

**2017 HOUSE INDUSTRY, BUSINESS, AND LABOR**

**HB 1112**

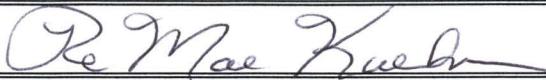
# 2017 HOUSE STANDING COMMITTEE MINUTES

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

HB 1112  
1/10/2017  
Job #26707

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Licensing & insurance producers.

**Minutes:**

Attachment #1

**Chairman Keiser:** Opens the hearing of HB 1112.

**Sara Behrens~Legal Counsel-ND Insurance Dept:** (Attachment 1).

(6:38)

**Rep Becker:** Is dishonesty in the criminal section of Century Code.

**Sara Behrens:** I also did a search and didn't find it. We looked to other insurance codes to see how they defined it. We based it off of Iowa's.

**Rep Becker:** We had in statute the words "dishonesty and breach of trust." They just weren't defined. Correct?

**Sara Behrens:** That's correct.

**Rep Becker:** Do each of these acts come with a felony charge?

**Sara Behrens:** I believe each in some context could be felony charges. If they aren't a felony conviction they wouldn't apply anyway.

**Rep Becker:** On page 5, section 3, it refers to a "good personal reputation." Could the commissioner say, "I heard he cheated on his wife and that is not a good personal reputation."

**Sara Behrens:** A good personal reputation would not go based on rumor. It would have to affect the business of insurance. Currently the statute is an automatic prohibition. We have changed the new language to "may." Everyone is entitled to a hearing if they disagree.

**Rep Laning:** It references automatic refusal if someone has a felony regarding dishonesty or breach of trust. Are there felonies that would not result in a denial?

**Sara Behrens:** Sure. Anything not included in that list. For example, drug possession would not be an automatic denial. It would be what has closer bearing on the business of insurance such as stealing money, burning houses, etc.

**Rep Kasper:** On the bottom of page 1, dishonesty, like knowingly issuing a back check. Are we now saying an insurance agent that is licensed can have a license revoked for a bad check? How do we do that?

**Sara Behrens:** It would have to be in that felony conviction that there is the "knowing" piece to the criminal conviction. If we can't prove that "knowing" is part of the felony, then that wouldn't be an automatic bar.

**Rep Kasper:** So in order for any of this to apply, there has to be a conviction not just an accusation.

**Sara Behrens:** Correct. There must be a conviction.

**Rep Kasper:** Is that a conviction in a court of law or is that a conviction in administrative hearing?

**Sara Behrens:** If I understand it correctly, it would have to be in a court of law because it has to be a felony

**Chairman Keiser:** On page 4, line 19 & 20, it doesn't make sense. On page 5, the commissioner "may." Why shouldn't it be "shall"?

**Sara Behrens:** I'm going to defer to our general counsel and deputy commissioner.

**Jeff Ubben~Deputy Commissioner and General Counsel of the Insurance Department:** The word "shall" was not in the existing statute. We have always read it as the commissioner has the discretion based on the findings. The industry was concerned that if we didn't put "may" in, it would take away the discretion to evaluate each applicant on their merits. We didn't want to tie the commissioner's hand.

**Rep Kasper:** Explains a situation where an individual was licensed for 7-10 years. There was a misstatement with continuing education credits. Minnesota did not revoke his license but the North Dakota department attempted to revoke his license. There was no felony, just a bad mistake. The department still continued to revoke his license. What policy will the department have going forward in cases like that.

**Jeff Ubben:** If this law passes, we will look at each case on its merits going forward. If we believe someone has been dishonest with the insurance department in reporting their continuing education credits, we have to consider that in determining whether this person should maintain a license. If you are willing to misrepresent your continuing education credits

to your regulator, that is a strike on trustworthiness. That decision was made under the former insurance commissioner.

**Rep Kasper:** I understand the need for proper regulation, but I hope the department would look at cases where no one was harmed. The person made a mistake and admitted it.

**Rep Laning:** Moved Do Pass.

**Rep Boschee:** Seconded the motion.

A Roll Call vote was taken: Yes 14, No 0, Absent 0.

Do Pass carries.

**Representative Beadle** will carry the bill.

Date: 1/10/2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1112**

**House** 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** Rep. Laning    **Seconded By** Rep. Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

**Total** (Yes) 14    No 0

**Absent** 0

**Floor Assignment** Rep. Beadle

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

**REPORT OF STANDING COMMITTEE**

**HB 1112: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1112 was placed on the Eleventh order on the calendar.

**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1112**

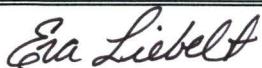
# 2017 SENATE STANDING COMMITTEE MINUTES

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

HB 1112  
2/8/2017  
Job Number 28045

- Subcommittee
- Conference Committee

Committee Clerk Signature



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

Relating to licensing and insurance producers

Minutes:

Attachment 1

**Chairman Klein:** Opened the hearing.

**Sara Behrens, Legal Counsel, North Dakota Insurance Department:** Written testimony, see attachment #1. (:20-6:04)

**Chairman Klein:** Obviously there are people that are doing bad things yet and the commissioner has had to revoke their license. Is this happening often?

**Sara Behrens:** I don't have any definite numbers but there are quite a few applications that are denied or revoked based on various issues. If they have a felony involving dishonesty or breach of trust they will be denied or the license revoked. As we see the statute that is an automatic denial because they are not the types of people that we want to be selling insurance within the state. We need the ability to make that determination.

**Chairman Klein:** Because the current language says if you have good character and a good reputation you are in but there was no way to get rid of them under that section. That is why you are adding that if you don't deem the applicant to be competent you are going to deny their licensure.

**Sara Behrens:** That is correct. For the new applicants they don't fall under the other sections that deal with this. (8:20-8:55)

**Chairman Klein:** So there are a lot of applicants that are denied right up front and once in a while we find some bad apples that we have to remove so we are trying to address all of that to make it easier for the commissioner to do his job.

**Sara Behrens:** That is correct. We wouldn't let them in at all if they don't qualify and if they cease to qualify we want the ability to remove them from licensure.

**Senator Roers:** So you have two categories, those who have been convicted of a felon and then those who have not been convicted of a felon and you are going to disqualify them based on these things?

**Sara Behrens:** Dishonesty or breach of trust.

**Senator Roers:** Who does the assessment? Do you go out into the community and seek input?

**Sara Behrens:** We don't take it lightly it would have to be based on court documents and 26.1-26-15 is based frequently on convictions and if they have large outstanding debts. It is ultimately the commissioner that makes that decision.

**Senator Roers:** My concern is where it says good personal and business reputation. Sometimes people say things about people that aren't necessarily true. How do you sift through all of that information and validate it? You are doing something substantial by disqualifying someone from making a living.

**Sara Behrens:** We would not do it based on rumor, there would be some sort of investigation into those allegations to substantiate them.

**Chairman Klein:** Is it a background check?

**Sara Behrens:** They do have to fill out an application and on that application they have to answer certain background questions and that is where we start.

**Evan Mandigo, State Executive for the Independent Insurance Agents:** In support. They feel it gives the insurance department better and more precise tools to deal with the bad actors. (13:15-13:54)

**Chairman Klein:** Asked if the background check cost money and who pays the fee?

**Sara Behrens:** They do have an application fee and far as answering those questions, they have to provide the documentation.

**Chairman Klein:** No cost to the department?

**Sara Behrens:** That is correct.

**Chairman Klein:** Closed the hearing.

Senator Casper moved a do pass.

Senator Poolman seconded motion.

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

Senator Casper will carry the bill.

Date: 2/8/17  
Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1112**

**Senate Industry, Business and Labor** **Committee**

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input checked="" type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Place on Consent Calendar	<input type="checkbox"/> Rerrefer to Appropriations
Other Actions:	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions:  Reconsider

Motion Made By Senator Casper Seconded By Senator Poolman

Absent 0

## Floor Assignment Senator Casper

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

**REPORT OF STANDING COMMITTEE**

**HB 1112: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1112 was placed  
on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**HB 1112**

**HOUSE BILL NO. 1112**

**Presented by:** **Sara Behrens**  
Legal Counsel  
North Dakota Insurance Department

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

**Date:** **January 10, 2017**

**TESTIMONY**

Good Morning Chairman Keiser and members of the committee. My name is Sara Behrens and I am Legal Counsel for the North Dakota Insurance Department. House Bill No. 1112 was introduced at the request of the Insurance Commissioner. I appear before you in support of House Bill No. 1112.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing insurance producers and for regulating their conduct in the state. This bill ensures the Commissioner has the power to deny an individual who is not fit to conduct insurance business an insurance producer license.

House Bill No. 1112 does four things: (1) it adds definitions of "breach of trust" and "dishonesty" to clarify what types of crimes are considered felonies involving dishonesty or breach of trust under Section 26.1-02.1-02.1(3); (2) clarifies that the Commissioner is required to deny, revoke or refuse to renew an insurance producer license where an applicant or licensee has been convicted of one of these felonies; (3) clarifies that because Section 26.1-26-15 requires a finding by the Commissioner that an applicant for a license is competent, trustworthy, financially responsible and of good personal and business reputation, the Commissioner has the authority to deny a license where such a finding is not made; and (4) clarifies that Section 26.1-26-39 applies to both applications for an insurance producer license and an application to renew an existing insurance

producer license. These amendments allow the Commissioner to protect consumers from unqualified producers attempting to sell them insurance. These amendments also benefit the insurance producer community by preventing these unqualified individuals from competing with and working among qualified producers.

Section 1 of the bill adds definitions for “breach of trust” and “dishonesty.” These definitions will help to clarify what felonies are an automatic bar to insurance producer licensure in North Dakota. These definitions are modeled after Iowa’s definitions.

Section 2 of the bill clarifies that the Commissioner is required to deny, revoke or not renew an insurance producer license if the producer has been convicted of a felony involving dishonesty or breach of trust. The statute currently provides “A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance.” This statute has been interpreted and enforced as an automatic denial by the North Dakota Insurance Department and previous administrative law judges. However, an administrative law judge recently concluded in her recommended order that N.D.C.C § 26.1-02.1-02.1 does not allow for an automatic bar to licensing based solely on a felony conviction involving dishonesty or breach of trust. However, in 2014 an administrative law judge found the opposite, concluding that an applicant with a felony conviction involving dishonesty or breach of trust was prohibited from holding an insurance license as that would allow him to participate in the business of insurance. This interpretation is supported by the legislative history of the statute.

Essentially, if Section 26.1-02.1-02.1 does not require license denial or allow for an automatic denial, the Department would be required to grant a license to an applicant that has a felony conviction involving dishonesty or breach of trust or allow a producer with such a conviction to keep a license. This is an illogical result because even if the Department had to allow such an individual to have a license, that producer would still be prohibited from participating in the business of insurance under the language of the law. It would be similar to being required to give a person a driver’s license and then turning around and telling them they cannot drive.

Section 3 of the bill clarifies that Section 26.1-26-15 grants the Commissioner the authority to deny a license if the Commissioner does not deem the applicant to be competent, trustworthy, financially responsible and of good personal and business reputation. The Department has denied multiple producer license applications based on their failure to meet the requirements of Section 26.1-26-15. Some of these cases went to a hearing. An administrative law judge ruled on multiple occasions that Section 26.1-26-15 does not give the Commissioner the authority to deny a license even if the Commissioner finds the applicant to not be competent, trustworthy, financially responsible, or of good personal and business reputation. Numerous administrative law judges and Commissioners since at least 1999 have determined that Section 26.1-26-15 prohibits the granting of a license unless the Commissioner determines the applicant meets the requirements of that section.

Section 4 simply clarifies that Section 26.1-26-39 applies to both the initial applicant for a license and the application for the renewal of a license.

In conclusion, I respectfully request a “do pass” recommendation from this committee on House Bill No. 1112. I am happy to take any questions.

**HOUSE BILL NO. 1112**

**Presented by:** **Sara Behrens**  
**Legal Counsel**  
**North Dakota Insurance Department**

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

**Date:** **February 8, 2017**

**TESTIMONY**

Good morning Chairman Klein and members of the committee. My name is Sara Behrens and I am Legal Counsel for the North Dakota Insurance Department. House Bill No. 1112 was introduced at the request of the Insurance Commissioner. I appear before you in support of House Bill No. 1112.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing insurance producers and for regulating their conduct in the state. This bill ensures the Commissioner has the power to deny an individual who is not fit to conduct insurance business an insurance producer license.

House Bill No. 1112 does four things: (1) it adds definitions of "breach of trust" and "dishonesty" to clarify what types of crimes are considered felonies involving dishonesty or breach of trust under Section 26.1-02.1-02.1(3); (2) clarifies that the Commissioner is required to deny, revoke or refuse to renew an insurance producer license where an applicant or licensee has been convicted of one of these felonies; (3) clarifies that because Section 26.1-26-15 requires a finding by the Commissioner that an applicant for a license is competent, trustworthy, financially responsible and of good personal and business reputation, the Commissioner has the authority to deny a license where such a finding is not made; and (4) clarifies that Section 26.1-26-39 applies to both applications for an insurance producer license and an application to renew an existing insurance

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Section 1 of the bill adds definitions for "breach of trust" and "dishonesty." These definitions will help to clarify what felonies are an automatic bar to insurance producer licensure in North Dakota. These definitions are modeled after Iowa's definitions.

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Section 4 simply clarifies that Section 26.1-26-39 applies to both the initial applicant for a license and the application for the renewal of a license.

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