

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Amendment to: HB 1132

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill amends existing law to expand the Commissioner's ability to obtain information on any member in an insurance holding company, to participate in supervisory colleges and group supervision and requires the submission of an enterprise risk analysis form.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill has no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill has no fiscal impact.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill has no fiscal impact.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill has no fiscal impact.

Name: Rebecca L. Ternes

Agency: Insurance Department

Telephone: 328-2440

Date Prepared: 12/30/2014

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: HB 1132

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	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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This bill has no fiscal impact.

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This bill has no fiscal impact.

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2015 HOUSE INDUSTRY, BUSINESS AND LABOR

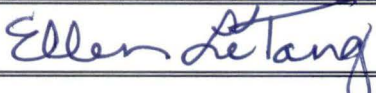
HB 1132

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1132
1/12/2015
21863

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Insurance holding company systems; and to provide a penalty.

Minutes:

Attachment 1-5

Chairman Keiser: Opens the hearing on HB 1132.

Ed Moody~Company Licensing Director, ND Insurance Department: (Attachment 1 & 2).

(7:20)

Representative Kasper: Page 2, lines 26-27, why are we deleting the securities broker under this section?

Moody: That was a change made in the model and I'm not sure what the rational is.

Representative Kasper: Why, changing the model answer is not a good enough answer. Why are we striking? Also, on page 3, line 21, what is the definition of reasonable?

Moody: I believe that determination is up to the commissioner. That is the discretionary authority that would be given to them if it became law.

Representative Kasper: Does this bill have any relationship where one of our major health insurance company that did business with out of state and was cross-wised with another state and is potentially facing legal action?

Moody: There is no relationship.

Representative M Nelson: Page 21, line 9, why have the clause in there where the commissioner has to initiate it? Why not just require financial statement from all affiliates?

Moody: I would imagine the reason it's given the discretionary tone, is that in some instances, it wouldn't be necessary, given the financial situation of the affiliates withing the

holding company group that the department would look at the financial information. Therefore, if we don't need it, there's no need for requesting it. It's a manner of efficiency.

Representative M Nelson: If you don't look at them, how do you develop this feeling?

Moody: We don't look at subsidiary information but we do get the individual components of the subsidiaries in the information that is reported to us. What we don't know is, what's within each one those subsidiaries.

Representative Kasper: Page 43 & 44, line 17 & line 25 & 26 is struck. You are striking Class A misdemeanor and putting in larger fines. Is there any place in the bill where you're judging that level of misdemeanor or felony has occurred or is that left up to the courts or is criminal liability wiped out in the bill?

Jeff Uben-General Counsel of the ND Insurance Department: I will answer Representative Kasper question. This will wipe out any criminal liability from the loss.

(15:00)

Representative Kasper: If a violation of the statute occurs and that the violation is so minor, even if it's intentional. If there is an intention to mislead the department, which could cost stockholders, we are wiping out any criminal penalty?

Ubben: In subsection 4 on page 44, there is still the ability to initiate or institute criminal proceedings. The criminal penalties were replaced with fines.

Representative Kasper: Does this mean if they institute criminal proceeding and found guilty, they could be charged with a crime or does it mean they all can be charged is the fine?

Ubben: It depends on the facts of each situation.

Representative Kasper: Would it be the criminal act or just the fine?

Ubben: It could be both.

(17:30)

Chairman Keiser: The way I read this, the commission may proceed through the courts on a criminal action basis, but by putting these new amounts, the fines can go way up. What it is actually doing is giving the regulators more authority to penalize?

Ubben: Yes.

Representative Beadle: It seems two different groups that are being targeted in these two different subsections? In subsection 5, looks as if you removed criminal proceeding element.

Ubben: You are correct.

Representative Becker: I'm looking for more clarification, in subsection 4, page 44, it seems that in the first part of subsection 4, it's talking about the aspects which can now only be fined and not about other aspects. It seems like there is a disconnect. What is the impetus to go away from any misdemeanors and go only towards fines?

Ubben: This is the way the NAIC has moved with this legislation in order to be consistent with how the other states in the nation are regulating this piece.

Representative Hanson: Can we request the reason behind the original drafting from wherever this bill came from?

Chairman Keiser: It would take a couple weeks to present it, but it's possible. What is the issue the NAIC trying to address in passing this as a model law? What are the primary issues relative to holding companies?

21:35

Moody: The changes were because they couldn't get access. The group holding companies were reluctant to provide information. This bill will allow them to do it and make our regulations consistent with the other international regulations.

Chairman Keiser: It's part of it. It is the case from a regulatory standpoint; regulators were experiencing additional problems with the establishment of captives. The regulators could easily come in on a market conduct or financial exam and examine an insurance company. If they are not disclosing all of the holding within the organization, it was becoming increasingly difficult for regulators to make appropriate judgments about the solvency of a company. Is this legislation not designed from the NAIC's perspective, to help regulators get a more complete picture?

Moody: That is the intent.

Chairman Keiser: That's the problem; you're not currently getting an appropriate representation because of financial condition of some companies due to the complex organizational structure.

Moody: Absolutely true.

24:48

Representative Kasper: Page 43, line 28, it appears to me that a person could be guilty of a civil penalty but they are taking away the intentional criminal violation here on page 44 and increasing and replacing with a larger penalty or fine. I think this bill is taking away all criminal liability.

Ubben: This is just a tiny sliver of title 26.1 and there are other provisions within 26.1 where criminal conduct could fall. There is much more to criminal action.

Representative Kasper: I like a letter from your department that says what you said and gives the statute that allows for criminal penalties to be imposed if this area of law is violated.

Ubben: I will draft that for you.

Chairman Keiser: This is a model bill; we can take the strikes out.

Jack McDonald: (Attachment 3). They are the same.

(30:47)

Representative Kasper: Would you be willing to work with the insurance department with the two sets of amendments propose and put them into one?

McDonald: Yes, I certainly would.

Chairman Keiser: Have you seen their amendments?

McDonald: Yes.

Chairman Keiser: We will hold them.

Levi Andrist~Represent the ACLI: Supports the bill with the amendments as long as they accurately reflects the work of the December 2014 NAIC.

Pat Ward~Represents several members of the insurance industry & ND Domestic Insurere: They do support this bill. We did ask if the commissioner would consider a small business exception similar to Texas & Maine. Here is a copy of an amendment to consider (Attachments 4 & 5). Page 44, paragraph 4 addresses the civil penalties.

37:50

Representative Kasper: Is there any difference on page 44, does it matter whether is it's a district court or any other court. Is that fine?

Ward: That is fine.

Chairman Keiser: Is there anyone else here to testify in support, opposition, neutral.

Closes the hearing to wait for information to take up the amendments.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1132
1/14/2015
21963

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Insurance holding company systems and provide a penalty.

Minutes:

Attachment 1 & 2

Chairman Keiser: Opens the working committee hearing on HB 1132

Ed Moody~Director of Company Licensing & Examinations of the North Dakota Insurance Department: (Attachment 1).

Representative Boschee: To accept the amendment proposed by the Insurance Department.

Representative Ruby: Second.

Voice vote, motion carries (there was no amendment number).

Chairman Keiser: Now we have a 2nd set of amendments presents by Pat Ward. (Attachment 2).

Moody: (Continues speaking from attachment 1).

Representative Kasper: Explain to me what enterprise risk is and why the small North Dakota companies should be required fill out something that may not apply to them. I also would like a copy of an enterprise risk report.

Moody: Every insurance company, regardless of its size, is subject to risk. When they aggregate risk, they have exposures that they need to manage. Enterprise risk is assessing those risks regardless of size. The report itself, the form F is the administrative code and that hasn't been passed yet, but we have the model act I could provide you.

Representative Kasper: The form F is something new and has not been formulated?

Moody: The form F has been put together as part of the model regulation. In North Dakota no.

Representative Kasper: The word enterprise, I would assume that the insurance department over the years, has been looking at the risk that each company has, you have a risk report. What is the importance of the term enterprise and how is it going to change the reporting requirement of the small North Dakota insurance companies?

Moody: The term enterprise is meant to encompass all the entities in the organization and the risks they bring to the organization.

Representative Kasper: Up until this point, you have not received risk reports from the insurance companies when they file their annual report. Does the department have no idea what the various risk elements have been out there in our state?

Moody: Currently the department receives a formal enterprise risk management report from any insurer. But part of our analysis and examinations, the enterprise risk are one of the elements that we look at and this is our primary focus.

Representative Kasper: The only difference is you now have a form that is completed, whereas in the past you looked to the reports that the insurance have filed with the department. You would have to depend on the reports, look for the risk and have to meet executives of the insurance companies. In addition, we are adding a form. Is that what this is about?

Moody: Yes, and we are doing it on an informal basis.

Representative Kasper: In the amendment it says three hundred million in premium or less, we might lose our accreditation. Is there a concern about the three hundred million dollars in premium but if it were a hundred million, it might be easier to talk to the accreditation area, or do you oppose an exemption period?

Moody: The department believe that every insurance entity by its very nature, should be (interrupted)

Representative Kasper: They do that, we've heard from your testimony. I'm wondering about the three hundred million threshold and your concern about accreditation.

Moody: Under the propose amendment, I believe there would be 7 insurance companies that would exempted. The largest among them has just over a hundred million dollars in premiums. Clearly, three hundred million is excessive. While we believe that every insurance company should be subject to it, especially for the North Dakota companies.

Representative Kasper: If his amendment said hundred fifty million and below, would your heartburn be as much as it is right now?

Moody: Yes, we are concern about insurers that write on a multi-state basis. If you say only small insurers that write in North Dakota only, that might be a different story.

Representative Kasper: Of the 7 companies, how many write in multi-state and only in North Dakota?

Moody: Five write only in North Dakota.

Representative Kasper: Do you know who the 2 are that write multi-state?

Moody: NoDak is one and I'm not sure of the other.

Representative M Nelson: Are there any non-accredited insurance commissioners in the country?

Moody: No, but there are some US Territories that are not accredited.

Representative M Nelson: You testified that 2 were putting a small company exclusion on their rule. How real is the loss of accreditation?

Moody: The issue you are referring to, those 2 states that weren't accredited, the review of the laws will not actually take place until after the effective date. I can't speak what will happen, but they have been identified as exceptions and it will be determined what actions will be taken.

Chairman Keiser: If they lose accreditation for the multi-state, conceivably, they would not accept our audits of those companies. Would they be audited by those other state?

Moody: It's been my experience that when we have states that weren't accredited, what was done was an accredited state was invited to the examinations and they would act as the lead. The non-accredited state would participate subject to the supervision. If we did the examining in your scenario and we were not accredited, it would not be accepted and therefore it would be left. Obviously that would try to be avoided because you have an unnecessary examination that served no purpose.

Chairman Keiser: It's difficult; can you provide Representative Kasper request a copy of the form F. Do we have that form available?

Moody: The form exists now only in the NAIC Form model regulation. We have not imposed the admin rules.

Chairman Keiser: There is a need for regulators to be able to see enterprises. But you did indicate that although it's a single form, they would have a shorter form and wouldn't be required to fill out much information?

Moody: I can make a copy of the model form from the report. There is not a separate report for different sizes. It would have the same number of items that need to be addressed but the elements within the items are going to be directly proportional to you size and complexity.

Chairman Keiser: They are required to complete the form and it makes it much easier.

21:00

Waiting for Pat Ward. 24:00

Chairman Keiser: We have adopted the proposal from the department and the NAMIC amendment, what are the wishes of the committee?

Representative Kasper: I would like to hold this bill.

Representative Kasper: I would like clarification what the enterprise risk report.

Moody: I want to address two questions. First question, is on page 2, lines 26-27, Representative Kasper asked why we are proposing the overstrike of the word "securities broker..." . This proposed amendment to the law would bring this securities broker described into the definition of what a person is. We are boarding the definition. Second question, we were asked why we were seeking to remove the language relating to criminal penalties found on page 44, lines 17, 19, 24, 25, and 26. When the bill was drafted, the counsel was concerned that if including these penalties in the law, would it be an NAIC accreditation issue. After speaking with the NAIC, the criminal penalties will not affect the insurance department's accreditation status; therefore the department has no abjection if the committee wishes to restore the criminal penalties currently overstruck. I would also like to add in the fraud section, that was recently amended to make those transactions a Class A felony. We would have more authority on to the fraud section.

Representative Kasper: If we keep it struck, there is another section of law that would allow for a higher severity of penalty.

Moody: That is correct.

Pat Ward: Did you get the Texas version of the amendment that I emailed? I don't know a lot about it but it was brought to my attention. It's NAMIC that has the issue. It makes sense to me that smaller companies shouldn't be held to the same standard. The form F is going to be a lot of additional work. Question is, is it really necessary in the case of our smaller domestic companies. It's a policy decision.

Representative Kasper: Refers to the discussion with Mr Moody earlier in testimony. I'm trying to get to the bottom of the extra work for the insurance companies of this enterprise risk form which seems to be only 2 pages.

Ward: My understanding, the format that the information is pulled together to go into the form, takes a time and a lot of work.

Representative Kasper: I asked the department about the three hundred million dollars, if that was a magic number. I asked what happens if we went to a hundred fifty million dollars, would that solved their concern a little bit. Where did the three hundred million dollars come from?

Ward: That is what Texas uses.

Representative Kasper: I asked to look at the form and I would ask that you would look at it too.

Ward: I've looked at it on line and it looked like a couple pages but there seemed to be several attachments as well.

Representative Kasper: Let's get to the bottom to see how onerous it's going to be for small companies in North Dakota.

Chairman Keiser: Do you want to still hold this bill.


Representative Kasper: I would like to still hold.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1132
1/14/2015
21976

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Insurance holding company systems; and to provide a penalty.

Minutes:

Chairman Keiser: Opens the work session on HB 1132. What are the wishes of the committee?

Audio was not working and it started working at the end.

Representative Kasper: Moves to accept Pat Ward's amendments.

Representative Frantsvog: Second.

Voice vote, amendments passes.

Chairman Keiser: What are the wishes of the committee?

Representative Kasper: I move for a Do Pass as Amended.

Representative Frantsvog: Second.

Roll call was taken for a Do Pass as Amended with 13 yes, 0 no, 2 absent and Representative Kasper is the carrier.

January 14, 2015

SP-1515

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1132

Page 2, line 18, after "4." insert:

""Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.

5. "

Page 2, line 20, replace "5." with "6."

Page 2, line 23, replace "6." with "7." and immediately thereafter insert:

""Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:

- a. Premiums written in at least three countries;
- b. The percentage of gross premiums written outside United States is at least ten percent of the insurance holding company system's total gross written premiums; and
- c. Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars.

8. "

Page 2, line 29, replace "7." with "9."

Page 3, line 1, replace "8." with "10."

Page 3, line 3, replace "9." with "11."

Page 21, line 13, after the underscored closing bracket insert "or the federal Securities Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.]"

Page 21, line 20, replace "for which" with "that"

Page 21, line 20, replace "are" with "is"

Page 21, line 20, after "responsible" insert "for"

Page 21, line 20, remove "which"

Page 21, line 21, remove "the board"

Page 21, line 21, remove the first "and" and insert immediately thereafter ", relating to"

Page 33, line 18, after the first "commissioner" insert "shall identify a single groupwide supervisor for an internationally active insurance group and"

Page 34, line 9, after the underscored period insert "However, a commissioner identified under this section as the groupwide supervisor may determine it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. The acknowledgment of the groupwide supervisor must be made after the consideration of the factors listed in subdivisions a through e, and must be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group."

Renumber accordingly

Date: Jan 14, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1132

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: Adopt Insurance Dept's amendments

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐

Motion Made By Rep Boschee Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote, motion carries to
adopt amendments from the
Insurance dept.

Date: Jan 14, 2015

Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1132**

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Kasper Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Bosch		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote, motion carried to accept Pat Ward's amendments

Date: Jan 14, 2015Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1132**

House Industry, Business & Labor Committee
☐ Subcommittee

 ☐ Conference Committee

Amendment LC# or Description: _____

 Recommendation: ☐ Adopt Amendment
 ☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
 ☒ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____Motion Made By Rep Kasper Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	Pb	
Representative Frantsvog	x		Representative Hanson	Pb	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 13 No 0Absent 0Floor Assignment Rep Kasper

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

REPORT OF STANDING COMMITTEE

HB 1132: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1132 was placed
on the Sixth order on the calendar.

Page 2, line 18, after "4." insert:

""Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.

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Page 2, line 20, replace "5." with "6."

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Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1132

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1132 Engrossed
3/11/2015
Job Number 24630

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to insurance holding company systems

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Edward Moody, Company Licensing Director for the North Dakota Insurance Department: Written Testimony Attached (1). (:10-3:00)

Chairman Klein: Asked for him to tell them about holding companies.

Edward Moody: Said in North Dakota there are a lot of standalone insurance companies but in the overall insurance realm kind of like banking, they are owned by a holding company and they also have a lot of other affiliated entities that are involved in that insurance holding company group. What this does is any insurance company that is part of a group is subject to the holding company law. (3:07-3:30)

Jack McDonald, America's Health Insurance Plans: Written Testimony Attached (2). (4:40-5:31)

Chairman Klein: Are we creating continued uniformity, is this a NAIC model, which a number of other states have adopted?

Jack McDonald: Yes it is along the same line. It could almost be called a uniform act but it is called a model act. It is required for a State to have this in order to be accredited.

Senator Sinner: This bill was amended in the House was it just housekeeping?

Jack McDonald: The changes in the House were more along a tweaking line to bring some more language into conforming of the national act.

Chairman Klein: We could ask Ed to come back to answer that.

Edward Moody: The revisions were due mostly between the version that basically was word for word from the model act and by the time it got to legislative council and back to us there were some changes so we had to take it back to the original language. In addition the group supervision piece of the model holding company act wasn't finished until January 15th, after the bill was submitted and we needed to add some revisions. (7:35-8:13)

Chairman Klein: Said they also had testimony from **John Gerni, Regional Vice President of State Relations for the American Council of Life Insurers**, Written Testimony Attached (3). He closed the hearing.

Senator Murphy: Moved a do pass.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Murphy will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1132 Engrossed**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Murphy Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

HB 1132, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1132 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1132

HOUSE BILL NO. 1132

Presented by: Edward Moody
Company Licensing Director
North Dakota Insurance Department

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

Date: January 12, 2015

TESTIMONY

Good afternoon, Chairman Keiser committee members. For the record, my name is Edward Moody and I am Chief Examiner and Director of the Company Licensing and Examinations Division of the North Dakota Insurance Department.

You have before you House Bill No. 1132 which amends existing insurance holding company systems (holding company) laws to reflect changes made to the National Association of Insurance Commissioners (NAIC) model holding company law which were made as part of the Solvency Modernization Initiative.

This bill modifies existing law relating to insurers that are part of a holding company to include the following:

- Expands the Commissioner's ability to evaluate any entity within an insurance holding company system;
- Enhances the regulator's rights to access books and records and compelling production of information;
- Establishes an expectation of funding with regard to regulator participation in supervisory colleges. (These represent meetings of regulators from multiple

countries that are designed to discuss the financial condition of particular insurance groups. State insurance regulators have held supervisory colleges for all U.S. firms that meet the current definition of an internationally active insurance group.)

- Establishes authority to act as the group wide supervisor for internationally active insurance holding company groups.
- Enhances corporate governance, such as Board of Directors and Senior Management responsibilities.
- Expands the Insurance Holding Company System Annual Registration Statement (Form B) to broaden requirements to include financial statements of all affiliates.
- Adds a new Form F (Enterprise Risk Report) that has also been introduced for firms to identify and report their enterprise risk. The Enterprise Risk Report (Form F) is to be submitted by all groups, regardless of size. The Form F requires disclosure of items that are relevant in understanding the risk of the group including the extent to which there is any potential for contagion risk within the group.

The amendments in House Bill No. 1132 will conform with recent changes to the model Holding Company Act included in the NAIC accreditation program and must be adopted by states by January 1, 2016, to ensure their accredited status. Under the accreditation program, established by the NAIC in 1990, the goal is for each state to adopt certain laws and rules so that multi-state life, health and property and casualty insurers are subject to consistent solvency regulation requirements. North Dakota has maintained its accredited status since 1992 by adopting and implementing the necessary standards to effectively regulate an insurer's corporate and financial affairs. Currently, the changes to the updated Holding Company Act have been adopted by 38 states.

The fiscal note on this bill indicates no fiscal impact.

Mr. Chairman, members of the committee, I am happy to answer any questions and urge a vote of "do pass" on House Bill No. 1132. Thank you.

January 12, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1132

Page 2, after line 17, insert:

- "4. "Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.

- 5. "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:
 - a. Premiums written in at least three countries;

 - b. The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums; and

 - c. Based on three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars."

Page 2, line 18, overstrike "4." and insert "6."

Page 2, line 20, replace "5." with "7."

Page 2, line 23, replace "6." with "8."

Page 2, line 29, replace "7." with "9."

Page 3, line 1, replace "8." with "10."

Page 3, line 3, replace "9." with "11."

Page 21, line 13, after the second bracket insert "or the Securities Exchange Act of 1934, as amended,"

Page 21, line 20, replace "for which" with "that", replace "are" with "is", after "responsible" insert "for", and remove the second "which"

Page 21, line 21, remove "the board" and remove the first "and"

Page 33, line 17, after the first "commissioner" insert "will identify a single groupwide supervisor for an internationally active insurance group and"

Page 34, after line 9, insert:

"However, a commissioner identified under this section as the groupwide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. The acknowledgement of the groupwide supervisor shall be made after consideration of the factors listed in subdivisions a through e, and shall be made in cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group."

Renumber accordingly

3

January 16, 2011

HOUSE INDUSTRY, BUSINESS & COMMITTEE HB 1132

CHAIRMAN KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of America's Health Insurance Plans or, as it is commonly known, AHIP.

AHIP is the national trade association representing the health insurance industry. Its members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual and small group insurance markets, and public programs such as Medicare and Medicaid.

We applaud the Insurance Commissioner for bringing HB 1132 forward. This is the National Association of Insurance Commissioners (NAIC) model Holding Company Act that is critical to continued accreditation by the Insurance Department.

We strongly support this bill and urge that you give it a DO PASS. However, there are just a few provisions that are a bit different from the model act. We urge you to consider the following amendments:

Reference to the Securities Exchange Act of 1934, should be included.

- On page 21, line 13, after [15 U.S.C. 77a et seq.] insert: "or the Securities Exchange Act of 1934, as amended".

We support the additions found in Section 9 on page 31, but believe that it would be enhanced with some additional definitions. For instance, there is a later reference to Groupwide Supervisor but there is no definition of that. And, there also needs to be a definition of who is being supervised. This would be an Internationally Active Insurance Group (IAIG). Therefore, we are recommending that the following two additions be made to the definitions in Section 1 on page one of the bill:

- "Groupwide supervisor." The regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under Section 10 to have sufficient significant contacts with the internationally active insurance group.

We believe it is important that the entities to be regulated by a Groupwide Supervisor be clearly identified so that regulators and companies know which companies are or are not part of an IAIG. Therefore, we recommend the following definition:

- “Internationally active insurance group.” An insurance holding company system that (1) includes an insurer registered under Section 5; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system’s total gross written premiums, and (c) based on three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).

During development of the model act there was broad agreement that to avoid the risk of duplicative or competing regulation, it was vital that there be only *one* groupwide supervisor. So, we recommend the following change:

- On page 33, line 18, after the first word “commissioner, “ insert “will identify a single groupwide supervisor for an internationally active insurance group and”

It is important that there be a provision for a successor groupwide supervisor in the event the current one is unable or unwilling to continue. There needs to be a clear process for determining who that would be. This brings predictability to the process, which is critical for both industry and regulators.

- Therefore, on page 34, at the end of line 9, we recommend adding: “However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

Thank you for your time and consideration. If you have any questions I would be glad to try to answer them.



Testimony in Support of HB 1132

House Industry, Business and Labor Committee

January 12, 2015

Chairman Keiser and members of the committee,

The American Council of Life Insurersⁱ supports the adoption of HB 1132, which is substantially similar to the NAIC Insurance Holding Company System Model Act as adopted in December 2010 and amended in December 2014. The ACLI is supportive of HB 1132 because it achieves the following:

- 1) The bill coordinates effective dates for enterprise risk reporting to avoid confusion and conflicting state-by-state requirements.
- 2) The bill includes appropriate confidentiality provisions of the model and North Dakota's participation in a master confidentiality agreement.
- 3) The bill is consistent with related projects focused on group supervision and enterprise risk management such as the U.S. Own Risk and Solvency Assessment (ORSA) (which is in SB 2131).

HB 1132 accomplishes each of these objectives.

Respectfully Submitted,

John Gerni

Senior Manager, State Government Affairs

ⁱThe American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums.

Jan 12, 2015

5

Page 23 of HB 1132

12. Except as provided in subsection 13, the ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. To the best of the ultimate controlling person's knowledge and belief, the report must identify the material risks within the insurance holding company system which could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

13. The ultimate controlling person of an insurer with total direct or assumed annual premiums of less than \$300 million excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program is not required to submit an enterprise risk report under Subsection 12. The ultimate controlling person of an insurer that is not in compliance with applicable risk-based capital standards or that is otherwise in hazardous condition, as determined by the commissioner, shall file an enterprise risk report required by Subsection 12 as directed by the commissioner.

14. The failure to file a registration statement or any summary of the registration statement ~~thereto~~ or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

12. The ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. The report must be appropriate to the nature, scale and complexity of the operations of the insurance holding company system. To the best of the ultimate controlling person's knowledge and belief, the report must identify the material risks within the insurance holding company system which could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

HOUSE BILL NO. 1132

Presented by: Ed Moody
Director of Company Licensing
North Dakota Insurance Department

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

Date: January 14, 2015

TESTIMONY

Good morning Chairman Keiser and committee members. My name is Ed Moody and I am the Director of the Company Licensing Division of North Dakota Insurance Department.

You have before you two sets of proposed amendments to House Bill No. 1132—one from the Insurance Department and one from AHIP which was brought forward by Jack McDonald, which seek to amend this bill to reflect changes made after the agency bill prefiling deadline to the NAIC model holding company law. We believe the amendments provided by the Department and AHIP are the same and ask the committee to adopt these amendments.

The committee also has before it a proposed amendment brought forward by NAMIC to add a small company exclusion from filing a Form F – The Enterprise Risk Management Report. The Department opposes this amendment.

This exact same small company exemption amendment presented by NAMIC was considered in the drafting of this model by the NAIC and was soundly rejected on the grounds that all insurers--large, medium, and small—are subject to the risks encompassed in this bill and should, therefore, not be excluded from having a system in place to guard against these risks.

According to Julie Garber, the Senior Accreditation Manager at the NAIC, the revisions contained by this bill will become required for the Insurance Department's accreditation on January 1, 2016. If a state is found to have adopted a premium threshold exemption for Form F, which is what the NAMIC amendment is, this will be reported to the NAIC's Audit Review Committee during its review process. The state will then bear the onus of demonstrating how our laws and regulations are "similar in force and no less effective" than the requirements of the model law. If the NAMIC amendment is adopted as a part of this law, it will be difficult, if not impossible, for the Department to make the case that North Dakota's law is similar in force and no less effective. Ultimately, the Audit Review Committee will determine the appropriate action, up to and including whether the North Dakota Insurance Department should lose its accreditation.

In summation, if the bill is passed with the proposed NAMIC amendment, the North Dakota Insurance Department will be brought before the Audit Review Committee and could very well lose its accreditation. One of the main consequences of the Insurance Department losing its accreditation is other states will not be able to rely on our financial solvency exams for the 15 domestic insurance companies that are also operating in other states. If this were to happen, these 15 North Dakota companies would have to make a business decision about whether to relocate to another state that is accredited. If any of these companies decide to leave North Dakota, the result would be a reduction in North Dakota jobs, a reduction in premium tax paid to the state, and fewer insurance options for North Dakota consumers.

In addition to these important facts, the Department believes the committee should also consider the principle behind the requirement of filing a Form F Enterprise Risk Management Report. As we all know, insurers are in the business of assessing risk. Therefore, it would seem reasonable that an insurance company operating in North Dakota writing \$300 million of revenue should have a full and complete understanding of the risks their operation faces and a system in place to guard against these risks. Preparing and filing a Form F Enterprise Risk Management Report is an integral part of

accurately understanding and preparing for the risks an insurance company of any size faces.

Finally, the Form F itself is flexible to the insurance company's size and complexity so that a smaller insurer can complete the Form F without being required to address the issues that may only apply to a much larger or more complex organization.

I also want to address two questions Representative Kasper asked of the Department during Monday's hearing. First, on page 2, lines 26-27, Representative Kasper asked why we are proposing to overstrike the words "securities broker performing no more than the usual and customary broker's function". This proposed amendment to the law would bring the securities broker described into the definition of what a "person" is under this law.

The Department believes it is important for everyone to be on a level playing field when it comes to complying with this law; therefore, we believe exemptions to who is a "person" under this law should be narrowly construed. We do not see a meritorious reason to treat a securities broker performing no more than the usual and customary broker's function differently under this law and, therefore, ask that this language remain overstruck.

We were also asked why we were seeking to remove the language relating to the criminal penalties found on page 44, lines 17, 19, 24, 25, and 26. When I drafted this bill, I was concerned that including these penalties in the law would be an NAIC accreditation issue. However, I spoke with the NAIC yesterday and have been informed that including these criminal penalties in the bill will not affect the Insurance Department's accreditation status. Therefore, the Department would have no objection if the committee wishes to restore the criminal penalties currently overstruck on page 44 of the bill.

Mr. Chairman and members of the committee, I am happy to answer any questions.



North Dakota Insurance Department

Adam W. Hamm, Commissioner

January 14, 2015

Honorable Representative Jim Kasper
House Industry, Business and Labor Committee
Peace Garden Room, State Capitol
Bismarck, ND 58505

RE: Applicable Statutes for Charging Criminal Offenses for Acts of Insurance Fraud
Committed by a Director, Officer, Employee, or Agent of an Insurance Company.

Dear Representative Kasper and Committee Members:

During a hearing held on January 12, 2015, before the House Industry, Business and Labor Committee on House Bill No. 1132, you asked me to provide you with statutes that could be used to criminally charge fraudulent insurance acts committed by a director, officer, employee, or agent of an insurance company.

N.D.C.C. § 26.1-02.1-02.1(1) outlaws fraudulent insurance acts. A "fraudulent insurance act" as defined by N.D.C.C. § 26.1-02.1-01(3) includes the following acts or omissions committed by a person knowingly and with intent to defraud:

- a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer, or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:
 1. A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction.
 2. The financial condition of an insurer or reinsurer.
- b. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.

pg 4

Honorable Representative Jim Kasper
House Industry, Business and Labor Committee
January 15, 2015
Page Two

Please note I have not included every fraudulent insurance act delineated under N.D.C.C. § 26.1-02.1-02.1, only those that appear relevant to your inquiry. Please also be advised that the criminal penalties for acts of insurance fraud and attempted insurance fraud range from the Class A felony level to the Class A misdemeanor level.

In addition, the Theft of Property statute found at N.D.C.C. § 12.1-23-02 could apply to certain sets of facts involving individuals who steal or otherwise illegally take money from insurance companies or from consumers. Again, the penalty level for theft of property and attempted theft of property ranges from the Class A felony level to the Class B misdemeanor level.

I hope you find this information helpful. I am available to answer any questions you may have.

Sincerely,



Jeff Ubben
General Counsel

JU/njb

Jan 14, 2015

2

Patrick Ward

From: Patrick Ward
Sent: Tuesday, January 13, 2015 4:58 PM
To: Kasper, Jim M.
Subject: Proposed amendment to HB 1132

Page 23, line 23 insert after 13. The ultimate controlling person of an insurer with total direct or assumed annual premiums of less than \$300 million excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program is not required to submit an enterprise risk report under Subsection 12. The ultimate controlling person of an insurer that is not in compliance with applicable risk-based capital standards or that is otherwise in hazardous condition, as determined by the commissioner, shall file an enterprise risk report required by Subsection 12 as directed by the commissioner.

Renumber accordingly

Patrick J. Ward
Zuger Kirmis & Smith
Box 1695
316 North 5th Street
Bismarck, ND 58502-1695
Phone: 701.223.2711
Fax: 701.223.9619
Email: pward@zkslaw.com
Web: www.zkslaw.com

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HOUSE BILL NO. 1132

Presented by: Edward Moody
Company Licensing Director
North Dakota Insurance Department

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

Date: March 11, 2015

TESTIMONY

Good morning, Chairman Klein and committee members. For the record, my name is Edward Moody and I am Chief Examiner and Director of the Company Licensing and Examinations Division of the North Dakota Insurance Department.

You have before you House Bill No. 1132 which amends existing insurance holding company systems (holding company) laws to reflect changes made to the National Association of Insurance Commissioners (NAIC) model holding company law which were made as part of the Solvency Modernization Initiative.

This bill modifies existing law relating to insurers that are part of a holding company to include the following:

- Expands the Commissioner's ability to evaluate any entity within an insurance holding company system;
- Enhances the regulator's rights to access books and records and compelling production of information;
- Establishes an expectation of funding with regard to regulator participation in supervisory colleges. (These represent meetings of regulators from multiple

countries that are designed to discuss the financial condition of particular insurance groups. State insurance regulators have held supervisory colleges for all U.S. firms that meet the current definition of an internationally active insurance group.)

- Establishes authority to act as the group wide supervisor for internationally active insurance holding company groups.
- Enhances corporate governance, such as Board of Directors and Senior Management responsibilities.
- Expands the Insurance Holding Company System Annual Registration Statement (Form B) to broaden requirements to include financial statements of all affiliates.
- Adds a new Form F (Enterprise Risk Report) that has also been introduced for firms to identify and report their enterprise risk. The Enterprise Risk Report (Form F) is to be submitted by all groups, regardless of size. The Form F requires disclosure of items that are relevant in understanding the risk of the group including the extent to which there is any potential for contagion risk within the group. Form F is a simplified version of the ORSA Senate Bill No. 2131 that this committee heard on January 14.

The amendments in House Bill No. 1132 will conform with recent changes to the model Holding Company Act included in the NAIC accreditation program and must be adopted by states by January 1, 2016, to ensure their accredited status. Under the accreditation program, established by the NAIC in 1990, the goal is for each state to adopt certain laws and rules so that multi-state life, health and property and casualty insurers are subject to consistent solvency regulation requirements. North Dakota has maintained its accredited status since 1992 by adopting and implementing the necessary standards to effectively regulate an insurer's corporate and financial affairs. Currently, the changes to the updated Holding Company Act have been adopted by 38 states.

The fiscal note on this bill indicates no fiscal impact.

Mr. Chairman, members of the committee, I am happy to answer any questions and urge a vote of "do pass" on House Bill No. 1132. Thank you.

Wednesday, March 11, 2015

SENATE INDUSTRY, BUSINESS & COMMITTEE
HB 1132

CHAIRMAN KLEIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of America's Health Insurance Plans or, as it is commonly known, AHIP.

AHIP is the national trade association representing the health insurance industry. Its members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual and small group insurance markets, and public programs such as Medicare and Medicaid.

We applaud the Insurance Commissioner for bringing HB 1132 forward. This is the National Association of Insurance Commissioners (NAIC) model Holding Company Act that is critical to continued accreditation by the Insurance Department.

We strongly support this bill and urge that you give it a DO PASS.

Thank you for your time and consideration. If you have any questions I would be glad to try to answer them.



Testimony in Support of HB 1132

Senate Industry, Business and Labor Committee

March 11, 2015

Chairman Klein and members of the committee,

The American Council of Life Insurersⁱ supports the adoption of HB 1132, which is substantially similar to the NAIC Insurance Holding Company System Model Act as adopted in December 2010 and amended in December 2014. The ACLI is supportive of HB 1132 because it achieves the following:

- 1) The bill coordinates effective dates for enterprise risk reporting to avoid confusion and conflicting state-by-state requirements.
- 2) The bill includes appropriate confidentiality provisions of the model and North Dakota's participation in a master confidentiality agreement.
- 3) The bill is consistent with related projects focused on group supervision and enterprise risk management such as the U.S. Own Risk and Solvency Assessment (ORSA) (which is in SB 2131).

HB 1132 accomplishes each of these objectives.

Respectfully Submitted,

John Gerni

Regional Vice President
State Relations

ⁱThe American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums.