

Introduced by

Senator Grindberg

1 A BILL for an Act to create and enact a new subsection to section 26.1-38.1-05 of the North
2 Dakota Century Code, relating to the powers and duties of a life and health insurance guaranty
3 association; and to amend and reenact subsection 3 of section 26.1-38.1-01 of the North
4 Dakota Century Code, relating to equity indexed life and annuity insurance contracts.

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

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

- 8 3. This chapter does not provide coverage for:
- 9 a. Any portion of a policy or contract not guaranteed by the insurer, or under
10 which the risk is borne by the policy owner or contract owner;
- 11 b. Any policy or contract of reinsurance, unless assumption certificates have
12 been issued pursuant to the reinsurance policy or contract;
- 13 c. Any portion of a policy or contract to the extent that the rate of interest on
14 which ~~it the portion of the policy or contract~~ is based or to the extent that the
15 rate of interest, crediting of a rate of interest, or similar factor determined by
16 using an index or other external reference stated in the policy or contract
17 which is employed in calculating returns or changes in value:
- 18 (1) Averaged over the period of four years prior to the date on which the
19 association becomes obligated with respect to such policy or contract,
20 exceeds a rate of interest determined by subtracting two percentage
21 points from Moody's corporate bond yield average averaged for that
22 same four-year period or for such lesser period if the policy or contract
23 was issued less than four years before the association became
24 obligated; and

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

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

29 **SECTION 2.** A new subsection to section 26.1-38.1-05 of the 1999 Supplement to the
30 North Dakota Century Code is created and enacted as follows:

1 Subject to approval of the receivership court, the association, in carrying out
2 association duties in connection with guaranteeing, assuming, or reinsuring
3 policies or contracts under subsections 2 and 3, may issue substitute coverage for
4 a policy or contract that provides a rate of interest, crediting of a rate of interest, or
5 similar factor determined by using an index or other external reference stated in
6 the policy or contract which is employed in calculating returns or changes in value
7 by issuing an alternative policy or contract if:

8 a. Instead of the index or other external reference provided in the replaced
9 policy or contract, the alternative policy or contract provides for a fixed
10 interest rate, payment of dividends with minimum guarantees, or different
11 method for calculating interest or changes in value;

12 b. There is no requirement for evidence of insurability, a waiting period, or other
13 exclusion that would not have applied under the replaced policy or contract;
14 and

15 c. The alternative policy or contract is substantially similar to the replaced policy
16 or contract in all other material terms.