

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

SENATE BILL NO. 2180
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

AN ACT to create and enact sections 26.1-01-03.3 and 26.1-30.1-01.1 of the North Dakota Century Code, relating to penalty for violation of the insurance code and unlawful grounds for declination of commercial insurance; to amend and reenact sections 26.1-01-03.1, 26.1-03-17, subsection 7 of section 26.1-04-03, sections 26.1-23-06, 26.1-33-02.1, subsection 6 of section 26.1-33-30, subsection 1 of section 26.1-36-03, subsection 11 of section 26.1-36-05, subsection 6 of section 26.1-36-14, subsection 1 of section 26.1-36-23.1, and section 26.1-45-05.1 of the North Dakota Century Code, relating to cease and desist orders, premium taxes, unfair discrimination, unsatisfied judgment fund, free-look periods of life insurance policies, life insurance, accident and health insurance, and long-term care insurance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear. The commissioner may issue an order to cease and desist and notice of opportunity for hearing when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. Any party aggrieved by the commissioner's order may make written application for a hearing on the order within thirty days of the date of the order. The application for a hearing must briefly state the respects in which the applicant is aggrieved by the order and the grounds for relief to be relied upon at the hearing. A hearing must be held not later than ten days after an application for hearing is received unless a delay is requested by all persons named in the order. The commissioner, within thirty days after the hearing, shall issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing. ~~If no civil monetary penalty is otherwise provided by law, the offender is, after hearing by the commissioner, subject to payment of an administrative monetary penalty of up to ten thousand dollars.~~ If no hearing is requested by written application, the commissioner's order becomes permanent.

SECTION 2. Section 26.1-01-03.3 of the North Dakota Century Code is created and enacted as follows:

26.1-01-03.3. Penalty for violation of title. Unless otherwise provided by law, a person who violates this title is subject, after hearing by the commissioner, to payment of an administrative monetary penalty of up to ten thousand dollars.

SECTION 3. AMENDMENT. Section 26.1-03-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal

benefit ~~society~~ and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 in any fiscal year. Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and ~~26.1-18-27~~ 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.
3. Any ~~person~~ company failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of ~~five percent of the amount of tax due or one hundred dollars, whichever is greater, plus interest of one percent per month on the unpaid tax for each month or fraction of a month of delay~~ twenty-five dollars per day, excepting the first day after the tax became due, ~~or twenty-five dollars per day, whichever is greater.~~ Any ~~person~~ company failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.
4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit ~~society~~ or benevolent societies, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of ~~either~~ the total tax paid during the previous calendar year, or eighty percent of the actual tax for the quarter being reported of the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.

6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5. Failure of a company to pay the two hundred dollar filing fee subjects the company to the penalty as provided in subsection 3.

SECTION 4. AMENDMENT. Subsection 7 of section 26.1-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.
 - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
 - b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.
 - c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
 - d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

SECTION 5. AMENDMENT. Section 26.1-23-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-23-06. Attorney general may appear. Section 26.1-23-04 does not apply in the case of any judgment entered by default, unless the commissioner and the attorney general have been given at least thirty days' notice prior to ~~the entry of judgment~~ hearing, to which notice shall be attached a copy of the summons and complaint. Upon receipt of the notice, the attorney general may enter an appearance, file a defense, appear by counsel at the trial, or take any other action the attorney general deems appropriate on behalf of the fund and in the name of the defendant, and may thereupon, on behalf of the fund and in the name of the defendant, conduct a defense, and all acts done in accordance therewith shall be deemed to be acts of the defendant. The attorney general may appear and be heard on any application for payment from the fund and may show cause, if any, why the order applied for should not be made.

SECTION 6. Section 26.1-30.1-01.1 of the North Dakota Century Code is created and enacted as follows:

26.1-30.1-01.1. Unlawful grounds for declination. The declination or termination of a commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an insurer, agent, or broker is prohibited if the declination or termination is based solely upon any of the following reasons:

1. The race, religion, nationality, ethnic group, disability, age, sex, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer, agent, or broker that limits its market to one lawful occupation or profession or to several related occupations or professions.
3. The age or location of the property of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.
4. The principal location of the insured motor vehicle, unless the decision is for a business purpose which is not a mere pretext for unfair discrimination.
5. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
6. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

SECTION 7. AMENDMENT. Section 26.1-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-02.1. Life insurance policies and certificates - Right to return policy. A person who purchases a life insurance policy or certificate issued or delivered in this state may return the policy or certificate within twenty days of delivery to the purchaser. If a policy or certificate is returned, the purchaser is entitled to a refund of the premium. Every life insurance policy or certificate issued or delivered in this state to any person must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the purchaser may return the policy or certificate within twenty days of its delivery and have the premium refunded if, after examination of the policy, the applicant is not satisfied for any reason.

SECTION 8. AMENDMENT. Subsection 6 of section 26.1-33-30 of the North Dakota Century Code is amended and reenacted as follows:

6. Filings subject to this section must ~~be accompanied by a certificate signed by an officer of the life insurance company or fraternal benefit society stating that it meets~~ provide the minimum reading ease score on the test used or stating a statement that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any ~~certification~~ statement, the commissioner may require the submission of further information to verify the certification in question.

SECTION 9. AMENDMENT. Subsection 1 of section 26.1-36-03 of the North Dakota Century Code is amended and reenacted as follows:

1. No accident and health insurance policy may be delivered or issued for delivery to any person in this state unless:
 - a. The entire money and other considerations for the policy are expressed in the policy.
 - b. The time at which the insurance takes effect and terminates is expressed in the policy.

- c. The policy purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is deemed the policyholder, any two or more eligible members of that family, including spouse, dependent children or any children under a specified age which may not exceed ~~nineteen~~ twenty-two years, and any other person dependent upon the policyholder.
- d. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which is uniform and not less than ten point with a lowercase unspaced alphabet length not less than one hundred twenty point. The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.
- e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 26.1-36-04, are printed at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "EXCEPTIONS" or "EXCEPTIONS AND REDUCTIONS". If an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.
- f. Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page thereof.
- g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

SECTION 10. AMENDMENT. Subsection 11 of section 26.1-36-05 of the North Dakota Century Code is amended and reenacted as follows:

- 11. A provision that all benefits payable under the policy or contract other than benefits for loss of time or unless subject to section 26.1-36-37.1 will be payable not more than sixty days after receipt of ~~proof, and that, subject to~~ due proof of loss, ~~all~~. All accrued benefits payable under the policy or contract for loss of time will be paid at least monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of that period will be paid as soon as possible after receipt of proof of loss.

SECTION 11. AMENDMENT. Subsection 6 of section 26.1-36-14 of the North Dakota Century Code is amended and reenacted as follows:

- 6. Filings subject to this section must ~~be accompanied by a certificate signed by an officer of the insurance company, nonprofit health service corporation, fraternal benefit society, or health maintenance organization stating that it meets~~ provide the minimum reading ease score ~~on the test used or stating a statement~~ that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any ~~certification~~ statement, the commissioner may require the submission of further information to verify the certification in question.

SECTION 12. AMENDMENT. Subsection 1 of section 26.1-36-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- 1. No group accident and health insurance policy, including a policy issued under a self-insured plan, group health service contract issued under chapter 26.1-17, or evidence of coverage issued under chapter ~~26.1-18~~ 26.1-18.1, providing coverage for hospital or

medical expenses, delivered, issued for delivery, renewed, or amended after July 1, 1987, which in addition to covering the insured also provides coverage to the spouse of the insured, may contain a provision for termination of coverage for a spouse covered under the policy, contract, or evidence of coverage solely as a result of a break in the marital relationship except by reason of an entry of a decree of annulment of marriage or divorce.

SECTION 13. AMENDMENT. Section 26.1-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-05.1. ~~Rescission~~ Incontestability and rescission of long-term care insurance policy or certificate. ~~An~~ After six months from the effective date of the policy or certificate, an insurer may not contest or rescind a long-term care insurance policy or certificate or deny a claim on the basis of representations made by an insured on the application for insurance ~~after coverage has been in effect for six months~~ except upon a showing by the insurer that the insured knowingly and intentionally misrepresented relevant facts ~~relating to the insured's health~~ on the application form.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2180.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 95 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State