

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2180


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2180

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 20, 1999

Tape Number	Side A	Side B	Meter #
1	x		
Committee Clerk Signature 			

Minutes:

Senator Mutch called the meeting to order. All senators were present.

Senator Mutch opened hearing on SB2180.

Susan Anderson, North Dakota Insurance Department, introduced the bill. Her testimony is included. Senator Klein asked if there is any income from the premium tax that will be coming into the insurance from the TIAA CREF. The answer was yes but she was not sure of the exact amount.

Senator Klein asked Ms. Anderson to clarify section 10 of the bill concerning the 22 day look back period. Ms. Anderson cooperated.

Senator Sand referred to section 3 of the bill and asked if the TIAA has been notified of this bill and what they thought about it. The answer was no. Senator Sand then asked if this would be a

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2180

Hearing Date January 20, 1999

substantial amount or a minor amount. Ms. Anderson said that she could not give an exact amount.

Vance Magnus, State Insurance Department, clarified some of the senators questions.

Tom Smith, Domestic Insurance Companies, testified in support of SB2180. His group thought that this was a very reasonable piece of legislation.

Senator Mutch closed the hearing on SB2180.

Committee discussion took place on January 20, 1999.

Senator Krebsbach moved for a do pass with referral to appropriations. Senator Klein seconded her motion. The motion was successful with a unanimous vote.

Senator Klein will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: Eng. SB 2180

Requested by Legislative Council _____ Date of Request: 3-12-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

Based on the amendments to Senate Bill No. 2180 as referenced in the March 11, 1999, Journal of the House (page 807), the Department anticipates that there will be no fiscal impact for state general or special funds, counties, cities, or school districts.

- 2. State fiscal effect in dollar amounts:

Table with 7 columns: 1997-99 Biennium (General Fund, Special Funds), 1999-2001 Biennium (General Fund, Special Funds), 2001-03 Biennium (General Fund, Special Funds). Rows: Revenues, Expenditures. All values are 0.

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None
b. For the 1999-2001 biennium: None
c. For the 2001-03 biennium: None

- 4. County, City, and School District fiscal effect in dollar amounts:

Table with 9 columns: 1997-99 Biennium (Counties, Cities, School Districts), 1999-2001 Biennium (Counties, Cities, School Districts), 2001-03 Biennium (Counties, Cities, School Districts). All values are 0.

If additional space is needed, attach a supplemental sheet.

Signed Trent C. Heinemeyer
Typed Name Trent C. Heinemeyer
Department Insurance Department
Phone Number 328-2440

Date Prepared: 3/15/99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: SB 2180

Requested by Legislative Council _____ Date of Request: 2-9-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The Insurance Department anticipates that, based on historical amounts, the fiscal impact of the penalty reduction of Section 5 of SB 2180 will result in a reduction in collection of premium tax penalties in the amount of \$35,000 per year. Note that any amount of premium tax penalty collected is directly related to the number of delinquent taxpayers and as such is not within the control of the Department.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	(\$70,000)	0	(\$70,000)	0
Expenditures:	0	0	0	0	0	0

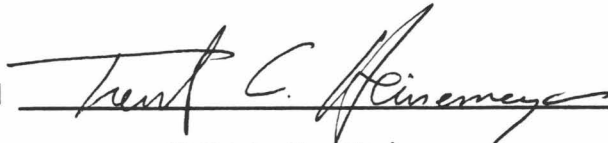
3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: 0
- c. For the 2001-03 biennium: 0

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed 
 Typed Name Trent C. Heinemeyer

Date Prepared: 2/9/99

Department Insurance Department

Phone Number 328-2440

**REVISED
FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: SB 2180 Amendment to: _____

Requested by Legislative Council Date of Request: 1/20/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The elimination of exemption 4 under Section 3 of this bill would provide additional premium tax revenues of approximately \$48,000 and \$52,000, respectively, over the next two bienniums. The Insurance Department anticipates that, based on historical amounts, the fiscal impact of the penalty reduction of Section 5 of SB 2180 will result in a reduction in collection of premium tax penalties in the amount of \$70,000 per biennium. Note that any amount of premium tax penalty collected is directly related to the number of delinquent taxpayers and as such is not within the control of the Department.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	(\$22,000)	0	(\$18,000)	0
Expenditures:	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: 0
- c. For the 2001-03 biennium: 0

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Vance Magnuson

Department Insurance Department

Phone Number 328-2440

Date Prepared: 1/20/99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2180 Amendment to: _____

Requested by Legislative Council _____ Date of Request: 1-4-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The Insurance Department anticipates that, based on historical amounts, the fiscal impact of the penalty reduction of Section 5 of SB 2180 will result in a reduction in collection of premium tax penalties in the amount of \$35,000 per year. Note that any amount of premium tax penalty collected is directly related to the number of delinquent taxpayers and as such is not within the control of the Department.

- 2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	(\$70,000)	0	(\$70,000)	0
Expenditures:	0	0	0	0	0	0

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: 0
- c. For the 2001-03 biennium: 0

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed Trent C. Heinemeyer

Typed Name Trent Heinemeyer

Date Prepared: January 7, 1999

Department Insurance Department

Phone Number 328-2440

2120925

Date:
Roll Call Vote #: 2180

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS REREFERRED TO APPROPRIATION

Motion Made By KREBSBACH Seconded By KLEIN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment KLEIN

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

REPORT OF STANDING COMMITTEE (410)
January 20, 1999 4:13 p.m.

Module No: SR-12-0925
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2180: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was rereferred to the Appropriations Committee.

1999 SENATE APPROPRIATIONS

SB 2180

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2180

Senate Appropriations Committee

Conference Committee

Hearing Date 2-3-99

Tape Number	Side A	Side B	Meter #
1	X		236-end
1		X	1-560
2-4-99 2	X		50-570
Committee Clerk Signature <i>Kathryn C. Kottenderock</i>			

Minutes:

SENATOR NETHING: Opened hearing on SB2180; A BILL FOR AN ACT TO CREATE AND ENACT SECTIONS 26.1-01-03.3, 26.1-30.1-01.1, AND 26.1-39-16.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO PENALTY FOR VIOLATION OF THE INSURANCE CODE, UNLAWFUL GROUNDS FOR DECLINATION OF COMMERCIAL INSURANCE, AND FLOOD INSURANCE NOTICES; TO AMEND AND REENACT SECTIONS 26.1-01-03.1, 26.1-02-05, 26.1-02-05.1, 26.1-03-17, SUBSECTION 7 OF SECTION 26.1-04-03, SECTIONS 26.1-22-21, 26.1-23-06, 26.1-33-02.1, SUBSECTION 6 OF SECTION 26.1-33-30, SUBSECTION 1 OF SECTION 26.1-36-03, SUBSECTION 11 OF SECTION 26.1-36-05, SUBSECTION 6 OF SECTION 26.1-36-14, SECTION 26.1-36-23, SUBSECTION 1 OF SECTION 26.1-36-23.1, AND SECTION 26.1-45-05.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO CEASE AND DESIST ORDERS, UNAUTHORIZED INSURANCE, PREMIUM TAXES, UNFAIR DISCRIMINATION, EXCESS LOSS REINSURANCE, UNSATISFIED JUDGMENT FUND, FREE-LOOK PERIODS OF LIFE INSURANCE POLICIES, LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE, GROUP HEALTH INSURANCE, AND LONG-TERM CARE INSURANCE; AND TO PROVIDE A PENALTY.

SUSAN T. ANDERSON: Legal Counsel for the North Dakota Insurance Department testifying in support of SB2180 (testimony attached (tape 1, side A, meter 236-880). I do have written testimony that I will hand out. I don't know how you would like me to proceed, I would be more than happy to go over the sections that are implicated in the fiscal note and describe or answer any questions that you may have at that time.

SENATOR NETHING: Why don't you give us a little overview of what this bill is about and then we will focus in on those provisions.

SUSAN T. ANDERSON: SB2180 is, what we at the insurance department refer as our housekeeping bill. Over the course of 2 years we have insurance department employees throwing to our hopper any ideas for legislative change or any concerns they may have, and then what we do, is we meet and we decide on what areas we should focus on and we weed that down into what you see before you. And so we have done that and as you know it has already gone through the Senate IBL Committee and was referred over to you. The sections that have the fiscal impact are Section 3, and briefly, what that does is eliminate the exemption commonly referred to as the TIAA-CREF exemption. Right now, they are not licensed in North Dakota and I probably should back up and explain what TIAA-CREF is. It is the Teacher's Insurance and Annuity Association College Retirement Equities Fund. They are involved in transacting life and health insurance business in the sale of annuities for educational, or religious or charitable institution operated without profit to any individual for the benefit of those institutions. What we propose to do in Section 3 is to eliminate the exemption, so therefore, they would be required to be licensed in North Dakota, for example, they would have to hold a C of A, they would have to pay premium tax, and they would be subject to the Guarantee Association. The other section of the bill that has a fiscal impact is Section 5 Subsection 3 and this is Premium Tax Penalty amount. Basically it is divided into two sections: penalties are levied upon companies that fail to file a tax statement and companies that owe tax and fail to pay that tax within their required time. Those are the two sections that have the fiscal impact. I don't know if you would like me to carry on with my testimony and describe how we got the calculations that you have in front of you. Turn to Section 5 first, the only reason why I do this first, is that the amount that was in the original fiscal note. That has to do with the premium tax penalties. Companies failing to pay tax as imposed by Subsection 1, within the time required, presently is subject to a 5% penalty on the amount of tax due or \$100 whichever is greater, plus an interest amount of 1% on the unpaid tax for each month of delay or \$25 per day, whichever is greater. Also, any company that fails to file the appropriate tax statement is subject to a penalty of \$25 per day with a maximum of \$500. As you can see in subsection 3, we are reducing those amounts. For those companies failing to pay tax, we take away that 5% interest option and then they are subject to a \$100 penalty and we also take away that interest amount of 1% and subject them to \$10 per day. Now companies failing to file the appropriate tax statement, we've changed the penalty amount from \$25 a day to \$10 a day and we've lowered that maximum amount from \$500 to \$100. On the page 2 of the testimony, you'll see on these estimated calculations, as an average, we penalize approximately thirty-five companies in each of the first quarters for filing late tax due or tax statements. Out of those thirty-five, approximately twenty-five companies that do not write business in North Dakota, therefore don't collect any premium tax, still have to file a tax statement and reflect that zero amount of tax due. They are presently subject to the \$25 per day with the maximum of \$500 penalty. As mentioned earlier, we would be reducing that amount. Presently the department collects about \$12,500 from these companies. In each of the first quarters, resulting in the an overall penalty of about \$37,500. Now if SB2180 passed, that amount would be

reduced to about \$30,000. Companies that owe tax but fail to pay it on time, we have approximately ten companies every three quarters that fail to pay their tax on time. Currently as the law stands, they are subject to a 5% penalty on the amount of tax due plus an interest amount of 1% per month on the unpaid tax or \$25 per day, whichever is greater. More often than not, the \$100 penalty is accessed rather than the 5% on the tax due. We did not delete the \$100 penalty just the 5% penalty. SB2180 would reduce the interest amount from \$25 per day to \$10 per day. This reduction would result in approximated loss of about \$1,500 per quarter for the three quarters. This is the result of \$15 per day, reducing the \$25 per day interest amount to \$10, times that amount by the approximate number of days it takes companies to pay the tax on time, which we estimate at ten days, that reduction would result in an overall amount of \$4,500. If you add the \$30,000 plus \$4,500 equals about \$35,000 times two years is the \$70,000 we had in the fiscal note. Turning to Section 3, which is the TIAA CREP exemption, we took a look at their life and health approximate premiums for the last three quarters of 1998 and we projected a historical experience from 1995. We factored that in for the amount of premiums they've collected and we came out with an amount of \$48,000 for the first biennium with \$52,000 for the second biennium. If you subtract the two you will get the \$22,000 on the fiscal note. \$22,000 for the 1999/2001 biennium and \$18,000 for the 2001/2003 biennium.

SENATOR NETHING: Let me just back up here, going to Section 5 and the premium tax modification, why are we doing this.

SUSAN T. ANDERSON: There are a couple of reasons. First, on those companies that don't do business in North Dakota, so they don't collect premium, they still have to file a tax statement and show the zero amount of tax due. These are the companies that are getting hit the hardest because they think that they don't have to file a tax statement because they are not doing any business here. Well, they are incorrect. They do have to file a tax statement. Ultimately, what we are doing is we are penalizing companies who are not even doing business in North Dakota.

SENATOR NETHING: What makes them eligible to have to file?

SUSAN T. ANDERSON: I have Rose Tipke here, who is our premium tax expert. She is probably best to answer that question. Would you like her to answer it now.

SENATOR NETHING: It is a little confusing, let us have her explain. I understand the part that they file but they don't do business. Why do we even want them to file?

ROSE TIPKE: The code requires that all companies who have a certificate of authority in North Dakota file.

SENATOR NETHING: So they do have a certificate of authority?

ROSE TIPKE: They have a certificate of authority, they just don't write any business in North Dakota.

SENATOR NETHING: If they don't like what you are collecting from them now, all they have to do is give up their certificate of authority and that would solve it.

ROSE TIPKE: Certainly, if they give up their certificate, they wouldn't be required to file in this state.

SENATOR NETHING: Have other state's run into the same problem, or are we unique? Again, I kind of wonder where the idea is coming from.

ROSE TIPKE: I did do an analysis of the other 50 states and their penalties, and we were excessive compared to the other states. Informally it was about \$10 a day that they were assessing, some just went to automatic revocation of suspension of a certificate of authority, but, like I said, we were excessive compared to the other states.

SENATOR NETHING: So you are trying to bring us in line then with that section?

ROSE TIPKE: We are, we really are penalizing those the harshest that don't write premiums here.

SENATOR NETHING: Then, Susan, let's go to Section 3 on the exemption of TIAA-CREF, what is the rationale for eliminating that?

SUSAN T. ANDERSON: In 1997, TIAA-CREF lost their federal nonprofit tax status. Ultimately across the nation, states have now been requiring TIAA-CREF to become licensed in their state. On the part of the lose of the federal tax exemption, we believe that they should be required to pay, for example, premium tax in our state, be subject to the Guarantee Association, and hold a certificate of authority so that we have some regulatory control over them.

SENATOR NETHING: When they were exempted under federal law, did you find problems with them? Are they a bad group?

SUSAN T. ANDERSON: Absolutely not, they are not a bad group, and I know Mr. Green is here from TIAA-CREF who will be testifying. They are a very strong company, we just feel that it is time that they be regulated. They are selling insurance products in state just like any other insurance company. The federal government has noticed and has even stated in some of the congressional notes that they are given a sort of unfair advantage compared to other insurance companies. Also, in the congressional minutes, it is mentioned that TIAA-CREF should be treated just like any other life insurance company. So that is ultimately what we are trying to do.

SENATOR NETHING: So it is not the fact that they have a history of causing you problems.

SENATOR ST. AUBYN: Related to the TIAA-CREF, I know when I was at the university I had TIAA-CREF and we were either under the PERS plan or TIAA-CREF. But under the state public employees, they have options for additional amounts of life insurance as part of the state. Are those companies also no longer exempted?

SUSAN T. ANDERSON: It is my understanding that those premium taxes are exempted. So for example, if the state pays for your life insurance, the companies that collect that premium tax don't have to pay it back to the state. Ultimately what we would be doing is taxing the state and we obviously don't want to do that. It is my understanding that TIAA-CREF provides some forms of insurance, for example, to the university system; but not all of it is paid by the state. Like I said, Mr. Greene can testify to this because I am not an expert on it, but my belief is that the only part of TIAA-CREF's products that are paid by the state is the group disability income policy.

SENATOR ST. AUBYN: You are allowed certain amounts through public employees, not through this, and I don't know what it is as public employees. You can buy incremental amounts additional beyond what the state provides for life insurance. Is that company treated the same as you are going to be treating this by doing that, that they would also lose that exemption?

SUSAN T. ANDERSON: They don't have an exemption at present. For example, I know the state, for example, PERS Life Insurance Company was ReliaStar, I think the name might have changed, but their not exempted. They are subject to a C of A, they have to pay, for example, premium tax on any other business that the state doesn't pay, and they are subject to the Guarantee Association. To answer your question, no, they don't have an exemption so if TIAA-CREF was to still have this exemption, they would be treated differently.

SENATOR SOLBERG: I have been looking through here trying to find the Unsatisfied Judgment Fund, I am trying to find that, where is it at?

SUSAN T. ANDERSON: Just give me a moment here. I know the provision, and I think I can tell you off the top of my head what we are doing in regards to the Unsatisfied Judgment Fund. The law, at present, requires an individual who wants to make a claim against the Unsatisfied Judgment Fund to give the attorney general's office and the insurance department 30 days notice before entry of judgment. We are changing that to give 30 days notice before a hearing. The problem that we are encountering is that we are having individuals that go to court on a default motion. What that basically means is there is no one contesting the case. So what they will do is, they will go to court and get a judgment and then they will notify the insurance department of the judgment, so we get 30 days before that judgment is entered. So you have to understand that the date that the judgment is given and the date that the judgment is entered could be two different dates. For example, an attorney could hold on to the judgment saying we don't want to enter it yet. Let's give the insurance department and the attorney general's office 30 days notice and then we will enter the judgment. What you have to understand is; under the Unsatisfied Judgment section in the code, the insurance department is entitled to step in and defend that

action if we want to. Now what we are finding is that a lot of cases are brought on these default motions but they are not maritus claims, or for example, the damages are inflation to reach the \$10,000 mark that we, as the Unsatisfied judgment, are allowed to pay. That is our statutory maximum. So, damages will be inflated to reach that \$10,000. If we have notice before a hearing, we can step in and go to that hearing, cross examine, file all the documents that we want, to try to get that demand amount accurately shown. What is happening now is that we are given notice so we can't step in and try and defend an unmaritus case.

SENATOR SOLBERG: But you can't tell me where this is?

SENATOR NETHING: Page 8, Section 8, the language he is speaking of is on Page 9, Line 1.

SUSAN T. ANDERSON: Does that answer your question, Senator Solberg?

SENATOR NETHING: Any other questions committee members, if not, we have other testimony that we will take. Anyone else to appear before us to testify for the bill? Anyone here in opposition to the bill?

LARRY ISAAK: Good Morning, Mr. Chairman. In the record, my name is Larry Isaak, Chancellor of the University System (testimony attached (tape 1, side A, meter 1720-2030). We want to state today that the university system strongly supports the retention of TIAA-CREF Insurance Company licensing exemption which would be lost if the changes in Section 3, Subsection 4, page 4, lines 25 - 28, are enacted. TIAA-CREF has been the pension system for the North Dakota University System faculty and administrators for the past 35 years, and it is recognized as the pension system of the higher education community, nationwide. Our employees have benefited greatly from this relationship which the legislature enacted 35 years ago. We know TIAA-CREF to be unsurpassed in integrity, and their financial stability is beyond question. As a nonprofit, formed to serve our community, they provide our employees with superior pensions and customer service at rock-bottom prices in their administrative fees. In North Dakota, TIAA-CREF is not just another insurance company in our state. They are the pension system for our faculty and administrators just as the PERS is the pension system for classified employees. We expect the same thing from TIAA-CREF that we expect from PERS, and that is to be judicious with every dollar we pay so that employees get the maximum bang for their buck. One of the primary reasons we chose TIAA-CREF, is their ability to do just that and because of their low administrative expenses. Another reason we chose TIAA-CREF is their financial strength rating which is virtually unequalled. We would not permit our employees' pensions to be with a company in which we do not have absolute confidence. We do not believe this bill will add any value but will only add unnecessary cost to our employees which could, and likely will, reduce future benefits. I am not going to read the last paragraph, but let me just say, that we ask you not to enact the changes on page 2 lines 25 - 28. I think you have heard this morning that life insurance premiums for employees under PERS are not premium taxed, and we don't believe that they should be for our employees under TIAA-CREF. I think just about all of TIAA-CREF's business in the state is with the university system and the private institutions

including Jamestown College and the University of Mary. That is the reason we do not support the amendment on page 2. There are people here from TIAA-CREF that can answer your questions. We asked them to be here. We contacted them when this bill came out to make them aware of it. I think they can also shed some light on what is happening in other states around the country, which is pretty much nothing on these issues. They can fill you in on the details.

SENATOR ST. AUBYN: I understand that the PERS plan, in your testimony, you talk about they do not get the exemption, but in your testimony, you say that they do?

LARRY ISAAK: I am not sure I am correct on this but I thought that when you asked your question about that, the insurance that is sold to state employees under PERS, under their life insurance plan, is not taxed the premium tax.

SENATOR ST. AUBYN: For the additional insurance, it was my understanding that they do pay.

LARRY ISAAK: I don't know that.

SENATOR ST. AUBYN: Could we get a clarification.

SUSAN T. ANDERSON: Mr. Chairman, if I could clarify. What I was mentioning, and Mr. Isaak was correct, they are given an exemption from paying premium taxes. Companies that collect the premiums, for example, whatever the state may pay, for example, for the life insurance, there are other areas that are included in regulatory that, should we take away the exemption. So we are not just talking premium tax, we are talking Guarantee Association assessment, we are talking having to get a C of A, having to have certain capitol and surplus requirements. So your question, if you are asking it in overall exemption, for example, ReliaStar is not granted an overall exemption. They are granted an exemption from having to pay premium tax on the amount of money that the state has paid for their employees, for life insurance. So I guess my point is that there are other areas that, when we talk about having regulatory authority over an insurance company, that they would not be exempted from, ReliaStar.

SENATOR ST. AUBYN: But, I guess my point is, does an employee still have the ability to buy additional insurance beyond what the state pays, that is my question. Under the PERS plan, does PERS charge the same as you are proposing for TIAA? Because it is really the same, you don't get both plans.

SUSAN T. ANDERSON: It is my understanding that if it comes out of an employee's pocket, it's going to cost the same, of course with other factors. For example, the rate factor is taken into account, but, let's say that all companies being equal, this is mine, I am looking at TIAA-CREF or ReliStar, I am not going to get a premium tax exemption on that money because it is out the

my pocket versus if the state pays. If the state pays, then they are granted the exemption on the premium tax amount.

SENATOR ST. AUBYN: So that is the way it is currently. Except for what you are saying, if I am under the PERS plan and I buy additional insurance, then PERS has to pay the additional tax, but if I buy it under TIAA-CREF, they don't pay? Is that what you are saying for the additional?

SUSAN T. ANDERSON: I guess I am a little bit confused on the question.

SENATOR ST. AUBYN: Okay, you have two employees. One is under PERS and one is under TIAA-CREF. Under both of them, the state will provide a certain level of insurance. I understand that you are saying that premium tax is not charged on those. Now you have a PERS employee that takes out an additional amount that comes out of their pocket, is PERS charged for the additional premium tax for that and TIAA-CREF is not.

SUSAN T. ANDERSON: PERS is charged, but, at present, TIAA-CREF is not because they do not pay premium tax.

SENATOR ST. AUBYN: For the excess it definitely different.

SUSAN T. ANDERSON: Yes.

JOHN OLSON: Good morning Chairman and Members of the Appropriations Committee, my name is John Olson, I am a registered lobbyist, and I appear here on behalf of TIAA-CREF. I am going to hand out an outline of comments that are going to be made by Mr. Howard Greene who is senior counsel for that organization. Mr. Greene is here, he is from New York City. I would just like to say that this bill is more than a housekeeping bill because it does have some serious ramifications, and I know that Howard will be able to explain that to you. We want to eliminate that repeal of the exemption that appears in Section 3 of the bill. I have prepared some amendments that I can distribute to you as well at the conclusion of Mr. Greene's testimony.

HOWARD W. GREENE: My name is Howard Greene, I am Senior Counsel with TIAA-CREF (testimony attached (tape 1, side A, meter 2520-4175). We are obviously, at the request of the university system, in opposition to the repeal of an exemption which TIAA currently has in North Dakota law and many states around the country. I do want to start by just correcting one thing that was said in earlier testimony. I think it was mentioned that all the other state's where we have an exemption, are in the process of repealing them, and that is just wrong. There is one state right now which we are talking with about a compromise on what we might do. We have been in many states recently, talking about our exemptions in another light, which I will get to, and none of those states have the interest in pushing for a repeal of our exemption. Legislatures in at least 10 states over the past few years have considered repeals of our exemption, brought by competitors of ours. In all but one case, and some of those legislatures have here this repeal a few times, all of them have rejected the repeal.

SENATOR NETHING: Thank you, Mr. Greene, it has been a long time since I served on a IBL Committee. We used to get housekeeping bills that were fairly simple. I always thought that is what housekeeping bills were. This one is very complex.

SENATOR KRINGSTAD: I'm curious, I happen to be a TIAA-CREF member and I am basically in the retirement aspect of it. I do not have any additional insurance with it, and so forth. Is that going to affect my retirement?

HOWARD W. GREENE: In the end, it would have to. Here is my point, first off, let me be clear. Is it going to devastate your retirement so that you need to walk down the street with a cup? No, you are still going to have, what we think, is the best deal around. Will it cost you something? I think there is no way it can't. We are nonprofit, our expenses have to find their way back. Not just this exemption, but what will happen is that if this exemption is eliminated and we fought for the one exemption that was eliminated in 1995 in Indiana. One or two of our competitors going to other states where they've tried this before and I guarantee you they will get up in front of each and every one of those legislators, and they will say that North Dakota just appealed the exemption, so should you. The exemptions all together add up to something which is some nice money for participants to have. Will it devastate our company if we lose them? Of course not. Will it devastate your retirement? Of course not. Will it cost you a little bit in your rate? I don't think there is any way it can't.

SENATOR BOWMAN: What actually will it cost. You know, we talk in generalities, but are we talking \$5 a year or are we talking per person or are we talking many more dollars?

HOWARD GREENE: It is hard to estimate. It depends on what the guarantee assessments will be. What I can tell you, for example, based on some numbers that I figured. Over last 6 years for our pension annuities alone, we would have paid, in guarantee association assessments in North Dakota alone, about \$650,000. That does not include assessments on the Good Disability Plan, any premium tax that we might have had to pay, although, I believe, that pretty much would have been offset. It doesn't include the impact that you get from all the exemptions around the country. That is a figure over the last 6 years.

SENATOR BOWMAN: So the success of any other states of this not becoming a repeal it's probably due to the fact that you have had an excellent lobbying group, it sounds to me like, that has done a good job in not making this possible. Because the argument was to put everyone on the same playing field and if you do that, it is fair to everybody.

HOWARD GREENE: And that is what we are asking you to keep. The argument that you have heard is that there is no level playing field. If these folks were in the teachers fund for retirement, would they be paying guarantee fund assessments? The answer is no, they would not be. This is their retirement system. It has been here for 35 years and it is in place of that or at something like the University of Mary, the private institutions. They would not have an

organization like us, they would possibly go out and form what is called their own defined benefit plan, kind of like a retirement system. They wouldn't be in the guarantee association either. They use us instead because we are recognized as the retirement system for higher education around the country. You actually ask these people to pay for the expenses which other state employees in their retirement systems do not. And as I said, the individual business, when we are going out to the public and say you can come in and buy a life insurance policy from us. You can go out and buy a long-term care policy from us. That business, we are going to be speaking with the insurance department to license. That will be like any other insurance company. It will all be separate from TIAA, the expenses will be separate, everything else will be separate entities. The new one is owned by a holding company which is then owned by TIAA. They are separate and the expenses will not be shared. That is the way it works.

SENATOR TALLACKSON: This is kind of hard to understand, but am I to believe that everything is exempt that you sell to the employees that the state pays for, but what about the extra that they buy that they pay for with their own premium? Are you the only one that is exempt from paying taxes? Why should you be.

HOWARD W. GREENE: That is right, the reason that we are in so many places around the country is because of our unique history because of our nonprofit status, because we are the only ones out there seeking to truly maximizing their returns, not for shareholders, but for them. Not that there is anything wrong will a stock company, we are a shareholder-owned company, but our mission is completely different and what we do is completely different in that way. The fact that when you look to us the way that you know how solid we are and have been. It is a very individual situation. And that is why. We don't believe it gives us any type of real advantage over our competitors, when we do have competitors. We think that when we have heard competitors say that, we kind of giggle because if you look at the numbers, we are so far apart in terms of expenses that it is silly to believe that would make a dent in it like I say before. The reason we are so lost cost really, is that we are nonprofit and that we don't have a commissioned sales force that we have many administrative efficiencies with our institutions because we are so specialized in that community. We also can't go out like other companies and go after the general public and sell products. We can't subsidize other folks with Higher Ed. There are other companies that do this. We can't do that.

SENATOR ST. AUBYN: Just a clarification, as I understand then, TIAA CREF, if they are selling these premiums over and above to the employees. They are currently exempt from that additional deal, but if one of these other companies that are doing it through PERS, they do pay it but there is a difference is what you are saying. That other company still has the ability to sell to the general public, but TIAA-CREF does not sell to the general public?

HOWARD W. GREENE: Yes, that is a major difference. We are limited by our charter. We would actually have to change our charter to change that. Our charter is part of New York State law, we would have to go to the legislature in New York and change the charter. If we could, and if we did, by the way, you would be the first ones to know that be were walking in here and

giving up our exemption because we would change our charter because we decided that there was more value in doing something else.

SENATOR ROBINSON: Didn't I hear you say that about 90 some percent of your business is in the annuities side of things, that the life insurance activity is relatively small in comparison when you look at the big picture.

HOWARD W. GREENE: It is very small in the big picture, and what I should explain what will remain in TIAA even after we license this new company, will be group life insurance and group disability. The reason that is staying in TIAA is that we view that as sort of part and parcel of the pension business. As a matter of fact, we were asked by the participating institutions to have those products because what they said to us was, that you know you have a great pension but we need group disability or life insurance or both to go with that. That is always a part of the pension package, in effect. And we know you guys can do what we think is best for us. Can you do that for us? I kind of admit the company kind of said all right, I guess I will have to do that. But we don't believe we have any of those plans to my knowledge. I don't believe we have any, anywhere in the country where we don't also have the pension plan. We are not out marketing that to various groups where we don't have their pension plan. It is part and parcel of the pension plan. The other business, the more individual business like I said, that we are going start to move on to license, so that on a going forward basis, that new policy will always come in they will be in a licensed company. Because if we are going to go out the offer that to the general public, one, it doesn't fit our exemption here, and two, we wouldn't come in and ask you to maintain or give an exemption for that. It is totally different.

SENATOR TOMAC: I am only confused on one point, and that is that I thought the testimony of the Insurance Department said that the reason they brought this change forward is because you lost your nonprofit status, am I wrong on that? So when I hear this, I am confused then when you talk about being for without profit, then how come we lost the non profit status.

HOWARD W. GREENE: That is a good question, I can explain that. What you heard from the insurance department, I think that was just the way it was phrased. Let me just clarify. We did not lose our nonprofit status, what we lost is our federal income tax exemption, and if you look at the law of nonprofit one of the first things I will tell you is that if income tax exemption is a subset of nonprofit, there are many nonprofits out there that do not have tax exemption. They are not the same thing. We are still very much operating on a nonprofit basis. We simply not exempt to federal income tax anymore.

SUSAN ANDERSON: I just have some general points to make and Mr. Green has raised some very good issues that I did not think would be raised today, but just with your indulgence I would like to respond to clarify to some of those issues. On a public policy standpoint, should TIAA contract holders be subject to the safeguards provided by the Guarantee Fund Associations that other North Dakota state residents have? We clearly think that they should. Also, one thing that, and I do apologize because I wasn't here for all of Mr. Greene's testimony, but I don't know if he

mentioned that Guarantee Fund assessments from other states are socialized through TIAA-CREF's contract holders. For example, if I was a contract holders of TIAA-CREF, my rate for my policy will include Guarantee assessments of a New York policyholder. For example, so the Guarantee assessments that would be levied against TIAA-CREF is socialized among the nation, so it is reflected in your contract or policy rate. The question becomes, should you be paying for another states guarantee assessment when you have no safety net? With the deletion of the exemption, at least we will level that playing field, at least you would have some safety net should, and chances are it would never happen, TIAA-CREF become insolvent. Last point, should TIAA-CREF have an unfair advantage? For example, their policy forms are not approved in North Dakota. So is it fair that a North Dakota policyholder have a policy that has never been approved in North Dakota. Mr. Greene did raise the situation that the department has never incurred any problems with TIAA-CREF. That may be true, but I would like to add this caveat. We do not regulate TIAA-CREF, so should a complaint come in, we have no authority. Could we have gotten calls on them? Possibly. Would we keep a record of them? No, because we do not regulate them. At least with the deletion of the exemption, should any problems arise, we would be able to take care of North Dakota policyholders. Those are just the clarifications I would like to make.

SENATOR NETHING: I would like to have you make one more clarification if you wouldn't mind. What, in your mind, makes you declare this to be a housekeeping bill?

SUSAN ANDERSON: My boss told me it was.

SENATOR NETHING: Did you say that to the IBL Committee that this was a housekeeping bill?

SUSAN ANDERSON: Yes

SENATOR ST. AUBYN: Your statement about the complaints that are not logged because it is not regulated. Wouldn't it be fair to assume that if you are getting a lot of complaints, that you certainly would know about it and you probably would be coming here or making changes right away saying that we are getting lots of complaints because it is unregulated. Wouldn't that be a fair statement?

SUSAN ANDERSON: Yes, that is a fair statement.

SENATOR ROBINSON: The other concern I would have is that you reference a playing field that is not level, and if we approve this bill with Section 3, on one hand, we might argue that we have created a level playing field, but over here, we have created another situation that is not fair. TIAA-CREF is not out in the public market. If you look at their situation in terms of the competitive marketplace. I don't know if we are making any headway here, I think we are probably stepping back.

SUSAN ANDERSON: That is a good point. I would like to add though, and perhaps Mr. Greene will clarify this, though TIAA-CREF's charter is very limited, for example, for the educational system, you also have to look at who is covered under that university system (retired employees, employees, employee's dependents, employee's spouses), so though it is a narrow focus, my point is that I am not so sure that it is as narrow as you are thinking. It does branch out to include a greater, for example, not just professors or university employees, range of people.

SENATOR ROBINSON: I am a member of TIAA-CREF, I have considered there insurance products. We don't have any of those products. But still are we not looking at a very small group in terms of the big picture? And I know we are branching out to retirees, dependents, etc., but in terms of the big picture, we are still looking at a very focused small group. In terms of numbers, are we not?

SUSAN ANDERSON: Yes, and though I know Mr. Greene has mentioned this, but they are branching out to cover the rest of the public, and they plan to do this through a life insurance sub. So yes and no. Yes, TIAA-CREF's charter limits them to, for example, the educational purposes, but now they are coming out and bringing a sub that will include the rest of the population. So they are branching out and I think that is a consideration that you have to take into account.

SENATOR ROBINSON: But for that endeavor they will be seeking licensing and approval of the department.

SUSAN ANDERSON: They intend to, that is my belief, yes.

SENATOR NETHING: Mr. Greene, would you like a little rebuttal time.

HOWARD GREENE: First of all, let me just go through a few of the points that were just made. On the TIAA-CREF life portion - the new company which we have and we talked about how we are branching out - we are branching out to TIAA-CREF life insurance company, and we recognize that this is not something which you are going to exempt. We are specifically including that as a company which is going to have the full regulation of the department. We are not asking for any exemption there. That is a totally separate thing. I believe, if anything, it keeps TIAA very precede, we understand that. The point about us socializing, as it is called, the cost, meaning we spread the savings or the costs therefore Guarantee Fund Assessments amongst all of our participants in the country. I am sorry if I did not make that clear. That is what I was referring to when I talked about all of the assessments working together in conjunction. I am sorry if that was not clear. The argument though that shouldn't folks in North Dakota, therefore, have that same benefit? That strikes me as a little strange because I think the Higher Ed community, and I know we view the costs that we are already paying around the country on that, to be pretty much without benefit, and I guess the argument that the High Ed folks have to pay even a little bit more for something that they don't want and don't need sort of strikes me as a little awkward. We have also, I should tell, discussed within the company, what happens if states

start to pull or exemptions, which has not happened. What if they do? What if we get to the point where only a handful have exemptions, what will we do? We have talked very seriously about no longer socializing. We do that now because about half the states give us some type of exemption, and it just seems silly to break it out state by state. If we have 6 or 7 of them, we might very well decide not to and say fine, if this state gives us an exemption, we'll just apply that to the state, I don't know what we would do. But paying more for something they don't need seems silly. The complaint portion of that, how the department would not know, one I think they would have heard, I don't know what they would have done with it. I can't speak for the department. I can tell you that when I first joined the company in 1995, I looked at three years of complaints for our company as part of a project that I was doing, and I read them all. We averaged about 30 complaints from insurance departments throughout the country, which I think the department will tell you for a company of our size, it is unthinkable low. I also noticed that we got complaints, if you want to call them that, most of them were about why did it take ten years to get my money out of TIAA, they weren't real complaints. We have had notices from states where we are not licensed. We responded to them like we would response to anyone else. I believe the department would know if there was a problem and if they pass it on to us, we would respond. Likewise, with the USE system, I believe that the HR office would tell you that the HR officers, if there were complaints about us, we would be hearing it in no uncertain terms, from the participants. And I can tell you for a fact that with the USE system, most of higher education around the country, if they were hearing problems about us, they don't keep it a secret. They let us know that very quickly and very bluntly. I think we would know if there were serious complaints, and I think the department would know as well. There was talk about competition with PERS. We don't consider ourselves to be in competition with PERS, we are not competing for business with PERS, we are simply a retirement system that is aside from PERS and we are trying to maximize benefits to people the same way PERS, I assume, is trying to maximize benefits to its folks. Finally, on who is covered, if you have an employer-sponsored group plan that includes life insurance, in any place, there are going to be dependents and spouses as part of that plan. The plan would look ridiculous to employees if they did not, and I think our institutions would say what are you out of your mind. What is true is that on a long-term care product, not on the pension products certainly, on the long-term care products, which is one of our newest products, we extend that a little farther to certain other relatives of participants. That product, by the way, will start to be sold out of the newly licensed company. To build a connection with the individual. It is not quite as tight as you would have in the employer plan.

SENATOR NETHING: Susan, if this committee would delete Section 3, would we also be wise then to delete Section 5, or could that still stand alone on its own merit?

SUSAN ANDERSON: Section 5 can stand alone.

SENATOR NETHING: Thank you very much. Anyone else to testify. Anything new to offer. If not then, we will close the hearing on SB 2180.

2/04/99

SENATOR NETHING: Reopened the hearing on SB2180 (tape 2, side a, meter 50-.

SENATOR NETHING: Explained the amendment.

SENATOR NETHING: Called for the motion on the amendment to SB2180.

SENATOR ROBINSON: Moved a Do Pass on the amendment to SB2180.

SENATOR HOLMBERG: Seconded the motion.

ROLL CALL: UNANIMOUS.

SENATOR NETHING: Called for the motion on SB2180 as amended.

SENATOR NAADEN: Do Pass as amended on SB2180.

SENATOR ST. AUBYN: Seconded the motion.

ROLL CALL: 14 YEAS; 0 NAYS; 0 ABSENT & NOT VOTING.

CARRIER: SENATOR NETHING

SENATOR NETHING: Closed the hearing on SB2180.

Date: 2-4-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2180

Senate APPROPRIATIONS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AMENDMENT

Motion Made By SENATOR Robinson Seconded By SENATOR Holmberg

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman					
Senator Naaden, Vice Chairman					
Senator Solberg					
Senator Lindaas					
Senator Tallackson					
Senator Tomac					
Senator Robinson					
Senator Krauter					
Senator St. Aubyn					
Senator Grindberg					
Senator Holmberg					
Senator Kringstad					
Senator Bowman					
Senator Andrist					

Total (Yes) voice vote No 0

Absent 0

Floor Assignment _____

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

Date: 2-4-99
 Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2180

Senate APPROPRIATIONS Committee

- Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By SENATOR NAADEN Seconded By SENATOR ST AUBYN

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment SENATOR NETHING

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

REPORT OF STANDING COMMITTEE

SB 2180: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was placed on the Sixth order on the calendar.

Page 1, line 4, remove "26.1-02-05, 26.1-02-05.1,"

Page 1, line 7, remove "section 26.1-36-23,"

Page 1, line 9, remove "unauthorized insurance,"

Page 1, line 11, remove "group health insurance,"

Page 2, remove lines 14 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 15

Page 12, remove lines 18 through 30

Page 13, remove lines 1 through 30

Page 14, remove lines 1 through 28

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2180

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2180

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
1	x		3539 - end
2		x	3646 - 4215
Committee Clerk Signature <i>Lisa Hower</i>			

Minutes: **SB 2180**

Chris Edison introduced SB 2180 relating to a penalty for violation of the insurance notices; to cease and desist orders, premium taxes, unfair discrimination, excess loss insurance, unsatisfied judgment fund, free-look periods of life insurance policies, life insurance, accident and health insurance and long-term care insurance; and to provide a penalty. (See written testimony)

Vice Chairman Kempenich: How does the bill passed in the House work with section 4 of this bill?

Chris Edison: There could be circumstances where a violation of one might be able to be considered a prohibited practice under this provision as well, but this was not put in to deal with the domestic abuse situation.

Rep. Keiser: What if we were to leave this bill as it is and reverse the registration fees for the nonresident agents?

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number Sb 2180
Hearing Date 3-1-99

Chris Edison, With regard to the F & T provision and deleting the requirement that the policy be countersigned by a resident agent, this changes in keeping with that. I don't think that this particular change is going to change the way the department reviews that contract.

Rep. Frank Wald does not oppose this bill, but would like to delete section five. Also section's eight and fourteen serve no purpose and they need work.

Chairman Berg closed the hearing.

Tape 2, side B, Meter No. 3646.

Chairman Berg opened the discussion of SB 2180. In Chris Edison's testimony where he breaks down each section, on page one in the last paragraph where he talks about penalties that has a fiscal impact on the general fund. I don't want to change that unless there is some reason to do so. Also section 14, there is no need for it.

There was on more discussion.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2180 3-2-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
3		x	2580 - 4062
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Chairman Berg opened the discussion of SB 2180.

Rep. Johnson handed out and explained the amendments.

Rep. Glassheim: You talked about deleting the notification of flood insurance. The notification is not covered and can you get it somewhere else?

Chairman Berg: Most property insurance companies will receive a commission to sell a national flood insurance as well, so those people will direct you to the national flood insurance.

Depending on where your house is, it's a mandatory requirement.

Chris Edison explained the fiscal note to the committee.

Rep. Keiser made a motion to adopt the amendments.

Rep. Severson second the motion.

The voice vote was 15 yea, 0 nay, the motion carried.

There was no further discussion.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2180

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-8-99

Tape Number	Side A	Side B	Meter #
1	x		0
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

SB 2180

Chairman Berg opened the meeting on the bill.

Rep. Johnson began by saying that there are 2 sets of amendments with the bill.

The committee discussed the general affects of the amendments on the bill.

Moved by Rep. Severson to adopt the amendments, second by Rep. Froseth

By voice vote, all voting yes, 0 no, 0 asent, motion carried

Moved by Rep. Kline for do pass on the bill as amended, second by Rep. Severson

By roll vote, 15 voting yes, 0 no, 0 absent, motion carried

Rep. Johnson will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180

Page 3, line 23, replace "ten" with "twenty-five"

Page 3, line 26, remove the overstrike from "~~twenty-five~~" and remove "ten"

Page 3, line 27, remove the overstrike from "~~five~~" and remove "one"

Page 3, line 29, remove the overstrike from "~~and interest~~"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SB 2180

Page 6, line 11, remove the overstrike over "The contract must be negotiated with and countersigned by a"

Page 6, line 12, remove the overstrike over "licensed North Dakota resident insurance agent."

Page 10, remove lines 22 through 30

Page 11, remove lines 1 through 3

Renumber accordingly

March 8, 1999

VR
3/8/99

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 1, line 1, replace the first comma with "and" and remove ", and 26.1-39-16.1"

Page 1, line 2, replace the second comma with "and"

Page 1, line 3, remove ", and flood insurance notices"

Page 1, line 5, remove "26.1-22-21,"

Page 1, line 9, remove "excess loss reinsurance,"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 3, line 23, replace "ten" with "twenty-five"

Page 3, line 26, remove the overstrike over "~~twenty five~~" and remove "ten"

Page 3, line 27, remove the overstrike over "~~five~~" and remove "one"

Page 3, line 29, remove the overstrike over "~~and interest~~"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 5, remove lines 27 through 31

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 6, remove lines 1 through 22

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 10, remove lines 22 through 30

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2180 IBL 3-9-99

Page 11, remove lines 1 through 3

Renumber accordingly

Date: 3-8-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2180

House Industry, Business and Labor Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Klein Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent _____

Floor Assignment Johnson

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

REPORT OF STANDING COMMITTEE

SB 2180: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2180 was placed on the Sixth order on the calendar.

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Page 1, line 9, remove "excess loss reinsurance,"

Page 3, line 23, replace "ten" with "twenty-five"

Page 3, line 26, remove the overstrike over "~~twenty five~~" and remove "ten"

Page 3, line 27, remove the overstrike over "~~five~~" and remove "one"

Page 3, line 29, remove the overstrike over "~~and interest~~"

Page 5, remove lines 27 through 31

Page 6, remove lines 1 through 22

Page 10, remove lines 22 through 30

Page 11, remove lines 1 through 3

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2180

CONFERENCE COMMITTEE

=====
 REPORT OF CONFERENCE COMMITTEE
 (ACCEDE/RECEDE) - 420
 =====

07398

(Bill Number) 2180 (, as (re)engrossed):

Your Conference Committee

For the Senate:	HELD	YES	NO	For the House:	HELD	YES	NO
<u>KLEIN</u>	<u>Y</u>	<u>X</u>		<u>KEMPEVICH</u>	<u>Y</u>	<u>X</u>	
<u>SAUD</u>	<u>Y</u>	<u>X</u>		<u>N. JOHNSON</u>	<u>Y</u>	<u>X</u>	
<u>HEITLAMP</u>	<u>Y</u>	<u>X</u>		<u>EKSTROM</u>	<u>Y</u>	<u>X</u>	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
 the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

and place _____ on the Seventh order.
727

, adopt (further) amendments as follows, and place
 _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
 and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
 calendar.

=====
 DATE: ____/____/____
 CARRIER: _____
 LC NO. _____ . _____ of amendment
 LC NO. _____ . _____ of engrossment
 Emergency clause added or deleted _____
 Statement of purpose of amendment _____
 =====

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2180, as engrossed: Your conference committee (Sens. Klein, Sand, Heitkamp and Reps. Kempenich, N. Johnson, Ekstrom) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 727 and place SB 2180 on the Seventh order.

Engrossed SB 2180 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

.SB 2180

**SENATE BILL NO. 2180
TESTIMONY BEFORE THE SENATE
INDUSTRY, BUSINESS AND LABOR COMMITTEE**

**SUSAN J. ANDERSON
LEGAL COUNSEL
NORTH DAKOTA INSURANCE DEPARTMENT**

Senate Bill No. 2180 addresses a number of different concerns relating to the insurance code, N.D. Cent. Code Title 26.1. It is the practice at the Insurance Department to ask staff to submit their suggestions for modifications to the insurance code including technical amendments and substantive changes for clarification to be included in the Department's housekeeping bill. The following are suggestions that, after review, are the suggestions that the Department feel are of most importance. The bill is made up of 18 sections, all addressing different areas of the insurance code. I have addressed each section separately addressing the modification proposed, the problem the modification is addressing, and how the modification intends to fix any problem.

Sections 1 and 2 - This proposed modification moves the authority of the Commissioner to levy a monetary penalty of up to \$10,000 from N.D. Cent. Code § 26.1-01-03.1 to a newly created section N.D. Cent. Code § 26.1-01-3.3. Since the authority is contained in the cease and desist section, some companies have interpreted the Commissioner's authority to levy the \$10,000 fine only in case of a Cease and Desist Order being issued. It is the Department's interpretation that this fining authority is a general provision applicable to all violations. Therefore, for clarification purposes, the authority to levy the fine is moved into a newly created section separate from the cease and desist section.

Section 3 - This proposed modification deletes the exemption for companies transacting life and health insurance business and the sale of annuities for educational or religious or charitable institutions operated without profit to any individual for the benefit of those institutions. This provision was put into law to exempt namely TIAA-CREF from licensing requirements. TIAA-CREF stands for Teachers Insurance and Annuity Association –College Retirement Equities Fund. TIAA-CREF is the nationwide retirement and financial services system for people who work at colleges, universities, independent schools, and other nonprofit education and research institutions throughout the United States. TIAA is the Teachers Insurance and Annuity Association, an insurance company founded in 1918 by the Carnegie Foundation for the Advancement of Teaching. As of December 1997, TIAA-CREF lost its federal tax-exempt status and Congress stated that TIAA-CREF is to be treated as a life insurance company for federal tax purposes. The tax status was removed because Congress felt that TIAA-CREF had an unfair competitive advantage over other insurance companies. This proposed modification will delete the exemption from holding a Certificate of Authority in North Dakota that TIAA-CREF currently enjoys. The deletion of this exemption will require TIAA-CREF obtain a Certificate of Authority in North Dakota resulting in the entity paying premium tax and being subject to the Guaranty Association. The Department believes this deletion is in the spirit of the federal law and will level the playing field for companies transacting that business in this state.

Sections 4 and 15 - These modifications relate to the deletion of the TIAA-CREF exemption proposed in Section 3 above. The modifications renumber the sections should the exemption be deleted as proposed above.

Section 5 - This section amends the premium tax section of the insurance code.

Subsection 1 will clarify that benevolent societies are exempt from taxation. The Department does not collect premium tax from these entities because they do not collect premium. Rather, these companies collect voluntary assessments to provide for the payment of a death benefit to the beneficiary of a deceased member. Currently, there is only one benevolent society operating in North Dakota. Adding a specific exemption for this entity simply provides clarification to the law in regard to the practice of these entities.

Subsection 2 corrects a citation error. This section intends to cite the examination credit section of the health maintenance organization chapter which was repealed and renumbered in 1993. Prior to 1993 the correct citation was N.D. Cent. Code § 26.1-18-27 and has been subsequently renumbered to N.D. Cent. Code § 26.1-18.1-18. This proposed modification corrects the citation.

Subsection 3 modifies the penalty provisions of the premium tax section of the code. The proposed modification will reduce the penalty for a company failing to pay premium tax from 5% per day or \$100 whichever is greater plus 1% interest per month on the unpaid tax to \$10 per day. After review, the Department discovered that most states penalized companies for failing to pay within this proposed amount. The reduction in the penalty amount will put North Dakota in line with other states and provide some tax relief to companies doing business in North Dakota.

This same subsection reduces the penalty for companies that fail to file the appropriate tax from a penalty of \$25 per day with a maximum of \$500 to \$10 per day not to exceed \$100. This proposed modification is based on fines in other states and will provide some tax relief for insurers doing business in North Dakota.

Subsection 4 exempts benevolent societies from filing estimated premium taxes for the same reasons as subsection 1. This section also modifies the calculation of estimated premium tax. At present, companies must make payments of at least ¼ of the total tax paid during the previous calendar year, or 80% of the actual tax for the current calendar year. Companies have been interpreting this provision as having to make a quarterly payment equal to the 80% of the total previous years for tax due, as opposed to 80% of the tax due for the quarter being reported. The Department takes the position that "current calendar year" meant the quarter the tax was being paid. Therefore, the addition of the language "quarter being reported of [the current calendar year]" will resolve any confusion over the calculation of the estimated premium tax.

Subsection 6 adds a penalty provision for companies that are subject to the \$200 filing fee. This provision would subject a company in this position to the penalty for failing to file the appropriate tax statement.

Section 6 - This modification adds an unfair discrimination provision for property and casualty risks. At present, there exists no express statutory prohibition against unfair discrimination in the property/casualty arena other than for rates. This modification would prohibit an insurer from

declining, refusing to renew, canceling, or limiting insurance coverage based on an individual geographical location of the risk, for example on an Indian reservation, unless it was based on sound underwriting principles. This provision would provide greater consumer protection for insureds.

Section 7 - This section modifies the Fire and Tornado Fund statute. This proposed modification deletes the requirement that any excess reinsurance the Fire and Tornado Fund purchases has to be countersigned by a resident insurance agent. The Department is proposing Senate Bill No. 2181 which deletes all countersignature requirements. This modification would make the Fire and Tornado Fund statute consistent with the Department's agent bill, Senate Bill No.2181.

Section 8 - This proposed modification amends the Unsatisfied Judgment Fund to provide the Insurance Department and Attorney General's Office with 30 days notice prior to hearing of a default judgment. The Unsatisfied Judgment Fund is a fund that was created back in 1947 to pay for judgment for those who obtained judgments against judgment proof defendants. At present, the Commissioner and the Attorney General must be given 30 days notice prior to entry of a default judgment and allows the Department to step in and defend, answer, or appear. The 30 days notice before entry of judgment many times does not give the Department time to prepare to step in and defend the action. In some cases, the motion for default judgment is heard and a judgment is rendered after the hearing. In those cases, the Department missed its opportunity to try the case or examine the witnesses during the hearing. The proposed modification would require 30 days notice of hearing and would remedy the situation mentioned above. This modification would, in the least, provide the Department more time to prepare should we decide to step in and participate in the hearing.

Section 9 - This proposed modification creates a newly created section that provides a list of unlawful reasons for declination or termination of a commercial insurance policy. At present, the insurance code provides for these unlawful reasons for declination or termination in personal insurance, such as auto and homeowner policies. This proposed modification would mirror the unlawful reasons for the declination or termination found in personal lines.

Section 10 - This proposed modification adds the term "certificate" into N.D. Cent. Code § 26.1-33-02.1. In life insurance the terms "policy" and "certificate" are used in group situations. For example, the policyowner receives a copy of a "policy" and members of the group receive a "certificate of insurance." A good example is PERS. PERS is the policyowner of a life insurance policy and myself as a member of PERS receives a copy of the "certificate of insurance." The policy and the certificate mirror each other. At present, N.D. Cent. Code § 26.1-33-02.1 provides that the person who purchases a life insurance policy has a 22-day free-look period. The law does not address whether a certificate holder has such a right. This modification expressly adds the term "certificate" to this section and clarifies that a certificate holder is also entitled to the 22-day free look period.

Sections 11 and 14 - These proposed modifications delete the requirement that companies, when filing policies, attach a certificate stating that the policy meets the minimum reading ease score. These modifications would still require the policies to meet the readability requirement but would not require a separate document stating as such. North Dakota is a prior approval state for forms. That is, insurance companies have to file their forms and get approval before they may

use the forms. The Department has begun accepting filings by SERFF (State Electronic Rate and Form Filing System). Under this system, insurance companies file their forms (and rates) by computer. Using this system, the Department has found that the requirement of an additional document "takes up space" in the computer and requires additional review time. The Department has found that this requirement is simply burdensome and the deletion of the certification will not affect North Dakota policyholders because the forms still must meet the reading ease score.

Section 12 - This proposed modification amends the age of dependent children in individual or group health insurance from the age of 19 to 22. N.D. Cent. Code § 26.1-36-22(3), the statute relating to individual and group health insurance for dependents, was changed by the Legislature to increase the age of dependent children that live with the insured to 22 years. At present, N.D. Cent. Code § 26.1-36-03(1)(c), the general provision regulating all accident and health insurance policies, conflicts with this section because the dependent age was overlooked when amending N.D. Cent. Code § 26.1-36-22(3) and left at 19. Therefore, the proposed modification would change the age of dependent children in N.D. Cent. Code § 26.1-36-03(1)(c) to age 22 and harmonize both sections.

Section 13 - This section modifies N.D. Cent. Code § 26.1-36-05(1) which provides that benefits payable under an accident and health policy other than benefits for loss of time must be paid within 60 days of receipt of proof of loss. The proposed modification would exclude from the 60-day requirement those policies subject to N.D. Cent. Code § 26.1-36-37.1. N.D. Cent. Code § 26.1-36-37.1 addresses proof of losses for policies for "health care services." "Health care services" include medical, dental, or hospital care as well as any service provided to prevent, alleviate, care, or heal human illness or injury. This section requires action on a claim within 15 days after a proof of loss claim form has been received. Therefore, there exists an inconsistency between the general 60-day action requirement in accident and health policies and the 15-day requirement for policies for health care services. The addition of the cite to N.D. Cent. Code § 26.1-36-37.1 in N.D. Cent. Code § 26.1-26-05 would reconcile these two statutes and provide clarification for the different action requirements for the two types of policies.

Section 16 - This proposed modification is just a technical change to correct a citation error. The proposed modification changes the cite to the health maintenance organization chapter from Chapter 26.1-18 to Chapter 26.1-18.1. The new cite was renumbered back in 1993 and this citation was not changed due to oversight.

Section 17 - This proposed modification would create a new section requiring a notice in homeowners and dwelling fire policies that their policies do not provide coverage for loss caused by flood or mudslides and that flood insurance is available through the National Flood Insurance Program. This proposed section would require the notice on first renewals and any new business as of the effective date of this section. This proposed section stems from the disaster that occurred in Grand Forks, when we learned that many homeowners were not aware that their homeowner policies did not cover losses caused by the flood. This section would provide express notice to policyholders that their homeowner policies do not cover such losses. This modification is patterned after similar laws in other states like New York and Pennsylvania.

Section 18 - This proposed modification provides that a long-term care insurer may not contest a long-term care policy after six months from the effective date of the policy unless based on

intentional misrepresentation on the application form. At present, N.D. Cent. Code § 26.1-45-05.1 states that a long-term care policy cannot be rescinded after six months from the effective date unless based on the insured's health status. Rescission involves erasing the policy. It is like the policy never existed. At present, a long-term care insurer may rescind a policy up to six months based on an intentional misrepresentation. Incontestability, on the other hand, may result in rescinding the policy or a denial of a claim. For example, long-term care insurers use the incontestability provision to contest the issuance of the policy, resulting in a rescission. N.D. Cent. Code § 26.1-36-04 provides the general incontestability provision for all accident or health insurance policies. Those policies may be contested for up to two years for any reasons except nonpayment of premiums. Long-term care companies use the incontestability provision to in essence rescind a policy after the six-month limitation date. There exists at present a conflict between the time frames for rescission of the policy and contesting the policy. The proposed modification would remove the inconsistency in these two statutes by having the same time frames for both rescission and incontestability in long-term care policies and prevent insurers from being able to deny coverage after six months.

SENATE BILL NO. 2180
TESTIMONY BEFORE THE
SENATE APPROPRIATIONS COMMITTEE

LARRY ISAAK, CHANCELLOR
NORTH DAKOTA UNIVERSITY SYSTEM

Good morning. My name is Larry Isaak and I am Chancellor of the North Dakota University System. The University System strongly supports the retention of TIAA's insurance company licensing exemption which would be lost if the changes in Section 3, subsection 4, (page 4, lines 25-28) are enacted.

TIAA has been the pension system for the North Dakota University System faculty and administrators for the past 35 years and it is recognized as **THE** pension system of the higher education community nationwide. Our employees have benefited greatly from this relationship which the legislature enacted 35 years ago. We know TIAA to be unsurpassed in integrity and their financial stability is beyond question. As a nonprofit formed to serve our community, they provide our employees with superior pensions and customer service at rock bottom prices.

TIAA is not just another insurance company in our state - they are **THE** pension system for our faculty and administrators, just as PERS is **THE** pension system for our classified employees. We expect the same thing from TIAA that we expect from PERS - be judicious with every dollar we pay so that employees receive the

maximum pension bang for our buck. One of the primary reasons we choose TIAA is their ability to do just that. They keep expenses to a level far below those of other companies because their motive is to serve our employees, not to make money.

Another reason we choose TIAA is their financial strength ratings, which are virtually unequaled. We would not permit our employees' pensions to be with a company that does not have our absolute confidence. We do not believe this bill will add any value, but only unnecessary cost to our employees which will reduce future benefits.

Let me close by pointing out that PERS does not have to pay costs such as those associated with being a licensed insurance company and our classified employees benefit from this in the form of lower expenses. Our faculty and administrators should continue to receive the same benefit in **THEIR** pension plan. Will the repeal of this exemption, reduce the dollars available to our employees when they retire? Without a doubt. Therefore, we respectfully suggest that it comes down to one question - are pension contributions better spent on administrative fees and expenses, or are pension contributions better spent adding to the retirement security of our employees? We side with the employees and we ask you to do the same by preserving TIAA's exemption. Thus, we ask you not to enact the changes on page 2, lines 25-28.

Thank you.

**SENATE BILL NO. 2180
TESTIMONY BEFORE THE
SENATE APPROPRIATIONS COMMITTEE**

**SUSAN J. ANDERSON
LEGAL COUNSEL
NORTH DAKOTA INSURANCE DEPARTMENT**

Good Morning, my name is Susan J. Anderson and I am Legal Counsel of the North Dakota Insurance Department and I am here today to testify in support of Senate Bill No. 2180.

Senate Bill No. 2180 includes 18 different sections. The revised fiscal note involves two sections, Section 3 and Section 5.

Section 5 - Premium Tax Modifications

Section 5 of Senate Bill No. 2180 reduces the amount of penalties for companies failing to file and/or pay premium tax in the state. North Dakota law taxes premium collected within the state at the following rates – 2% on life insurance and 1 ¾ % on accident and health insurance and other lines of insurance. N.D.C.C. § 26.1-03-17(3) is the premium tax section of the code and states the penalties for companies that fail to file or pay their tax within the required time. It is this section that Senate Bill No. 2180 proposes to modify.

Presently, N.D. Cent. Code § 26.1-03-17(3) states that companies that fail to file their tax statements by the due date and have no tax due are subject to a penalty of \$25 per day with a maximum penalty of \$500. The proposed change would reduce the penalty to a \$10 per day penalty with an aggregate penalty of \$100. Section 5 also modifies the penalty provisions for those companies that fail to file and pay the tax due by the required due date. Presently, companies that fail to pay their tax on time are subject to a penalty of 5% of the tax due or \$100, whichever is greater, plus interest of 1% per month of the unpaid tax or \$25 per day, whichever is greater. The proposed modification eliminates the 5% penalty option yet retains the \$100 penalty. The proposed modification also eliminates the 1% interest amount and reduces the daily assessed amount to \$10 per day. Therefore, companies which fail to file their tax due are penalized \$100 plus an interest penalty of \$10 per day.

After review and discussions with companies, the Department discovered that most states penalized companies for failing to pay/file within these proposed amounts. The Department believes that these changes will bring some uniformity to penalty provisions among states. Furthermore, the majority of the companies penalized are those that fail to file their statement on time on the basis that they collect no premium within the state and, therefore, believe that the filings are not necessary.

The revised fiscal note states that the modification to Section 5 will result in a reduction in the collection of premium tax penalties in the amount of \$70,000 per biennium.

The \$70,000 reduction is calculated as follows –

The Department penalizes approximately 35 companies in each of the first three quarters of the year for late filing of tax and/or statements. Of those 35, approximately 25 are companies who do not write business in North Dakota and, therefore, do not collect premium in the state. Although these companies do not owe any tax, they are required to file a tax statement and reflect the zero amount of tax due. At present, these companies are penalized \$25 per day, with a maximum of \$500. In many quarters, the majority of these 25 companies reach the \$500 maximum penalty. The Department collects approximately \$12,500 from these companies (25 x \$500) each of the first three quarters resulting in an overall penalty amount of \$37,500 (\$12,500 x 3). Should Senate Bill No. 2180 pass, the maximum aggregate would be reduced to a daily limit of \$10 per day and a maximum limit of \$100. This reduction would result in an overall penalty amount of approximately \$2,500 (25 x \$100). This proposed modification to Senate Bill No. 2180 would result in a reduction of penalties collected from companies that fail to file their tax statement of approximately \$10,000 per quarter for the first three quarters, with an annual reduction of \$30,000.

Of the 35 companies that the Department penalizes each quarter, approximately 10 companies have tax due yet fail to pay the tax due by the required time. Companies that file late are subject to a penalty of 5% of the tax due or \$100 plus an interest amount of 1% per month on the unpaid tax or \$25 per day, whichever is greater. More often than not, the \$100 penalty is assessed rather than the 5% of the tax due and the Department does not anticipate that this will change. Senate Bill No. 2180 would reduce the interest amount from \$25 per day to \$10 per day. This reduction would result in an approximated loss of interest of \$1,500 per quarter for the first three quarters. This reduction is the result of a loss of \$15 per day (\$25 being reduced to \$10) times the approximate number of days in which it takes companies to remit the tax due, which is 10 days (\$15 x 10 days). This reduction would result in an approximate reduction of premium interest collected of \$4,500.

Should Senate Bill No. 2180 pass, the total annual reduction of premium tax penalties collected for both failing to file and pay premium tax within the allocated time, is approximately \$35,000. Please note that this amount is not within the control of the Department since it is based on the number of companies which file late or fail to file their tax statement. Ultimately, this number could increase or decrease dependent upon the number of delinquent companies.

Section 3 - TIAA-CREF Exemption Deletion

Section 3 of Senate Bill No. 2180 will delete the exemption from licensing that TIAA-CREF currently enjoys in North Dakota. As a result of this deletion, the Insurance Department will experience a fiscal impact of an increase of premium tax on the premiums that TIAA-CREF will collect in this state. At present, TIAA-CREF enjoys an exemption from regulation including but not limited to having to pay premium tax.

The revised fiscal note states that the deletion of the TIAA-CREF exemption will result in an increase of premium tax revenues of approximately \$48,000 and \$52,000, respectively, over the next two bienniums. These amounts were calculated based upon TIAA-CREF's 1998 North Dakota life and health premium experience and projected based upon their previous North

Dakota historical experience since 1995. Annuity premiums were not included in the premium tax amounts because such premiums are not taxed in North Dakota.

Summary

The 1999-2001 biennium loss amount of \$22,000 is the difference of the loss of premium tax penalties collected of \$70,000 and the premium tax recovery from TIAA-CREF of \$48,000. The 2001-2003 biennium loss amount of \$18,000 is the difference of the loss of premium tax penalties collected of \$70,000 and the premium tax recovery from TIAA-CREF of \$52,000.

Outline of Testimony by Howard W. Greene, Senior Counsel,
Teachers Insurance and Annuity Association of America,
Before the North Dakota Senate's Committee on Appropriations
February 3, 1999

Teachers Insurance and Annuity Association of America (TIAA) is a nonprofit insurance company founded in 1918 by the Carnegie Foundation for the Advancement of Teaching. Its sole mission, set forth in its charter, is to **"aid and strengthen"** nonprofit educational and research institutions by providing pension annuities and certain other insurance products to teachers and other persons employed by them **"on terms as advantageous" "as shall be practicable", "all without profit to the corporation or its stockholders."** This continues to be TIAA's nonprofit mission despite the loss of TIAA's federal income tax exemption in 1997.

TIAA and its companion company College Retirement Equities Fund have more than 6,700 participants in North Dakota at over 40 institutions throughout the state.

TIAA is exempted from North Dakota's insurance company licensing requirements by Section 26.1-02-05(4), North Dakota Century Code. Senate Bill 2180, Section 3, would eliminate TIAA's exemption.

- **Eliminating TIAA's exemption will hurt North Dakota's higher education employees.** TIAA's exemption, codified in 1973, was granted by the North Dakota Legislature because of a desire to maximize the pension benefits of North Dakota's higher education community by eliminating unnecessary costs, such as the subsidization of the Life and Health Insurance Guaranty Association. TIAA has among the lowest expenses of any annuity provider in the country and exemptions such as North Dakota's help keep expenses low, maximizing the pension benefits of North Dakota's higher education employees.
- **TIAA participants will receive no corresponding benefit from elimination of the exemption for the added costs they will be required to pay.**
 - **TIAA is one of the most financially sound life insurance companies in the United States.** It is one of only three companies to hold the highest solvency ratings from all four of the major rating agencies. A "run" on TIAA is impossible because, unlike other life insurance companies, more than 90 percent of TIAA's annuities are not immediately cashable.

- **TIAA is fully regulated by the New York Department of Insurance.** As a New York domiciled company, TIAA is regulated by one of the most stringent regulatory departments in the nation.
- **TIAA holds insurance company licensing or guaranty association exemptions in 23 states, as well as a premium tax exemption in the District of Columbia.**
- **TIAA participants should not have to subsidize insolvencies twice.** Insurance companies that pay assessments to cover insolvencies are permitted to subtract some or all of those payments from future premium taxes. These "offsets," which result in lower premium tax revenues to the state, place much of the actual burden of funding insolvencies squarely on the taxpayers of North Dakota, including higher education employees. In effect, the insurance companies pay the assessments up-front and the taxpayers pay the companies back over time. However, because TIAA's business is predominantly annuities and since premium taxes are not paid on annuities, TIAA would have too little premium tax to offset the great majority of its assessments against. This means that TIAA would not get reimbursed by the taxpayers and therefore in reality, TIAA's participants would not get paid back. As such, the higher education community would be forced to pay a disproportionate share of the cost of insurance company insolvencies by effectively paying twice, once as citizens and again as TIAA participants, even though they are with one of the financially strongest insurance companies in America.
- **TIAA's charter limits it to serving the nonprofit educational community exclusively.** Unlike for-profit companies, TIAA cannot offer its products to the public at large. TIAA only offers pension annuities to individuals employed by eligible institutions - the institution serves as a sophisticated screen which approves the company or companies which may offer retirement annuities to its employees.
- **TIAA's exemption permits retirement system parity for University System faculty and administrative staff.** TIAA has been the exclusive retirement plan for faculty and administrators at the University System since 1964. Other state employees, including University System staff, are part of PERS. PERS is not subjected to expenses such as guaranty association assessments on their pension or disability plan. The elimination of TIAA's exemption would therefore require faculty and administrators to absorb expenses that do not apply to other state employees.

- North Dakota law recognizes TIAA as being akin to other state retirement systems, such as PERS, the Highway Patrolmen's Retirement System and the Teachers Fund for Retirement.
- TIAA's licensing exemption does not create an unlevel playing field for TIAA's "competitors." The amount of money TIAA saves, and that other companies therefore must pay in guaranty association assessments, barely makes a dent in the enormous expense advantage TIAA has over commercial insurers. As recognized by the major solvency rating agencies, TIAA's expense advantage is attributable to its nonprofit operations, its lack of a commissioned sales force and its unique relationship with pension plan administrators.
- The repeal of TIAA's federal income tax exemption in 1997 has no relationship to TIAA's licensing exemption in North Dakota and was not a policy statement by Congress or the President. The repeal was included in the "Chairman's Mark" of major budget/tax legislation. The bill was written by tax staff and under the highly unusual process utilized in the House, no hearings or true mark-ups were permitted. The huge bill was presented to House members for an up or down vote, with no opportunity to testify, debate or vote on any individual provision, including the repeal of TIAA's exemption. The only "Dear Colleague" letters circulated in the House were on behalf of retaining TIAA's exemption. The Senate, with a more traditionally open process, deliberately left the repeal out of their version. Almost half the Senate, on a completely bipartisan basis, signed "Dear Colleague" letters in support of TIAA. The Administration likewise supported maintaining TIAA's exemption. In the end, TIAA's exemption was traded for an unrelated provision. It ultimately came down to trading and revenue numbers.

It is interesting to note that Rep. Earl Pomeroy was one of TIAA's most enthusiastic supporters, co-authoring one "Dear Colleague" letter and signing another that was co-authored by Rep. Henry Hyde.

- Elimination of TIAA's exemption is a solution in search of a problem. TIAA's exemption has not caused any problem during the past 25 years. Nothing has changed. Approximately 10 state legislatures have considered legislation to repeal TIAA's exemptions, with virtually all of these bills emanating from one or more TIAA competitors. Some of these legislatures have been subjected to multiple efforts over a period of years. The legislatures in all but one of these states (Indiana) have chosen to preserve TIAA's exemptions.

PROPOSED AMENDMENTS TO SB 2180

Page 1, line 4, remove “26.1-02-05, 26.1-02-05.1,”

Page 1, line 7, remove “section 26.1-36-23,”

Page 1, line 9, remove “unauthorized insurance,”

Page 1, line 11, remove “group health insurance,”

Page 2, remove lines 14 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 15

Page 12, remove lines 18 through 30

Page 13, remove lines 1 through 30

Page 14, remove lines 1 through 28

Renumber accordingly

SENATE BILL NO. 2180
TESTIMONY BEFORE THE HOUSE
INDUSTRY, BUSINESS AND LABOR COMMITTEE

CHRIS EDISON
GENERAL COUNSEL
NORTH DAKOTA INSURANCE DEPARTMENT

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Sections 1 and 2 - This proposed modification moves the authority of the Commissioner to levy a monetary penalty of up to \$10,000 from N.D. Cent. Code § 26.1-01-03.1 to a newly created section N.D. Cent. Code § 26.1-01-3.3. Since the authority is contained in the cease and desist section, some companies have interpreted the Commissioner's authority to levy the \$10,000 fine only in case of a Cease and Desist Order being issued. It is the Department's interpretation that this fining authority is a general provision applicable to all violations. Therefore, for clarification purposes, the authority to levy the fine is moved into a newly created section separate from the cease and desist section.

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Subsection 1 will clarify that benevolent societies are exempt from taxation. The Department does not collect premium tax from these entities because they do not collect premium. Rather, these companies collect voluntary assessments to provide for the payment of a death benefit to the beneficiary of a deceased member. Currently, there is only one benevolent society operating in North Dakota. Adding a specific exemption for this entity simply provides clarification to the law in regard to the practice of these entities.

Subsection 2 corrects a citation error. This section intends to cite the examination credit section of the health maintenance organization chapter which was repealed and renumbered in 1993. Prior to 1993 the correct citation was N.D. Cent. Code § 26.1-18-27 and has been subsequently renumbered to N.D. Cent. Code § 26.1-18.1-18. This proposed modification corrects the citation.

Subsection 3 modifies the penalty provisions of the premium tax section of the code. The proposed modification will reduce the penalty for a company failing to pay premium tax from 5% per day or \$100 whichever is greater plus 1% interest per month on the unpaid tax to \$100 plus \$10 per day. After review, the Department discovered that most states penalized companies for failing to pay within this proposed amount. The reduction in the penalty amount will put

North Dakota in line with other states and provide some tax relief to companies doing business in North Dakota.

This same subsection reduces the penalty for companies that fail to file the appropriate tax statement, if their tax liability is zero, from a penalty of \$25 per day with a maximum of \$500 to \$10 per day not to exceed \$100. This proposed modification is based on fines in other states and will provide some tax relief for insurers doing business in North Dakota.

Subsection 4 exempts benevolent societies from filing estimated premium taxes for the same reasons as subsection 1. This section also modifies the calculation of estimated premium tax. At present, companies must make payments of at least $\frac{1}{4}$ of the total tax paid during the previous calendar year, or 80% of the actual tax for the current calendar year. Companies have been interpreting this provision as having to make a quarterly payment equal to the 80% of the total previous years for tax due, as opposed to 80% of the tax due for the quarter being reported. The Department takes the position that "current calendar year" meant the quarter the tax was being paid. Therefore, the addition of the language "quarter being reported of [the current calendar year]" will resolve any confusion over the calculation of the estimated premium tax.

Subsection 6 adds a penalty provision for companies that are subject to the \$200 filing fee. This provision would subject a company in this position to the penalty for failing to file the appropriate tax statement.

Section 4 - This modification adds an unfair discrimination provision for property and casualty risks. At present, there exists no express statutory prohibition against unfair discrimination in the property/casualty arena other than for rates. This modification would prohibit an insurer from declining, refusing to renew, canceling, or limiting insurance coverage based on an individual geographical location of the risk, for example on an Indian reservation, unless it was based on sound underwriting principles. This provision would provide greater consumer protection for insureds.

Section 5 - This section modifies the Fire and Tornado Fund statute. This proposed modification deletes the requirement that any excess reinsurance the Fire and Tornado Fund purchases has to be countersigned by a resident insurance agent. The Department is proposing Senate Bill No. 2181 which deletes all countersignature requirements. This modification would make the Fire and Tornado Fund statute consistent with the Department's agent bill, Senate Bill No.2181.

Section 6 - This proposed modification amends the Unsatisfied Judgment Fund to provide the Insurance Department and Attorney General's Office with 30 days notice prior to hearing of a default judgment. The Unsatisfied Judgment Fund is a fund that was created back in 1947 to pay for judgment for those who obtained judgments against judgment proof defendants. At present, the Commissioner and the Attorney General must be given 30 days notice prior to entry of a default judgment and allows the Department to step in and defend, answer, or appear. The 30 days notice before entry of judgment many times does not give the Department time to prepare to step in and defend the action. In some cases, the motion for default judgment is heard and a judgment is rendered after the hearing. In those cases, the Department missed its opportunity to try the case or examine the witnesses during the hearing. The proposed modification would require 30 days notice of hearing and would remedy the situation mentioned

above. This modification would, in the least, provide the Department more time to prepare should we decide to step in and participate in the hearing.

Section 7 - This proposed modification creates a newly created section that provides a list of unlawful reasons for declination or termination of a commercial insurance policy. At present, the insurance code provides for these unlawful reasons for declination or termination in personal insurance, such as auto and homeowner policies. This proposed modification would mirror the unlawful reasons for the declination or termination found in personal lines.

Section 8 - This proposed modification adds the term "certificate" into N.D. Cent. Code § 26.1-33-02.1. In life insurance the terms "policy" and "certificate" are used in group situations. For example, the policyowner receives a copy of a "policy" and members of the group receive a "certificate of insurance." A good example is PERS. PERS is the policyowner of a life insurance policy and myself as a member of PERS receives a copy of the "certificate of insurance." The policy and the certificate mirror each other. At present, N.D. Cent. Code § 26.1-33-02.1 provides that the person who purchases a life insurance policy has a 22-day free-look period. The law does not address whether a certificate holder has such a right. This modification expressly adds the term "certificate" to this section and clarifies that a certificate holder is also entitled to the 22-day free look period.

Sections 9 and 12 - These proposed modifications delete the requirement that companies, when filing policies, attach a certificate stating that the policy meets the minimum reading ease score. These modifications would still require the policies to meet the readability requirement but would not require a separate document stating as such. North Dakota is a prior approval state for forms. That is, insurance companies have to file their forms and get approval before they may use the forms. The Department has begun accepting filings by SERFF (State Electronic Rate and Form Filing System). Under this system, insurance companies file their forms (and rates) by computer. Using this system, the Department has found that the requirement of an additional document "takes up space" in the computer and requires additional review time. The Department has found that this requirement is simply burdensome and the deletion of the certification will not affect North Dakota policyholders because the forms still must meet the reading ease score.

Section 10 - This proposed modification amends the age of dependent children in individual or group health insurance from the age of 19 to 22. N.D. Cent. Code § 26.1-36-22(3), the statute relating to individual and group health insurance for dependents, was changed by the Legislature to increase the age of dependent children that live with the insured to 22 years. At present, N.D. Cent. Code § 26.1-36-03(1)(c), the general provision regulating all accident and health insurance policies, conflicts with this section because the dependent age was overlooked when amending N.D. Cent. Code § 26.1-36-22(3) and left at 19. Therefore, the proposed modification would change the age of dependent children in N.D. Cent. Code § 26.1-36-03(1)(c) to age 22 and harmonize both sections.

Section 11 - This section modifies N.D. Cent. Code § 26.1-36-05(1) which provides that benefits payable under an accident and health policy other than benefits for loss of time must be paid within 60 days of receipt of proof of loss. The proposed modification would exclude from the 60-day requirement those policies subject to N.D. Cent. Code § 26.1-36-37.1. N.D. Cent. Code § 26.1-36-37.1 addresses proof of losses for policies for "health care services." "Health care

services" include medical, dental, or hospital care as well as any service provided to prevent, alleviate, care, or heal human illness or injury. This section requires action on a claim within 15 days after a proof of loss claim form has been received. Therefore, there exists an inconsistency between the general 60-day action requirement in accident and health policies and the 15-day requirement for policies for health care services. The addition of the cite to N.D. Cent. Code § 26.1-36-37.1 in N.D. Cent. Code § 26.1-26-05 would reconcile these two statutes and provide clarification for the different action requirements for the two types of policies.

Section 13 - This proposed modification is just a technical change to correct a citation error. The proposed modification changes the cite to the health maintenance organization chapter from Chapter 26.1-18 to Chapter 26.1-18.1. The new cite was renumbered back in 1993 and this citation was not changed due to oversight.

Section 14 - This proposed modification would create a new section requiring a notice in homeowners and dwelling fire policies that their policies do not provide coverage for loss caused by flood or mudslides and that flood insurance is available through the National Flood Insurance Program. This proposed section would require the notice on first renewals and any new business as of the effective date of this section. This proposed section stems from the disaster that occurred in Grand Forks, when we learned that many homeowners were not aware that their homeowner policies did not cover losses caused by the flood. This section would provide express notice to policyholders that their homeowner policies do not cover such losses. This modification is patterned after similar laws in other states like New York and Pennsylvania.

Section 15 - This proposed modification provides that a long-term care insurer may not contest a long-term care policy after six months from the effective date of the policy unless based on an intentional misrepresentation on the application form. At present, N.D. Cent. Code § 26.1-45-05.1 states that a long-term care policy cannot be rescinded after six months from the effective date unless based on the insured's health status. Rescission involves erasing the policy. It is like the policy never existed. At present, a long-term care insurer may rescind a policy up to six months based on an intentional misrepresentation. Incontestability, on the other hand, may result in rescinding the policy or a denial of a claim. For example, long-term care insurers use the incontestability provision to contest the issuance of the policy, resulting in a rescission. N.D. Cent. Code § 26.1-36-04 provides the general incontestability provision for all accident or health insurance policies. Those policies may be contested for up to two years for any reasons except nonpayment of premiums. Long-term care companies use the incontestability provision to in essence rescind a policy after the six-month limitation date. There exists at present a conflict between the time frames for rescission of the policy and contesting the policy. The proposed modification would remove the inconsistency in these two statutes by having the same time frames for both rescission and incontestability in long-term care policies and prevent insurers from being able to deny coverage after six months.