of times that changes were made between the original version of the bill which was presented at the request of the Insurance Commissioner and the current version of the bill and I apologize I have not read the first version, but were there more consumer protections in the bill as it was originally written? You said the changes were made to address concerns raised by the agent community but I'm assuming the bill itself was brought basically as you said to protect the consumer community, so, have these compromises to get to the 2000 version compromised consumer protection in your mind or is it still a good consumer bill?

**Mary Hoberg** - There were no changes to consumer protections. The bill as you see it now has a couple of additions to meet the agent concerns but there was no removal of anything that would protect consumers in terms of the commissioner's ability to enforce the laws.

**Evan Mandigo, North Dakota Association of Independent Insurance Agents** - We stand in favor of this bill as it's engrossed.

**Norbert Mayer, North Dakota Association of Insurance and Financial Advisors** - We too support this bill. The amendment which basically starts on line 20 assured us that the commissioner could not at will request out tax information. There had to be reasonable cause as to why they would request this information and I think that goes on to protect the confidentiality of our tax records.

**Patrick Ward, State Farm Insurance Company and the Association of North Dakota Insurance Companies** - We support the bill also with the amendments that were provided on the House side. We think it's a good bill.

**Emily Thompson, Tax Department** - I would like to stand in support of this bill. We did work with Ms. Hoberg on the drafting of this bill and are comfortable with the provisions. To address the previous question that was asked, we do have strict confidentiality requirements within the tax code of course to protect taxpayer information. So until we do have these specific exemptions written into the law we do not disclose that information.

**Chairman Cook** closed the hearing on HB 1098.

**Senator Miller** - I'll move a **Do Pass**.

Seconded by **Vice Chairman Campbell**.

**Roll Call Vote 7-0-0**

Carried by **Vice Chairman Campbell**.

Date: 3-6-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1098

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Miller Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

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

**REPORT OF STANDING COMMITTEE**

**HB 1098, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)**  
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1098 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**HB 1098**

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TESTIMONY

**Presented by:** Mary Hoberg  
Legal Counsel  
North Dakota Insurance Department

**Before:** House Finance and Taxation Committee  
Representative Wesley Belter, Chairman

**Date:** January 15, 2013

Good morning, Chairman Belter and House Finance and Taxation Committee. My name is Mary Hoberg and I am Legal Counsel for the North Dakota Insurance Department. I am here in support of House Bill No. 1098.

This bill allows the Tax Commissioner to share specified items of information about an insurance licensee's state income tax status with the Insurance Commissioner upon the Insurance Commissioner's written request.

Under current law, the Insurance Commissioner has authority to take action against an insurance producer's license if the producer fails to pay state income tax. The problem is when the Insurance Commissioner suspects a producer has not paid state income tax, the Insurance Commissioner cannot get information from the Tax Commissioner to confirm whether that is true. Without this information, the Insurance Commissioner's ability to carry out his responsibility is limited. Another reason owing taxes is a concern to the Insurance Department is because financial responsibility is a condition of licensure. Producers who are not in compliance with tax laws may have other debts. Producers who cannot or do not manage their own money responsibly may put consumers at risk because producers handle consumers' money and their personal and financial information.

Section 1 of this bill rewords a portion of the insurance code to match more closely how the state income tax chapter is set up. Currently the Insurance Commissioner has

authority to take action against a licensee who knowingly fails to pay state income tax. N.D.C.C. § 26.1-26-42(18). The bill changes the reference from “state income tax” to “tax imposed by chapter 57-38” which is the state income tax chapter. Chapter 57-38 also imposes a duty on employers to withhold state income tax from wages paid to employees. The bill allows the Insurance Commissioner to take action where the producer fails to withhold state income tax from wages paid to employees or where the producer fails to file returns. The bill also drops the word “knowingly” from the grounds for action against a license because it is unnecessary and potentially undermines the requirement that a producer must be competent.

Under Section 2 of this bill, the Tax Commissioner could tell the Insurance Commissioner whether the producer has complied with the requirements of the income tax chapter. The Insurance Commissioner could use the information only for purposes of taking administrative action against a license, such as suspension or a fine, or for investigating fraudulent insurance acts. The Department is not looking to take licenses away just from a search of tax information. This information would likely be used only when there are other violations to consider.

Section 57-38-57 already permits the Tax Commissioner to share information with other state agencies including the Unclaimed Property Division, State Lottery, and Bank of North Dakota, for limited purposes. This bill would add the Insurance Commissioner, also for limited purposes that balance taxpayer privacy with consumer protection.

I thank you for your time and respectfully ask for your support of House Bill No. 1098. I would be happy to answer any questions you may have. Thank you.

January 22, 2013

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1098**

Page 1, line 19, after the period insert the following: "The insurance commissioner may make a written request only if the insurance commissioner has started an investigation of an applicant or licensee on grounds other than failure to comply with chapter 57-38, or has started an investigation of a suspected or actual fraudulent insurance act."

Page 2, line 2, after the period insert the following: "For the purposes of this subsection, a taxpayer is deemed in compliance with this chapter if the taxpayer has entered into an agreement with the tax commissioner to cure the taxpayer's noncompliance and the taxpayer is current with those obligations under the agreement."

Renumber accordingly

HOUSE BILL NO. 1098

**Presented by:** Mary Hoberg  
Legal Counsel  
North Dakota Insurance Department

**Before:** Senate Finance and Taxation Committee  
Senate Dwight Cook, Chairman

**Date:** March 6, 2013

**TESTIMONY**

Good morning, Chairman Cook and Senate Finance and Taxation Committee. My name is Mary Hoberg and I am Legal Counsel for the North Dakota Insurance Department. I am here in support of House Bill No. 1098.

This bill allows the Tax Commissioner to share specified items of information about an insurance licensee's state income tax status with the Insurance Commissioner. The items that can be disclosed are (1) whether the agent has complied with the requirements of Chapter 57-38; if the agent has not complied, then (2) tax type; (3) period for which return not filed; and (4) amount of tax, penalty and interest owed. The Insurance Commissioner would not get an agent's tax return. The Insurance Commissioner could use the information only for purposes of taking administrative action against a license or application, such as suspension or a fine, or for investigating fraudulent insurance acts.

Under current law, the Insurance Commissioner has authority to take action against an insurance producer's license if the producer fails to pay state income tax. The problem is that when the Insurance Commissioner suspects a producer has not paid state income tax, the Insurance Commissioner cannot get information from the Tax Commissioner to confirm whether that is true. Without this information, the Insurance Commissioner's ability to sanction an agent is limited. Agents owing back taxes are a concern to the Insurance Department because financial responsibility is a condition of licensure. Agents who cannot or do not manage their own money responsibly may put

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consumers at risk because producers handle consumers' money and their personal and financial information.

This bill was amended in the House Finance and Taxation Committee to address some concerns raised by the agent community. The Insurance Commissioner agreed to the amendments. The bill now limits when the Insurance Commissioner may request the tax information. The information may be requested only when the Insurance Commissioner is already investigating the agent on some other grounds or has started an investigation of a fraudulent insurance act. The bill now also allows an agent to be declared in compliance with Chapter 57-38 if the agent has made an agreement with the Tax Commissioner to pay back taxes and the agent is current on the payment plan.

Section 1 of this bill rewords a portion of the insurance code to match more closely how the state income tax chapter is set up. Currently the Insurance Commissioner has authority to take action against a licensee who knowingly fails to pay state income tax. N.D.C.C. § 26.1-26-42(18). The bill changes the reference from "state income tax" to "tax imposed by chapter 57-38". This change allows the Insurance Commissioner to take action when an agent fails to withhold state income tax from wages paid to the agent's employees or where an agent fails to file returns. The bill also drops the word "knowingly" because it is unnecessary and potentially undermines the requirement that an agent must be competent.

Section 57-38-57 already permits the Tax Commissioner to share information with other state agencies including the Unclaimed Property Division, State Lottery, and Bank of North Dakota, for limited purposes. This bill would add the Insurance Commissioner, also for limited purposes that balance taxpayer privacy with consumer protection for the insurance-buying public.

I thank you for your time and respectfully ask for your support of House Bill No. 1098. I would be happy to answer any questions you may have. Thank you.