



Division of Insurance

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Deiter Attends NAIC DC Fly-in

South Dakota Division of Insurance Director Larry Deiter and fellow members of the National Association of Insurance Commissioners (NAIC) were in Washington, D.C., from May 10-13 to discuss insurance issues with members of Congress. Key topics included retirement security, flood insurance, cyber security and health reform.

Nearly 40 chief state insurance regulators and senior staff gathered for the 2016 Commissioner Washington, D.C. Fly-In. Deiter and fellow NAIC members spent two days meeting with their respective congressional representatives to discuss the impact of policy initiatives in the states and brief lawmakers on insurance regulatory developments.

Deiter's goal was to reinforce to key staff from the offices of Representative Kristi Noem and Senators Mike Rounds and John Thune how they can help the state Division better protect consumers and strengthen our insurance market.

The D.C. fly-in is an annual event sponsored by NAIC.

Dissolution and Wind Down of NIMA

In 2012, the South Dakota Division of Insurance ("Division") joined the Nonadmitted Insurance Multi-State Agreement (NIMA) for the uniform filing and allocation of surplus lines premium taxes. ([See Bulletin 12-03.](#)) Due to the recent withdrawal of several key states, the Board of Directors of NIMA voted on April 28, 2016, to wind-down operations and dissolve the organization. The Division issued [Bulletin 16-05](#) as guidance to surplus line brokers regarding the filing of multi-state surplus lines policies.

The last day for brokers to report new multi-state policies to the Florida Surplus Lines Service Office (FSLSO) is Sept. 30, 2016. Policy endorsements or cancellations for policies filed prior to Sept. 30, 2016, may be reported to the FSLSO until Sept. 30, 2017.

The FSLSO will continue serving as the Division's vendor for all surplus lines filings and premium tax submissions. Beginning Oct. 1, 2016, all new and renewal multi-state surplus lines policies will be filed as single-state policies with the FSLSO when South Dakota is the home state. If you have any questions regarding this process, you may contact the Division at 605.773.3563 or insurance@state.sd.us.

2016 Legislative Session Recap

The 2016 legislative session officially ended March 29. A total of 419 bills were introduced during the 38-day session, 247 in the House of Representatives and 172 in the Senate. In addition, 49 commemorations, 19 concurrent resolutions and six joint resolutions were submitted.

Four bills were introduced by the Department of Labor and Regulation, Division of Insurance and successfully completed the legislative process. The following list is the recap of the Division bills, as well as other industry related bills passed during the 2016 legislative session. Unless otherwise noted, all legislation has an effective date of July 1, 2016.

Division of Insurance Bills:

SB 38: An Act to revise certain provisions concerning bail bondspersons. This bill updates licensing procedures such as requiring bail bondspersons to report felony prosecutions to the Division. The bill also changes the required background check from a state background check to a federal criminal background check and prevents a bail bondsperson from using their own license to bail themselves out of jail.

SB 39: An Act to revise certain provisions concerning fees for sponsored captive insurance companies. The bill clarifies the fees associated with protected cells. It makes it clear there is no application fee for the first protected cell formed under a sponsored captive insurance company.

HB 1040: An Act to revise and implement

certain provisions regarding the regulation of risk retention groups. The passage of this bill was important to maintain the Division's accreditation with the National Association of Insurance Commissioners (NAIC). It updates chapter 58-6A, which regulates risk retention groups (RRGs). The bill amends the definition section and adds provisions requiring corporate governance standards for RRGs, including material relationships between an RRG's officers and its vendors.

HB 1041: An Act to revise certain provisions regarding the recovery of certain insurance company premium and annuity taxes. This legislation removes outdated language related to the premium tax recovery process. The language was only necessary for a one-year period in 1993 and is no longer needed.

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Announcements from the Centers for Medicare & Medicaid Services (CMS): Ending SEP Retroactive Coverage

As in prior years, as of April 1, 2016, CMS will no longer accept new requests that would enable consumers to enroll in a Qualified Health Plan (QHP) with 2015 coverage effective dates using an SEP. SEP requests for 2015 coverage received on or before March 31, 2016, may be processed by CMS after April 1, 2015. However, as of April 1, 2016, all new SEP requests to CMS seeking 2015 coverage, with the exception of SEPs issued as a result of an eligibility appeal, will be given a coverage effective date no earlier than Jan. 1, 2016 if the consumer is eligible for retroactive coverage. For more information on SEP retroactive coverage, please review the [Ending Special Enrollment Periods for Coverage during Calendar Year 2015](#) guidance issued by CMS on April 1, 2016.

Other Industry-Related Legislation:

SB 159: An Act to provide a tax credit to insurance companies that contribute to an organization providing educational scholarships to certain students. The bill establishes a premium tax credit for funds donated by insurance companies for educational scholarships to qualified students that attend accredited, non-public schools. The tax credit is equal to 80 percent of total funds donated by an insurance company. The annual cumulative donation for all insurance companies is limited to a total tax credit of \$2 million.

HB 1084: An Act to define when concurrent employment may be used to calculate earnings in workers' compensation cases. In May 2015, the Supreme Court rendered a decision that workers' compensation disability benefits should be calculated using the aggregate earnings from all employment the injured worker concurrently held on the date of injury. (See *Wheeler v Cinna Bakers LLC*). This legislation abrogates the ruling and clarifies that the ruling does not impact situations where the injury occurred prior to Wheeler decision. The bill allows concurrent earnings for prospective claims starting on the day

the decision was rendered. Concurrent earnings are not included unless the worker was actively working in the concurrent employment and was prevented from performing duties at the concurrent employment. The bill provides a means with which an employer or insurer can access records from concurrent employer to establish the earnings received. It prohibits an insurer from including the insured worker's concurrent earnings in the premium calculations. The Workers' Compensation Advisory Council is required to report claim costs related to this bill to the 2019 Legislature.

HB 1091: An Act to establish certain requirements regarding insurance for vehicles used to provide rides for a transportation network company and to exempt vehicles used to provide these rides from certain commercial licensing requirements. This legislation establishes the insurance requirements for persons working for a transportation network company. The bill sets minimum coverage limits as well as other application requirements for drivers and TNC companies such as Uber or Lyft.

A full list of bills and the final legislative action can be accessed via the Legislative Research Council website at <http://www.legis.sd.gov/> in the 2016 Legislative Session section.

Market Conduct Annual Statement beginning in 2017

The South Dakota Division of Insurance ("Division") will participate in the Market Conduct Annual Statement (MCAS) beginning in 2017.

A licensed company is required to file MCAS if it writes at least \$50,000 of gross premium in the life, annuity, private passenger auto or homeowners lines of business in South Dakota. Companies with any in-force Long-Term Care policies of certain types will also be required to file MCAS data. There is no premium threshold for Long-Term Care business.

Companies writing at least \$50,000 of gross premium in Health will be required to file MCAS data starting in 2018 for the 2017 data year.

Additional filing information can be found in [Bulletin 16-04](#) issued by the Division on May 5, 2016. MCAS general information and FAQs are available at www.naic.org/industry_market_conduct_statement.htm.

Workers' Compensation Informal Hearing Held March 23

Pursuant to SDCL 58-24-67, a workers' compensation informal hearing was held March 23. The proposed National Council on Compensation Insurance Inc. (NCCI) Advisory Loss Costs and Assigned Risk Rate Filing were discussed.

The filing proposed an overall average decrease of 1.3 percent to the current voluntary advisory loss cost level and an overall average increase of 0.2 percent to the current assigned risk rate level. The information on the proposed July 1, 2016, Loss Cost/Assigned Risk Filing was presented by Robert Moss and Carla Townsend of NCCI.

This filing was approved by the Division as presented on April 14, 2016.

Recent Administrative Rule Changes/ Updates & Bulletins

[Administrative Rule Changes](#) (effective June 28, 2016) – Amend rules to update the sources referenced in rule and incorporate the 2016 Medicare coverage amounts. (Rules 20:06:12, 20:06:13, 20:06:19, 20:06:25, 20:06:26 and 20:06:36.)

[Division Bulletins issued in 2016](#)

[16-01](#) Assignment of Life Insurance to Funeral Homes

[16-02](#) 2017 Product Filing Deadlines

[16-03](#) Extension of Transition Policies

[16-04](#) Market Conduct Annual Statement

Deadline Reminders

Companies are reminded to file the following reports/statements by their due date with your domestic state:

- July 1 – Form B – Insurance Holding Company System Annual Registration Statement
Form C – Summary of Registration Statement
- August 1 – Written Communication as to Unremediated Material Weaknesses in Internal Controls Over Financial Reporting
Management's Report of Internal Control over Financial Reporting
- August 15 – Second Quarter 2015 Statements
- November 15 – Third Quarter 2015 Statements



Happy Retirement

The South Dakota Division of Insurance extends best wishes and happy retirement to Property and Casualty Complaint Analyst **Gaylord Sonnenschein**, who retired from state government after over 17 years of service.

Congratulations!