

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact sections 26.1-26-04.1, 26.1-26-13.1, 26.1-26-13.2,
2 26.1-26-13.3, 26.1-26-25.1, 26.1-26-30.1, 26.1-26-45.1, and 26.1-26-47.1 of the North Dakota
3 Century Code, relating to the licensing of insurance producers; to amend and reenact
4 subdivision n of subsection 1 of section 10-04-11, subsections 15, 16, and 22 of section
5 26.1-01-07, subsection 6 of section 26.1-02-06, section 26.1-02-24.1, subsection 3 of section
6 26.1-02.1-01, subdivision a of subsection 1 of section 26.1-02.1-02, subsections 2 and 3 of
7 section 26.1-02.1-04, subsection 2 of section 26.1-03.1-08, subsection 2 of section
8 26.1-03.2-08, subsection 12 of section 26.1-04-03, sections 26.1-04-04, 26.1-04-05,
9 26.1-04-06, 26.1-04-07, 26.1-04-16, 26.1-04-17, and 26.1-05-07.2, subdivisions a and b of
10 subsection 3 of section 26.1-06.1-04, subsection 4 of section 26.1-06.1-13, subdivision c of
11 subsection 1 of section 26.1-06.1-21, subdivision a of subsection 3 of section 26.1-06.1-21,
12 subdivision a of subsection 1 of section 26.1-06.1-32, subsection 1 of section 26.1-06.1-51,
13 subsection 3 of section 26.1-08-11, sections 26.1-09-03, 26.1-09-11, and 26.1-09-13,
14 subdivisions b and j of subsection 1 of section 26.1-10-02, subsection 9 of section 26.1-11-01,
15 sections 26.1-11-07, 26.1-15.1-33, 26.1-16-12, 26.1-16-13, 26.1-17-23, and 26.1-17.1-15,
16 subsection 1 of section 26.1-17.1-18, subsection 13 of section 26.1-18.1-01, subsection 2 of
17 section 26.1-18.1-18, section 26.1-19-10, subsection 5 of section 26.1-19-14, subsection 3 of
18 section 26.1-20.1-01, subsection 3 of section 26.1-20.1-02, subdivision b of subsection 1 of
19 section 26.1-20.1-06, subsection 2 of section 26.1-20.1-06, subsection 1 of section
20 26.1-20.1-09, sections 26.1-22-21, 26.1-24-08, 26.1-24-09, 26.1-25-16, 26.1-26-01, 26.1-26-02,
21 26.1-26-03, 26.1-26-04, 26.1-26-05, 26.1-26-06, 26.1-26-07, 26.1-26-09, 26.1-26-10,
22 26.1-26-11, 26.1-26-17, 26.1-26-20, 26.1-26-25, 26.1-26-26, 26.1-26-30, 26.1-26-31,
23 26.1-26-31.1, 26.1-26-31.8, 26.1-26-32, 26.1-26-33, 26.1-26-34, 26.1-26-36, 26.1-26-41,
24 26.1-26-42, 26.1-26-43, 26.1-26-48, 26.1-26-52, 26.1-26.1-01, 26.1-26.1-02, 26.1-26.1-03, and
25 26.1-26.1-04, subdivision b of subsection 3 of section 26.1-26.3-01, subsections 1 and 2 of

section 26.1-26.3-02, subdivision c of subsection 10 of section 26.1-26.3-03, subsection 6 of section 26.1-26.3-04, subdivision b of subsection 1 of section 26.1-26.3-06, subdivision h of subsection 1 of section 26.1-26.6-05, subsection 4 of section 26.1-27-01, sections 26.1-28-02, 26.1-28-03, 26.1-28-04, 26.1-29-26, and 26.1-30.1-01.1, subsection 4 of section 26.1-31.1-01, subsection 8 of section 26.1-33-28, subdivision b of subsection 1 of section 26.1-36-04, sections 26.1-36-40 and 26.1-36.1-09, subsection 29 of section 26.1-36.3-01, subsection 1 of section 26.1-38.1-16, subdivision d of subsection 3 of section 26.1-38.1-16, section 26.1-39-06, subsections 1 and 2 of section 26.1-39-11, subsections 2 and 3 of section 26.1-39-12, subsection 4 of section 26.1-39-16, section 26.1-39-17, subsection 1 of section 26.1-39-18, sections 26.1-39-19, 26.1-39-22, and 26.1-39-23, subsections 1 and 2 of section 26.1-40-01, section 26.1-40-07, subsections 2 and 3 of section 26.1-40-10, sections 26.1-40-11, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06, 26.1-44-08, and 26.1-45-04.1, paragraph 2 of subdivision a of subsection 2 of section 26.1-45-09, sections 26.1-45-11 and 26.1-45-12, subsections 3, 4, and 10 of section 26.1-46-03, subsection 8 of section 26.1-46-06, subsection 1 of section 26.1-46-08, subsection 2 of section 26.1-46-08.1, and section 26.1-46-11 of the North Dakota Century Code, relating to the licensing of insurance producers; to repeal sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1, 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28, 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code, relating to the licensing of insurance producers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision n of subsection 1 of section 10-04-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an ~~agent, broker~~ insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 2. AMENDMENT. Subsections 15, 16, and 22 of section 26.1-01-07 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15. For issuing and each annual renewal of ~~an insurance broker's~~, a surplus lines insurance ~~broker's~~, producer's or insurance consultant's license, ten dollars.

16. For issuing an insurance ~~agent's~~ producer's license, one hundred dollars.

22. For each insurance company appointment and renewal of an appointment of an insurance ~~agent~~ producer, ten dollars.

SECTION 3. AMENDMENT. Subsection 6 of section 26.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

6. Directly or indirectly acting as an ~~agent~~ insurance producer for or otherwise representing or aiding on behalf of another, any person or insurance company in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed, in this state. This subsection does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer.

SECTION 4. AMENDMENT. Section 26.1-02-24.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-24.1. Definition. For the purpose of this section and section 26.1-02-24.2, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, ~~broker~~ insurance producer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which the person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

1 **SECTION 5. AMENDMENT.** Subsection 3 of section 26.1-02.1-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 3. "Insurer" includes an authorized insurer, self-insurer, reinsurer, broker, insurance
4 producer, or any agent thereof.

5 **SECTION 6. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-02.1-02 of
6 the North Dakota Century Code is amended and reenacted as follows:

- 7 a. Presents or causes to be presented to an insurer, reinsurer, insurance
8 producer, ~~broker~~, or any agent thereof, any oral or written statement knowing
9 that the statement contains any false or misleading information concerning
10 any fact material to an application for the issuance of an insurance policy;

11 **SECTION 7. AMENDMENT.** Subsections 2 and 3 of section 26.1-02.1-04 of the North
12 Dakota Century Code are amended and reenacted as follows:

- 13 2. Except in prosecution for perjury or insurance fraud, and in the absence of malice,
14 an insurer, or any officer, employee, or agent thereof, or any licensed insurance
15 producer or private person who cooperates with, furnishes evidence, or provides or
16 receives information regarding any suspected fraudulent insurance act to or from
17 an authorized agency, the national association of insurance commissioners, or any
18 not-for-profit organization established to detect and prevent fraudulent insurance
19 acts or who complies with an order issued by a court of competent jurisdiction
20 acting in response to a request by any of these entities to provide evidence or
21 testimony is not subject to a criminal proceeding or to a civil penalty with respect to
22 any act concerning which the person testifies to or produces relevant matter.
- 23 3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or
24 any licensed insurance producer or private person who cooperates with, furnishes
25 evidence, or provides information regarding any suspected fraudulent insurance
26 act to an authorized agency, the national association of insurance commissioners,
27 or any not-for-profit organization established to detect and prevent fraudulent
28 insurance acts or who complies with an order issued by a court of competent
29 jurisdiction acting in response to a request by any of these entities to furnish
30 evidence or provide testimony, is not subject to civil liability for libel, slander, or any
31 other relevant tort, and no civil cause of action of any nature exists against the

person, for filing reports, providing information, or otherwise cooperating with an investigation or examination of any of these entities.

SECTION 8. AMENDMENT. Subsection 2 of section 26.1-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislative assembly that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, ~~agent,~~ ~~broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 9. AMENDMENT. Subsection 2 of section 26.1-03.2-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization

and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any health organization, or of any component derived in the calculation, by any health organization, ~~agent, broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the health organization's risk-based capital levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 10. AMENDMENT. Subsection 12 of section 26.1-04-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, ~~agent, broker~~ insurance producer, or individual.

SECTION 11. AMENDMENT. Section 26.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-04. Coercing purchaser or borrower to insure with particular company or ~~agent~~ insurance producer prohibited.

- 1 1. No person, engaged in selling property or in the business of financing the
2 purchase of property or of lending money on the security of property and no
3 trustee, director, officer, agent, or other employee of the person may require, as a
4 condition precedent, concurrent, or subsequent to the sale or financing the
5 purchase of the property or to lending money upon the security of a mortgage
6 thereon or for the renewal or extension of any such loan or mortgage or for the
7 performance of any other act in connection therewith, that the person purchasing
8 the property or for whom the purchase is to be financed or to whom the money is
9 to be loaned or for whom the extension, renewal, or other act is to be granted, or
10 performed, negotiate any insurance policy or renewal thereof covering the property
11 through a particular insurance company, ~~agent, solicitor, or broker~~ insurance
12 producer.
13 2. This section does not prevent the exercise by any person of the right to designate
14 reasonable financial requirements as to the insurance company, the terms and
15 provisions of the policy, and the adequacy of the coverage with respect to
16 insurance on property pledged or mortgaged to the person; nor does this section
17 prohibit the right of any person from voluntarily negotiating or soliciting the placing
18 of such insurance; nor does this section forbid the securing of insurance or
19 renewal thereof at the request of the purchaser or borrower or because of the
20 failure of the purchaser or borrower to furnish the necessary insurance or renewal
21 thereof.
22 3. Violation of this section constitutes an unfair insurance practice. The person
23 violating this section must be proceeded against under this chapter.

24 **SECTION 12. AMENDMENT.** Section 26.1-04-05 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-04-05. Discrimination by life companies and rebates and inducements by**
27 **~~agents~~ insurance producers prohibited.** A life insurance company doing business in this
28 state may not make or permit any distinction or discrimination between insureds of the same
29 class and with equal expectation of life in the amount or payment of premiums or rate charges
30 for policies of life or endowment insurance, or in the dividends or other benefits payable
31 thereon, or in any other of the terms or conditions of the contracts which it makes. No life

insurance company, and no ~~agent or solicitor~~ insurance producer therefor, either personally or by any other person, may:

1. Make any insurance contract, or agreement with reference thereto, other than such as is expressed plainly in the policy issued thereon.
2. Offer, promise, allow, give, set off, or pay any rebate of the whole or any part of the premium payable on the policy or the ~~agent's~~ insurance producer's commission thereon, or any special favor or advantage in the dividends, earnings, profits, or other benefit founded, arising, accruing, or to accrue thereon or therefrom.
3. Offer, promise, allow, or give any special advantage in the date of the policy or the age at which the same is issued.
4. Offer, promise, allow, or give any paid employment or contract for services of any kind, or any other valuable inducement or consideration whatever not specified in the insurance policy or contract.
5. Offer, promise, give, option, sell, or purchase, or offer to give, sell, or purchase, as inducement to insurance or in connection therewith, any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever not specified in the policy.

This section does not prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

SECTION 13. AMENDMENT. Section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates. An insurance ~~broker, limited insurance representative, producer or agent~~ of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any ~~agent's, insurance broker's, limited insurance representative's, or solicitor's~~ producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other

than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates.

SECTION 14. AMENDMENT. Section 26.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-07. Misrepresentation of terms of policy and future dividends prohibited.

An insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, doing business in this state, and an officer, director, agent, or solicitor of the company, society, or organization, and an insurance ~~broker or limited insurance representative~~ producer, may not issue, circulate, or use, or cause or permit to be issued, circulated, or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by the company, society, or organization, or the benefits or advantages, promised thereby, or make an estimate, with intent to deceive, of the future dividends or shares of surplus payable under the policy, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

SECTION 15. AMENDMENT. Section 26.1-04-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-16. Penalty for violating provisions relating to misrepresentation and discrimination. Any officer, agent, ~~solicitor~~ insurance producer, or representative of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization, or association, or any other person, who violates section 26.1-04-05, 26.1-04-06, 26.1-04-07, or 26.1-04-17 is guilty of a class A misdemeanor. The commissioner may, after a hearing upon fifteen days' notice, revoke the license to transact business in this state of any insurance organization violating section 26.1-04-05 or 26.1-04-06.

SECTION 16. AMENDMENT. Section 26.1-04-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-17. Revocation or suspension of insurance ~~broker's, limited insurance representative's, and agent's~~ producer's license for misrepresentation or discrimination.

Upon satisfactory evidence of the violation of any provision of this chapter relating to misrepresentation or discrimination by any insurance ~~broker, limited insurance representative, agent, or solicitor~~ producer of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, the

commissioner may suspend or revoke the license of the offending ~~solicitor or agent~~ insurance producer.

SECTION 17. AMENDMENT. Section 26.1-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-07.2. Effects of redomestication. In the discretion of the commissioner, the certificate of authority, ~~agent~~ insurance producer appointments and licenses, rates, and other items in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this state or another state by merger, consolidation, or any other lawful method, continue in effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. An outstanding policy of a transferring insurer remains in effect and does not need to be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing forms with appropriate endorsements as approved by the commissioner. A transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

SECTION 18. AMENDMENT. Subdivisions a and b of subsection 3 of section 26.1-06.1-04 of the North Dakota Century Code are amended and reenacted as follows:

- a. If the person served is an ~~agent, broker,~~ insurance producer or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
- b. If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an ~~agent or broker~~ insurance producer of or for the reinsurer, in any action on or incident to the reinsurance contract;

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

- 1 4. If it appears to the rehabilitator that there has been criminal or tortious conduct, or
2 breach of any contractual or fiduciary obligation detrimental to the insurer by any
3 officer, manager, ~~agent, broker~~ insurance producer, employee, or other person,
4 the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

5 **SECTION 20. AMENDMENT.** Subdivision c of subsection 1 of section 26.1-06.1-21 of
6 the North Dakota Century Code is amended and reenacted as follows:

- 7 c. By first-class mail to all insurance ~~agents~~ producers of the insurer;

8 **SECTION 21. AMENDMENT.** Subdivision a of subsection 3 of section 26.1-06.1-21 of
9 the North Dakota Century Code is amended and reenacted as follows:

- 10 3. a. Notice under subsection 1 to ~~agents~~ insurance producers of the insurer and
11 to potential claimants who are policyholders must include, where applicable,
12 notice that coverage by state guaranty associations may be available for all or
13 part of policy benefits in accordance with applicable state guaranty laws.

14 **SECTION 22. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-06.1-32 of
15 the North Dakota Century Code is amended and reenacted as follows:

- 16 1. a. An ~~agent, broker~~ insurance producer, premium finance company, or any other
17 person, other than the insured, responsible for the payment of a premium is
18 obligated to pay any unpaid premium for the full policy term due the insurer at
19 the time of the declaration of insolvency, whether earned or unearned, as
20 shown on the records of the insurer. The liquidator shall also have the right to
21 recover from such person any part of an unearned premium that represents
22 commission of such person. Credits or setoffs, or both, may not be allowed to
23 an ~~agent, broker,~~ insurance producer or premium finance company for any
24 amounts advanced to the insurer by the ~~agent, broker,~~ insurance producer or
25 premium finance company on behalf of, but in the absence of a payment by,
26 the insured.

27 **SECTION 23. AMENDMENT.** Subsection 1 of section 26.1-06.1-51 of the North
28 Dakota Century Code is amended and reenacted as follows:

- 29 1. The domiciliary liquidator of an insurer domiciled in a reciprocal state, except as to
30 special deposits and security on secured claims under subsection 3 of section
31 26.1-06.1-52, is vested by operation of law with the title to all of the assets,

property, contracts and rights of action, ~~agents'~~ insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting must be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting or property in the domiciliary state. Otherwise, the date of vesting must be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from ~~agents~~ insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 26.1-06.1-52.

SECTION 24. AMENDMENT. Subsection 3 of section 26.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

3. All licensed accident and health insurance ~~agents~~ producers may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an ~~agent's~~ insurance producer's referral fee of twenty-five dollars to each licensed accident and health insurance ~~agent~~ insurance producer who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid to the lead carrier from moneys received as premiums for the association plan.

SECTION 25. AMENDMENT. Section 26.1-09-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-03. Reciprocal or interinsurance contracts - Execution. Reciprocal or interinsurance contracts may be executed by an attorney, ~~agent~~ insurance producer, or other representative, in this chapter designated as an attorney, duly authorized and acting for the subscribers. The attorney may be a corporation. The office of the attorney may be maintained at the place designated by the subscribers in the power of attorney.

SECTION 26. AMENDMENT. Section 26.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-11. Appointment of ~~agents~~ insurance producers by attorney - ~~Agent's~~ Insurance producer's license fee. The attorney may appoint ~~agents~~ insurance producers to represent the attorney in this state, but the ~~agents~~ insurance producers, before writing or soliciting any of the insurance provided for under this chapter, must receive a certificate of

1 authority from the commissioner. The fee for the certificate is that specified in section
2 26.1-01-07.

3 **SECTION 27. AMENDMENT.** Section 26.1-09-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-09-13. Solicitation without certificate of authority - Limitation.** For the
6 purpose of organization, and upon the issuance of a permit by the commissioner, powers of
7 attorney may be solicited without a license or certificate of authority, but an attorney, ~~agent~~
8 insurance producer, or other person may not effect any insurance contract under this chapter
9 until in compliance with this chapter.

10 **SECTION 28. AMENDMENT.** Subdivisions b and j of subsection 1 of section
11 26.1-10-02 of the North Dakota Century Code are amended and reenacted as follows:

- 12 b. Acting as an insurance ~~broker or as insurance agent~~ producer for its parent or
13 for any of its parent's insurance company subsidiaries.
- 14 j. Financing of insurance premiums, ~~agents~~ insurance producers, and other
15 forms of consumer financing.

16 **SECTION 29. AMENDMENT.** Subsection 9 of section 26.1-11-01 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 9. Agreed to appoint, and will appoint, as its ~~agents~~ insurance producers in this state
19 only residents of this state except as otherwise provided in chapter 26.1-26.

20 **SECTION 30. AMENDMENT.** Section 26.1-11-07 of the 1999 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **26.1-11-07. Countersignature requirement - Commissions - Reciprocity.**

23 Notwithstanding any other provision of this title or policy forms to the contrary, there may not be
24 any requirement that an ~~agent~~ insurance producer resident in this state sign or countersign an
25 insurance policy covering a subject of insurance resident, located, or to be performed in this
26 state. However, if the laws or rules of another state require a signature or countersignature by
27 an ~~agent~~ insurance producer resident in that state on an insurance policy written by a
28 nonresident ~~agent or nonresident broker~~ insurance producer of that state, then any insurance
29 policy written by an ~~agent~~ insurance producer resident of that state licensed as a nonresident
30 ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to
31 be performed in this state must be signed or countersigned in writing by an ~~agent~~ insurance

1 producer resident in this state. An insurance policy may not be deemed invalid because of the
2 absence of the required signature or countersignature. If the laws or rules of another state
3 require an ~~agent~~ insurance producer resident in that state to retain a portion of the commission
4 paid on a like insurance policy written, countersigned, or delivered by the ~~agent~~ insurance
5 producer in that state at the request of a nonresident ~~agent or nonresident broker~~ insurance
6 producer of that state, then the ~~agent~~ insurance producer resident in this state who signed or
7 countersigned an insurance policy written by a resident of that state licensed as a nonresident
8 ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to
9 be performed in this state shall retain an equal pro rata portion of any commission on the
10 insurance policy.

11 **SECTION 31. AMENDMENT.** Section 26.1-15.1-33 of the North Dakota Century Code
12 is amended and reenacted as follows:

13 **26.1-15.1-33. Licensing of agents.** ~~Agents~~ Insurance producers of societies must be
14 licensed under chapter 26.1-26.

15 **SECTION 32. AMENDMENT.** Section 26.1-16-12 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **26.1-16-12. Territorial restrictions on society - Voluntary contribution plan**
18 **benefits regulated by chapter.** Any society organized under this chapter shall confine its
19 activities, insofar as solicitation by ~~agents~~ insurance producers is concerned, to this state. No
20 benefits on the voluntary contribution plan may be provided by any society except as provided
21 in this chapter.

22 **SECTION 33. AMENDMENT.** Section 26.1-16-13 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **26.1-16-13. Licensing of ~~agents~~—Residence requirements insurance producers.**
25 All ~~agents~~ insurance producers of a benevolent society must be ~~residents of this state and~~
26 ~~must be~~ licensed in the same manner as ~~agents~~ insurance producers for insurance companies
27 generally are licensed.

28 **SECTION 34. AMENDMENT.** Section 26.1-17-23 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **26.1-17-23. Licensing of sales representatives.** The sales representatives of any
31 health service corporation are subject to the laws pertaining to insurance ~~agents~~ producers as

defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal is prescribed in section 26.1-01-07.

SECTION 35. AMENDMENT. Section 26.1-17.1-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17.1-15. Agents Insurance producers. No individual may apply, procure, negotiate, or place for others any policy or contract of a prepaid limited health service organization unless that individual holds a license or is otherwise duly authorized to sell accident and health insurance policies, health, hospital or medical service contracts, or health maintenance organization contracts.

SECTION 36. AMENDMENT. Subsection 1 of section 26.1-17.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A prepaid limited health service organization shall maintain in force a fidelity bond in its own name on its officers and employees in an amount not less than fifty thousand dollars or in any other amount prescribed by the commissioner. Except as otherwise provided by this subsection, the bond must be issued by an insurance company that is licensed to do business in this state or, if the fidelity bond required by this subsection is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a licensed surplus lines ~~agent-resident~~ insurance producer in this state shall satisfy the requirements of this subsection.

SECTION 37. AMENDMENT. Subsection 13 of section 26.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Health maintenance organization producer" means an insurance ~~agent or insurance broker~~ producer, as defined in section 26.1-26-02, who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for that person, or a person who advertises or otherwise holds out to the public as such.

SECTION 38. AMENDMENT. Subsection 2 of section 26.1-18.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. Every health maintenance organization and provider shall submit its books and records for the examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and ~~agents~~ insurance producers of, the health maintenance organization and the principals of the providers concerning their business.

SECTION 39. AMENDMENT. Section 26.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-19-10. Licensing of sales representatives. The sales representatives of a prepaid legal services organization are subject to the laws pertaining to insurance ~~agents~~ producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal thereof shall be prescribed in section 26.1-01-07.

SECTION 40. AMENDMENT. Subsection 5 of section 26.1-19-14 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purpose of examination, the commissioner may issue subpoenas, administer oaths to, and examine the officers and ~~agents~~ insurance producers of the prepaid legal services organization, as well as any providers of services.

SECTION 41. AMENDMENT. Subsection 3 of section 26.1-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance ~~agent or broker~~ producer in payment of premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums where a life or disability insurance policy is made the security or collateral for the repayment of a debt.

SECTION 42. AMENDMENT. Subsection 3 of section 26.1-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. This chapter does not apply to ~~resident~~ insurance ~~agents~~ producers; insurers who finance their own premiums; banks; savings and loan associations; credit unions;

annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

SECTION 43. AMENDMENT. Subdivision b of subsection 1 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

b. Contain the name and place of business of the insurance ~~agent or insurance broker~~ producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed including the term and type of policy; and

SECTION 44. AMENDMENT. Subsection 2 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed ~~resident agent~~ insurance producer which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance

company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last-known address and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement.

SECTION 46. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. Insurance required - Excess loss reinsurance. The commissioner shall procure and shall keep in force, an excess loss reinsurance contract naming the fund as the reinsured. The reinsurance contract must meet the following minimum specifications:

1. Reimburse the fund for all losses in excess of one million dollars incurred by the fund under policies issued by the fund and arising out of each occurrence of a peril included in the fund policies.
2. The limit of liability of such reinsurance contract must be no less than one hundred million dollars for each loss occurrence.
3. A sixty-day cancellation notice.
4. The quoted rate must be the guaranteed rate for the two-year bid period.

The cost of the excess loss reinsurance must be paid out of the premium income of the fund. This excess loss reinsurance must be procured by the commissioner and the fund only through bids as hereinafter provided and must be written only by a company or companies authorized to do business within this state. The contract must be ~~negotiated with and~~ countersigned by a licensed North Dakota resident insurance ~~agent~~ producer. On or before the third Monday in June of each odd-numbered year the commissioner shall publish in the official newspaper of Burleigh County a notice that on the last Monday in June of that year the commissioner will accept bids at the commissioner's office in the state capitol. A copy of the notice must be

1 posted at the office of the fund. A copy of the notice must be mailed to each insurance
2 company licensed to write fire insurance in this state. On the last Monday in June of each
3 odd-numbered year, the commissioner, with the approval of the industrial commission, shall
4 contract for the excess loss reinsurance with the company or group of companies submitting
5 the lowest and best bid for the two-year period commencing on the ensuing first day of August.
6 The commissioner, with the approval of the industrial commission, may disregard this section
7 after the commissioner and the commission have studied the available bids for the reinsurance
8 required by this section.

9 **SECTION 47. AMENDMENT.** Section 26.1-24-08 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **26.1-24-08. Security agreement to secure premium payment must be in separate**
12 **instrument - Penalty.** It is unlawful for any insurance company, or any ~~agent or solicitor~~
13 insurance producer therefor within this state, to take or procure to be taken upon the property to
14 be insured, or upon any other property, a security agreement securing the payment of the
15 premium due or to become due, including policy fees, or any part thereof, unless the security
16 agreement is printed or written upon a paper which is separate and distinct from the
17 application. Any security agreement given in violation of this section is void. Any insurance
18 company violating this section is guilty of a class A misdemeanor, and forfeits its right to do
19 business in this state.

20 **SECTION 48. AMENDMENT.** Section 26.1-24-09 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **26.1-24-09. Sale or negotiation of premium note prohibited - Penalty.** A
23 promissory note taken in settlement of the first premium on any life, health, or accident
24 insurance policy may not be sold or negotiated in any manner prior to the applicant's medical
25 examination, where one is required, nor a binding receipt for the premium signed by an
26 authorized ~~agent~~ insurance producer of the insurance company has been delivered to the
27 applicant, nor until the insurance company has received the application and medical
28 examination. Any person violating this section is guilty of a class B misdemeanor.

29 **SECTION 49. AMENDMENT.** Section 26.1-25-16 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-25-16. Rebates prohibited.** No ~~broker or agent~~ insurance producer may
2 knowingly charge, demand, or receive a premium for any insurance policy except in
3 accordance with this chapter. No insurer or employee of an insurer, and no broker or agent
4 may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to
5 insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or
6 reduction of the premium named in an insurance policy, or any special favor or advantage in
7 the dividends or other benefits to accrue on the policy, or any valuable consideration or
8 inducement whatever, not specified in the insurance policy, except to the extent provided for in
9 applicable filing. No insured named in an insurance policy, nor any employee of the insured,
10 may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement,
11 credit, or reduction of premium, or any such special favor or advantage or valuable
12 consideration or inducement. This section does not prohibit the payment of commissions or
13 other compensation to licensed ~~agents or brokers~~ insurance producers, nor any insurer from
14 allowing or returning to its participating policyholders, members, or subscribers, dividends,
15 savings, or unabsorbed premium deposits. As used in this section, "insurance" includes
16 suretyship and "policy" includes bond.

17 **SECTION 50. AMENDMENT.** Section 26.1-26-01 of the 1999 Supplement to the North
18 Dakota Century Code is amended and reenacted as follows:

19 **26.1-26-01. Scope.** This chapter governs the qualifications and procedures for the
20 licensing of insurance ~~agents, insurance brokers~~ producers, insurance consultants, and surplus
21 lines insurance ~~brokers~~ producers. This chapter applies to all lines of insurance and types of
22 insurers including prepaid legal service organizations and health maintenance organizations.

23 **SECTION 51. AMENDMENT.** Section 26.1-26-02 of the 1999 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **26.1-26-02. Definitions.** As used in this chapter, unless the context requires
26 otherwise:

- 27 1. "Business entity" means a corporation, association, partnership, limited liability
28 company, limited liability partnership, or other legal entity.
- 29 2. "Home state" means the District of Columbia and any state or territory of the
30 United States in which an insurance producer maintains the producer's principal

place of residence or principal place of business and is licensed to act as an insurance producer.

3. ~~"Insurance" includes annuities~~ means any of the lines of authority in section 26.1-26-11.

2. ~~"Insurance agent" means an individual, partnership, limited liability partnership, corporation, or limited liability company appointed by an insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.~~

3. ~~"Insurance broker" means any individual, partnership, limited liability partnership, corporation, or limited liability company which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.~~

4. ~~"Insurance consultant" means an individual, partnership, limited liability partnership, corporation, or limited liability company~~ a person that, for a fee, holds oneself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any insurance policy that could be issued in this state.

5. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

6. "Insurer" means all types of insurance companies as well as prepaid legal service organizations and health maintenance organizations.

7. "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

8. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

- 1 9. "Person" means an individual or a business entity.
- 2 10. "Sell" means to exchange a contract of insurance by any means, for money or its
3 equivalent, on behalf of an insurance company.
- 4 11. "Solicit" means attempting to sell insurance or asking or urging a person to apply
5 for a particular kind of insurance from a particular company.
- 6 12. "Surplus lines insurance ~~broker~~ producer" means an individual, partnership, limited
7 liability partnership, corporation, or limited liability company which a person that
8 sells, solicits, negotiates, or procures an insurance policy from an insurer not
9 licensed to transact business in this state which cannot be procured from an
10 insurer licensed to do business in this state.
- 11 13. "Terminate" means the cancellation of the relationship between an insurance
12 producer and the insurer or the termination of a producer's authority to transact
13 insurance.
- 14 14. "Uniform business entity application" means the current version of the national
15 association of insurance commissioners uniform business entity application for
16 resident and nonresident business entities.
- 17 15. "Uniform application" means the current version of the national association of
18 insurance commissioners uniform application for resident and nonresident
19 insurance producer licensing.

20 **SECTION 52. AMENDMENT.** Section 26.1-26-03 of the 1999 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **26.1-26-03. License required - Acting as agent, ~~broker~~, insurance producer or**
23 **consultant without license prohibited - Penalty.** No person may act as or hold oneself out
24 to be an insurance ~~agent, insurance broker~~ producer, insurance consultant, or surplus lines
25 insurance ~~broker~~ producer unless licensed under this chapter. ~~No insurance agent, insurance~~
26 ~~broker, or surplus lines insurance broker may apply for, procure, negotiate for, or place for~~
27 ~~others, any policy for any line of insurance as to which that person is not then qualified and~~
28 ~~licensed under this chapter.~~ A person may not sell, solicit, or negotiate insurance in this state
29 for any class of insurance unless the person is licensed for that line of authority in accordance
30 with this chapter. Any person willfully violating this section is guilty of a class C felony.

SECTION 53. AMENDMENT. Section 26.1-26-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04. ~~Payment to or acceptance by unlicensed person of commission prohibited~~—When payment or assignment of commissions permitted Commissions. ~~No insurer, insurance agent, insurance broker, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. In the case of an insurance agent, the agent must also be properly appointed under this chapter before the insurer may pay, or the agent may accept, any commission or other valuable consideration for services as an insurance agent. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid, to a partnership or limited liability partnership of which that person is a member, employee, or agent, to a corporation of which that person is an officer, employee, or agent, or to a limited liability company of which that person is a manager, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.~~

1. An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.
2. A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.
3. Renewal or other deferred compensation may be paid to a person for selling, soliciting, or negotiating insurance in this state if that person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.

- 1 4. An insurer or insurance producer may pay or assign commissions, service fees,
2 brokerages, or other valuable consideration to an insurance agency or to persons
3 that do not sell, solicit, or negotiate insurance in this state, unless the payment
4 violates section 26.1-04-06.

5 **SECTION 54.** Section 26.1-26-04.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **26.1-26-04.1. Fees.**

- 8 1. Except as provided in subsection 2, an insurance producer acting as an agent of
9 an insured as provided under section 26.1-26-07 may charge a consumer a fee if:
- 10 a. The fee is disclosed to the consumer in a manner that separately identifies
11 the fee and the premium and states that the insurance producer is entitled to
12 receive a commission from the insurer for selling, soliciting, or negotiating the
13 insurance;
- 14 b. The fee is not calculated as a percentage of the premium;
- 15 c. The fee is not refunded, forgiven, waived, offset, or reduced by any
16 commission earned or received for any policy or coverage sold;
- 17 d. The amount of the fee and the consumer's obligation to pay the fee are not
18 conditioned upon the occurrence of a future event or condition, such as the
19 purchase, cancellation, lapse, declination, or nonrenewal of insurance;
- 20 e. The insurance producer discloses to the consumer that the fee is being
21 charged by the insurance producer and not by the insurance company,
22 neither state law nor the insurance company requires that the insurance
23 producer charge the fee, and the fee is not refundable;
- 24 f. The consumer consents in writing to the fee; and
- 25 g. The insurance producer, in charging the fee, does not discriminate on the
26 basis of sex, race, national origin, religion, disability, health status, age,
27 marital status, or geographic location and does not unfairly discriminate
28 between individuals of essentially the same class and of essentially the same
29 hazard or expectation of life.
- 30 2. An insurance producer acting as an agent of an insured as provided under section
31 26.1-26-07 may not charge a fee for taking or submitting an initial application for

coverage or processing a change to an existing policy, cancellation, claim, or renewal in connection with any of the following personal lines policies:

- a. Private passenger automobile.
- b. Homeowners, including coverage for tenants or condominium owners; owner-occupied fire, dwelling, or property coverage; personal umbrella liability; or any other personal lines-related coverage whether sold as a separate policy or as an endorsement to another personal lines policy.
- c. Individual life insurance.
- d. Individual sickness or accident insurance.
- e. Disability income policies.
- f. Credit insurance products.

- 3. Notwithstanding any other provision of this section, an insurance producer acting as a broker for the insured under section 26.1-26-07 may charge a fee for insurance producer services in connection with a policy issued if the producer provides the consumer with prior disclosure of the fee and of the services to be provided.
- 4. In the event of a dispute between an insurance producer and a consumer regarding any disclosure required by this section, the insurance producer has the burden of proving that the disclosure was made.

SECTION 55. AMENDMENT. Section 26.1-26-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance ~~agent, insurance broker, producer~~ or surplus lines insurance ~~broker producer~~ who sells, solicits, or negotiates an insurance policy on behalf of an insurer is an insurance ~~agent producer~~ within the intent of this chapter; and is liable for all the duties, requirements, liabilities, and penalties to which an insurance ~~agent producer~~ of the insurer is subject. An insurer accepting business from an unlicensed person through any of its officers, ~~agents~~ insurance producers, or employees thereby acknowledges that person as ~~its agent an~~ insurance producer acting on its behalf in the transaction. ~~A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the~~

1 ~~negotiations of such insurance, is an insurance broker within the intent of this chapter, and is~~
2 ~~liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are~~
3 ~~subject.~~

4 **SECTION 56. AMENDMENT.** Section 26.1-26-06 of the 1999 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **26.1-26-06. Insurance agent producer - Agent of insurer.** ~~Every~~ An insurance
7 ~~agent producer who sells, solicits, or negotiates an application for insurance of any kind is, in~~
8 ~~any controversy between the insured or the insured's beneficiary and the insurer, regarded as~~
9 ~~representing the insurer and not the insured or the insured's beneficiary. An insurance~~
10 ~~producer may not act as an agent of an insurer unless the insurance producer becomes an~~
11 ~~appointed insurance producer of that insurer.~~ This section does not affect the apparent
12 authority of an agent.

13 **SECTION 57. AMENDMENT.** Section 26.1-26-07 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **26.1-26-07. Broker Insurance producer - Agent of insured.** ~~Every~~ An insurance
16 ~~broker producer or surplus lines insurance broker who solicits an application for insurance of~~
17 ~~any kind, in any controversy between the insured or the insured's beneficiary and the insurer~~
18 ~~issuing any policy upon the application~~ producer, who is not an appointed insurance producer
19 of the insurer with which an insurance policy is placed and who acts or aids in any manner in
20 negotiating insurance contracts or placing risks of effecting insurance for a party other than
21 oneself or itself, is regarded as representing the insured or the insured's beneficiary and not the
22 insurer. ~~However, any insurer that directly or through its agents delivers in this state to any~~
23 ~~insurance broker a policy of insurance pursuant to the application or request of the broker,~~
24 ~~acting for an insured other than oneself, is deemed to have authorized the broker to receive on~~
25 ~~its behalf payment of any premium which is due on the insurance policy at the time of its~~
26 ~~issuance or delivery.~~

27 **SECTION 58. AMENDMENT.** Section 26.1-26-09 of the 1999 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **26.1-26-09. Exceptions to licensing requirements.** ~~No license as an insurance~~
30 ~~agent, insurance broker, or surplus lines insurance broker is required of:~~

1. ~~Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.~~ Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.
2. ~~Any~~ A license as an insurance producer is not required of the following:
 - a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:
 - (1) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or
 - (2) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
 - b. A person who secures and furnishes information for the purpose of group or wholesale life insurance, group property and casualty insurance, group annuities, or group, or blanket, or franchise accident and health insurance, or for the purpose of enrolling individuals under such plans or issuing certificates under such plans or otherwise assisting in administering such plans, or performs administrative services related to mass-marketed property and

casualty insurance, where no commission is paid to the person for the service.

- 3- c. ~~Employers~~ An employer or association or ~~their~~ its officers or, directors,
employees, or the trustees of ~~any~~ an employee trust plan, to the extent that
the employers, officers, employees, directors, or trustees are engaged in the
administration or operation of ~~any~~ a program of employee benefits for ~~their~~
~~own employees~~ the employer's or association's own employees or the
employees of ~~their~~ its subsidiaries or affiliates ~~involving~~, which program
involves the use of insurance issued by ~~a licensed insurance company;~~
~~provided, that~~ an insurer, as long as the employers, associations, officers,
directors, employees, or trustees are not in any manner compensated,
directly or indirectly, by the ~~insurance~~ company issuing the ~~insurance~~
contracts.

- 4- ~~Employees of a creditor who enrolls debtors under a group policy; provided, that~~
~~the employees receive no commission or other compensation directly related to~~
~~the enrollment.~~

d. An employee of an insurer or an organization employed by an insurer or an
organization who inspects, rates, or classifies risks or supervises the training
of insurance producers and who is not individually engaged in the sales,
solicitation, or negotiation of insurance.

e. A person whose activities in this state are limited to advertising without the
intent to solicit insurance in this state through communications in printed
publications or other forms of electronic mass media whose distribution is not
limited to residents of the state, provided that the person does not sell, solicit,
or negotiate insurance that would insure risks residing, located, or to be
performed in this state.

f. A person who is not a resident of this state who sells, solicits, or negotiates a
contract of insurance for commercial property and casualty risks to an insured
with risks located in more than one state insured under that contract, provided
that that person is otherwise licensed as an insurance producer to sell, solicit,
or negotiate that insurance in the state where the insured maintains its

principal place of business and the contract of insurance insures risks located
in that state.

g. A salaried full-time employee who counsels or advises that person's employer
relative to the insurance interests of the employer or of the subsidiaries or
business affiliates of the employer provided that the employee does not sell or
solicit insurance or receive a commission.

h. An employee of an insurer or of an insurance producer who responds to
requests from existing policyholders on existing policies provided that
employee is not directly compensated based on the volume of premiums that
may result from these services and provided that employee does not sell,
solicit, or negotiate insurance.

SECTION 59. AMENDMENT. Section 26.1-26-10 of the 1999 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

26.1-26-10. Consultant - Exceptions to licensing requirement. ~~An individual,
partnership, limited liability partnership, corporation, or limited liability company~~ A person may
not act as an insurance consultant until licensed as such by the commissioner. However, a
license as an insurance consultant is not required of:

1. An attorney licensed to practice law in this state acting in the attorney's
professional capacity.
2. A licensed insurance ~~agent, insurance broker, producer~~ or surplus lines insurance
~~broker producer.~~
3. A trust officer of a bank acting in the normal course of the trust officer's
employment.
4. An actuary or a certified public accountant who provides information,
recommendations, advice, or services in the actuary's or the certified public
accountant's professional capacity.

SECTION 60. AMENDMENT. Section 26.1-26-11 of the 1999 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of ~~agent or broker~~ insurance producer - Lines of insurance.
An insurance ~~agent, insurance broker, producer~~ or surplus lines insurance ~~broker producer~~
may receive a license to market products under one or more of the following lines:

- 1 1. Life and annuity means insurance coverage on human lives including benefits of
- 2 endowment, annuities, and credit life.
- 3 2. Accident and health means insurance coverage for sickness, disease, injury,
- 4 accidental death, and disability.
- 5 3. Property means insurance coverage for direct and consequential loss of or
- 6 damage to property of every kind.
- 7 4. Casualty means insurance coverage against legal liability including that for death,
- 8 injury, or disability or damage to real or personal property.
- 9 5. Variable life and annuity means insurance coverage provided under variable life
- 10 insurance contracts; and variable annuities; ~~or any other life insurance or annuity~~
- 11 ~~that reflects the investment experience of a separate account.~~

12 The product types found under each of the above lines of insurance are those adopted
13 pursuant to section ~~26.1-15-02.4~~ 26.1-05-02.1.

14 **SECTION 61.** Section 26.1-26-13.1 of the North Dakota Century Code is created and
15 enacted as follows:

16 **26.1-26-13.1. Appointments.**

- 17 1. An insurance producer may not act as an agent of an insurer unless the insurance
- 18 producer becomes an appointed agent of that insurer. An insurance producer who
- 19 is not acting as an agent of an insurer is not required to become appointed.
- 20 2. To appoint an insurance producer as its agent, the appointing insurer shall file a
- 21 notice of appointment within thirty days from the later of the date the agency
- 22 contract is executed or the first insurance application is submitted. The notice
- 23 must be in a format approved by the insurance commissioner. An insurer may
- 24 also appoint an insurance producer to all or some insurers within the insurer's
- 25 holding company system or group by the filing of a single appointment request.
- 26 3. An insurer shall pay an appointment fee for each insurance producer appointed by
- 27 the insurer in the amount and method of payment set forth in section 26.1-01-07.
- 28 4. An insurer shall remit, in a manner prescribed by the commissioner, a renewal
- 29 appointment fee in the amount set forth in section 26.1-01-07.

30 **SECTION 62.** Section 26.1-26-13.2 of the North Dakota Century Code is created and
31 enacted as follows:

26.1-26-13.2. Application for examination.

1. A resident individual applying for an insurance producer license or an insurance consultant license must pass a written examination unless exempt under section 26.1-26-25. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or consultant, and the insurance laws and regulations of this state. The individual must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the individual seeks qualification.
2. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 26.1-01-07.
3. An individual applying for an examination must remit a nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
4. An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination provided the individual remits all required fees and forms before being rescheduled for another examination.

SECTION 63. Section 26.1-26-13.3 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.3. Application for license.

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:
 - a. Is at least eighteen years of age;
 - b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;

- c. Has completed, within six months of the filing of the application for licensure, an approved prelicensing course of study for the lines of authority for which the individual has applied;
- d. Has paid the fees set forth in section 26.1-01-07; and
- e. Has successfully passed the examinations for the lines of authority for which the individual has applied.

2. A business entity acting as an insurance producer must obtain an insurance producer license. Application must be made using the uniform business entity application. Before approving the application, the commissioner must find that:

- a. The business entity has paid the fee set forth in section 26.1-01-07;
- b. The business entity has designated a licensed individual principal insurance producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
- c. The individual designated as the licensed principal insurance producer of the business entity has taken the examination required by section 26.1-26-13.2. The business entity may only be licensed for those lines of insurance for which one or more of its principal insurance producers is licensed. The business entity shall inform the commissioner within ten working days of any change in the status of its principal insurance producer or producers.
- d. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 64. AMENDMENT. Section 26.1-26-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-17. License requirement - Surplus lines insurance ~~broker—Resident~~ insurance agent's or insurance broker's license producer. An applicant for a license as a surplus lines insurance ~~broker producer~~ must be licensed in this state as a ~~resident insurance agent or an insurance broker producer~~ qualified as to the line or lines to be written.

SECTION 65. AMENDMENT. Section 26.1-26-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-20. Nonresident license—~~Must hold like license elsewhere licensing~~. An applicant may qualify for a nonresident license if the applicant holds a like resident license from

~~a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee.~~

1. Unless denied licensure pursuant to this chapter, the commissioner shall issue a nonresident person a nonresident insurance producer license if:
 - a. The person is currently licensed as a resident and is in good standing in the person's home state;
 - b. The person has submitted the proper request for licensure and has paid the fees required by section 26.1-01-07;
 - c. The person has submitted or transmitted to the commissioner either the person's home state application for licensure or a completed uniform application; and
 - d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.
2. The commissioner may verify the insurance producer's licensing status through the insurance producer data base maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.
3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. A fee or license application is not required.
4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in the person's home state is entitled to receive a nonresident surplus lines insurance producer license pursuant to subsection 1. Except as to subsection 1, nothing in this section otherwise amends or supersedes any provision of chapter 26.1-44.
5. Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state

1 which restricts the authority of the license to less than the total authority prescribed
2 in the associated major lines pursuant to section 26.1-26-11.

3 6. A nonresident insurance producer shall pay a biennial continuation fee of
4 twenty-five dollars.

5 **SECTION 66. AMENDMENT.** Section 26.1-26-25 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **26.1-26-25. Exceptions from examination.** The requirement for a written
8 examination is subject to the following exceptions:

9 1. ~~An applicant for a license covering the same line or lines of insurance for which the~~
10 ~~applicant was licensed under a like resident license in this state, other than a~~
11 ~~temporary license, within the twelve months next preceding the date of application,~~
12 ~~unless the previous license was suspended or revoked by the commissioner. An~~
13 ~~individual who applies for an insurance producer license in this state who was~~
14 ~~previously licensed for the same lines of authority in another state may not be~~
15 ~~required to complete any prelicensing education or examination. This exemption is~~
16 ~~only available if the person is currently licensed in that state or if the application is~~
17 ~~received within ninety days of the cancellation of the applicant's previous license~~
18 ~~and if the prior state issues a certification that, at the time of cancellation, the~~
19 ~~applicant was in good standing in that state or the state's insurance producer data~~
20 ~~base records, maintained by the national association of insurance commissioners,~~
21 ~~its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed~~
22 ~~in good standing for the line of authority requested.~~

23 2. ~~A nonresident applicant may be licensed without examination if the public official~~
24 ~~having supervision of insurance in the state of the applicant's residence certifies,~~
25 ~~by facsimile signature and seal, that the applicant has passed a similar written~~
26 ~~examination, or has been a continuous holder prior to the time the written~~
27 ~~examination was required, of a license like the license being applied for in this~~
28 ~~state. A person licensed as an insurance producer in another state who moves to~~
29 ~~this state shall make application within ninety days of establishing legal residence~~
30 ~~in this state to become a resident licensee pursuant to section 26.1-26-13.2. A~~
31 ~~prelicensing education or examination may not be required of that person to obtain~~

any line of authority previously held in the prior state except where the
commissioner determines otherwise by rule.

3. ~~An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.~~
4. ~~An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and five pertaining to state laws and rules.~~
5. ~~An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines three and four pertaining to state laws and rules.~~
6. An applicant may be licensed without examination to market a specific product type if the commissioner finds by rule the specific product type does not require the same professional competency demanded for other product types.
7. 4. An applicant for a license to write only a specific product type may be licensed subject to reduced examination requirements if the commissioner finds by rule that the requirements for licensure would otherwise be too burdensome and unrelated to that specific product type.

SECTION 67. Section 26.1-26-25.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-25.1. Assumed names. An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner before using the assumed name.

SECTION 68. AMENDMENT. Section 26.1-26-26 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-26. Temporary license as an ~~agent or broker~~ insurance producer. The commissioner may issue a temporary license as an insurance ~~agent or insurance broker~~ producer for a period not to exceed ~~ninety~~ one hundred eighty days without requiring an

examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse, next of kin, administrator, executor, or employee of a licensed insurance ~~agent~~ producer who died, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance ~~agent or insurance broker~~ producer who became disabled.
2. To a member or employee of a ~~partnership, officer or employee of a corporation, or manager or employee of a limited liability company~~ business entity, licensed as an insurance ~~agent~~ producer, upon the death or disability of an individual ~~registered with~~ designated as the principal insurance producer in the business entity application or the license.
3. To the designee of a licensed insurance ~~agent~~ producer entering upon active service in the armed forces of the United States.
4. In any other circumstance where the commissioner determines that the public interest will best be served by the issuance of the license.

SECTION 69. AMENDMENT. Section 26.1-26-30 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-30. Contents of license. The license shall state the name, ~~resident~~ address, social security number, personal identification number, or internal revenue service identification number of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

SECTION 70. Section 26.1-26-30.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-30.1. Vendor authority. In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliates or subsidiaries that the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to insurance producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

SECTION 71. AMENDMENT. Section 26.1-26-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31. Term of license. A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a ~~corporation, partnership, limited liability partnership, or limited liability company~~ business entity, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. ~~The insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;~~
6. ~~The insurance broker or surplus lines insurance broker~~ producer has failed to ~~maintain a bond as required by section 26.1-26-18, has failed to maintain a~~ resident or nonresident license as an insurance ~~agent~~ producer as required by section ~~26.1-26-16~~ 26.1-26-17, or has failed to pay the annual renewal fee to the commissioner; or
- ~~7.~~ 6. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

SECTION 72. AMENDMENT. Section 26.1-26-31.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.1. Continuing education required - Exceptions.

1. Except as otherwise provided in this ~~section~~ chapter, any person licensed as an insurance ~~agent, insurance broker, surplus lines insurance broker,~~ producer or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom hours. The commissioner may reduce or waive the minimum number of hours per year of

approved coursework for any person having a license limited to a specific product type. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each two-year period following licensure. No continuing education is required of an ~~agent licensed for the sale of life insurance or sickness, accident, and health insurance, or both, producer~~ who is at least sixty-two years of age, and who has a combined total years of continuous licensure as ~~such agent~~ an insurance producer and years of age which equals eighty-five, ~~and whose commissions from new business each year do not exceed ten thousand dollars. No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness.~~

2. The commissioner shall by rule divide the persons subject to this section into two equal segments for the purpose of reporting, as follows:
 - a. One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.
 - b. One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every even-numbered year.
3. All persons licensed after January 1, 1989, shall report within thirty days of the first day of January of the year following the second anniversary of the person's licensure.

SECTION 73. AMENDMENT. Section 26.1-26-31.8 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.8. License revocation.

1 1. The commissioner shall suspend the license of any person if, after holding a
2 hearing, the commissioner finds that the person failed to meet the requirements
3 imposed by subdivision c of subsection 1 of section 26.1-26-15.1 26.1-26-13.3 and
4 sections 26.1-26-31.1 through 26.1-26-31.8. Any license suspended under this
5 subsection must remain suspended until the person has demonstrated, to the
6 satisfaction of the commissioner, compliance with the requirements of section
7 26.1-26-15.1 and sections 26.1-26-31.1 through 26.1-26-31.8 and other applicable
8 laws.

9 2. The commissioner, after holding a hearing, shall suspend the license of any
10 person who has submitted a false or fraudulent certificate of compliance.

11 **SECTION 74. AMENDMENT.** Section 26.1-26-32 of the 1999 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **26.1-26-32. Renewal of appointments and licenses - Annual fee.** An appointment
14 of an insurance ~~agent~~ producer and the license of ~~an insurance broker, a~~ surplus lines
15 insurance ~~broker, producer~~ or insurance consultant terminates upon failure to pay the
16 prescribed annual renewal fees before May first.

17 **SECTION 75. AMENDMENT.** Section 26.1-26-33 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **26.1-26-33. Notification of address change - Duty of licensee.** Every licensee shall
20 notify the commissioner of any change in the licensee's residential or business address or legal
21 name within thirty days of the change. Any licensee who ceases to maintain residency in this
22 state shall deliver the insurance license to the commissioner by personal delivery or by mail
23 within thirty days after terminating residency.

24 **SECTION 76. AMENDMENT.** Section 26.1-26-34 of the 1999 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 ~~**26.1-26-34. Termination reports by insurer - Duty of insurer - Information**~~
27 ~~**furnished privileged in civil action**~~ **Notification to commissioner of termination.** If an
28 appointment is terminated for any of the grounds listed in this chapter, or for cause as defined
29 by the insurer involved, the insurer shall promptly give written notice of the termination and the
30 effective date of the termination to the commissioner and to the licensee where reasonably

possible. ~~The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to notify the licensee.~~

~~All notices of termination must be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of termination.~~

~~Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.~~

1. Termination for cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 26.1-26-42 or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 26.1-26-42. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.

2. Termination without cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 26.1-26-42, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

3. Ongoing notification requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in

1 accordance with subsection 1 had the insurer then known of the information's
2 existence.

3 4. Copy of notification to be provided to insurance producer.

4 a. Within fifteen days after making the notification required by subsections 1, 2,
5 and 3, the insurer shall mail a copy of the notification to the insurance
6 producer at the insurance producer's last-known address. If the insurance
7 producer is terminated for cause for any of the reasons listed in section
8 26.1-26-42, the insurer shall provide a copy of the notification to the insurance
9 producer at the insurance producer's last-known address by certified mail,
10 return receipt requested, postage prepaid or by overnight delivery using a
11 nationally recognized carrier.

12 b. Within thirty days after the insurance producer has received the original or
13 additional notification, the insurance producer may file written comments
14 concerning the substance of the notification with the commissioner. The
15 insurance producer shall, by the same means, simultaneously send a copy of
16 the comments to the reporting insurer, and the comments become a part of
17 the commissioner's file and must accompany every copy of a report
18 distributed or disclosed for any reason about the insurance producer as
19 permitted under subsection 6.

20 5. Immunities.

21 a. In the absence of actual malice, an insurer, the authorized representative of
22 the insurer, an insurance producer, the commissioner, or an organization of
23 which the commissioner is a member and that compiles the information and
24 makes it available to other insurance commissioners or regulatory or law
25 enforcement agencies is not subject to civil liability, and a civil cause of action
26 of any nature does not arise against these entities or their respective agents
27 or employees, as a result of any statement or information required by or
28 provided pursuant to this section or any information relating to any statement
29 that may be requested in writing by the commissioner, from an insurer or
30 insurance producer; or a statement by a terminating insurer or insurance
31 producer to an insurer or insurance producer limited solely and exclusively to

whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

b. In any action brought against a person who may have immunity under subdivision a for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision a does not apply because the person making the statement or providing the information did so with actual malice.

c. Subdivision a or b does not abrogate or modify any existing statutory or common law privileges or immunities.

6. Confidentiality.

a. Any documents, materials, or other information in the control or possession of the insurance department that is furnished by an insurer, insurance producer, or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner, in an investigation pursuant to this section is confidential and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

b. Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision a.

c. In order to assist in the performance of the commissioner's duties under this chapter, the commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision a, with other state, federal, and international regulatory

1 agencies, with the national association of insurance commissioners, its
2 affiliates, or subsidiaries, and with state, federal, and international law
3 enforcement authorities, provided that the recipient agrees to maintain
4 the confidentiality and privileged status of the document, material, or
5 other information;

6 (2) May receive documents, materials, or information, including otherwise
7 confidential and privileged documents, materials, or information from
8 the national association of insurance commissioners, its affiliates or
9 subsidiaries, and from regulatory and law enforcement officials of other
10 foreign or domestic jurisdictions, and shall maintain as confidential or
11 privileged any document, material, or information received with notice
12 or the understanding that it is confidential or privileged under the laws
13 of the jurisdiction that is the source of the document, material, or
14 information; and

15 (3) May enter into agreements governing sharing and use of information
16 consistent with this subsection.

17 (4) A privilege or claim of confidentiality in the documents, materials, or
18 information shall not be waived as a result of disclosure to the
19 commissioner under this section or as a result of sharing as authorized
20 in paragraph 3.

21 (5) Nothing in this chapter prohibits the commissioner from releasing final,
22 adjudicated actions including for cause terminations that are open to
23 public inspection to a data base or other clearinghouse service
24 maintained by the national association of insurance commissioners, its
25 affiliates, or subsidiaries of the national association of insurance
26 commissioners.

27 7. Penalties for failing to report. An insurer, the authorized representative of the
28 insurer, or insurance producer that fails to report as required under the provisions
29 of this section or that is found to have reported with actual malice by a court of
30 competent jurisdiction may, after notice and hearing, have its license or certificate

of authority suspended or revoked and may be fined in accordance with sections
26.1-26-42, 26.1-26-43, and 26.1-26-50.

SECTION 77. AMENDMENT. Section 26.1-26-36 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-36. Surplus lines insurance ~~broker's~~ producer's authority. A surplus lines insurance ~~broker~~ producer may act as a surplus lines insurance ~~broker~~ producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance ~~broker~~ producer may accept business from any licensed ~~agent~~ insurance producer for an admitted company and may compensate the ~~agent~~ insurance producer for the business, provided the insurance is written in conformity with this title.

SECTION 78. AMENDMENT. Section 26.1-26-41 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or limited liability company with nor receive any remuneration whatsoever from any licensed insurance ~~agent~~, ~~insurance broker~~ producer, surplus lines insurance ~~broker~~ producer, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance ~~agent~~, ~~insurance broker~~, producer or surplus lines insurance ~~broker~~ producer in any line.

SECTION 79. AMENDMENT. Section 26.1-26-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.
2. An acquisition or attempt to acquire a license through misrepresentation or fraud.
3. The applicant has been found to have been cheating on an examination for an insurance license.

4. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
5. ~~A conviction~~ The applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance agent, ~~insurance broker~~ producer, insurance consultant, or surplus lines insurance ~~broker~~ producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.
8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary, or excessive insurance coverage to any person.
9. The licensee has forged another's name to an application for insurance.
10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.
11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.
13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.
14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.

15. Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.

16. The licensee knowingly accepts insurance business from an individual who is not licensed.

17. The applicant or licensee knowingly fails to comply with a court order imposing child support obligation.

18. The applicant or licensee knowingly fails to pay state income tax or comply with a court order directing payment of state income tax.

SECTION 80. AMENDMENT. Section 26.1-26-43 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-43. License suspension, revocation, or refusal - ~~Partnership, corporation, or limited liability company~~ Business entity - Additional ground. The license of a ~~partnership, corporation, or limited liability company~~ business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the ~~partnership, corporation, or limited liability company~~ business entity and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

SECTION 81. Section 26.1-26-45.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-45.1. Reporting of actions.

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

2. Within thirty days after a criminal conviction, an insurance producer shall report to the commissioner any criminal conviction of the insurance producer taken in any

jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.

SECTION 82. Section 26.1-26-47.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-47.1. Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the insurance producer's home state, except the requirements imposed by section 26.1-26-20, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
2. A nonresident insurance producer's satisfaction of the insurance producer's home state's continuing education requirements for licensed insurance producers constitutes satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

SECTION 83. AMENDMENT. Section 26.1-26-48 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-48. Commissioner may make examinations and investigations. Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer or insurance producer, whether located within or without this state, all books, records, and papers of the insurer or insurance producer and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and ~~agents~~ insurance producers of the insurer, or the insured, as to the violation.

SECTION 84. AMENDMENT. Section 26.1-26-52 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-52. Insurance license for automobile rental agencies - Exception. A license as an insurance ~~agent or limited insurance representative~~ producer is not required for the counter sales personnel of an automobile rental company or its franchisee if:

- 1 1. The automobile rental company is appropriately licensed in this state under
2 subsection 2 of section ~~26.1-26-08~~ 26.1-26-13.3 or is affiliated with an
3 appropriately licensed North Dakota ~~agent~~ insurance producer.
- 4 2. The coverage offered by the counter sales personnel is limited to the following:
 - 5 a. Personal accident insurance covering the risks of travel, including accident
6 and health insurance that provides coverage to renters and other rental
7 vehicle occupants for accidental death or dismemberment and for medical
8 expenses resulting from an accident that occurs during the rental period;
 - 9 b. Supplemental liability insurance that must include uninsured and
10 underinsured motorist coverage, either offered separately or in combination
11 with other liability insurance, and that provides coverage to renters and other
12 authorized drivers for liability arising from the operation of the rental vehicle;
 - 13 c. Personal effects insurance that provides coverage to renters and other
14 vehicle occupants for the loss of, or damage to, personal effects that occurs
15 during the rental period;
 - 16 d. Roadside assistance and emergency sickness protection programs; and
 - 17 e. Any other coverage that a rental company offers in connection with and
18 incidental to the rental of vehicles.
- 19 3. The rental period is ninety days or less.
- 20 4. The automobile rental company files an acknowledgement with the commissioner
21 that its counter sales personnel act on its behalf and that it is responsible for any
22 representations made by the counter sales personnel relating to insurance
23 products offered through the automobile rental company or its franchisee. The
24 acknowledgement must state that the commissioner has the right to take any
25 administrative action contemplated in this title, including revocation or suspension
26 of the license required under subsection 1.
- 27 5. The automobile rental company provides basic training to counter sales personnel
28 in the insurance products offered under this section. The training must require
29 counter sales personnel to refer all customers with questions regarding the
30 insurance products offered under this section to appropriately licensed ~~agents~~

insurance producers employed by the automobile rental company or to written brochures or other materials that:

- a. Summarize the material terms of the coverage, including the identity of the insurer;
- b. Disclose that the policies offered by the automobile rental company may duplicate coverage already provided by other insurance the renter may have;
- c. State that the purchase of insurance is not required to rent the vehicle; and
- d. Describe the process of filing a claim.

6. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the automobile rental company from including the insurance products in an overall employee performance compensation incentive program.

SECTION 85. AMENDMENT. Section 26.1-26.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-01. Definitions. For the purposes of this chapter, an "independent insurance ~~agent~~ producer" means any licensed property and casualty insurance ~~agent~~ producer representing a property and casualty insurance company on an independent contractor basis and not as an employee. This term includes only those ~~agents~~ producers not obligated by contract to place property and casualty insurance accounts with any insurance company or group of companies. This chapter only applies to contracts which have been in effect for more than one year between an independent insurance ~~agent~~ producer and a property and casualty insurance company.

SECTION 86. AMENDMENT. Section 26.1-26.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-02. ~~Agent~~ Producer and company rehabilitation. In an effort to avoid termination, a property and casualty insurance company and an independent insurance ~~agent~~ producer may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed upon by them. Any written plan agreed upon must identify the problem areas and specify what the ~~agent~~ insurance producer must do in order to avoid termination.

SECTION 87. AMENDMENT. Section 26.1-26.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1 **26.1-26.1-03. Notice of termination.** Contracts between an independent insurance
2 ~~agent~~ producer and any property and casualty insurance company may not be terminated or
3 amended by the company except by mutual agreement or unless ninety-day prior written notice
4 has been provided to the independent insurance ~~agent~~ producer. The rate of commission and
5 renewal terms must be in accordance with those in effect immediately prior to the termination.

6 **SECTION 88. AMENDMENT.** Section 26.1-26.1-04 of the North Dakota Century Code
7 is amended and reenacted as follows:

8 **26.1-26.1-04. Termination of agents insurance producers for cause - Exceptions.**
9 This chapter does not apply to terminations for abandonment, insolvency of the terminating
10 company, gross and willful misconduct, refusal, suspension, revocation, or termination of the
11 ~~agent's~~ insurance producer's license by the commissioner of insurance, sale or material
12 change or ownership of agency, fraud, material misrepresentation or failure to pay an
13 independent insurance ~~agent's~~ producer's account less the independent insurance ~~agent's~~
14 producer's commission and any disputed items within thirty days after written demand by the
15 company.

16 **SECTION 89. AMENDMENT.** Subdivision b of subsection 3 of section 26.1-26.3-01 of
17 the North Dakota Century Code is amended and reenacted as follows:

18 b. Acts as an ~~agent~~ insurance producer for the insurer whether known as a
19 managing general agent, manager, or other similar term, who, with or without
20 the authority, either separately or together with affiliates, produces, directly or
21 indirectly, and underwrites an amount of gross direct written premium equal to
22 or more than five percent of the policyholder surplus as reported in the last
23 annual statement of the insurer in any one quarter or year together with one
24 or more of the following activities related to the business produced:

- 25 (1) Adjusts or pays claims in excess of an amount determined by the
26 commissioner; or
27 (2) Negotiates reinsurance on behalf of the insurer.

28 **SECTION 90. AMENDMENT.** Subsections 1 and 2 of section 26.1-26.3-02 of the
29 North Dakota Century Code are amended and reenacted as follows:

- 30 1. No individual, partnership, corporation, or limited liability company may act in the
31 capacity of a managing general agent with respect to risks located in this state for

an insurer licensed in this state unless the individual, partnership, corporation, or limited liability company is licensed as an insurance ~~agent~~ producer in this state.

2. An individual, partnership, corporation, or limited liability company may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the individual, partnership, corporation, or limited liability company is licensed as either a resident or nonresident insurance ~~agent~~ producer in this state pursuant to the provisions of this title.

SECTION 91. AMENDMENT. Subdivision c of subsection 10 of section 26.1-26.3-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. Appoint any ~~agent~~ insurance producer without assuring that the ~~agent~~ insurance producer is licensed in the appropriate lines of insurance.

SECTION 92. AMENDMENT. Subsection 6 of section 26.1-26.3-04 of the North Dakota Century Code is amended and reenacted as follows:

6. An insurer shall review its books and records each quarter to determine if any of its ~~agents~~ insurance producers have become, by operation of subsection 3 of section 26.1-26.3-01, a managing general agent as defined in that section. If the insurer determines that an ~~agent~~ insurance producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the ~~agent~~ insurance producer and the commissioner of the determination and the insurer and ~~agent~~ insurance producer shall fully comply with the provisions of this chapter within thirty days.

SECTION 93. AMENDMENT. Subdivision b of subsection 1 of section 26.1-26.3-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. Revocation or suspension of the insurance producer's license; and

SECTION 94. AMENDMENT. Subdivision h of subsection 1 of section 26.1-26.6-05 of the North Dakota Century Code is amended and reenacted as follows:

- h. Knowingly employing a person whose ~~agent~~ insurance producer license has been revoked, suspended, or denied in this or any other state.

SECTION 95. AMENDMENT. Subsection 4 of section 26.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1 4. A life or health ~~agent or broker~~ insurance producer licensed in this state, whose
2 activities are limited exclusively to the sale of insurance.

3 **SECTION 96. AMENDMENT.** Section 26.1-28-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-28-02. Sale of insurance through vending machines under certain**
6 **conditions.** ~~Resident insurance agents~~ Insurance producers licensed by the commissioner
7 under this title to solicit applications for and to sell policies of personal travel accident insurance
8 providing benefits for accidental bodily injury or accidental death may also solicit applications
9 for and issue or sell such insurance by means of vending machines supervised by them and
10 placed in locations for the convenience of the traveling public, upon the following conditions:

- 11 1. That each policy is reasonably suited for sale and issuance through a vending
12 machine, and that use of a vending machine in a proposed location would be of
13 material convenience to the traveling public.
- 14 2. That the type of vending machine proposed to be used is reasonably suitable and
15 practical for the purpose.
- 16 3. That reasonable means, as determined by the commissioner, are provided for
17 informing the prospective purchaser of the benefits, limitations, and exclusions of
18 the policy, the premium rates, the name and address of the ~~agent~~ insurance
19 producer, and the name and home office address of the insurer.
- 20 4. That the vending machine is constructed and operated to retain, or is provided with
21 a suitable place for deposit and safekeeping of, a copy of the application, which
22 shows the date of the application, name and address of the applicant and the
23 beneficiary, and the amount of insurance.
- 24 5. That no policy of insurance sold through a vending machine may be for a period of
25 time longer than the duration of a specified one-way or round trip not exceeding
26 one hundred eighty days.
- 27 6. That the vending machine has provided on it or immediately adjacent thereto, in a
28 prominent location, adequate envelopes for use of purchasers in mailing policies
29 vended through the machine, or that the policy itself, if designed to permit the
30 procedure, may be mailed without an envelope; provided, however, that the

commissioner may modify or waive this requirement, by a writing delivered to the
~~agent~~ insurance producer.

7. That each vending machine is supervised, inspected, and tested by the ~~agent~~
insurance producer with such frequency as may reasonably be required by the
commissioner, and if any machine is not in good working condition the ~~agent~~
insurance producer shall promptly cause a notice to be displayed on the machine
that the machine is out of order, and cause the machine to be promptly removed
from service until it is in proper working order.

8. That prompt refund by the ~~agent~~ insurance producer is provided to each applicant
or prospective applicant of money deposited in any defective vending machine and
for which no insurance, or a less amount than paid for, is actually received.

The commissioner may adopt by rule additional conditions for types and locations of vending
machines, their maintenance and operation, and the methods to be used by the ~~agent~~
insurance producer in the solicitation and sale of insurance by means of vending machines as
are reasonable and necessary.

SECTION 97. AMENDMENT. Section 26.1-28-03 of the North Dakota Century Code is
amended and reenacted as follows:

26.1-28-03. Licensing of vending machine devices - Expiration date. The
insurance ~~agent~~ producer shall apply for a license for each vending machine to be used. The
commissioner shall prescribe the form of the application. A fee of two dollars for each vending
machine must be paid at the time of making the application. Upon approval of the application
the commissioner shall issue to the ~~agent~~ insurance producer a special vending machine
license. The license applies to a specific vending machine or to any machine of identical type
which, after written notice by the ~~agent~~ insurance producer to the commissioner, is substituted
for it. The license must specify the name and address of the ~~agent~~ insurance producer, the
name and home-office address of the insurer, the name or other identifying information of the
policy or policies to be sold, the serial number or other identification of the vending machine,
and the address, including the location on the premises, where the machine is to be in
operation. A vending machine for which a license has been issued for operation at a specific
address may be transferred to a different address during the license year upon written notice to
the commissioner at the time of the transfer. The license for each vending machine expires

1 April thirtieth of each year, but may be renewed from year to year by the commissioner upon
2 approval of the application of the ~~agent~~ insurance producer, the furnishing of information
3 requested by the commissioner, and the payment of two dollars for each license year or part
4 thereof for each machine. Proof of the existence of a subsisting license must be displayed on
5 or about each vending machine in use in the manner the commissioner may reasonably
6 require.

7 **SECTION 98. AMENDMENT.** Section 26.1-28-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-28-04. Suspension, revocation, or refusal of license - Notice and opportunity**
10 **to be heard.** The license for each vending machine is subject to expiration, suspension, or
11 revocation coincidentally with that of the ~~agent~~ insurance producer or the insurer. The
12 commissioner also may suspend, revoke, or refuse to renew the license as to any vending
13 machine concerning which the commissioner finds any conditions upon which the machine was
14 licensed or referred to in section 26.1-28-02 have been violated, or no longer exist, or that the
15 machine is being used or operated by the ~~agent~~ insurance producer in violation of the laws of
16 this state. Before suspending, revoking, or refusing to renew a license for a vending machine,
17 the commissioner shall conduct a hearing and shall make a determination upon the basis of the
18 standards, conditions, and requirements of this section.

19 **SECTION 99. AMENDMENT.** Section 26.1-29-26 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **26.1-29-26. Representations on information and belief.** When a person insured has
22 no personal knowledge of a fact, the person may repeat information which that person has
23 upon the subject and which that person believes to be true with the explanation that that person
24 does so on the information of others, or that person may submit the information in its whole
25 extent to the insurer. In neither case is the person responsible for the truth of the
26 representation unless it proceeds from an ~~agent~~ insurance producer of the insured who has a
27 duty to give the information.

28 **SECTION 100. AMENDMENT.** Section 26.1-30.1-01.1 of the 1999 Supplement to the
29 North Dakota Century Code is amended and reenacted as follows:

30 **26.1-30.1-01.1. Unlawful grounds for declination.** The declination or termination of a
31 commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an

insurer, ~~agent~~, or ~~broker~~ insurance producer 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~~ insurance producer 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 101. AMENDMENT. Subsection 4 of section 26.1-31.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Licensed producer" means an ~~agent, broker,~~ insurance producer or reinsurance intermediary licensed pursuant to the applicable provision of this title.

SECTION 102. AMENDMENT. Subsection 8 of section 26.1-33-28 of the North Dakota Century Code is amended and reenacted as follows:

8. A policy delivered outside this state through an ~~agent~~ insurance producer or other representative of the company issuing the policy.

SECTION 103. AMENDMENT. Subdivision b of subsection 1 of section 26.1-36-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. A provision that no ~~agent~~ insurance producer has authority to change the policy or to waive any of its provisions.

1 **SECTION 104. AMENDMENT.** Section 26.1-36-40 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **26.1-36-40. General penalty - License suspension or revocation.** Any person
4 willfully violating any provision of this chapter or order of the commissioner made in accordance
5 with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or
6 revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

7 **SECTION 105. AMENDMENT.** Section 26.1-36.1-09 of the North Dakota Century
8 Code is amended and reenacted as follows:

9 **26.1-36.1-09. General penalty - License suspension or revocation.** Any person
10 willfully violating any provision of this chapter or order of the commissioner made in accordance
11 with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or
12 revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

13 **SECTION 106. AMENDMENT.** Subsection 29 of section 26.1-36.3-01 of the 1999
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15 29. "Producer" means insurance ~~agent or insurance broker~~ producer.

16 **SECTION 107. AMENDMENT.** Subsection 1 of section 26.1-38.1-16 of the 1999
17 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 18 1. No person, including an insurer, ~~agent~~ insurance producer, or affiliate of an insurer
19 may make, publish, disseminate, circulate, or place before the public, or cause
20 directly or indirectly, to be made, published, disseminated, circulated, or placed
21 before the public, in any newspaper, magazine, or other publication, or in the form
22 of a notice, circular, pamphlet, letter, or poster, or over any radio station or
23 television station, or in any other way, any advertisement, announcement or
24 statement, written or oral, which uses the existence of the insurance guaranty
25 association of this state for the purpose of sales, solicitation, or inducement to
26 purchase any form of insurance covered by chapter 26.1-38.1. Provided, however,
27 that this section does not apply to the North Dakota life and health insurance
28 guaranty association or any other entity that does not sell or solicit insurance.

29 **SECTION 108. AMENDMENT.** Subdivision d of subsection 3 of section 26.1-38.1-16
30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as
31 follows:

- 1 d. State that the insurer and its ~~agents~~ insurance producers are prohibited by
2 law from using the existence of the North Dakota life and health guaranty
3 association for the purpose of sales, solicitation, or inducement to purchase
4 any form of insurance;

5 **SECTION 109. AMENDMENT.** Section 26.1-39-06 of the North Dakota Century Code
6 is amended and reenacted as follows:

7 **26.1-39-06. Standard fire insurance policy.** No fire insurance contract or policy,
8 including a renewal, may be made, issued, used, or delivered by any insurer or by any ~~agent~~
9 insurance producer or representative of the insurer on property in this state other than such as
10 conform in all particulars as to blanks, size of type, context, provisions, agreements, and
11 conditions with the 1943 standard fire insurance policy of the state of New York, a copy of
12 which must be filed in the office of the commissioner as the standard policy for this state. The
13 cancellation provisions contained in the standard policy are superseded to the extent sections
14 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different
15 provision, agreement, condition, or clause may be made a part of the contract or policy or be
16 endorsed on the contract or policy or delivered with the contract or policy, except as follows:

- 17 1. The name of the insurer, its location and place of business, the date of its
18 incorporation or organization, and the state or county under which the insurer is
19 organized, the amount of paid-up capital stock, whether it is a stock or mutual
20 company, the names of its officers, the number and the date of the policy, and
21 appropriate company emblems may be printed on policies issued on property in
22 this state; provided, however, that any insurer organized under special charter
23 provisions may so indicate upon its policy and may add a statement of the plan
24 under which it operates in this state.
- 25 2. Printed or written forms of description and specifications or schedules of the
26 property covered by any particular policy and any other matter necessary to
27 express clearly all the facts and conditions of insurance on any particular risk,
28 which facts or conditions may not be inconsistent with or a waiver of any of the
29 provisions or conditions of the standard policy, may be written upon or attached or
30 appended to any policy issued on property in this state. Appropriate forms of
31 contracts, supplemental contracts, or endorsements, whereby the interest in the

property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions and stipulations inconsistent with the standard policy if applicable only to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies any provision which it is required by law to insert in the policies if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.

4. There may be endorsed in writing on the outside of any policy the name, with the word "~~Agent~~ Producer or ~~Agents~~ Producers" and place of business, of any insurance ~~agent producer~~ or ~~agents producers~~. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.

5. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.

6. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.
7. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.
8. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or proportion of the loss than the ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.
9. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.
10. This section does not apply to inland marine, ocean marine, or automobile insurance.

SECTION 110. AMENDMENT. Subsections 1 and 2 of section 26.1-39-11 of the North Dakota Century Code are amended and reenacted as follows:

1. "Declination" means the refusal of an insurer to issue a property insurance policy upon receipt of a written nonbinding application or written request for coverage from its ~~agent~~ insurance producer or an applicant. For the purposes of sections 26.1-39-10 through 26.1-39-21, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage is considered a declination.
2. "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on property insurance policies subject to sections 26.1-39-10 through 26.1-39-21, whether the payments are directly payable to the insurer or its ~~agent~~ insurance producer or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of

premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

SECTION 111. AMENDMENT. Subsections 2 and 3 of section 26.1-39-12 of the North Dakota Century Code are amended and reenacted as follows:

2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requires insurance coverage from the insurer.

3. No ~~agent or broker~~ insurance producer, for any reason set out in section 26.1-39-17, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

SECTION 112. AMENDMENT. Subsection 4 of section 26.1-39-16 of the North Dakota Century Code is amended and reenacted as follows:

4. Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew must be retained for a period of not less than one year by the insurer or ~~agent or broker~~ insurance producer giving the notice.

SECTION 113. AMENDMENT. Section 26.1-39-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-17. Prohibited reasons for declination or termination of property and casualty policies. The declination or termination of a property insurance policy subject to sections 26.1-39-10 through 26.1-39-21 by an insurer, ~~agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is based upon any of the following reasons:

1. The race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer that limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. The age or location of the residence 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 fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

5. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

SECTION 114. AMENDMENT. Subsection 1 of section 26.1-39-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the commissioner, upon the filing of a complaint or through the commissioner's own investigation has reason to believe that an insurer, ~~agent~~, or ~~broker~~ insurance producer has engaged in practices which violate sections 26.1-39-10 through 26.1-39-21 and that a proceeding would be in the public interest, the commissioner shall conduct a hearing.

SECTION 115. AMENDMENT. Section 26.1-39-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-19. Immunity. There is no liability on the part of and no claim for relief arises against the commissioner, any insurer or its authorized representatives, agents, or employees, any licensed insurance ~~agent or broker~~ producer, or any person furnishing information to an insurer as to reasons for a termination or declination for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a declination or termination under these sections. This section does not apply to statements made in bad faith with malice in fact.

SECTION 116. AMENDMENT. Section 26.1-39-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-22. Termination of property and casualty insurance agency contracts. Any insurer authorized to transact property or casualty business in this state, upon termination of an ~~agent's~~ insurance producer's appointment by the insurer, shall permit the renewal and endorsement of all insurance contracts written by the ~~agent~~ insurance producer for a period of one year from the date of the termination, as determined by the individual underwriting requirements of the insurer. If any contract does not meet the underwriting requirements, the insurer shall give the ~~agent~~ insurance producer sixty days' notice of its intention not to renew the contract. This section does not apply if the contract is terminated because of the ~~agent's~~

1 insurance producer's failure, after receiving a written demand, to pay over moneys due the
2 insurer.

3 **SECTION 117. AMENDMENT.** Section 26.1-39-23 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **26.1-39-23. Temporary insurance - Use of binders.** A binder or contract for
6 temporary farm and personal lines of insurance may be made orally or in writing and is deemed
7 to include all the terms of a standard fire insurance policy and all applicable endorsements as
8 may be designated in the binder. However, the cancellation clause of the standard fire
9 insurance policy and the clause specifying the hour of the day at which the insurance
10 commences may be superseded by the express terms of the binder. A duly authorized binder
11 must be accepted as evidence of insurance coverage required as a condition of financing the
12 purchase of property, except that a mortgagee or lender is not required to accept a renewal or
13 extension of the binder. Any insurance ~~agent~~ producer who has express authority to bind farm
14 and personal lines of insurance coverage, and who orally agrees on behalf of an insurer to
15 provide insurance coverage, if requested, shall execute and deliver a written memorandum or
16 binder containing the terms of the oral agreement to the insured within three business days
17 from the time of the oral agreement.

18 **SECTION 118. AMENDMENT.** Subsections 1 and 2 of section 26.1-40-01 of the North
19 Dakota Century Code are amended and reenacted as follows:

- 20 1. "Declination" means the refusal of an insurer to issue a policy upon receipt of a
21 written nonbinding application or written request for coverage from its ~~agent~~
22 insurance producer or an applicant. The offering of insurance coverage with a
23 company within an insurance group which is different from the company requested
24 on the nonbinding application or written request for coverage, or the offering of
25 policy coverage or rates substantially less favorable than requested in the
26 nonbinding application or written request for coverage, is a declination.
- 27 2. "Nonpayment of premium" means failure of the insured to discharge when due any
28 of the insured's obligations in connection with the payment of premium on a policy,
29 or any installment of the premium, whether the premium is payable directly to the
30 insurer or its ~~agent~~ insurance producer or indirectly under any premium finance
31 plan or extension of credit.

1 **SECTION 119. AMENDMENT.** Section 26.1-40-07 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **26.1-40-07. Proof of notice of termination.** A postal service certificate of mailing to
4 the named insured at the address shown in the policy is sufficient proof of notice. Proof of
5 mailing a notice of cancellation or a notice of an intention not to renew, or business records of
6 the notice of the insured's willingness to renew, must be retained for a period of one year by the
7 insurer or ~~agent or broker~~ insurance producer giving the notice.

8 **SECTION 120. AMENDMENT.** Subsections 2 and 3 of section 26.1-40-10 of the North
9 Dakota Century Code are amended and reenacted as follows:

10 2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse
11 to provide an insurance application form or other means of making a written
12 request for insurance to a prospective applicant who requests insurance coverage
13 from the insurer.

14 3. No ~~agent or broker~~ insurance producer, for any reason set out in section
15 26.1-40-11, may refuse to provide an insurance application form or other means of
16 making a written request for insurance to a prospective applicant who requests
17 insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

18 **SECTION 121. AMENDMENT.** Section 26.1-40-11 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **26.1-40-11. Terminations - Declinations - Prohibited reasons.** The declination of an
21 application for, or the termination of, a policy by an insurer, ~~agent,~~ or ~~broker~~ insurance producer
22 is prohibited if the declination or termination is:

- 23 1. Based upon the race, religion, nationality, or ethnic group of the applicant or
24 named insured.
- 25 2. Based solely upon the lawful occupation or profession of the applicant or named
26 insured, except that this provision does not apply to any insurer, ~~agent,~~ or ~~broker~~
27 insurance producer which limits its market to one lawful occupation or profession
28 or to several related lawful occupations or professions.
- 29 3. Based upon the principal location of the insured motor vehicle unless such
30 decision is for a business purpose which is not mere pretext for unfair
31 discrimination.

4. Based solely upon the age, sex, or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based upon age, sex, or marital status.

5. Based upon 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.

6. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

SECTION 122. AMENDMENT. Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-02. Affidavit as prerequisite of insurance - Contents. A surplus lines insurance ~~broker~~ producer licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within fifteen days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state.

SECTION 123. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines in solvent insurers. A surplus lines insurance ~~broker~~ producer may not knowingly place surplus line insurance with an insurer that is financially unsound. The surplus lines insurance ~~broker~~ producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance ~~broker~~ producer may not so insure with:

1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.

2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

SECTION 124. AMENDMENT. Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-04. Service of process. Any insurer desiring to transact any business under this chapter, by any surplus lines insurance ~~broker~~ producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

SECTION 125. AMENDMENT. Section 26.1-44-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-44-05. Endorsement of policy. Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES ~~BROKER'S~~ PRODUCER'S LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance ~~broker~~ producer shall properly complete the endorsement by typing or printing the ~~broker's~~ producer's full name in the space provided and shall sign and date the endorsement.

SECTION 126. AMENDMENT. Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

1 **26.1-44-06. Record of business - Filing of statement - Content.** Every surplus lines
2 insurance ~~broker~~ producer shall keep a separate account of the business under the ~~broker's~~
3 producer's license and on or before the first day of April in each year shall file with the
4 commissioner a statement for the twelve months preceding, giving the name of the insured to
5 whom a policy or indemnity contract granting unauthorized insurance has been issued, the
6 name and home office of each insurer issuing the policy or contract, the amount of the
7 insurance, the rates charged, the gross premiums charged, the date and term of the policy, and
8 the amount of premium returned on each policy canceled or not taken, with such information
9 and upon such form as required by the commissioner, and pay the commissioner an amount
10 equal to the taxes imposed by law on the premiums of authorized insurance companies. If a
11 surplus line policy covers risks or exposures only partially in this state, the tax so payable must
12 be computed upon the portion of the premium which is properly allocable to the risks or
13 exposures located in this state.

14 **SECTION 127. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code
15 is amended and reenacted as follows:

16 **26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for**
17 **recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing**
18 **procedure and judicial review.** Every such surplus lines insurance ~~broker~~ producer who fails
19 or refuses to make and file the annual statement, and to pay the taxes required to be paid prior
20 to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day
21 of delinquency. The tax and fine may be recovered in an action to be instituted by the
22 commissioner in the name of the state, the attorney general representing the commissioner, in
23 any court of competent jurisdiction, and the fine, when so collected, must be paid to the state
24 treasurer and placed to the credit of the general fund. The commissioner shall revoke the
25 surplus lines insurance ~~broker's~~ producer's license of the ~~broker~~ producer if any surplus lines
26 insurance ~~broker~~ producer fails to make and file the annual statement and pay the taxes, or
27 refuses to allow the commissioner to inspect and examine the ~~broker's~~ producer's records of
28 the business transacted by the ~~broker~~ producer pursuant to this chapter, or fails to keep the
29 records in the manner required by the commissioner, or falsifies the affidavit referred to in
30 section 26.1-44-02.

1 If the license of a surplus lines insurance ~~broker~~ producer is revoked, whether by the
2 action of the commissioner or by judicial proceedings, another license may not be issued to that
3 surplus lines insurance ~~broker~~ producer until two years have elapsed from the effective date of
4 the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that
5 full compliance with this chapter will be had.

6 **SECTION 128. AMENDMENT.** Section 26.1-45-04.1 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 **26.1-45-04.1. Adoption of long-term care benefits comparison guides by**
9 **commissioner.** The commissioner of insurance shall adopt rules to create a long-term care
10 benefits comparison guide to be presented at the point of sale between the client and ~~agent~~
11 insurance producer. The guide must include information regarding nursing home coverage and
12 alternatives to nursing home coverage.

13 **SECTION 129. AMENDMENT.** Paragraph 2 of subdivision a of subsection 2 of section
14 26.1-45-09 of the North Dakota Century Code is amended and reenacted as follows:

15 (2) In the case of ~~agent~~ insurance producer solicitations, an ~~agent~~
16 insurance producer must deliver the outline of coverage prior to the
17 presentation of an application or enrollment form.

18 **SECTION 130. AMENDMENT.** Section 26.1-45-11 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **26.1-45-11. Rulemaking authority.** The commissioner may adopt reasonable rules to
21 establish minimum standards for correcting abusive marketing practices, replacement forms,
22 ~~agent~~ insurance producer testing, penalties, and reporting practices for long-term care
23 insurance.

24 **SECTION 131. AMENDMENT.** Section 26.1-45-12 of the North Dakota Century Code
25 is amended and reenacted as follows:

26 **26.1-45-12. Penalties.** In addition to any other penalties provided by the laws of this
27 state, any insurer and any ~~agent~~ insurance producer found to have violated any requirement of
28 this title relating to the regulation of long-term care insurance or the marketing of such
29 insurance shall be subject to a fine of up to three times the amount of any commissions paid for
30 each policy involved in the violation or up to ten thousand dollars, whichever is greater.

1 **SECTION 132. AMENDMENT.** Subsections 3, 4, and 10 of section 26.1-46-03 of the
2 North Dakota Century Code are amended and reenacted as follows:

3 3. Taxation.

- 4 a. All premiums paid for coverages within this state to risk retention groups are
5 subject to taxation at the same rate and subject to the same interest, fines,
6 and penalties for nonpayment that are applicable to foreign-admitted insurers.
- 7 b. To the extent ~~agents or brokers~~ insurance producers are utilized, ~~they~~ the
8 insurance producers shall report and pay the taxes for the premiums for risks
9 which ~~they~~ the insurance producers have placed with or on behalf of a risk
10 retention group not chartered in this state.
- 11 c. To the extent the ~~agents or brokers~~ insurance producers are not utilized or fail
12 to pay the tax, each risk retention group shall pay the tax for risks insured
13 within the state. Further, each risk retention group shall report all premiums
14 paid to it for risks insured within the state.
- 15 d. This subsection does not apply to risk retention groups doing business in this
16 state which have fewer than twenty-six resident members or insureds.
- 17 e. To the extent that insurance ~~agents or brokers~~ producers are utilized
18 pursuant to section 26.1-46-11, each ~~agent or broker~~ insurance producer
19 shall keep a complete and separate record of all policies procured from each
20 risk retention group, which record must be open to examination by the
21 commissioner, as provided in sections 26.1-03-19.1 through 26.1-03-22.
22 These records must, for each policy and each kind of insurance provided
23 thereunder, include the limit of liability, the time period covered, the effective
24 date, the name of the risk retention group which issued the policy, the gross
25 premium charged, and the amount of return premiums, if any.

- 26 4. Compliance with prohibited practices chapter. Any risk retention group, its ~~agents~~
27 insurance producers and representatives, shall comply with chapter 26.1-04.

- 28 10. Any risk retention group, its ~~agents~~ insurance producers, and representatives shall
29 comply with chapter 26.1-04. The terms of any insurance policy issued by any risk
30 retention group may not provide, or be construed to provide, coverage prohibited

generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

SECTION 133. AMENDMENT. Subsection 8 of section 26.1-46-06 of the North Dakota Century Code is amended and reenacted as follows:

8. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance ~~agent or broker~~ producer residing in this state.

SECTION 134. AMENDMENT. Subsection 1 of section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed ~~agent or broker~~ insurance producer acting pursuant to the surplus lines laws and regulations of such state.

SECTION 135. AMENDMENT. Subsection 2 of section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Paid first by such insurance source, and if not by such source, by the ~~agent or broker~~ insurance producer for the purchasing group, and if not by such ~~agent or broker~~ insurance producer, then by the purchasing group, and if not by such purchasing group, then by each of its members.

SECTION 136. AMENDMENT. Section 26.1-46-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-11. Duty of ~~agents or brokers~~ insurance producers to obtain license. Any person acting, or offering to act, as an ~~agent or broker~~ insurance producer for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, shall, before commencing any such activity, obtain a license from the commissioner. This section does not apply to any person acting as an ~~agent or broker~~ insurance producer for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

- 1 **SECTION 137. REPEAL.** Sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1,
2 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28,
3 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code are repealed.