

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/05/2017**

Bill/Resolution No.: SB 2138

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$3,000		\$3,000
<b>Expenditures</b>				\$1,050		\$1,130
<b>Appropriations</b>				\$1,050		\$1,130

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

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

The bill would require the Insurance Department to develop a program to certify and monitor assisters as defined by the bill and collect associated fees.

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

Section 2 of the bill would generate revenue through application, renewal, and late fees. The Department would have to request and fund the resources for the operating costs of the program.

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

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

The state could charge \$100 every two years per certification for business entities, and \$50 every two years per certification for individuals. There are currently an estimated 45 assisters in North Dakota, 15 of which are business entities.

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

For the 2017-2019 biennium, operating costs of \$1,050 would be needed, and 2019-2021 would require operating costs of \$1,130 to continue the program. The program would be funded by the Insurance Regulatory Trust Fund.

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

All expenditures highlighted above would need to be appropriated from the Insurance Regulatory Trust Fund.

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**Agency:** Insurance Department

**Telephone:** 328-2930

**Date Prepared:** 01/10/2017

2017 SENATE JUDICIARY

SB 2138

# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2138  
1/16/2017  
26901

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to certification of assisters for health benefit exchanges, related to criminal history background checks and to provide a penalty.

Minutes:

Testimony attached #

1, 2

**Chairman Armstrong** called the committee to order on SB 2138. All committee members were present.

**Senator Oley Larsen**, District 3 Senator of North Dakota, introduced and testified in support of the bill. No written testimony.

“The ACA has inputted these navigators and they helped people to pick a policy.”  
Senator O. Larsen went over the Healthcare.gov website. He discussed how if you don’t have health coverage, you have to go and find your own coverage.

“The coverage we don’t think about, 50 or 60-year-old is confronted with a thousand-dollar bill per month, or a hundred-dollar bill per month. It is a burden that we just can’t understand.”

Senator O. Larsen showed how to navigate the website and discussed the plans that are available depending on certain circumstances such as age, income, etc.

“The navigators are supposed to input your information and give you the list of coverages then let you decide what you want to do. Navigators are taking you through the process and the different policies, but they are not agents.”

**Chairman Armstrong**: “It sounds like you have an issue what navigators are doing and that you think licensed health insurers should be doing that, is that right?”

**Senator O. Larsen**: “Yes. Licensed insurance agents should be doing that job, not the navigators.”

**Chairman Armstrong**: “This bill really doesn’t go into that. This bill just increases the requirements to be navigator.”

**Senator O. Larsen**: “Exactly, at least if they are going to be doing that, at least there is a background check on them so we know that it’s better than nothing. I would just assume them having licensed agents.”

**Senator Myrdal:** "What qualifications does a navigator need now?"

**Senator O. Larsen:** "None. They need nothing now."

**Chairman Armstrong:** "Who licenses a navigator?"

**Senator O. Larsen:** "Nobody."

**Chairman Armstrong:** "So when they do a background check, who is taking it over? Somebody has to get the background check."

**Senator O. Larsen:** "Exactly, I hope it will be a certified navigator going through the Insurance Department that would hold that certificate."

**Senator Larson:** "If somebody is going to this site and then they are looking for local help, licensed insurance agents don't show up to help them with the local help? Is this site promoted by the navigators?"

**Senator O. Larsen:** "Correct, and it's promoted by the Federal Government."

**Senator Osland:** "Where is the revenue stream for the navigator?"

**Senator O. Larsen:** "The Federal Government put up a 600,000 dollar grant for funding. It trickles down. I don't know the exact revenue stream."

**Senator Osland:** "Are all of these assisters through extension?"

**Senator O. Larsen:** "No. There are other navigators and assisters throughout the state"

**Senator Myrdal:** "If they don't like the coverage, what is their next recourse?"

**Senator O. Larsen:** "Great question. I have insurance up to 2 million dollars. If I tell you something and it's wrong, you get part of that 2 million. If I screw up, you get awarded, navigators don't get into any trouble."

**Brent Askvig**, testified for Neil Scharpe who could not make it today. Mr. Askvig came up during the opposition of the bill segment but he claims he and Mr. Scharpe are testifying in neutrality to the bill. (see attachment 1)

**Chairman Armstrong:** "Who does that training?"

Chairman Armstrong was referring Mr. Askvig's testimony where he mentioned that navigators have to complete 20 hours of training.

**Brent Askvig:** "Centers for Medicare and Medicaid (CMS.)"

**Chairman Armstrong:** "So the Federal Government, essentially?"

**Brent Askvig:** "Correct."

**Senator Luick:** "Is there any recourse for a person that has an issue with that policy that they were peddled?"

**Brent Askvig:** "A number of times there were instances where the applicant didn't like their policy. When this happens the navigators actually take them back through the system. I'm not sure how often they take them back through the process, it may be annually. As for liability, our seller doesn't sell the policy so I'm not sure about the liability issue."

**Rod St. Aubyn**, representing Community Healthcare Association of the Dakotas (CHAD) testified in opposition of the bill. (see attachment 2)

**Jeff Ubben**, General Counsel of the North Dakota Insurance Department (NDID): Testified in neutrality of the bill, No written testimony.

He expressed some practical concerns over the way the bill was written as well as similar concerns with the last two speakers (see attachments 1,2).

"This bill is similar to a bill that was introduced in the last legislative session, Senate Bill 2163, that bill was defeated by the Senate for similar concerns expressed by the speakers here today."

He discussed another bill similar to this one that was passed in Missouri, the Federal Government sued Missouri for this bill and won because a Federal Judge ruled Missouri's law was a violation of the Supremacy Clause.

"We know who these navigators are, so there's no questioning their background."

He discussed his concerns that this new law charges those who sell insurance without a license as an infraction, but currently in the North Dakota Century Code, that is classified as a felony, making this a conflict of law.

"If the background check comes back as a bad actor, there aren't any real remedies of how the Insurance Department can proceed or react if we were to find a bad actor. There have been no complaints or issues to the Insurance Department regarding assisters and navigators. The bill does not address Senator O. Larsen's concerns over assisters and navigators."

**Senator Nelson:** "So you're basically saying there is no real solution to a perceived problem here?"

**Jeff Ubben:** "Correct."

**Chairman Armstrong** closed the hearing on SB 2138.

No motions were made.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2138 Committee Work  
1/16/2017  
26923

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to certification of assisters for health benefit exchanges, related to criminal history background checks and to provide a penalty.

**Minutes:** **No written testimony**

**Chairman Armstrong** called the committee to order on SB 2138. All committee members were present.

**Senator Nelson** motioned Do Not Pass. **Senator Larson** seconded.

Discussion followed.

**Chairman Armstrong:** "I feel like this is an attack on the ACA (Affordable Care Act). I'm not sure what is to be accomplished with this?"

**Senator Larson:** "Both sides of the bill sounded good to me, when I heard the support for the bill I thought that this sounds like a good idea, but I changed my initial thoughts on it after I heard the opposition. I think we need to defeat this bill."

**Chairman Armstrong:** "In criminal law there is something called the Rule of Lenity, and essentially what that means is if the statutes differ in two different places, you get whatever is less. So if this truly is an infraction and it's supposed to be a Class C Felony, there will be no more Class C Felony's. They will all be infractions. Which is stuff we can clean up, but I also think it goes to the point of who is and isn't consulted when bills are written."

**Senator Nelson:** "I saw this as a job protection bill from the sponsors. That's what they do, they sell health insurance. I think there's a lot of things in here and some are already certified. When you're doing something that cost you that kind of money, you do what you can."

**Chairman Armstrong:** "Two things that we know: One, cost of implementation to an executive agency is a concern, and most of the executive agencies, especially in this session are looking at reduced budgets to begin with. Also, a lot of this stuff is being done at the Federal level, not to mention cost of implementation is always passed on to the consumer

and if it's duplicative and unnecessary then we are creating an unnecessary step of North Dakota regulatory burden and also a necessary increase in cost to the consumer."

**Senator Luick:** "I'm wondering if anyone caught in the testimony anything about a documented case or anything where this has been a problem?"

**Chairman Armstrong:** "I did not get any from the testimony."

**Senator Nelson:** "My notes say there were no reports of complaints to the insurance department."

**Senator Myrdal:** "No official complaints, but they did say they've had several people come in and fix it up, the wording that is. I think we are on hold until we see what happens in Washington. I'm not really in favor of the navigator thing. I think we may see a big shift federally so I think we should vote no."

A Roll Call Vote was taken for a Do Not Pass. Yea: 6 Nay: 0 Absent: 0  
The motion carried.

**Chairman Armstrong** carried the bill.

**Chairman Armstrong** closed the hearing on SB 2138.

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2138**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Nelson    Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Senator Armstrong

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

**REPORT OF STANDING COMMITTEE**

**SB 2138: Judiciary Committee (Sen. Armstrong, Chairman)** recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2138 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2138

1

Testimony  
Senate Bill 2138 – Senate Judiciary Committee  
Senator Armstrong, Chairman  
January 16, 2017

Chairman Armstrong, and members of the Senate Judiciary Committee, I am Neil Scharpe, Project Director of the North Dakota Navigator project. I am employed by the North Dakota Center for Persons with Disabilities, a federally designated center of excellence in developmental disabilities, located at Minot State University.

Thank you for this opportunity to provide information to the committee on the current operations of the project, and to ask some questions or clarification on the proposed legislation.

NDCPD has been the recipient of a cooperative agreement with the Centers for Medicare and Medicaid (CMS) for the past four years. NDCPD has arranged contracts with Federation of Families for Children’s Mental Health, Family Voices of ND, and DLN Consulting of Dickinson to have certified Navigators in every region of the state. Currently 14 Navigators have been certified by CMS under this cooperative agreement. There are however two other entities who have also received cooperative agreements through CMS to provide Navigator services these being the Family Health Center in Fargo and the Great Plains Tribal Chairman’s Health Board.

The current agreement is in the second year of a three-year contract. Navigators had to complete 20 hours of online training specified by CMS prior to completing duties and must be recertified each year by completing additional training. Navigators are tasked with providing outreach to the public so they may understand the Affordable Care Act and also to assist consumers in enrolling/choosing a plan on the federal Marketplace or the Expanded Medicaid program.

There is not a requirement by CMS through the cooperative agreement to conduct these background checks although it is an allowable expense. All NDCPD

affiliated Navigators have undergone a criminal background check conducted by the Bureau of Criminal Investigation paid for by their employer.

There are several concerns with SB 2138 that should be addressed. The first is in Section 2.2 the bill states “...nor may an individual receive assister funding from the state, federal government, or any exchange unless that individual is certified by the department as provided under this section.” Does the state have that authority? If so, how is the Insurance Department going to inform the federal funding agency that funding should be withheld?

Second, in section 2.3.b. why are attorneys excluded from the certification?

Third, in section 2.5.b. a Navigator/assistor must reside in the state or provide services for a business located in the state. CMS has a cooperative agreement with the Great Plains Tribal Chairman’s Health Board based in South Dakota. This group serves individuals in both North Dakota and South Dakota per the agreement with CMS. This is an approved arrangement. Does this bill apply to them as well?

Fourth, in Section 2.5.c. it states “Meets additional requirements established by the insurance department.” This is very open ended and could include many things the federal government has already said are in excess of the ACA requirements.

Fifth, Section 2.5.e imposes a fee for the background check that our Navigators have already paid for, would this be an additional charge? If so our proposal approved by CMS did not include these costs.

Sixth, Section 2.5.f. states “Is of good moral character.” What are the criteria and documentation required to meet this component?

Seventh, section 2.8 states the insurance department may suspend or revoke certification for good cause but does not state what this would be. How would an organization under contract with CMS continue to provide services if this would happen?

Eighth, section 2.9 addresses a willful violation would mean a person/organization/agency is guilty of an infraction but does not delineate what the consequences would be.

ND Navigators have assisted hundreds of consumers access the federal Marketplace and Medicaid Expansion, to my knowledge not one complaint has been filed with the Insurance Department claiming mistreatment by a consumer.

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## **Testimony on SB 2138 Senate Judiciary Committee January 16, 2017**

Chairman Armstrong and members of the Senate Judiciary Committee, for your record I am Rod St. Aubyn, representing the Community HealthCare Association of the Dakotas (CHAD). I would like to speak on behalf of our community health center members in opposition to Senate Bill 2138.

CHAD works with Community Health Center (CHC) members and other community leaders across North Dakota to find solutions for improving health care options in areas that need it most. CHCs offer a unique model with proven results for high quality, cost-effective care customized to benefit the patient and communities being served. North Dakota has five community health centers located in 17 communities with a total of 19 delivery sites (soon to be 20 with a new site in Bismarck), including primary care, dental and school based clinics. Coal Country Community Health Center, Community Health Service, Inc., Family HealthCare Center, Northland Health Centers and Valley Community Health Centers treated nearly 40,000 patients across North Dakota in 2015.

SB 2138 is duplicative of federal requirements, will add unnecessary costs for community health centers, lacks clear certification standards, and really is "a solution searching for a problem."

Starting in 2013, community health centers received funding from the Health Resources and Services Administration (HRSA) to hire and train federally Certified Application Counselors (CACs). Assistants are responsible for conducting consumer outreach and education about and enrollment in qualified health plans (QHPs), Medicaid, and the Children's Health Insurance Program (CHIP). North Dakota's community health centers offer consumer assistance for all clinic sites.

In order to provide this assistance, each of the community health centers had to apply to the federal Centers for Medicare and Medicaid Services to become a Certified Application Counselor (CAC) organization and ensure that all health center assistants successfully complete all required federal CAC training. Federal regulations require assistants to be recertified and trained at least on an annual basis, and all of North Dakota's community health centers are in full compliance with this requirement, which includes completion of the updated 2017 plan year training curriculum for assistants.

A certified organization is responsible for making sure that all of the staff and volunteers it certifies as individual CACs take and pass the training; comply with the requirements to be a CAC, including privacy and security regulations; and sign an agreement that he or she will comply with the CAC requirements. Further, CACs receiving certification must display their certificate when completing CAC duties, much as other professionals must display.

8 1

Community health centers must educate consumers about affordable insurance options, including the benefits of insurance that extend beyond the services provided by the health center (e.g., access to specialty care and hospitalization), and provide assistance with enrollment for eligible individuals. CACs receive no additional compensation for this assistance.

Community health center CACs are not selling insurance, nor are they allowed to advise a consumer about choosing a specific insurance policy. Further, health center assisters are not allowed to refer consumers to any specific insurance agent or broker. However, assisters may inform consumers about the general availability of licensed, Marketplace-trained health insurance agents and brokers as an additional resource that may be able to provide recommendations to the consumer or answer complex health insurance issues.

Given the significant federal regulations established for both CAC organizations and CACs, an additional layer of state regulation seems unnecessary at this time. Rather, it appears that this would be a duplicative effort at the state level that would expend unnecessary financial and staff resources that could instead be focused on other issues. In addition, with the changes being proposed in Washington, DC, is this the time to make changes to a program that could experience other significant changes in the near future? Will the changes by Congress be in congruence with this bill?

In reviewing the bill, we identified many other troubling issues. Among just a few are:

- The certification standards found on Page 2, lines 20-31 are very ambiguous. On line 31, how do you define "good moral character"?
- The main requirement for this bill requires a criminal history background check. In visiting with our CHCs, it was noted that ALL CHC employees are required to meet a criminal background check. In one center, that background check is done monthly. Will these current background checks be acceptable?
- Will this bill meet the Supremacy Clause concerning a totally federal program?
- What problem will this bill correct? Where have there been any complaints concerning this issue in ND?
- Page 2, line 26, will require that the Insurance Department establish new administrative rules. That process can take over 6 months. Will these new requirements be completed in time for the open enrollment period for the 2018 plan year?

Collaboration has been and continues to be a major component of the success of the Certified Application Counselor program at the state's community health centers. Specifically, CHAD's facilitation has unified the application counselors into one team to share best practices and challenges. Further, CHAD's involvement has streamlined the process to create more consistency and continuity in how consumers are provided assistance.

North Dakota community health centers and their certified application counselors are committed to maintaining expertise in eligibility, enrollment, and the health care marketplace, as well as to providing free and impartial assistance to consumers so the consumer may choose the best health insurance option to meet their needs. We ask that you not require an additional layer of unnecessary regulation that increases the expenditure of financial and time resources to a system that is currently working.

Mr. Chairman and Committee members, thank you for the opportunity to address your committee on this bill. CHAD requests the committee's recommendation for a **do not pass on SB 2138.** I would be willing to respond to any questions.