DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Adam W. Hamm
Commissioner of Insurance

BULLETIN 2009-1

TO: All Property and Casualty Insurers Writing Contractual Liability Insurance for Automobile Warranty Programs

FROM: Adam Hamm, Commissioner

DATE: June 2, 2009

SUBJECT: Automobile Warranty Programs – House Bill No. 1158

The 2009 North Dakota Legislative Assembly passed House Bill No. 1158 which will become law August 1, 2009. A copy of the bill is attached to this bulletin.

1. Change in Scope

House Bill No. 1158 amended N.D.C.C. § 26.1-40-18 – Automobile warranties construed. The change in statute expands the requirement to maintain a contractual liability policy from just automobile dealers and their third party administrators to all persons who issue written automobile warranty contracts, automobile mechanical breakdown contracts and automobile service contracts. Original equipment manufacturers are exempt from this requirement.

2. Surplus and Paid-In Capital Requirements

The amendments to the law did not change the surplus and paid-in capital requirements for an insurer that writes contractual liability insurance. The change in scope, however, now means that an insurer who writes contractual liability insurance for any person issuing automobile warranty contracts, automobile mechanical breakdown contracts and automobile service contracts must comply.

The requirements are:

- A contractual liability company must have surplus and paid-in capital of at least $10 million before it may write contractual liability insurance for automobile warranty, automobile mechanical breakdown or automobile service contracts.

- If a company's surplus and paid-in capital is more than $10 million but less than $15 million, the entity must demonstrate to the Commissioner by letter and supporting financial documents that the company maintains a ratio of net written premiums, wherever written, to surplus and paid-in capital of not greater than three to one.

3. Certification Requirement

The amendments to the law did not change the requirement for insurers to certify to the Commissioner either:

- That its combined surplus and paid-in capital equals or exceeds $15 million; or
- If its surplus and paid-in capital is less than $15 million but more than $10 million, that its ratio of written premiums, wherever written, to surplus and paid-in capital is no greater than three to one.

Insurers that previously certified in keeping with Bulletin 2005-1 need not recertify at this time as the certification continues indefinitely; provided, however, that if an insurer's financial status changes, the company must notify the Commissioner of the following:

- That the combined surplus and paid-in capital that was certified as equaling or exceeding $15 million has decreased to less than $15 million;
- That the combined surplus and paid-in capital that was certified as less than $15 million but more than $10 million has decreased to $10 million or less; or
- That the ratio of written premiums to surplus and paid-in capital has increased to greater than three to one.

Certification can be completed by mailing the Form SFN 54357 (a copy is attached to this bulletin or you can find it at http://www.nd.gov/eforms/Doc/sfn54357.pdf) or a letter to:

North Dakota Insurance Department
Company Licensing Division
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505-0320
Telephone: (701) 328-2440
Email: insurance@nd.gov
Fax: (701) 328-9610

4. Filing of Financial Information

The amendments to the law did not change the requirement for insurers to file annually a copy of their annual report and audited financial statements with the Commissioner.

The Commissioner has designated the National Association of Insurance Commissioners (NAIC) as its repository so that if the documents are filed with the NAIC, the documents need not be filed directly with the Commissioner.

AH/njb

Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1158
(Judiciary Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-40-18 of the North Dakota Century Code, relating to automobile warranty contracts, automobile mechanical breakdown contracts, and automobile service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-40-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-18. Automobile warranties construed.

1. ~~An automobile dealer or a third party administrator~~ A person who issues ~~an~~ a written automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the ~~dealer's or administrator's~~ person's contractual obligation.

2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:

   a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

   b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.

3. This section does not apply to an original equipment manufacturer.

David Morson
Speaker of the House

John S. Dalrymple
President of the Senate

Bull J. Reich
Chief Clerk of the House

Ryan C. Gromberg
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1158.

House Vote:	Yeas	90	Nays	0	Absent	4
Senate Vote:	Yeas	46	Nays	0	Absent	1

Bull J. Reich
Chief Clerk of the House

Received by the Governor at 3:29 P. M. on April 24, 2009.

Approved at 3:51 P. M. on April 24, 2009.

Governor

Filed in this office this 29th day of April, 2009,

at 1:48 o'clock P. M.

Secretary of State

CERTIFICATION AS AN INSURER OF AUTOMOBILE WARRANTY CONTRACTS

NORTH DAKOTA INSURANCE DEPARTMENT
SFN 54357 (Rev. 5-2009)

Name of Entity		CoCode	State of Domicile	
Mailing Address	City		State	Zip Code

The undersigned, on behalf of the above-named entity, is authorized to complete this certification as an insurer writing contractual liability policies as a back up for automobile warranty and similar programs and hereby affirms that:

1. The above-named entity is licensed or registered to do business in the State of North Dakota.

2. The above-named entity has filed and received an approval for a contractual liability policy with the North Dakota Insurance Commissioner to provide coverage for persons that issue an automobile warranty, automobile mechanical breakdown, or automobile service contract.

3. The above-named entity meets one of the following financial criteria, as set out in N.D.C.C. § 26.1-40-18 (check one box):

   ☐ The combined amount of surplus as to policyholders and paid-in capital equals or exceeds $15 million.

   ☐ The combined amount or surplus as to policyholders and paid-in capital is between $10 million and $15 million and the ratio of net written premiums (wherever written) to policyholder surplus and paid-in capital is not greater than three to one.

4. The above-named entity will annually file the audited financial statement, NAIC annual statement, and actuarial certification with the National Association of Insurance Commissioners and with the entity's state of domicile.

This certification continues indefinitely; provided, however, that if a company's status changes, the company must notify the Commissioner of the following:

- That the combined surplus and paid-in capital that was certified as equaling or exceeding $15 million has decreased to less than $15 million;

- That the combined surplus and paid-in capital that was certified as less than $15 million but more than $10 million has decreased to $10 million or less; or

- That the ratio of written premiums to surplus and paid-in capital has increased to greater than three to one.

I do hereby swear and affirm that the aforementioned statements and information are true and correct.

Officer's Signature	
Title	Date

Mail completed form to: North Dakota Insurance Department
Company Licensing
600 East Boulevard Ave, Dept 401
Bismarck, ND 58505-0320

Legal References: N.D. Century Code Section 26.1-40-18
Bulletin 2009-1- see:
http://www.nd.gov/ndins/communications/bulletins