

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/23/2014**

Bill/Resolution No.: SB 2131

- 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).*

Requires insurers writing more than \$500M in direct written premium or insurers that are part of a holding company with more than \$1B in premiums to file a report showing its assessment of solvency risks if it is part of a larger group.

- 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

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2131**

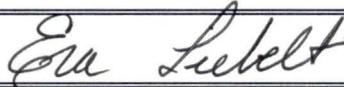
# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2131  
1/14/2015  
Job Number 21947

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to own risk and solvency assessments of insurers

## Minutes:

Attachments

**Chairman Klein:** Opened the hearing.

**Edward Moody, Company Licensing Director North Dakota Insurance Department:** Written Testimony Attached (1). (1:30-5:55)

**Senator Sinner:** Asked if there were only eight companies that would be affected by this law at this time?

**Edward Moody:** Currently that is correct. (6:10-6:53)

**Senator Sinner:** If they are domiciled in a state that doesn't have ORSA regulations, Own Risk and Solvency Assessment Model Act, do they still have to do the report to you? All of these companies can do their own assessment of risk?

**Edward Moody:** Yes they do still have to do a report. They can do their own assessment but if they are part of a group it would make sense for them to do it as taking into consideration all the risk of the group and not the individual subsidiaries. (7:00-7:27)

**Senator Sinner:** So each separate company can do their own ORSA, if your examiners have to review these forms they could be looking at eight different ORSA's?

**Edward Moody:** If they are subject to ORSA, yes they would file an ORSA. We would only look at them if we are the lead state or we had some questions on the lead states' review. We wouldn't be reviewing eight. (8:00-8:42)

**Senator Campbell:** Convince me this isn't over regulation.

**Edward Moody:** Said that he whole heartily endorses it and believes it is beneficial. This process is already required in Europe and other jurisdictions. It is already being done and

he has been involved in some of the initial pilots of it and he has looked at ORSA and it is definitely a beneficial process. Yes it is very detailed but we are talking about insurance companies who are supposed to be experts in accessing risk and pricing risk. Part of what they need to do is look at their organizational structure and the risk they have decided to accept and what kind of things could possibly happen and how they will be prepared from a capital sufficiency bases to address those. It's something they are already doing. (10:53-12:05)

**Chairman Klein:** Stated that there are twenty states that have adopted this and five others considering adoption.

**Edward Moody:** You can see the overlying theme in that a lot of these are already being done in other regulatory jurisdictions outside of the United States, that this is attempt to front run federal regulation. (12:30-13:00)

**Senator Campbell:** Said that he thinks it's still an overregulation. He said the insurance companies are already rated now. (17:50-18:23)

**Edward Moody:** What he would point to is the ratings, if you look at mortgage that passed through security in 2006 they were all rated AAA. He wouldn't place a lot of creditability on ratings. (18:25-19:35)

**Jack McDonald, On behalf of America's Health Insurance Plans:** Written Testimony Attached with proposed amendment (2). (22:35-24:08)

**Levi Andrist, American Council of Life Insurers:** The life insurance industry is supportive of this legislation. It doesn't impose new standards, what it really does is formalizes these risk assessments and provides disclosures to the regulators. This is consistent with the Model Holding Companies Systems Act which was just heard on the House IBL side, which is a compliment of this as part of solvency modernization. Ultimately the Bill essentially requires companies to have a risk management framework to regularly assess that framework and to make disclosures in a form of an ORSA to the department. The life insurance industry's primary concerns with this legislation as it went through the NIAC process was that information that is disclosed be kept appropriately confidential. There is a lot of trade secrets and proprietary information and the Bill before you adequately protects those confidential records. We would appreciate a do pass.

**Chairman Klein:** Asked Edward Moody to speak to the Severability issue and why it wasn't included.

**Edward Moody:** Said the department was aware of the clause but decided the chance of it being necessary was very remote, therefore considered it extraneous but are not opposed to its addition.

**Chairman Klein:** Asked for anymore comments. He closed the hearing.

**Senator Poolman moved to adopt the McDonald amendment.**

**Senator Sinner** seconded the motion.

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

**Senator Poolman** moved a do pass as amended.

**Senator Burckhard** seconded the motion.

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

**Senator Poolman will carry the bill.**

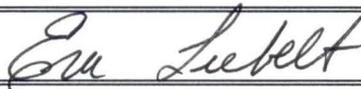
# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2131  
1/19/2015  
Job Number 22145

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to own risk and solvency assessments of insurers

## Minutes:

Attachment

**Chairman Klein:** Opened the meeting. Stated that Senator Poolman was going to carry SB2131 and with the bill was an amendment. Jack McDonald wanted a severability clause put into the statute. Lucas was going to draft this and visiting with legislative Council he found out that we don't do severability clauses in North Dakota. They said we should fix it in committee. Attachment of the North Dakota Century Code (1).

**Senator Campbell:** Made a motion to reconsider actions to take the amendment off.

**Senator Burckhard:** Seconded the motion.

**Chairman Klein:** All in favor of that motion say "I", opposed.

**Senator Poolman:** Made the motion to remove the severability clause amendment.

**Senator Burckhard:** Seconded the motion.

**Chairman Klein:** All in favor of the motion say "I", opposed. We have the bill before us with no amendments.

**Senator Poolman:** Moved a do pass.

**Senator Burckhard:** Seconded the motion.

Roll Call Vote: Yes-~~6~~No-0 Absent-1

**Senator Poolman will carry the bill.**

January 14, 2015

SENATE INDUSTRY, BUSINESS & COMMITTEE  
SB 2131

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 Department's decision to introduce this bill to enact Own Risk and Solvency Assessment (ORSA) legislation to bring state law into conformity with the National Association of Insurance Commissioners (NAIC) model act. The Act addresses the increasing complexity of the insurance marketplace. Adoption of the Act is critical to the Insurance Department's continued accreditation by the NAIC.

However, we believe SB 2131 inadvertently left out the Act's severability clause which we believe is important in the unlikely event the Act were challenged in court.

Therefore, we propose the following amendment to insert severability language. With this amendment we urge you give SB 2131 a do pass.

Thank you for your time and consideration. I'd be happy to answer any questions.

PROPOSED AMENDMENT TO SB 2131

On page 8, after line 18, insert the following:

**26.1-10.2-09. Severability.** If any provisions of this Act, or the application thereof to any person or circumstances, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable.

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2131**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: McDonald Amendment - See Attachment #2  
January 14th

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 Poolman Seconded By Senator Sinner

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 \_\_\_\_\_

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

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2131**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: McDonald Amendment

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 Poolman    Seconded By Senator Burckhard

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 Poolman

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

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2131**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: McDonald Amendment

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 Campbell Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Campbell			Senator Sinner		
Senator Burckhard					
Senator Miller					
Senator Poolman					
<i>All say "I"</i>					
<i>Voice Vote taken</i>					
<i>motion Passed</i>					

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

Absent \_\_\_\_\_

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

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

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2131**

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     Remove

Motion Made By Senator Poolman Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Campbell			Senator Sinner		
Senator Burckhard					
Senator Miller					
Senator Poolman					
All say "I"					
Voice Vote Taken					
motion Passed					

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

Absent \_\_\_\_\_

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

If the vote is on an amendment, briefly indicate intent: Voted to remove McDonald amendment

Date: 1/19/2015  
 Roll Call Vote #: 3

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2131**

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 Poolman Seconded By Senator Burckhard

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

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Poolman

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

**REPORT OF STANDING COMMITTEE**

**SB 2131: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2131 was placed on the Eleventh order on the calendar.

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2131**

# 2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2131  
3/18/2015  
25038

- Subcommittee  
 Conference Committee

Ellen Letang

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

Own Risk & solvency assessments of insurers and provide a penalty.

## Minutes:

Attachments 1, 2

**Chairman Keiser:** Opens the hearing on BE 2131.

**Edward Moody~Company Licensing Director-North Dakota Insurance Department:**  
(Attachment 1).

2:35

**Representative Ruby:** What is the problem this is trying to fix?

**Moody:** We are trying to get US regulation standards up to the rest of the world.

**Representative Ruby:** That didn't answer my question, was somebody hurt by this?

**Moody:** All I have to do is bring the AIG incident to the committee and the particular analysis that was done. The operations of those in London would have been flushed out and subject to regulators.

**Representative Hanson:** Who were the two companies in North Dakota and the six groups you were referencing?

**Moody:** Names the companies.

**Representative Louser:** Are there states where this has been introduced but failed?

**Moody:** I'm not aware of any states but one state tabled it for further discussion.

**Chairman Keiser:** What the NAIC is taking is a proactive approach, setting up a system whereby they will provide information that's required for companies to consider and the companies will do a self-exam. In doing that, the companies will benefit because they will

go through though a process and look at their risk exposures and then report those to the NAIC and the NAIC will be monitoring them. Without this you could conceivably have a problem develop and not know until the problem became significant. With this process, the self-examine and reporting, the theory is that we will identify the problems.

**Representative Ruby:** If other states are doing this and meet the requirements for all the states, what is North Dakota going to be doing to affect that? Do they have to go through every state level and the redundancy or every combine all states?

**Moody:** No, each group has a lead state where the preponderance of the business is done, it's the leads state responsibility to review and determine its accuracy. North Dakota has two that we will be responsible for.

**John Gerni-Regional Vice President of State Relations for the American Council of Life Insurers:** (Attachment 2).

**Representative Lefor:** This information seems reasonable. What is the reporting now and what are you asking for?

**Gerni:** The insurer subject to the holding company act. You already approved enhancement to the holding company act in January. This is a supplement to what has been filed. This is another self-assessment as well as its group that the insurer works with the department regulator.

**Chairman Keiser:** Anyone else here to testify in support of SB 2131, opposition, neutral? Closes the hearing on SB 2131, what are the wishes of the committee?

**Vice Chairman Sukut:** Moves a Do Pass.

**Representative Boschee:** Seconded.

**Roll call was taken on SB 2131, for a Do Pass with 13 yes, 0 no, 2 absent and Representative Lefor will carry the bill.**

Date: Mar 18

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2131

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 Sukut Seconded By Rep Boschee

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	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	Ab	
Representative Laning	X				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Lefor

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

**REPORT OF STANDING COMMITTEE**

**SB 2131: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
SB 2131 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**SB 2131**

**SENATE BILL NO. 2131**

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

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

**Date:** January 14, 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 Examination Division of the North Dakota Insurance Department.

You have before you Senate Bill No. 2131 which will require certain insurance companies to annually provide an assessment of the material risks associated with the insurer's or insurance group's current business plan and the analysis of the sufficiency of its capital resources to support those risks.

As part of the Solvency Modernization Initiative (SMI), the National Association of Insurance Commissioners (NAIC) adopted the Risk Management and Own Risk and Solvency Assessment Model Act (ORSA) in September 2012 to require any individual insurer that writes more than \$500 million of annual direct written and assumed premium, and/or insurance groups that collectively write more than \$1 billion of annual direct written and assumed premium, to provide regulators the authority to collect annual reports on the risk management and capital requirements of the qualifying entities.

An insurer that is subject to the ORSA requirements will be expected to:

1. Regularly, but no less than annually, conduct an ORSA to assess the adequacy of its risk management framework, and current and estimated projected future solvency position;
2. Internally document the process and results of the assessment; and
3. Provide a confidential high-level ORSA Summary Report annually to the lead state commissioner if the insurer is a member of an insurance group and, upon request, to the domiciliary state regulator.

In essence, an ORSA considers current and prospective solvency positions under normal and severe stress scenarios. An ORSA will require insurers to analyze all reasonably foreseeable and relevant underwriting, credit, market, operational and liquidity risks that could have an impact on an insurer's ability to meet its policyholder obligations.

The "O" in ORSA represents the insurer's "own" assessment of their current and future risks. Insurers and/or insurance groups will be required to articulate their own judgment about risk management and the adequacy of their capital position. This is meant to encourage management to anticipate potential capital needs and to take action before it is too late. ORSA is not a one-off exercise—it is a continuous evolving process. Moreover, there is no set way of conducting an ORSA. That is left to each insurer to decide, and actual results and contents of an ORSA report will vary from company to company. The output will be a set of documents that demonstrate the results of management's self-assessment.

Senate Bill No. 2131 conforms with the recently adopted model ORSA law included in the NAIC accreditation program that sets out the requirements for ORSA filings for insurers. 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. The accreditation program is instrumental in promoting and maintaining state-based regulation of the insurance industry. No date has been set for when the ORSA model law will become an accreditation standard. It is expected that it will be sometime after 2017. As of October 21, 2014, 20 states have adopted the model and it is under consideration in 5 others.

In North Dakota there are two domiciled companies that have more than \$500 million in written premiums and six other domiciled companies that belong to groups with more than \$1 billion in premium.

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 Senate Bill No. 2131. Thank you.

January 14, 2015

SENATE INDUSTRY, BUSINESS & COMMITTEE  
SB 2131

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 Department's decision to introduce this bill to enact Own Risk and Solvency Assessment (ORSA) legislation to bring state law into conformity with the National Association of Insurance Commissioners (NAIC) model act. The Act addresses the increasing complexity of the insurance marketplace. Adoption of the Act is critical to the Insurance Department's continued accreditation by the NAIC.

However, we believe SB 2131 inadvertently left out the Act's severability clause which we believe is important in the unlikely event the Act were challenged in court.

Therefore, we propose the following amendment to insert severability language. With this amendment we urge you give SB 2131 a do pass.

Thank you for your time and consideration. I'd be happy to answer any questions.

PROPOSED AMENDMENT TO SB 2131

On page 8, after line 18, insert the following:

**26.1-10.2-09. Severability.** If any provisions of this Act, or the application thereof to any person or circumstances, is held invalid, such determination shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable.

## NORTH DAKOTA CENTURY CODE Drafting and Interpretation

Century Code Chapters 1-01 and 1-02 contain provisions that apply to the drafting and interpretation of bills.

Chapter 1-01 has general provisions and many definitions that apply to the entire Century Code. Examples of words defined include children, coal, executor, gender, month, person, population, property, rule, several, week, will, and year. If the drafter wants a definition other than the one provided in Chapter 1-01 or in the definitions otherwise provided for in the title or chapter, the word must be defined in the bill.

Section 1-02-10 provides that no part of the Century Code is retroactive unless expressly so declared. However, see *State v. Davenport*, 536 N.W.2d 686 (N.D. 1995) holding that intent of retroactive application may be implied.

Section 1-02-11 provides that no source note is a declaration by the Legislative Assembly as to the purpose, scope, or effect of any section to which the source note or Code Revisor's note relates.

Section 1-02-12 states that no headnote (caption), source note, or cross-reference, whether designating an entire title, chapter, section, subsection, or subdivision, constitutes any part of a statute. A headnote may not be used to determine legislative intent or the legislative history for any statute. See also *State v. Thill*, 468 N.W.2d 643 (N.D. 1991); *Lipp v. Lipp*, 355 N.W.2d 817 (N.D. 1984); *Jochim v. Jochim*, 306 N.W.2d 196 (N.D. 1981).

Section 1-02-16 provides that the repeal of an Act which repealed a former Act does not revive the former Act.

Section 1-02-20 provides that if any portion of a statute is adjudged to be invalid, such judgment does not affect or invalidate any other portion of that statute, but only that portion of the law directly involved in the controversy is affected by the judgment. Therefore, **severability clauses are not necessary in North Dakota legislation**. If the Supreme Court declares a portion of a law unconstitutional, the constitutional provisions of that law will stand, unless the provisions are so interrelated that none of the law can stand without the unconstitutional portion.

Section 1-02-37 provides that all amendments and additions to the Century Code appearing in pocket part supplements must be cited as sections of the Century Code. Therefore, in cross-references and other references to the Century Code it is not necessary to add the words "as amended". This conclusion is further supported by Section 1-02-40, which states that a reference to any portion of a statute applies to all reenactments, revisions, or amendments thereof.

Section 1-02-38 lists five items that are presumed in the enactment of every statute. The presumptions are that compliance with state and federal constitutions is intended, the entire statute is intended to be effective, a just and reasonable result is intended, a result feasible of execution is intended, and public interest is favored over any private interest.

Section 1-02-39 provides for aids in construing ambiguous statutes. If found to be ambiguous, a court may consider the object sought to be attained; the circumstances under which the statute was enacted; the legislative history; the common law or former statutory provisions, including laws upon the same or similar subjects; the consequences of a particular construction; the administrative construction of the statute; and the preamble.

The creating clause (with a section identification number) for a new numbered section of the Century Code should read as follows:

**SECTION 3.** Section 40-57-03.1 of the North Dakota Century Code is created and enacted as follows:

If the section is long, it may be easier to create a new subsection rather than amend the entire section. The creating clause for an unnumbered subsection is:

**SECTION 4.** A new subsection to section 49-22-20 of the North Dakota Century Code is created and enacted as follows:

In limited instances, special creating clauses are necessary due to the nature of the subject matter being considered. **Contact the Legislative Council staff whenever use of a special creating clause is being considered.** Examples of special creating clauses are:

**SECTION 5.** If Senate Bill No. 2460 is approved by the sixty-fourth legislative assembly and becomes effective, a new section to chapter 54-24.3 of the North Dakota Century Code is created and enacted as follows:

**SECTION 6.** If Senate Bill No. 2460 as approved by the sixty-fourth legislative assembly becomes effective, a new section to chapter 54-24.3 of the North Dakota Century Code is created and enacted as follows:

**Caption**

The complete text, including the Century Code number (if used) and caption (headnote), of the relevant section of law follows the amending or creating clause. When a new section is created, a descriptive caption should be included. A caption gives a brief notice of the content of a section. Well-written captions allow the section listing preceding a chapter to be used as a chapter table of contents. Section 1-02-12 provides that a caption is not part of the law. When a caption is not included in a new section, it will be inserted by the Code Revisor at the time the new law is published as part of the Century Code. A caption should not list every item contained in the section. However, the wording of a caption is important because Century Code index entries are based on the caption.

A dash is used to separate subject headings in a caption. The first word following a dash is capitalized. A period is used at the end of a caption. An example of a caption is:

**60-02-07. Public warehouse license - How obtained - Fee - Financial statement.**

**SPECIAL CLAUSES**

Special clauses, although an integral part of certain bills, are usually not published as permanent law in the Century Code. Therefore, special clauses do not have to be underscored. However, some special clauses, such as penalty clauses, are published as permanent law and must be underscored.

**Savings or Constitutionality Clause**

A clause intended to protect the validity of certain portions of an Act is usually termed a savings, severability, or constitutionality clause. **Do not use these clauses.** This type of clause is not necessary in North Dakota because the courts will generally hold all portions of an Act which stand alone to be constitutional even though some other portion of the Act may be unconstitutional. See *State ex rel. Link v. Olson*, 286 N.W.2d 262 (N.D. 1979); *Baird v. Burke County*, 205 N.W. 17 (N.D. 1925). Additionally, Section 1-02-20 is a statutory savings clause.

**SENATE BILL NO. 2131**

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

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

**Date:** March 18, 2015

**TESTIMONY**

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

You have before you Senate Bill No. 2131 which will require certain insurance companies to annually provide an assessment of the material risks associated with the insurer's or insurance group's current business plan and the analysis of the sufficiency of its capital resources to support those risks.

As part of the Solvency Modernization Initiative (SMI), the National Association of Insurance Commissioners (NAIC) adopted the Risk Management and Own Risk and Solvency Assessment Model Act (ORSA) in September 2012 to require any individual insurer that writes more than \$500 million of annual direct written and assumed premium, and/or insurance groups that collectively write more than \$1 billion of annual direct written and assumed premium, to provide regulators the authority to collect annual reports on the risk management and capital requirements of the qualifying entities.

An insurer that is subject to the ORSA requirements will be expected to:

1. Regularly, but no less than annually, conduct an ORSA to assess the adequacy of its risk management framework, and current and estimated projected future solvency position;
2. Internally document the process and results of the assessment; and
3. Provide a confidential high-level ORSA Summary Report annually to the lead state commissioner if the insurer is a member of an insurance group and, upon request, to the domiciliary state regulator.

In essence, an ORSA considers current and prospective solvency positions under normal and severe stress scenarios. An ORSA will require insurers to analyze all reasonably foreseeable and relevant underwriting, credit, market, operational and liquidity risks that could have an impact on an insurer's ability to meet its policyholder obligations.

The "O" in ORSA represents the insurer's "own" assessment of their current and future risks. Insurers and/or insurance groups will be required to articulate their own judgment about risk management and the adequacy of their capital position. This is meant to encourage management to anticipate potential capital needs and to take action before it is too late. ORSA is not a one-off exercise—it is a continuous evolving process. Moreover, there is no set way of conducting an ORSA. That is left to each insurer to decide, and actual results and contents of an ORSA report will vary from company to company. The output will be a set of documents that demonstrate the results of management's self-assessment.

Senate Bill No. 2131 conforms with the recently adopted model ORSA law included in the NAIC accreditation program that sets out the requirements for ORSA filings for insurers. 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. The accreditation program is instrumental in promoting and maintaining state-based regulation of the insurance industry. No date has been set for when the ORSA model law will become an accreditation standard. It is expected that it will be sometime after 2017. As of October 21, 2014, 20 states have adopted the model and it is under consideration in 5 others.

In North Dakota there are two domiciled companies that have more than \$500 million in written premiums and six other domiciled companies that belong to groups with more than \$1 billion in premium.

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 Senate Bill No. 2131. Thank you.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
BEFORE THE HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE  
IN SUPPORT OF SB 2131

John P. Gerni  
Regional Vice President; State Relations  
March 18, 2015

Good morning, Chairman Keiser and members of the House IBL Committee. My name is John Gerni and I am the Regional Vice President of State Relations for the American Council of Life Insurers. The ACLI is a national trade association representing the life insurance industry that has nearly 300 member companies who hold more than 93 percent of the total life insurance in America today accounting for 93 percent of the total life insurance coverage on North Dakota residents.

ACLI supports SB 2131, which is substantially similar to the NAIC Model Law on Own Risk Solvency Assessment (ORSA) to monitor the adequacy of insurers risk management activities. SB 2131 enables the regulator to assess current and likely future solvency through a self assessment and disclosure of all reasonably foreseeable and relevant material risks. An insurer that is subject to the ORSA requirement will be expected to have a risk management framework to regularly assess the adequacy of that risk management framework, the insurer's current prospective solvency position, and to internally document the process and results. Usually, the ORSA process is conducted in partnership with the regulator. Such information is provided to the insurance regulator in the way of a high-level summary report.

The ACLI requests your favorable consideration of SB 2131 as it is a vital solvency tool that will protect both insurers as well as consumers.