

STATE OF NORTH DAKOTA

BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of the Promulgation)	
Of Proposed Rules Regarding:)	
Unfair Sex Discrimination,)	REGULATORY ANALYSIS,
Preferred Mortality Tables,)	SMALL ENTITY ECONOMIC
Loss Ratios, Accounting Practices)	IMPACT STATEMENT, AND
and Procedures, Model Rule)	SMALL ENTITY REGULATORY
Requiring Audited Financial)	ANALYSIS
Reports, Risk Retention and)	
Purchasing Groups, Licensing of)	FILE NO. RU-07-208
Insurance Producers, Continuing)	
Education and Prelicensure)	
Education, Viatical Settlement)	
Advertising, Surplus Lines, Military)	
Sales Model Regulations)	
and Hobby Boiler Operator)	
Licensing.)	

I. REGULATORY ANALYSIS

The North Dakota Insurance Department issues this regulatory analysis as required by N.D.C.C. § 28-32-08. An agency must issue a regulatory analysis if a written request for an analysis is filed by the Governor or a member of the Legislative Assembly or a proposed rule being adopted by the agency is expected to have an impact on the regulated community in excess of \$50,000. *Id.*

Some of the changes involved in this rulemaking are a result of law changes made by the 60th Legislative Assembly during the 2007 legislative session so the impact on the regulated community or a small entity is a result of the law change and not this rulemaking. These rule changes, however, are collectively expected to have an impact on the regulated community in excess of \$50,000.

1. N.D. Admin. Code Chapter 45-03-10 - Unfair Sex Discrimination.
2. N.D. Admin. Code Chapter 45-04-07.2 - Preferred Mortality Tables.
3. N.D. Admin. Code Chapter 45-06-08 - Loss Ratios.
4. N.D. Admin. Code Chapter 45-03-15 - Accounting Practices and Procedures.

5. N.D. Admin. Code Chapter 45-03-20 - Model Rule Requiring Annual Audited Financial Reports.
6. N.D. Admin. Code Chapter 45-05-05 - Risk Retention and Purchasing Groups.
7. N.D. Admin. Code Chapter 45-02-02 - Licensing of Insurance Producers.
8. N.D. Admin. Code Chapter 45-02-04 - Continuing Education and Prelicensure Education.
9. N.D. Admin. Code Chapter 45-04-13 - Viatical Settlement Advertising.
10. N.D. Admin. Code Chapter 45-09-01 - Surplus Lines.
11. N.D. Admin. Code Chapter 45-04-14 - Military Sales Model Regulations.
12. N.D. Admin. Code Chapter 45-12-11 - Hobby Boiler Operator Licensing.

A. The Classes of Persons Who Probably Will Be Affected by the Proposed Rules

For N.D. Admin. Code Chapters 45-03-10, Unfair Sex Discrimination; 45-04-07.2, Preferred Mortality Tables; and 45-06-08, Loss Ratios, the class of persons who will probably be affected by the proposed rules are insurance companies that sell life or health insurance policies and the consumers that buy them. Each of these classes potentially bears the burden and the benefit of these proposed rules.

For N.D. Admin. Code Chapters 45-03-15, Accounting Practices and Procedures, and 45-03-20, Model Rule Requiring Annual Audited Financial Reports, the class of persons who will probably be affected are insurance companies that do business in North Dakota. This class potentially bears the burden and receives the benefit of these proposed rules.

For N.D. Admin. Code Chapters 45-05-05, Risk Retention and Purchasing Groups; 45-02-02, Licensing of Insurance Producers; 45-02-04, Continuing Education and Prelicensure Education; 45-04-13, Viatical Settlement Advertising; 45-09-01, Surplus Lines; and 45-04-14, Military Sales Model Regulations, the class of persons who will probably be affected are insurance companies and other licensees doing business in North Dakota and individuals and business entities who are licensed or who wish to become licensed as insurance producers. Each of these classes potentially bears the burden and receives the benefit of these proposed rules.

For N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operator Licensing, the classes of persons who will probably be affected are individuals who wish to become licensed to

operate hobby boilers and the public. Each of these classes potentially bears the burden and receives the benefit of these proposed rules.

B. A Description of the Probable Impact Including the Economic Impact of the Proposed Rules

For N.D. Admin. Code Chapter 45-03-10, Unfair Sex Discrimination, the proposed rules' probable economic impact on the regulated community is expected to be minimal given that the rule will simply allow insurers a choice in how they offer health insurance to individuals.

For N.D. Admin. Code Chapter 45-04-07.2, Preferred Mortality Tables, the proposed rules are designed to allow insurers the option to use a preferred class structure in their mortality tables for purposes of determining their life insurance reserves. The probable impact is to allow insurers more flexibility in their choice of mortality tables and can have a favorable economic impact for insurers and consumers.

For N.D. Admin. Code Chapter 45-06-08, Loss Ratios, the proposed rule is being adopted to comply with a change made to the North Dakota Century Code by 2007 Senate Bill No. 2154.

For N.D. Admin. Code Chapter 45-03-15, Accounting Practices and Procedures, the proposed rule merely updates the version of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual that insurers providing property and casualty and life and health insurance must use from the March 2005 version to the March 2007 version. This rule is expected to have only a minimal impact on insurers.

For N.D. Admin. Code Chapter 45-03-20, Model Rule Requiring Annual Audited Financial Reports, the proposed rule adds one item which impacts the qualifications of an independent certified public accountant. The rule provides that the Insurance Commissioner shall not recognize any person or firm as a qualified independent certified public accountant which has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer. The rule could impact those who wish to qualify as independent certified public accountants.

For N.D. Admin. Code Chapter 45-05-05, Risk Retention and Purchasing Groups, the proposed rule is necessary to comply with the requirements of the federal law known as the Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. No. 106-102, 113 Stat. 1338] relating to licensing reciprocity for nonresidents.

For N.D. Admin. Code Chapter 45-02-02, Licensing of Insurance Producers, the proposed rules are expected to impact insurance producers. The proposed rules would remove the requirement that the Department verify, at the time of licensing, that an applicant for an insurance producer's license by a business entity has an active Certificate of Authority with the North Dakota Secretary of State's office. An applicant

licensed in another state who moves to this state must provide within 90 days proof of clearance from the state in which the insurance producer is currently or was most recently licensed which is needed to be consistent with statutory requirements. The proposed rules also modify the requirements for producer licensing, prelicensing, and examinations.

For N.D. Admin. Code Chapter 45-02-04, Continuing Education and Prelicensure Education, the proposed rules eliminate the need for prelicensing education for insurance producers and describe the requirements for insurance continuing education. The proposed rules are expected to impact those who wish to be licensed as resident insurance producers.

For N.D. Admin. Code Chapter 45-04-13, Viatical Settlements, the proposed rules govern the advertising of viatical settlements. The proposed rules are expected to impact individuals and business entities that engage in the business of viatical settlements in North Dakota.

For N.D. Admin. Code Chapter 45-09-01, Surplus Lines, the proposed rule is expected to impact surplus lines insurance producers and is a slight modification to the rules to be consistent with statutory timelines for filing of affidavits.

For N.D. Admin. Code Chapter 45-04-14, Military Sales Model Regulations, the proposed rules are expected to have an impact on any insurance producer or insurer who wishes to solicit the sale of life insurance to a member of the United States Armed Forces. The proposed rules may also impact members of the United States Armed Forces.

For N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operator Licensing, the proposed rules are expected to impact those who wish to operate hobby boilers at public events. The proposed rules may have an economic impact on these individuals in that they would require the payment of an examination fee and a licensing fee.

C. The Probable Costs to the Agency of Implementation and Enforcement of the Proposed Rule and Any Anticipated Effect on State Revenues

The probable cost to the agency of implementation and enforcement of these rules will be minimal. Many of these chapters are already in existence and, therefore, will require only minimal implementation or additional enforcement efforts. In regard to N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Operating Licensing, the proposed rules will generate a minimal amount of revenue from the collection of examination and licensing fees which will offset the cost of the examinations and licensing.

D. A Description of Any Alternative Methods for Achieving the Purpose of the Proposed Rules That Were Seriously Considered by the Agency and the Reasons Why the Methods Were Rejected in Favor of the Proposed Rules

Some of the proposed rules are the result of statutory changes and, therefore, alternative methods for achieving the purpose of the proposed rules was not possible. In any other cases, alternative methods that would lessen the impact on the regulated community were considered and adopted wherever possible.

II. SMALL ENTITY ANALYSES

N.D.C.C. § 28-32-08.1 requires that an agency prepare a regulatory analysis and an economic impact statement of the impact of the rule changes on a small entity. "Small entity" is defined by state law to include small businesses, small organizations, and small political subdivisions. *Id.* "Small business" is defined to mean a business entity, including its affiliates, which is independently owned and operated and employs fewer than 25 full-time employees; or has gross annual sales of less than \$2,500,000. *Id.* "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. *Id.* "Small political subdivision" means a political subdivision with a population of less than 5,000. *Id.*

A. Small Entity Economic Impact Statement

1. Small entities subject to the proposed rule

The small entities that may possibly be subject to these proposed rules are insurers and insurance producers.

2. Administrative and other costs required for compliance with the proposed rule

The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules will update the standard of what constitutes unfair sex discrimination in insurance, allow more choice in valuation mortality tables, amend loss ratios to be consistent with statutory changes enacted in 2007, update the accounting procedures manual to be used, remove the requirement of preclicensing education for insurance producers, regulate the advertising of viatical settlements, and the solicitation of life insurance to members of the United States Armed Forces; repeal obsolete appendices and extend the deadline in which affidavits must be filed in order to be consistent with the statute regarding surplus lines insurance producer requirements; and provide for the licensing of hobby boiler operators. There is imposed, as required by statute, an examination and a licensing fee for hobby boiler operators.

3. Probable cost and benefit to private persons and consumers who are affected by the proposed rule

There could be some cost to private persons and consumers since the proposed rules affect insurance products and hobby boiler operation. The probable benefits to private persons and consumers include furthering public safety in the operation of hobby boilers, allowing additional choice of valuation mortality tables to be used by insurers to more accurately relate reserve levels to underwriting risks which can benefit consumers,

making the requirements for insurance producer licensing consistent with federal and state law requirements, and protecting members of the United States Armed Forces from unfair tactics in the sale of life insurance.

4. Probable effect of the proposed rule on state revenues

There will be little, if any, effect on state revenues from the proposed rules. The rules proposed in N.D. Admin. Code Chapter 45-12-11, Hobby Boiler Licensing, may generate a small amount of revenue collected for examination and licensing fees but the cost to administer the examination and licensing will offset this revenue.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. However, some of the proposed rules are designed to implement or comply with statutory requirements. In those instances where alternative methods of achieving the purpose of the proposed rule were available, the alternatives were not selected because of the potential cost associated with them or because they were not equally effective.

B. Small Entity Regulatory Analysis

1. Establishment of less stringent compliance or reporting requirements for small entities

Less stringent reporting requirements for small entities were considered. However, some of the proposed rules are designed to implement or comply with statutory requirements. Many of the proposed rules are expected to lessen the regulatory burden on small entities and make it easier for them to do business in North Dakota.

2. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities

Some of the proposed rules are designed to streamline and make consistent with federal and state laws the requirements for licensing of insurance producers. There were no less stringent schedules or deadlines for compliance or reporting that were available to be considered. The Department considered less stringent schedules or deadlines where possible.

3. Consolidation or simplification of compliance or reporting requirements for small entities

To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible (e.g., hobby boiler licensing).

4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule

Small entities were not given different standards to comply with than large entities.

5. Exemption of small entities from all or any part of the requirements contained in the proposed rule

Small entities were not given different standards to comply with than large entities.

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