

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2236
(Senators Tallackson, Lips)
(Representatives Carlson, Wald)

AN ACT to amend and reenact section 26.1-06.1-29 of the North Dakota Century Code, relating to insurance company setoff in liquidation or rehabilitation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-06.1-29 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-29. Setoffs.

1. Mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, must be set off and the balance only may be allowed or paid, except as provided in ~~subsections~~ subsection 2, 3, and 4 and section 26.1-06.1-32.
2. No setoff may be allowed in favor of any person where:
 - a. The obligation of the insurer to the person would not at the date of filing of a petition for ~~liquidation~~ receivership entitle the person to share as a claimant in the assets of the insurer;
 - b. The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
 - c. The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;
 - d. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;
 - e. The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or
 - f. The obligations between the person and the insurer arise from business ~~which is both ceded to and assumed from the insurer except that the rehabilitator may, with regard to such business, allow certain setoffs in rehabilitation if the liquidator finds the allowance of the setoffs appropriate where either the person or the insurer has assumed risks and obligations from the other party and has ceded back to that party substantially the same risks and obligations.~~
3. ~~The liquidator shall provide persons that assumed business from the insurer with accounting statements identifying debts which are currently due and payable. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statement.~~
4. ~~A person that ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in the insurer's delinquency proceeding.~~

5. ~~Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of those set forth in subdivision f of subsection 2 must be allowed for those sums accruing from business written where the contracts were entered into, renewed, or extended with the express written approval of the commissioner of insurance of the state of domicile of the now insolvent insurer, when in the judgment of such commissioner it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of the commissioner's regulatory responsibilities.~~
6. These amendments ~~must~~ become effective ~~six months~~ from the date of enactment and ~~must~~ apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any such contract ~~including those in existence prior to the effective date, and must supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer.~~ For purposes of this section, any change in the terms of, or consideration for, any such contract ~~must be~~ is deemed an amendment.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2236 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 43 Nays 0 Absent 6

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 94 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at ____ o'clock _____ M.

Secretary of State