

**SENATE BILL NO. 2192**

Introduced by

Senator Grindberg

1 A BILL for an Act to amend and reenact subsection 3 of section 26.1-38.1-01 of the North  
2 Dakota Century Code, relating to equity indexed life and annuity insurance contracts.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-38.1-01 of the 1999  
5 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6 3. This chapter does not provide coverage for:

7 a. Any portion of a policy or contract not guaranteed by the insurer, or under  
8 which the risk is borne by the policy owner or contract owner;

9 b. Any policy or contract of reinsurance, unless assumption certificates have  
10 been issued pursuant to the reinsurance policy or contract;

11 c. Any portion of a policy or contract to the extent that the rate of interest on  
12 which it is based:

13 (1) Averaged over the period of four years prior to the date on which the  
14 association becomes obligated with respect to such policy or contract,  
15 exceeds a rate of interest determined by subtracting two percentage  
16 points from Moody's corporate bond yield average averaged for that  
17 same four-year period or for such lesser period if the policy or contract  
18 was issued less than four years before the association became  
19 obligated; and

20 (2) On and after the date on which the association becomes obligated with  
21 respect to such policy or contract, exceeds the rate of interest  
22 determined by subtracting three percentage points from Moody's  
23 corporate bond yield average as most recently available;

- 1           d. A portion of a policy or contract issued to a plan or program of an employer,  
2           association, or other person to provide life, health, or annuity benefits to its  
3           employees, members, or others, to the extent that such plan or program is  
4           self-funded or uninsured including benefits payable by an employer  
5           association or other person under:
- 6           (1) A multiple employer welfare arrangement as defined in 29 U.S.C.  
7           section 1144;  
8           (2) A minimum premium group insurance plan;  
9           (3) A stop-loss group insurance plan; or  
10          (4) An administrative services only contract;
- 11          e. Any portion of a policy or contract to the extent that it provides for dividends or  
12          experience rating credits, voting rights, or payment of any fees or allowances  
13          to any person, including the policy owner or contract owner, in connection with  
14          the service to or administration of such policy or contract;
- 15          f. Any policy or contract issued in this state by a member insurer at a time when  
16          it was not licensed or did not have a certificate of authority to issue such  
17          policy or contract in this state;
- 18          g. Any unallocated annuity contract issued to or in connection with a benefit plan  
19          protected under the federal pension benefit guaranty corporation regardless of  
20          whether the federal pension benefit guaranty corporation has yet become  
21          liable to make any payments with respect to the benefit plan;
- 22          h. Any portion of any unallocated annuity contract which is not issued to, or in  
23          connection with, a specific employee, union, or association of natural persons  
24          benefit plan or a government lottery;
- 25          i. A portion of a policy or contract to the extent that the assessments required by  
26          section 26.1-38.1-06 with respect to the policy or contract are preempted by  
27          federal or state law;
- 28          j. An obligation that does not arise under the express written terms of the policy  
29          or contract issued by the insurer to the contract owner or policy owner,  
30          including:
- 31          (1) Claims based on marketing materials;

- 1                   (2)    Claims based on side letters, riders, or other documents that were  
2                               issued by the insurer without meeting applicable policy form filing or  
3                               approval requirements;  
4                   (3)    Misrepresentations of or regarding policy benefits;  
5                   (4)    Extracontractual claims; or  
6                   (5)    A claim for penalties or consequential or incidental damages; ~~and~~  
7           k.    A contractual agreement that establishes the member insurer's obligations to  
8                   provide a book value accounting guaranty for defined contribution benefit plan  
9                   participants by reference to a portfolio of assets that is owned by the benefit  
10                  plan or its trustee, which in each case is not an affiliate of the member insurer;  
11                  and  
12           l.    A portion of a policy or contract to the extent it provides for interest or other  
13                  changes in value to be determined by the use of an index or other external  
14                  reference stated in the policy or contract, but which has not been credited to  
15                  the policy or contract, or as to which the policy owner's or contract owner's  
16                  rights are subject to forfeiture, as of the date the member insurer becomes an  
17                  impaired or insolvent insurer under this chapter, whichever is earlier. If a  
18                  policy's or contract's interest or changes in value are credited less frequently  
19                  than annually, then for purposes of determining the values that have been  
20                  credited and are not subject to forfeiture under this subdivision, the interest or  
21                  changes in value determined by using the procedures defined in the policy or  
22                  contract will be credited as if the contractual date of crediting interest or  
23                  changing values was the date of impairment or insolvency, whichever is  
24                  earlier, and is not subject to forfeiture.