

Fifty-eighth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2251**

Introduced by

Senators Espegard, Heitkamp, Krebsbach

Representatives Ekstrom, Ruby, Severson

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century  
2 Code, relating to creation of a property insurance placement facility.

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

4 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created  
5 and enacted as follows:

6 **Sunrise - Trigger.** The commissioner may implement a property insurance placement  
7 facility for those residents who are unable to obtain necessary property insurance through the  
8 standard insurance market. The commissioner shall hold a public hearing upon notice of not  
9 less than twenty days to determine the reasonable availability of property insurance in the  
10 market. Upon a finding by the commissioner that there is a lack of availability of property  
11 insurance in the market, the commissioner shall by order authorize the implementation of a  
12 property insurance placement facility as set forth in this chapter.

13 **Definitions.** As used in this chapter:

- 14 1. "Basic property insurance" means insurance against direct loss to property as  
15 defined and limited in standard fire policies and extended coverage endorsements  
16 thereon.
- 17 2. "Homeowners insurance" means insurance on owner-occupied dwellings providing  
18 personal multi-peril property and liability coverage.
- 19 3. "Insurer" means an insurance company authorized to write and that is engaged in  
20 writing in North Dakota, on a direct basis, basic property and homeowners  
21 insurance or components thereof.
- 22 4. "North Dakota property insurance placement facility" or "facility" means the  
23 organization formed by insurers to assist applicants in securing basic property or  
24 homeowners insurance.

**Board.**

1. A board of directors consisting of seven members shall direct the operations of the property insurance placement facility. The seven members are comprised of five directors from the insurance industry and two public directors as follows:
  - a. Two of the five industry representatives must come from domestic insurance companies, one must come from county mutual insurance companies, one from foreign stock companies, and one from foreign mutual companies. The commissioner shall appoint the first board on a staggered basis. Subsequent board members are to be elected by facility members.
  - b. The public directors must be appointed by the commissioner. Public directors may include licensed insurance agents.
  - c. The term of each director is three years beginning on January first of the year the director is elected or appointed, except as staggered in the initial appointment process. A vacancy must be filled by election by the other directors for the remainder of the term. A vacancy to a public directorship must be filled by appointment by the commissioner for the remainder of the term. If the board fails to elect a replacement for an industry vacancy within thirty days, the commissioner shall appoint a replacement for the remainder of the term.
2. The board shall prepare and maintain a plan of operation which provides for the management of the facility, including the hiring of employees or contracting services to carry out the plan of operation, establishment of necessary facilities within the state, assessment of members to defray losses and expenses, negotiating commission agreements, establishing reasonable underwriting standards, developing reasonable cancellation and nonrenewal standards, acceptance and cession of reinsurance, adopting procedures for determining amounts of insurance to be provided, procedures for payment of claims, procedures for appealing adverse actions, procedures for reporting the plan experience to a statistical agent, and procedures for contracting facility functions to the private sector. The board has ninety days to submit the initial plan of operation to the commissioner for approval. All subsequent amendments to the plan of

operation must be submitted to the commissioner for approval. The commissioner may require the board to waive the assessment requirement for an insurer if the assessment would cause a significant financial impairment to the insurer or would jeopardize the solvency of the insurer.

**Facility membership.** Each insurer authorized to write and who is engaged in writing within this state, on a direct basis, basic property insurance or any component thereof in multi-peril policies or homeowners insurance shall participate in the facility as a condition of its authority to do the business of insurance in this state. Members of the facility are responsible for the cost of funding the operations, expenses, and losses of the facility. Each year the board shall assess the members based upon each member's pro rata share of the aggregate property insurance premium written in the second preceding calendar year as disclosed in the annual statement and other reports filed by members with the commissioner. The assessment must be based on the premiums reported from income from this state in the following lines of the annual statement: fire, allied lines, and homeowners multiple peril.

**Coverage and forms.** The plan must use standard policy forms to provide coverage for basic property and homeowners insurance. The plan may not provide coverage for automobile or commercial risks.

**Rates.** The facility shall establish rates and may include data from an advisory or statistical organization in the development of its rates. Rates must be submitted to the commissioner for approval prior to use. Rates must be actuarially sound under chapter 26.1-25 and may not actively compete with rates in the voluntary market.

**Underwriting.** A person who has been refused coverage, in writing, by at least five standard carriers based on an underwriting, claims, or credit history is eligible to apply to the facility for coverage.

**Agents.** A licensed property and casualty agent may submit an application on behalf of an applicant to the facility. The agent is entitled to receive a commission for the service. The agent is not a representative of the facility.

**Immunity.** The facility, its members, employees, contractors, agents, and the commissioner are not liable for or have a cause of action against them for statements made in good faith in the course of conducting facility operations and procedures.

- 1           **Examinations and audits.** The commissioner shall examine the facility every three
- 2 years. The facility shall submit a financial report and an annual report to the commissioner by
- 3 April first of each year. The report must include premiums written, losses incurred, loss
- 4 adjusting expenses incurred, underwriting expenses, claims losses, and assessments.