

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2111

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2111
February 1, 2011
Job Number 13758

Conference Committee

Committee Clerk Signature	<i>Eva Lubelt</i>
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Explanation or reason for introduction of bill/resolution:

Relating to coverage limits, powers and duties and assessments of the North Dakota life and health insurance guarantee association

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Carole Kessel, Company Licensing Director, North Dakota Insurance Department: Testimony Attached.

Senator Schneider: Asked if there had been any recent incidences.

Carole: Two in the last three years, national, multi-state insurers.

Senator Schneider: Asked if that was life insurance.

Carole: Yes and there is always a concern that Federalization will pre-empt state law.

Chairman Klein: Asked if these were the limits that everyone in the country had or if they had chosen this dollar limit, and if they were uniform in the country or does it go state by state.

Carole: She believed roughly twenty eight states have the same level that is incorporated in this bill and there are a few states with higher limitations and the remaining states are in the process of in-acting changes to their laws.

Gregory D. Morris, Executive Director NDHIGA: Testimony Attached.

Senator Andrist: Asked if he was right in presuming that most policies would have limitations that would exceed this, but what they are doing is setting the limitations of what you would have to do if you were picking up the pieces for an insolvent company.

Gregory: That is correct. They would step in and the insolvent company may have assets to pay up to a certain point on a policy but they have to meet the obligation of that policy up to their limits.

Chairman Klein: Asked if he had any additional statistics on the number of companies that were insolvent.

Gregory: He said they do a report each year to the commissioner and in that they list the current active insolvencies.

Senator Laffen: Asked if all insurance companies that do business here were required to be a part of this group.

Gregory: Yes all that are doing business are required.

Senator Murphy: Asked if there was an increase to the consumer.

Gregory: No it is not a negative for them.

Bruce Ferguson, Senior Vice-President with American Council of Life Insurers: All of the nations' life insurers are members of ACLI. There are two hundred and sixty licensed to do business in North Dakota. He stated that Carole and Greg had given excellent testimony. He said that they would urge a do pass.

Norbert Mayer, North Dakota Association of Insurance and Financial Advisors: He said he was in favor of the bill and stated that he wanted to emphasize to clients to always look at the strength of a company.

Chairman Klein: Closed the hearing.

Senator Andrist: Motioned a do pass.

Senator Schneider: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Murphy to carry the bill

Date: Feb 1, 2011
 Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 211

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Andrist Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

SB 2111: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2111 was placed on the Eleventh order on the calendar.

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2111

2011 HOUSE STANDING COMMITTEE MINUTES

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

SB 2111
March 7, 2011
Job #14988

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Application of effective dates of amendments to member insurers of the North Dakota life and health insurance guaranty association; coverage limits, powers and duties, and assessments of the North Dakota life and health insurance guaranty association.

Minutes:

Chairman Keiser: Opens the hearing on SB 2111

Carole Kessel-Company Licensing Director-North Dakota Insurance Department:
(See attached testimony #1).

Chairman Keiser: How many states have passed this model to date?

Carole Kessel: 28 states have adopted in the past two years.

Chairman Keiser: Would you walk through how a guaranty fund works?

Carole Kessel: When there is insolvency, the guaranty fund steps in to assure that payments are made. If there are inadequate assets to pay claimants, then the guaranty fund will assess member insurers that are licensed in the state to obtain the funds necessary to pay whatever excess claims there are over what assets were available.

Chairman Keiser: We just pass to all other policies a little bit of a charge that creates the funds to protect those people impacted.

Carole Kessel: That's correct. Ultimately it gets passed through the expenses of each insurer that pays an assessment from a guaranty fund. It's incorporated into the policy rates. Any insolvency of an insurer can take years to settle. There are some from the 90's that are paying out claims.

Chairman Keiser: We are very lucky in North Dakota. Our insurance department does an excellent job in looking at the financial condition of these companies on a regular basis to prevent insolvencies. If there is insolvency, we fund the recovery through some charge back to everyone else in the system. I just want to compliment you folks.

Representative N Johnson: If there is an insolvency, the guaranty would then pay out as some policy holder that the insurer had. If something happens, then it would come out of this fund? Is this how it works?

Carole Kessel: The state of domicile for the insolvent insurer would take the lead acting as a receiver liquidator for that insurer that is insolvent. It would essentially gather all the assets that are available to pay claims. Initially claims would be paid out of that pot. If there are obligations in excess of what is available, then assessments will be made to the various states where this insolvent insurer is licensed. Based on the policy holders in that state, North Dakota Guaranty Association will not be paying any claims of other states. It is only for North Dakota policies. When the time comes that a claim is filed by a North Dakota policy holder, the guaranty fund will step up and pay the claim up to the cap.

Chairman Keiser: When the problem arises, we assess on a year-by-year basis the monies required to supplement the assets that were available to provide the coverage up to these limits. If you have a million dollar life insurance policy, you are not going to get a million dollars if you are insured by an insolvent company.

Carole Kessel: That's correct.

Representative N Johnson: If you are a policyholder, when that company goes insolvent and your policy still remains in effect, do you still have to pay premiums to somewhere to keep the policy?

Carole Kessel: That is correct

Representative N Johnson: So the individual could opt to say, "I had that policy but now if I were to die I would only get \$300,000. Maybe I want to drop that policy and go to a different company."

Chairman Keiser: That is a possibility. Another company can buy that policy. The department works in every way they can through the liquidation process to make everybody as whole as they can. What this bill does is adjust the limits of the exposure during that window of insolvency if the event occurs.

Representative Clark: Does this cover all existing policies as well as just new ones?

Carole Kessel: That is correct. The entire book of business, that the insolvent insurer has an obligation to, is covered by the Guaranty Association.

Representative Ruby: Is the reason that Medicare Part C & D aren't covered is because they are guaranteed by the federal government?

Carole Kessel: That is correct. Apparently there have been some disagreements in the last few years where certain Guaranty Associations have attempted to assess member companies for their Part C & D premiums. There has been some resistance to do that with arguments that those premiums are federally preempted. You cannot assess those. The idea is if they are not going to pay into the funds, their coverage should be eliminated. It is

my understanding that these centers for the federal CMMS have indicated that there is insolvency protection for those policy holders that hold Part C & D.

Representative Ruby: Why are the charitable gifts, annuity organizations, not included?

Carole Kessel: They never have been included. This is just to clarify that they are not covered. They are not regulated the same. I think it is an attempt to make certain that they are excluded and that there is no doubt about it.

Representative Ruby: You mentioned impaired or insolvent insurer. I don't see the definition for that.

Carole Kessel: I will get you the information. An insurer where there has been an order of liquidation or rehabilitation.

Representative Ruby: It's defined elsewhere.

Carole Kessel: Yes.

Chairman Keiser: When was the last time the State of North Dakota increased our limits?

Carole Kessel: I am not sure. I think it was back in the 90's.

Carole Kessel: Also provided written testimony from Gregory Morris, Executive Director of the ND Life and Health Insurance Guaranty Association. (See attached #2)

Norbert Mayer, North Dakota Association of Insurance and Financial Advisors: We support this bill. We think it is good to increase the limits. When you purchase an insurance plan you should purchase it from a highly rated company. I commend the insurance department because they make those ratings readily available if clients will ask. In those cases where a company does go into default, we think this is an excellent way to protect those consumers.

Chairman Keiser: support, opposition, neutral position?
Closed the hearing.

Representative Kasper: Moved Do Pass

Representative Kreun: Seconded the motion

A Roll Call vote was taken. **Yes: 13, No: 0, Absent: 1,**
Representative Nathe)

DO PASS carries.

Representative Ruby will carry the bill.

Date: March 7, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2111

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Kasper Seconded By Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	AB				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Ruby

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

REPORT OF STANDING COMMITTEE

SB 2111: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SB 2111 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2111

SENATE BILL NO. 2111

Presented by: Carole Kessel
Company Licensing Director
North Dakota Insurance Department

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

Date: February 1, 2011

TESTIMONY

Good morning, Chairman Klein and committee members. For the record, my name is Carole Kessel and I am Chief Examiner and Director of the Examinations and Company Licensing Division of North Dakota Insurance Department. I appear before you today in support of Senate Bill No. 2111.

This bill updates the Life and Health Insurance Guaranty Association law. The guaranty system provides a safety net against policyholder losses from insurer insolvencies and shores up consumer confidence in the insurance industry by assuring that consumers receive at least a base level of financial protection if a life or health insurance company fails. This system is comparable to the role of the Federal Deposit Insurance Corporation (FDIC) in the banking system that provides a safety net for banking consumers by insuring deposits in banks and thrift institutions for up to \$250,000 per depositor, per insured bank.

The Guaranty Association law provides a mechanism for the payment of covered claims under certain insurance policies, to limit excessive delay in payment and to minimize financial loss to claimants or policyholders because of the insolvency of an insurer. Guaranty associations do not cover contractual benefits that are not guaranteed by the insurer, or which the consumer has agreed to bear market risks.

The key change in this bill will increase the benefit limits for specific lines of business which the North Dakota Life and Health Insurance Guaranty Association is obligated to pay in the event of an insurance company insolvency. Various minor revisions are made in the bill for purposes of clarification, readability or to correct references; such revisions will not be addressed in this testimony.

Section 1 of the bill makes changes in three areas. First, obligations related to supplemental contracts for group policies and to allocated funding agreements are specifically included in the type of policies and contracts covered by the Guaranty Association. A supplemental contract is defined in existing law as any written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract. Allocated funding agreements relate to pension plan arrangements in which the insurer assumes the employer's obligation to pay specific benefits to specific participants.

The second area adds Medicare Part C and Part D policies to the existing list of policies and contracts that are not covered by the Guaranty Association.

The third area increases benefit limitations as shown on the attached exhibit. Disability and long-term care policies have a new limitation of \$300,000 and basic hospital, medical and surgical insurance or major medical policies have a new limitation of \$500,000. The new benefit limitation for annuities, government retirement benefit plans and structured settlement annuities is \$250,000. A new aggregate limitation of \$500,000 is established for basic hospital, medical and surgical insurance or major medical insurance policies.

Section 2 of the bill specifically excludes charitable gift annuity organizations from membership in the Guaranty Association. A charitable gift annuity is a contract under which an individual transfers cash, securities or property to a charitable or nonprofit organization in exchange for the entity's promise to make fixed annuity payments to one

or two individuals for their lifetime. Such organizations include hospitals, churches, universities, and foundations. They are issued a certificate of exemption under the provisions of Chapter 26.1-34.1 if they meet specified criteria, but they are not subject to the same regulatory requirements as life insurers.

Section 3 changes the word "assume" to "assure" to clarify that the Guaranty Association may guaranty the policy obligations of an insolvent insurer directly or through a reinsurance arrangement with a reinsurance company. In this context, the word "assume" arguably limits what protections the Association may provide.

Section 5 of the bill removes the annual \$150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority. Except for HMOs and fraternal societies, all licensed life and health insurers are members of the Guaranty Association and are subject to its assessments. Class A assessments are issued to the insurer members as needed to cover administrative and general expenses which are not directly related to an insolvency. Class B assessments are for benefits, settlements, and related expenses associated with an insolvent insurer. Class B assessments are allocated among the member insurers based on premiums received in North Dakota by each insurer. The Guaranty Association operates on minimal administrative expenses and rarely needs to levy a Class A assessment, so it prefers the ability to levy whatever amount is needed in the event a North Dakota domestic insurer becomes insolvent.

Section 6 adds a provision requiring the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association.

Section 7 revises the requirements for the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

Section 10 increases the stay on legal proceedings in which the insolvent insurer is a party from 60 to 180 days.

Section 11 provides that the changes enacted by this bill will apply to insolvent insurers that are placed under a liquidation order after the effective date of the amendments.

All states need to adopt uniform guaranty association laws to preclude the possibility of federal regulation of guaranty funds. Federal charter legislation introduced in 2007 provided for a single national insurance guaranty corporation to be created and joined by national insurers if a state guaranty association does not provide policyholders of national insurers with a level of protection equivalent to the National Association of Insurance Commissioners (NAIC) model standards. This bill incorporates relevant provisions from the NAIC's current Life and Health Insurance Guaranty Association Model Act to meet uniformity requirements.

Mr. Chairman, members of the committee, I am happy to answer any questions and urge a vote of "do pass" on Senate Bill No. 2111. Thank you.

Senate Bill No. 2111
 Life and Health Insurance Guaranty Association Law
 Exhibit to Testimony by Insurance Department

Life & Health Guaranty Association Existing Benefit Limitations	Life & Health Guaranty Association New Benefit Limitations
\$300,000 in life death benefits but no more than \$100,000 in net cash surrender and net cash withdrawal values	No change
\$100,000 in health insurance benefits, includes any net cash surrender and net cash withdrawal values	\$100,000 for health policies, except as noted below, includes any net cash surrender and net cash withdrawal values
	\$300,000 for disability and for long term care policies.
	\$500,000 for basic hospital, medical, surgical or major medical policies
\$100,000 in the present value of annuity benefits, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits, includes any net cash surrender and net cash withdrawal values
\$100,000 in the present value of annuity benefits relating to government retirement benefit plan, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits relating to government retirement benefit plan, includes any net cash surrender and net cash withdrawal values
\$100,000 in the present value of annuity benefits relating to structured settlements, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits relating to structured settlements, includes any net cash surrender and net cash withdrawal values
\$300,000 aggregate limitation for one life	No change
	\$500,000 aggregate limitation for one life for basic hospital, medical, surgical or major medical policies
\$5,000,000 aggregate limitation for one owner of multiple nongroup policies of life insurance	No change
\$5,000,000 aggregate limitation for a nonresident contract owner that is not eligible by another state's guaranty association due to a ND insurer that wasn't licensed in that state, or for a plan sponsor of unallocated annuity contracts not included as a government retirement benefit plan.	No change

**NORTH DAKOTA LIFE & HEALTH INSURANCE
GUARANTY ASSOCIATION**

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FARGO, ND 58108**

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**Testimony by: Gregory D. Morris
Executive Director
NDLHIGA**

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

Date: February 1, 2011

Re: SB #2111

TESTIMONY

Chairman Klein and members of the Committee, my name is Greg Morris and I am the Executive Director of the North Dakota Life and Health Insurance Guaranty Association, which I will simply refer to as the Association throughout my testimony. The Association is in full support of Senate Bill 2111 as filed.

SB2111 amends Section 26.1-38.1-01 of the North Dakota Century Code, which Section, is the Section, which actually created our Association and continues to govern its activities and responsibilities. There are substantive changes to the Section that will significantly impact and improve the benefits payable by the Association to North Dakota Policyholders as well as others that are less of a substantive nature. I will address the majority of them, but with brevity.

However, it might be helpful first, to put this Bill and its changes in some context, with a little historical and operational information about the Association as well as the National Association of Life and Health Guaranty Associations referred to as NOLHGA.

Association

The Association is about 30 years old and as I stated, it was created by enactment of this Section. The Association is composed of all insurers who have been issued a certificate of authority from and licensed by the North Dakota Commissioner of Insurance to sell life insurance, accident and health insurance, and annuities and remain in good standing. As of June of last year we had 875 Member Companies. I am sure that number has changed by now. The Association operates under a Plan of Operation that is adopted by its Board and approved by the Commissioner. The Plan is in many ways like a corporation's bylaws. The Association is governed by a Board of Directors selected from the Member Insurers and approved by the Commissioner. Currently we have 5 Board members as one company just resigned. That was ING. Our other Board Members are Allianz, The Principal, Midland National, Noridian Mutual and Lincoln Mutual Life and Casualty Insurance Company. We are seeking to add at least one more company if not two. We have a part time Executive Director and a part time Accountant, who are hired by the Board of Directors as the staff. Our Association is a member of NOLHGA along with the other 49 states the District of Columbia and Puerto Rico.

Process

When an insurance company enters a period of financial difficulty and is unable to meet its obligations the insurance commissioner in the company's home state initiates a process, dictated by the laws of the state, whereby every attempt is first made to help the company regain its financial footing under a period of conservation or rehabilitation. The associations will often work with the commissioner or conservator to see if the company can be rehabilitated or if the company should be liquidated and its business transferred to a sound company. If it is determined that rehabilitation will not work the commissioner will make a determination to ask the court to place the company under the commissioner's control and to appoint a receiver or liquidator. Often the commissioner will use a specialist and appoint them as a Special Deputy for the purpose of handling the receivership. The Special Deputy Receiver or liquidator oversees an accounting of the company's assets and liabilities and administers the estate of the company. In doing so, the receiver seeks to maximize the company's assets, transfer them to cash and then distribute that cash to creditors having valid claims against the insurer in accordance with payment priorities specified by state law.

The role of the Association is to step in when a Member Insurer is found to be insolvent and is ordered into liquidation by which time the Member Insurer is usually under the management of a receiver. The Association is required to provide coverage based on the provisions of this Section and the language of the insolvent company's policies or contracts. It takes over the task of servicing and providing coverage and benefits to the North Dakota policyholders.

Please keep in mind that the Association works in coordination with the other affected state associations, through NOLHGA, to provide policy service, coverage and benefits in a uniform and efficient and effective manner, as many of these insolvencies are national in scope. NOLHGA forms task forces consisting of experts and the Executive Directors of those associations from the states most affected by the insolvency. The experts are usually legal, actuarial, and financial.

Regardless of what other states do, even in a national insolvency, coverage and benefits can only be provided by our Association within the limits set by this Section. In order to meet these obligations and fund the coverage and benefits, the Association assesses its Member Companies. We assess a Class A Assessment for our expenses and a Class B Assessment for the funds to provide the insurance service and benefits. For more information on the Association you can visit our web site at www.ndlifega.org, and for information regarding NOLHGA, at www.nolhga.com.

In this bill, there are a number of proposed amendments to several subsections of the law.

Benefit Limits

The most important amendments that directly benefit the North Dakota policyholder begin on Page 6 under subsection 4. These benefit changes have been presented and addressed quite clearly by the Insurance Department representative.

Life

There is no change recommended for the life insurance benefits as it is believed that the limits are high enough for the average amount of coverage and \$300,000 is a reasonable amount for a life policy benefit. The changes are in the area of health insurance and annuities.

Health

This bill seeks to increase coverage for disability and long term care from \$100,000 to \$300,000 and also to clearly state that long term care policies are covered. We have had one insolvent insurer, LHICA, that still has 62 long term care policies in North Dakota being administered through a third party administrator being used by all of the associations. Of those 62 policies, six are presently in claim and 4 policy holders reached the \$100,000 limit. Had the limit been \$300,000, we could still be providing benefits to those policyholders. We had to stop because of the statutory limit. This limit needs to be increased. We are also increasing it for disability coverage, which again makes a great deal of sense given the importance of such coverage. We ask that the Major Medical Coverage be increased to \$500,000 from \$100,000 as it seems apparent that medical costs are not going down, and \$100,000 of protection does not go very far today. We are also asking to have an increase in the aggregate limitation for health coverage from \$300,000 to \$500,000.

Annuities

With the economic downturn and the concern with the stability of financial institutions and the need to be able to provide for a decent retirement, annuities have garnered attention as a vehicle for saving but have also become subject to the same stability concerns relating to banks and bank accounts. The current limit of \$100,000 does not provide enough protection. We are asking that it be increased to \$250,000, which is comparable to the FDIC guarantee for bank accounts. This would apply to individual annuities, those that are used to fund government retirement plans and those that fund structured settlements. Many people use annuities as part of their retirement planning. We need to provide them some additional security for that retirement vehicle.

Source

These benefit limitation changes parallel and are taken from the latest National Association of Insurance Commissioner's "Life and Health Insurance Guaranty Association Model Act. This act in some part has been adopted in the last two years by approximately 28 states. This bill is drafted to use those model provisions that we have not already included and addressed in the existing law and in those areas where a change makes good sense. These benefit increases are extremely beneficial to the policyholders and also to the Association, as it makes good economic sense for the several states to have similar acts, thereby promoting the ease of administration in

the case of national insolvencies by the Association and NOLHGA while providing reasonably equal treatment to policyholders.

Medicare Part C & D

There is an additional substantive change that impacts coverage provided by the Association and its basis for assessments of health insurance carriers. On line 9 of Page 6 of the bill under subsection M we add Medicare Part C and D to the coverage **not** included in the obligations of the Association. Medicare Part C often called Medicare Advantage, provides private coverage of Medicare A (hospital stays) and Medicare B (doctor visits) and eliminates the need for Medigap coverage, while Part D plans provide private prescription drug coverage. What has happened is that there have been significant disagreements on whether an Association can assess on the basis of the premium collected by a company under these programs as there may be a federal preemption. Consequently, and on the other hand, why should there then be coverage provided, if there can be no assessment to pay for the coverage. The answer is to remove both the assessment and the coverage. It is my understanding that this was supported by the Center for Medicare and Medicaid Services, which took the position that the Part C and D program already provided adequate insolvency protections for consumers. It is also support by the ACLI and America's Health Insurance Plans (AHIP). The Association believes it will help avoid law suits and challenges to our assessments and seems to be the best solution at this time.

Supplemental Contracts and Allocated Funding Agreements

On Page 3 line 18 we have added the language to specifically state what we were already covering, and that is, supplemental contracts. We believe this is merely a point of clarification since they are contract benefits and they are covered.

We have also added the language on line 21, also on Page 3, to include allocated funding agreements. An allocated funding instrument or agreement is a specific type of insurance or annuity contract that pension plans often use to purchase retirement benefits incrementally. They should be covered.

Housekeeping & Miscellaneous Changes

We have amended the act on Page 4 line 5 and elsewhere in the bill to consistently use the phrase "impaired or insolvent insurer" to describe the insurer in conversation, receivership or liquidation for which we may be or are going to be providing benefits.

On Page 9 lines 12 and 13, organizations who only issue charitable gift annuities have been added to the list of those not covered to be consistent with the model act. There is no intent to include charitable organizations as Member Companies.

On Page 10, lines 9 through 13, the amendments have limited our Class A Assessment to be only on a non-pro rata basis thereby we will be assessing all Member Companies for the Associations expenses on an equal basis. However, we have not had a Class A Assessment since 1994.

On that same page in lines 17 and 18 the interest rate we will pay on any refunds, should any be required, has been defined.

On Page 11 in lines 5 through 8 provisions were added for the inclusion of certain matters in our Plan of Operation providing for the removal of a board member and for dealing with conflicts of interest. While this is also part of the Model Act, it makes sense to be able to remove a Member Company if they themselves have become insolvent.

On Page 13 line 24 the time for the Association to act has been increased in length regarding its ability to stay other proceedings and overturn default judgments against an insolvent insurer from sixty days to 180 days.

Effective Date of the Amendments

On Page 14, the final page of the bill, the effective date of the changes is clarified in stating that the changes are prospective in nature and do not apply to an ongoing insolvency but rather apply only to companies that go insolvent or are placed under an order of liquidation after the effective date of this bill.

Conclusion

The Association believes this is a bill that contains necessary changes to the law to enable it to provide better protection for the policyholders of this state while also improving the ability of the Association to work with the other associations across the country.

That concludes my testimony and I respectfully request your support of SB #2111.

Thank you, Mr. Chairman and members of the committee. If there are any questions I would be happy to address them?

#1

SENATE BILL NO. 2111

Presented by: -Carole Kessel
Company Licensing Director
North Dakota Insurance Department

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

Date: March 7, 2011

TESTIMONY

Good morning, Chairman Keiser and committee members. For the record, my name is Carole Kessel and I am Chief Examiner and Director of the Examinations and Company Licensing Division of North Dakota Insurance Department. I appear before you today in support of Senate Bill No. 2111.

This bill updates the Life and Health Insurance Guaranty Association law. The guaranty system provides a safety net against policyholder losses from insurer insolvencies and shores up consumer confidence in the insurance industry by assuring that consumers receive at least a base level of financial protection if a life or health insurance company fails. This system is comparable to the role of the Federal Deposit Insurance Corporation (FDIC) in the banking system that provides a safety net for banking consumers by insuring deposits in banks and thrift institutions for up to \$250,000 per depositor, per insured bank.

The Guaranty Association law provides a mechanism for the payment of covered claims under certain insurance policies, to limit excessive delay in payment and to minimize financial loss to claimants or policyholders because of the insolvency of an insurer. Guaranty associations do not cover contractual benefits that are not guaranteed by the insurer, or which the consumer has agreed to bear market risks.

The key change in this bill will increase the benefit limits for specific lines of business which the North Dakota Life and Health Insurance Guaranty Association is obligated to pay in the event of an insurance company insolvency. Various minor revisions are made in the bill for purposes of clarification, readability or to correct references; such revisions will not be addressed in this testimony.

Section 1 of the bill makes changes in three areas. First, obligations related to supplemental contracts for group policies and to allocated funding agreements are specifically included in the type of policies and contracts covered by the Guaranty Association. A supplemental contract is defined in existing law as any written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract. Allocated funding agreements relate to pension plan arrangements in which the insurer assumes the employer's obligation to pay specific benefits to specific participants.

The second area adds Medicare Part C and Part D policies to the existing list of policies and contracts that are not covered by the Guaranty Association.

The third area increases benefit limitations as shown on the attached exhibit. Disability and long-term care policies have a new limitation of \$300,000 and basic hospital, medical and surgical insurance or major medical policies have a new limitation of \$500,000. The new benefit limitation for annuities, government retirement benefit plans and structured settlement annuities is \$250,000. A new aggregate limitation of \$500,000 is established for basic hospital, medical and surgical insurance or major medical insurance policies.

Section 2 of the bill specifically excludes charitable gift annuity organizations from membership in the Guaranty Association. A charitable gift annuity is a contract under which an individual transfers cash, securities or property to a charitable or nonprofit organization in exchange for the entity's promise to make fixed annuity payments to one

or two individuals for their lifetime. Such organizations include hospitals, churches, universities, and foundations. They are issued a certificate of exemption under the provisions of Chapter 26.1-34.1 if they meet specified criteria, but they are not subject to the same regulatory requirements as life insurers.

Section 3 changes the word "assume" to "assure" to clarify that the Guaranty Association may guaranty the policy obligations of an insolvent insurer directly or through a reinsurance arrangement with a reinsurance company. In this context, the word "assume" arguably limits what protections the Association may provide.

Section 5 of the bill removes the annual \$150 per member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority. Except for HMOs and fraternal societies, all licensed life and health insurers are members of the Guaranty Association and are subject to its assessments. Class A assessments are issued to the insurer members as needed to cover administrative and general expenses which are not directly related to an insolvency. Class B assessments are for benefits, settlements, and related expenses associated with an insolvent insurer. Class B assessments are allocated among the member insurers based on premiums received in North Dakota by each insurer. The Guaranty Association operates on minimal administrative expenses and rarely needs to levy a Class A assessment, so it prefers the ability to levy whatever amount is needed in the event a North Dakota domestic insurer becomes insolvent.

Section 6 adds a provision requiring the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association.

Section 7 revises the requirements for the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

Section 10 increases the stay on legal proceedings in which the insolvent insurer is a party from 60 to 180 days.

Section 11 provides that the changes enacted by this bill will apply to insolvent insurers that are placed under a liquidation order after the effective date of the amendments.

All states need to adopt uniform guaranty association laws to preclude the possibility of federal regulation of guaranty funds. Federal charter legislation introduced in 2007 provided for a single national insurance guaranty corporation to be created and joined by national insurers if a state guaranty association does not provide policyholders of national insurers with a level of protection equivalent to the National Association of Insurance Commissioners (NAIC) model standards. This bill incorporates relevant provisions from the NAIC's current Life and Health Insurance Guaranty Association Model Act to meet uniformity requirements.

Mr. Chairman, members of the committee, I am happy to answer any questions and urge a vote of "do pass" on Senate Bill No. 2111. Thank you.

Senate Bill No. 2111
 Life and Health Insurance Guaranty Association Law
 Exhibit to Testimony by Insurance Department

Life & Health Guaranty Association Existing Benefit Limitations	Life & Health Guaranty Association New Benefit Limitations
\$300,000 in life death benefits but no more than \$100,000 in net cash surrender and net cash withdrawal values	No change
\$100,000 in health insurance benefits, includes any net cash surrender and net cash withdrawal values	\$100,000 for health policies, except as noted below, includes any net cash surrender and net cash withdrawal values
	\$300,000 for disability and for long term care policies.
	\$500,000 for basic hospital, medical, surgical or major medical policies
\$100,000 in the present value of annuity benefits, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits, includes any net cash surrender and net cash withdrawal values
\$100,000 in the present value of annuity benefits relating to government retirement benefit plan, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits relating to government retirement benefit plan, includes any net cash surrender and net cash withdrawal values
\$100,000 in the present value of annuity benefits relating to structured settlements, includes any net cash surrender and net cash withdrawal values	\$250,000 in the present value of annuity benefits relating to structured settlements, includes any net cash surrender and net cash withdrawal values
\$300,000 aggregate limitation for one life	No change
	\$500,000 aggregate limitation for one life for basic hospital, medical, surgical or major medical policies
\$5,000,000 aggregate limitation for one owner of multiple nongroup policies of life insurance	No change
\$5,000,000 aggregate limitation for a nonresident contract owner that is not eligible by another state's guaranty association due to a ND insurer that wasn't licensed in that state, or for a plan sponsor of unallocated annuity contracts not included as a government retirement benefit plan.	No change

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Testimony by: **Gregory D. Morris**
 Executive Director
 NDLHIGA

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

Date: **March 7, 2011**

Re: **SB #2111**

TESTIMONY

Chairman Keiser and members of the Committee, my name is Greg Morris and I am the Executive Director of the North Dakota Life and Health Insurance Guaranty Association, which I will simply refer to as the Association throughout my testimony. The Association is in full support of Senate Bill 2111 as filed.

SB2111 amends Section 26.1-38.1-01 of the North Dakota Century Code, which Section, is the Section, which actually created our Association and continues to govern its activities and responsibilities. There are substantive changes to the Section that will significantly impact and improve the benefits payable by the Association to North Dakota Policyholders as well as others that are less of a substantive nature. I will address the majority of them, some with brevity.

However, it might be helpful first, to put this Bill and its changes in some context, with a little historical and operational information about the Association as well as the National Association of Life and Health Guaranty Associations referred to as NOLHGA. I recognize that Chairman Keiser and Vice Chairman Kasper have actually attended NOLHGA meetings and are probably quite familiar with the organizations, so I will be brief.

Association

The Association is about 30 years old and as I stated, it was created by enactment of this Section. The Association is composed of all insurers who have been issued a certificate of authority from and licensed by the North Dakota Commissioner of Insurance to sell life insurance, accident and health insurance, and annuities and remain in good standing. As of June of last year we had 875 Member Companies. I am sure that number has changed by now. The Association operates under a Plan of Operation that is adopted by its Board and approved by the Commissioner. The Plan is in many ways like a corporation's bylaws. The Association is governed by a Board of Directors selected from the Member Insurers and approved by the Commissioner. Currently we have 5 Board members as one company just resigned. That was ING. Our other Board Members are Allianz, The Principal, Midland National, Noridian Mutual and Lincoln Mutual Life and Casualty Insurance Company. We are seeking to add at least one more company if not two. We have a part time Executive Director and a part time Accountant, who are hired by the Board of Directors as the staff. Our Association is a member of NOLHGA along with the other 49 states the District of Columbia and Puerto Rico.

Process

When an insurance company enters a period of financial difficulty and is unable to meet its obligations the insurance commissioner in the company's home state initiates a process, dictated by the laws of the state, whereby every attempt is first made to help the company regain its financial footing under a period of conservation or rehabilitation. The associations will often work with the commissioner or conservator to see if the company can be rehabilitated or if the company should be liquidated and its business transferred to a sound company. If it is determined that rehabilitation will not work the commissioner will make a determination to ask the court to place the company under the commissioner's control and to appoint a receiver or liquidator. Often the commissioner will use a specialist and appoint that person as a Special Deputy for the purpose of handling the receivership. The Special Deputy Receiver or liquidator oversees an accounting of the company's assets and liabilities and administers the estate of the company. In doing so, the receiver seeks to maximize the company's assets, transfer them to cash and then distribute that cash to creditors having valid claims against the insurer in accordance with payment priorities specified by state law.

The role of the Association is to step in when a Member Insurer is found to be insolvent and is ordered into liquidation by which time the Member Insurer is usually under the management of a receiver. The Association is required to provide coverage based on the provisions of this Section and the language of the insolvent company's policies or contracts. It takes over the task of servicing and providing coverage and benefits to the North Dakota policyholders.

Please keep in mind that the Association works in coordination with the other affected state associations, through NOLHGA, to provide policy service, coverage and benefits in a uniform and efficient and effective manner, as most of these insolvencies are regional or national in scope. NOLHGA forms task forces consisting of experts and the Executive Directors of those associations from the states most affected by the insolvency. The experts are usually legal, actuarial, and financial.

Regardless of what other states do, even in a national insolvency, coverage and benefits can only be provided by our Association within the limits set by this Section. In order to meet these obligations and fund the coverage and benefits, the Association assesses its Member Companies. We assess a Class A Assessment for our expenses and a Class B Assessment for the funds to provide the insurance service and benefits. For more information on the Association you can visit our web site at www.ndlifega.org, and for information regarding NOLHGA, at www.nolhga.com.

In this bill, there are a number of proposed amendments to several subsections of the law.

Benefit Limits

The most important amendments that directly benefit the North Dakota policyholder begin on Page 6 under subsection 4. These benefit changes have been already presented and addressed by the Insurance Department representative.

Life

There is no change recommended for the life insurance benefits as it is believed that the limits are high enough for the average amount of coverage and \$300,000 is a reasonable amount for a life policy benefit. The changes are in the area of health insurance and annuities.

Health

This bill seeks to increase coverage for disability and long term care from \$100,000 to \$300,000 and also to clearly state that long term care policies are covered. We have had one insolvent insurer, LHICA, that still has 62 long term care policies in North Dakota being administered through a third party administrator being used by all of the associations. Of those 62 policies, six are presently in claim and 4 policy holders reached the \$100,000 limit. Had the limit been \$300,000, we could still be providing benefits to those policyholders. We had to stop because of the statutory limit. This limit needs to be increased. We are also increasing it for disability coverage, which again makes a great deal of sense given the importance of such coverage. We ask that the Major Medical Coverage be increased to \$500,000 from \$100,000 as it seems apparent that medical costs are not going down, and \$100,000 of protection does not go very far today. We are also asking to have an increase in the aggregate limitation for health coverage from \$300,000 to \$500,000.

Annuities

With the economic downturn and the concern with the stability of financial institutions and the need to be able to provide for a decent retirement, annuities have garnered attention as a vehicle for saving but have also become subject to the same stability concerns relating to banks and bank accounts. The current limit of \$100,000 does not provide enough protection. We are asking that it be increased to \$250,000, which is comparable to the FDIC guarantee for bank accounts. This would apply to individual annuities, those that are used to fund government retirement plans and those that fund structured settlements. Many people use annuities as part of their retirement planning. We need to provide them some additional security for that retirement vehicle.

Source

These benefit limitation changes parallel and are taken from the latest National Association of Insurance Commissioner's "Life and Health Insurance Guaranty Association Model Act. This act in some part has been adopted in the last two years by approximately 28 states. This bill is drafted to use those model provisions that we have not already included and addressed in the existing law and in those areas where a change makes good sense. These benefit increases while extremely beneficial to the policyholders also makes good economic sense for the several states to have similar acts, thereby promoting the ease of administration in the case of national

insolvencies by the Association and NOLHGA while providing reasonably equal treatment to all of the insolvent insurer's policyholders.

Medicare Part C & D

There is an additional substantive change that impacts coverage provided by the Association and its basis for assessments of health insurance carriers. On line 9 of Page 6 of the bill under subsection M we add Medicare Part C and D to the coverage not included in the obligations of the Association. Medicare Part C often called Medicare Advantage, provides private coverage of Medicare A (hospital stays) and Medicare B (doctor visits) and eliminates the need for Medigap coverage, while Part D plans provide private prescription drug coverage. What has happened is that there have been significant disagreements on whether an Association can assess on the basis of the premium collected by a company under these programs as there may be a federal preemption prohibiting it. Consequently, and on the other hand, why should there then be coverage provided, if there can be no assessment to pay for the coverage. The answer is to remove both the assessment and the coverage. It is my understanding that this was supported by the Center for Medicare and Medicaid Services, which took the position that the Part C and D program already provided adequate insolvency protections for consumers. It is also supported by the ACLI and America's Health Insurance Plans (AHIP). The Association believes it will help avoid law suits and challenges to its assessments and seems to be the best solution at this time.

Supplemental Contracts and Allocated Funding Agreements

On Page 3 line 18 we have added the language to specifically state what we were already covering, and that is, supplemental contracts. We believe this is merely a point of clarification since they are contract benefits and they are covered.

We have also added the language on line 21, also on Page 3, to include allocated funding agreements. An allocated funding instrument or agreement is a specific type of insurance or annuity contract that pension plans often use to purchase retirement benefits incrementally. They should be covered.

Housekeeping & Miscellaneous Changes

We have amended the act on Page 4 line 5 and elsewhere in the bill to consistently use the phrase “impaired or insolvent insurer” to describe the insurer in conversation, receivership or liquidation for which we may be or are going to be providing benefits.

On Page 9 lines 12 and 13, organizations who only issue charitable gift annuities have been added to the list of those not covered to be consistent with the model act. There is no intent to include charitable organizations as Member Companies.

On Page 10, lines 9 through 13, the amendments have limited our Class A Assessment to be only on a non-pro rata basis thereby we will be assessing all Member Companies for the Association’s expenses on an equal basis. However, we have not had a Class A Assessment since 1994.

On that same page in lines 17 and 18 the interest rate we will pay on any refunds, should any be required, has been defined.

On Page 11 in lines 5 through 8 provisions were added for the inclusion of certain matters in our Plan of Operation providing for the removal of a board member and for dealing with conflicts of interest. While this is also part of the Model Act, it makes sense to be able to remove a Member Company if they themselves have become impaired or insolvent.

On Page 13 line 24 the time for the Association to act has been increased in length regarding its ability to stay other proceedings and overturn default judgments against an insolvent insurer from sixty days to 180 days to protect assets that may benefit the policyholders.

Effective Date of the Amendments

On Page 14, the final page of the bill, the effective date of the changes is clarified in stating that the changes are prospective in nature and do not apply to an ongoing insolvency but rather apply only to companies that go insolvent or are placed under an order of liquidation after the effective date of this bill.

Conclusion

The Association believes this is a bill that contains necessary changes to the law to enable it to provide better protection for the policyholders of this state while also improving the ability of the Association to work with the other associations across the country with a higher degree of uniformity.

Thank you, Mr. Chairman and members of the committee.

That concludes my testimony and the Association and I respectfully request your support and a due pass of Senate Bill #2111.