

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1329

Introduced by

Representative Keiser

Senator Klein

1 A BILL for an Act to create and enact sections 26.1-25-04.4, 26.1-25-04.5, 26.1-25-04.6,
2 26.1-25-11.1, and 26.1-25-20 of the North Dakota Century Code, relating to the regulation of
3 fire, property, and casualty insurance rates and rate filings; and to amend and reenact sections
4 26.1-25-02.1, 26.1-25-04, 26.1-25-05, and 26.1-25-10.5 of the North Dakota Century Code,
5 relating to the regulation of fire, property, and casualty insurance rates and rate filings.

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

7 **SECTION 1. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **26.1-25-02.1. Definitions.**

- 10 1. ~~"Advisory organization" means any entity, including its affiliates or subsidiaries,~~
11 ~~which either has two or more member insurers or is controlled either directly or~~
12 ~~indirectly by two or more insurers, and which assists insurers in ratemaking-related~~
13 ~~activities as enumerated in this chapter. Two or more insurers having a common~~
14 ~~ownership or operating in this state under common management or control~~
15 ~~constitute a single insurer for purposes of this definition~~ organization that has five
16 or more unrelated members and which assists insurers as authorized under
17 section 26.1-25-20. It does not include joint underwriting organizations, actuarial
18 or legal consultants, single insurers, any employees of an insurer, or insurers
19 under common control or management of the insurer's employees or managers.
20 2. "Classification system" or "classification" means the process of grouping risks with
21 similar risk characteristics so that differences in costs may be recognized.
22 2- 3. "Commercial risk" means any kind of risk which is not a personal risk.
23 4. "Competitive market" means any market except any market that has been found to
24 be noncompetitive under section 26.1-25-04.5.

- 1 ~~3.~~ 5. "Developed losses" means losses including loss adjustment expenses, adjusted,
2 using standard actuarial techniques, to eliminate the effect of differences between
3 current payment or reserve estimates and those needed to provide actual ultimate
4 loss including loss adjustment expense payments.
- 5 6. "Excessive" means a rate that is likely to produce a long-term profit that is
6 unreasonably high for the insurance provided.
- 7 ~~4.~~ 7. "Expenses" means that portion of a rate attributable to acquisition, field
8 supervision, collection expenses, general expenses, taxes, licenses, and fees.
- 9 8. "Experience rating" means a rating procedure utilizing past insurance experience
10 of the individual policyholder to forecast future losses by measuring the
11 policyholder's loss experience against the loss experience of policyholders in the
12 same classification to produce a prospective premium credit, debit, or unity
13 modification.
- 14 9. "Inadequate" means a rate that is unreasonably low for the insurance provided
15 and:
- 16 a. The continued use of which endangers the solvency of the insurers using it;
17 or
- 18 b. Will have the effect of substantially lessening competition or creating a
19 monopoly in any market.
- 20 ~~5.~~ 10. "Joint underwriting" means a voluntary arrangement established to provide
21 insurance coverage for a commercial risk pursuant to which two or more insurers
22 jointly contract with the insured at a price and under policy terms agreed upon
23 between the insurers.
- 24 11. "Large commercial policyholder" means a financial guaranty insurance
25 policyholder or a commercial policyholder that has certified to the commissioner
26 that the policyholder employs the services of an insurance agent or broker and
27 meets at least three of the following seven criteria:
- 28 a. Has a net worth of over twenty-five million dollars;
29 b. Has net revenue or sales of over fifty million dollars;
30 c. Has more than five hundred employees per individual company or one
31 thousand employees per holding company aggregate;

- 1 d. Procures its insurance through an employee acting as a full-time risk
2 manager or qualified consulting risk manager;
- 3 e. Generates aggregate annual property casualty insurance premiums of over
4 five hundred thousand dollars, excluding contract bonds, crop insurance
5 premiums, and workers' compensation premiums;
- 6 f. Is a nonprofit or public entity with an annual budget or assets of at least
7 twenty-five million dollars; or
- 8 g. Is a municipality with a population of over twenty-five thousand population.
- 9 12. "Loss adjustment expense" means the expenses incurred by the insurer in the
10 course of settling claims.
- 11 ~~6.~~ 13. "Loss trending" means any procedure for projecting developed losses to the
12 average date of loss for the period during which the policies are to be effective.
- 13 14. "Market" means the statewide interaction between buyers and sellers in the
14 procurement of a line of insurance coverage pursuant to this chapter.
- 15 15. "Noncompetitive market" means a market that is subject to a ruling under section
16 26.1-25-04.5 that a reasonable degree of competition does not exist. Residual
17 markets and pools are noncompetitive markets.
- 18 ~~7.~~ 16. "Personal risk" means homeowners, tenants, private passenger nonfleet
19 automobiles, mobile homes, and other property and casualty insurance for
20 personal, family, or household needs. The term includes any property and
21 casualty insurance that is otherwise intended for noncommercial coverage.
- 22 ~~8.~~ 17. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant
23 to which two or more insurers participate in the sharing of risks on a predetermined
24 basis. The pool may operate through an association, syndicate, or other pooling
25 agreement.
- 26 ~~9.~~ 18. "Prospective loss costs" means that portion of a rate that does not include
27 provisions for expenses other than loss adjustment expenses, or profit, and are
28 based on historical aggregate losses and loss adjustment expenses adjusted
29 through development to their ultimate value and projected through trending to a
30 future point in time.

1 ~~40.~~ 19. "Rate" means that cost of insurance per exposure unit whether expressed as a
2 single member or as a prospective loss cost with an adjustment to account for the
3 treatment of expenses, profit, and individual insurer variation in loss experience,
4 prior to any application of individual risk variations based on loss or expense
5 considerations, and does not include minimum premium.

6 ~~44.~~ 20. "Residual market mechanism" means an arrangement, either voluntary or
7 mandated by law, involving participation by insurers in the equitable apportionment
8 among them of insurance which may be afforded applicants who are unable to
9 obtain insurance through ordinary methods.

10 21. "Special assessments" means guaranty fund assessments, special indemnity fund
11 assessments, vocational rehabilitation fund assessments, and other similar
12 assessments. Special assessments may not be considered as expenses or
13 losses.

14 ~~42.~~ 22. "Supplementary rating information" includes any manual or plan of rates,
15 classification, rating schedule, minimum premium, policy fee, rating rule,
16 underwriting rule, statistical plan, and any other similar information needed to
17 determine the applicable rate in effect or to be in effect.

18 ~~43.~~ 23. "Supporting information" means:
19 a. The experience and judgment of the filer and the experience or date of other
20 insurers or advisory organizations relied upon by the filer;
21 b. The interpretation of any other data relied upon by the filer; and
22 c. Descriptions of methods used in making the rates and any other information
23 required by the commissioner to be filed.

24 24. "Unfairly discriminatory" means rates that cannot be actuarially justified, but does
25 not refer to rates that produce differences in premiums for policyholders with like
26 loss exposure, so long as the rate reflects such differences with reasonable
27 accuracy.

28 **SECTION 2. AMENDMENT.** Section 26.1-25-04 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **26.1-25-04. Rate filings, supplementary rate information, and supporting**
31 **information.**

1. ~~Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum class rate, rating schedule or rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing must state the proposed effective date thereof and must indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, the commissioner shall require the insurer to furnish the information upon which it supports the filing and the waiting period commences as of the date the information is furnished. Every insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include:~~
 - a. ~~The experience or judgment of the insurer or advisory organization making the filing.~~
 - b. ~~Its interpretation of any statistical data upon which it relies.~~
 - c. ~~The experience of other insurers or advisory organizations.~~
 - d. ~~Any other relevant factors.~~

~~A filing and any supporting information is open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by an advisory organization, must be filed with the commissioner.~~
2. ~~After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by an advisory organization. Insurers utilizing the services of an advisory organization must provide with their rate filing, at the request of the commissioner, a description of the rationale for such use, including its own information and method of utilization of~~

1 ~~the advisory organization's information. This chapter does not require any insurer~~
2 ~~to become a member of or a subscriber to any advisory organization.~~

3 ~~3. The commissioner shall review filings as soon as reasonably possible after they~~
4 ~~have been made in order to determine whether they meet the requirements of this~~
5 ~~chapter.~~

6 ~~4. Subject to the exceptions specified in subsection 5, each filing must be on file for a~~
7 ~~waiting period of sixty days before it becomes effective. The period may be~~
8 ~~extended by the commissioner for an additional period not to exceed fifteen days if~~
9 ~~the commissioner gives written notice within the waiting period to the insurer or~~
10 ~~advisory organization which made the filing that the commissioner needs the~~
11 ~~additional time for the consideration of the filing. Upon written application by the~~
12 ~~insurer or advisory organization, the commissioner may authorize a filing which the~~
13 ~~commissioner has reviewed to become effective before the expiration of the~~
14 ~~waiting period or any extension thereof. A filing is deemed to meet the~~
15 ~~requirements of this chapter unless disapproved by the commissioner within the~~
16 ~~waiting period or any extension thereof.~~

17 ~~5. Any special filing with respect to a surety or guaranty bond required by law or by~~
18 ~~court or executive order or by order or rule of a public body, not covered by a~~
19 ~~previous filing, becomes effective when filed and is deemed to meet the~~
20 ~~requirements of this chapter until such time as the commissioner reviews the filing~~
21 ~~and so long thereafter as the filing remains in effect. Specific inland marine rates~~
22 ~~on risks specially rated by an advisory organization become effective when filed~~
23 ~~and are deemed to meet the requirements of this chapter until such time as the~~
24 ~~commissioner reviews the filing and so long thereafter as the filing remains in~~
25 ~~effect.~~

26 ~~6. Under any rules the commissioner may adopt, the commissioner may, by written~~
27 ~~order, suspend or modify the requirement of filing as to any kind of insurance,~~
28 ~~subdivision, or combination thereof, or as to classes of risks, the rates for which~~
29 ~~cannot practicably be filed before they are used. The orders and rules must be~~
30 ~~made known to insurers and advisory organizations affected thereby. The~~
31 ~~commissioner may make any examination the commissioner deems advisable to~~

ascertain whether any rates affected by the order meet the standards set forth in subdivision c of subsection 1 of section 26.1-25-03.

7. ~~Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.~~

8. ~~No insurer may make or issue a contract or policy except in accordance with the filings that have been approved and are in effect for the insurer as provided in this chapter or in accordance with subsection 6 or 7.~~

9. ~~Nothing in this chapter may be construed to require an advisory organization or its members or its subscribers to immediately refile final rates or premium charges previously approved by the commissioner. Members or subscribers of an advisory organization are authorized to continue to use insurance rates or premium charges approved before July 1, 1991, or decreases from those rates or premium charges filed by the advisory organization and subsequently approved after July 1, 1991.~~

For personal lines in a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state no later than thirty days before the effective date of the rate. Effective August 1, 2007, if the commissioner has filed with the legislative council a report that the use and file system of rate regulation is being implemented under this chapter, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state no later than thirty days after the effective date of the rate. For personal lines in a competitive market, rates and supplementary rate information need not be filed for inland marine risks, which by general custom are not written according to manual rules or rating plans. Rates in a competitive market for commercial insurance need not be filed.

2. In a noncompetitive market, every insurer shall file with the commissioner all rates, supplementary rate information, and supporting information for noncompetitive markets at least thirty days before the proposed effective date. Within thirty days of the receipt of the filing, the commissioner may give written notice that the commissioner needs additional time, not to exceed thirty days from the date of such notice, to consider the filing. Upon written application of the insurer, the

1 commissioner may authorize rates to be effective before the expiration of the
2 waiting period or an extension of the waiting period. A filing is deemed to meet the
3 requirements of this chapter and to become effective unless disapproved by the
4 commissioner under section 26.1-25-05 before the expiration of the waiting period
5 or an extension of the waiting period. In a noncompetitive market, residual market
6 mechanisms or advisory organizations may file residual market rates. The filing
7 under this subsection is deemed in compliance with the filing provisions of this
8 section unless the commissioner informs the insurer within ten days after receipt of
9 the filing as to what supplementary rate information or supporting information is
10 required to complete the filing.

11 3. An insurer may file its rates by either filing its final rates or by filing a multiplier and,
12 if applicable, an expense constant adjustment to be applied to prospective loss
13 costs that have been filed by an advisory organization on behalf of the insurer as
14 permitted under section 26.1-25-10.5.

15 4. All rates, supplementary rate information, and supporting information filed under
16 this chapter must be open to public inspection once filed, except information
17 marked confidential, trade secret, or proprietary by the insurer or filer. Copies may
18 be obtained from the commissioner upon request and upon payment of a
19 reasonable fee.

20 5. Notwithstanding any other provision of this section, upon written application of the
21 insured stating the reason, a rate in excess of or below the rate otherwise
22 applicable may be used on any specific risk.

23 **SECTION 3.** Section 26.1-25-04.4 of the North Dakota Century Code is created and
24 enacted as follows:

25 **26.1-25-04.4. Competitive market.**

26 1. A competitive market for a line of insurance is presumed to exist unless the
27 commissioner, after notice and hearing, determines that a reasonable degree of
28 competition does not exist within a market and issues a ruling to that effect. The
29 burden of proof in any hearing is on the party advocating the position that
30 competition does not exist. Any ruling that a market is not competitive must
31 identify the factors causing the market not to be competitive. Such ruling expires

one year after issue unless rescinded earlier by the commissioner or unless the commissioner renews the ruling after a hearing and a finding as to the continued lack of a reasonable degree of competition. Any ruling that renews the finding that competition does not exist also must identify the factors that cause the market to continue not to be competitive.

2. The commissioner shall consider the following factors for purposes of determining if a reasonable degree of competition does not exist in a particular line of insurance:

a. The number of insurers or groups of affiliated insurers providing coverage in the market;

b. Measures of market concentration and changes of market concentration over time;

c. Ease of entry and the existence of financial or economic barriers that could prevent new firms from entering the market;

d. The extent to which any insurer or group of affiliated insurers controls all or a portion of the market;

e. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple options;

f. The availability of insurance coverage to consumers in the market; and

g. The opportunities available to consumers in the market to acquire pricing and other consumer information.

3. The commissioner shall monitor the degree and continued existence of competition in North Dakota on an ongoing basis. In doing so, the commissioner may utilize existing relevant information, analytical systems, and other sources or rely on some combination thereof. Such activities may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner.

SECTION 4. Section 26.1-25-04.5 of the North Dakota Century Code is created and enacted as follows:

26.1-25-04.5. Rating standards and methods.

- 1 1. Rates may not be excessive, inadequate, or unfairly discriminatory. A rate in a
2 competitive market may not be considered excessive. A rate is not unfairly
3 discriminatory if the rate averages broadly among individuals insured under a
4 group, franchise, or blanket policy, or a mass marketing plan. A rate in a
5 competitive market may not be considered unfairly discriminatory unless the rate
6 violates subsection 2, in that the rate classifies risk on the basis of race, color,
7 creed, or national origin. Risks may be classified in any way except a risk may not
8 be classified on the basis of race, color, creed, or national origin.
- 9 2. In determining whether rates in a noncompetitive market are excessive,
10 inadequate, or unfairly discriminatory, the commissioner may consider the
11 following elements:
 - 12 a. Whether due consideration was given to past and prospective loss and
13 expense experience within and outside of this state to catastrophe hazards
14 and contingencies; to events or trends within and outside of this state; to
15 dividends or savings to policyholders, member, or subscribers; and to all
16 other factors and judgments deemed relevant by the insurer.
 - 17 b. Whether risks were grouped by classifications for the establishment of rates
18 and minimum premiums. Classification rates may be modified for individual
19 risks in accordance with rating plans or schedules that establish standards for
20 measuring probable variations in hazards or expenses, or both.
 - 21 c. Whether the expense provision reflects the operating methods of the insurer
22 and its own past expense experience and anticipated future expenses.
 - 23 d. Whether the rates contain a provision for contingencies, contain a provision
24 for a reasonable underwriting profit, and reflect investment income directly
25 attributable to unearned premium and loss reserves.
 - 26 e. Any other factors available at the time of hearing.

27 **SECTION 5.** Section 26.1-25-04.6 of the North Dakota Century Code is created and
28 enacted as follows:

29 **26.1-25-04.6. Noncompetitive market rate regulation.**

- 30 1. If the commissioner determines that competition does not exist in a market and
31 issues a ruling to that effect pursuant to section 26.1-25-04.4, the rates applicable

1 to insurance sold in that market must be regulated in accordance with the
2 provisions of this chapter which are applicable to noncompetitive markets.

- 3 2. Any rate filing in effect at the time the commissioner determines that competition
4 does not exist under section 26.1-25-04.4 are deemed to be in compliance with the
5 laws of this state unless disapproved under the procedures and rating standards
6 contained under this chapter which are applicable to noncompetitive markets.
7 3. Any insurer having a rate filing in effect at the time the commissioner determines
8 that competition does not exist under section 26.1-25-04.4 may be required to
9 furnish supporting information within thirty days of a written request by the
10 commissioner.

11 **SECTION 6. AMENDMENT.** Section 26.1-25-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **26.1-25-05. Disapproval of filings.**

- 14 1. ~~If within the waiting period or any extension thereof as provided in subsection 4 of~~
15 ~~section 26.1-25-04 the commissioner finds that a filing does not meet the~~
16 ~~requirements of this chapter, the commissioner shall send to the insurer or~~
17 ~~advisory organization which made the filing written notice of disapproval of the~~
18 ~~filing specifying therein in what respects the commissioner finds the filing fails to~~
19 ~~meet the requirements of this chapter and stating that the filing will not become~~
20 ~~effective~~ The commissioner may not disapprove a rate in a competitive market
21 unless the commissioner finds under subsection 2 that the rate is inadequate or
22 unfairly discriminatory. The commissioner may not disapprove a rate for use in a
23 noncompetitive market unless the commissioner finds under subsection 2 that the
24 rate is excessive, inadequate, or unfairly discriminatory.
25 2. ~~If within thirty days after a filing subject to subsection 5 of section 26.1-25-04 has~~
26 ~~become effective the commissioner finds that the filing does not meet the~~
27 ~~requirements of this chapter, the commissioner shall send to the insurer or~~
28 ~~advisory organization that made the filing written notice of disapproval of the filing~~
29 ~~specifying therein in what respect the commissioner finds that the filing fails to~~
30 ~~meet the requirements of this chapter and stating when, within a reasonable period~~
31 ~~thereafter, the filing will be deemed no longer effective. The disapproval may not~~

~~affect any contract made or issued prior to the expiration of the period set forth in~~
~~the notice~~ The following is the procedure for disapproval:

a. Before the expiration of the waiting period, or an extension thereof, of a filing
made under subdivision b, the commissioner may disapprove by written order
rates filed under subdivision b, without a hearing. The order must specify in
what respects such filing fails to meet the requirements of this chapter. Any
insurer whose rates are disapproved under this section must be given a
hearing upon written request made within thirty days of disapproval.

b. If at any time the commissioner finds that a rate applicable to insurance sold
in a noncompetitive market does not comply with the standards set forth
under section 26.1-25-04.5, the commissioner may, after a hearing held upon
not less than twenty days written notice, issue an order under subsection 3
disapproving such rate. The notice must be sent to every insurer and
advisory organization that adopted the rate and must specify the matters to
be considered at the hearing. The disapproval order may not affect any
contract or policy made or issued before the effective date set forth in the
order.

c. If at any time the commissioner finds that a rate applicable to insurance sold
in a competitive market is inadequate or unfairly discriminatory, the
commissioner may issue an order under subsection 3 disapproving the rate.
The order may not affect any contract or policy made or issued before the
effective date set forth in the order.

3. ~~If at any time subsequent to the applicable review period provided for in~~
~~subsection 1 or 2 the commissioner finds that a filing does not meet the~~
~~requirements of this chapter, the commissioner shall, after a hearing held upon not~~
~~less than ten days' written notice, specifying the matters to be considered at the~~
~~hearing, to every insurer and advisory organization which made the filing, issue an~~
~~order specifying in what respects the commissioner finds that the filing fails to meet~~
~~the requirements of this chapter, and stating when, within a reasonable period~~
~~thereafter, the filing will be deemed no longer effective. Copies of the order must~~
~~be sent to every such insurer and advisory organization. The order may not affect~~

~~any contract or policy made or issued prior to the expiration of the period set forth in the order~~ If the commissioner disapproves a rate under subsection 2, the commissioner shall issue an order within thirty days of the close of the hearing specifying in what respects such rate fails to meet the requirements of this chapter. The order must state an effective date at least thirty business days after the date of the order when the use of such rate must be discontinued. This order does not affect any policy made before the effective date of the order.

4. ~~Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon. However, the insurer or advisory organization that made the filing may not proceed under this subsection. The application must specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds are established, and that the grounds otherwise justify holding such a hearing, the commissioner shall, within thirty days after receipt of the application, hold a hearing upon not less than ten days' written notice to the applicant and to every insurer and advisory organization which made the filing. If, after the hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. Copies of the order must be sent to the applicant and to every such insurer and advisory organization. The order may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order~~ If an order of disapproval is appealed pursuant to section 26.1-25-17, the insurer may implement the disapproved rate upon notification to the court, in which case any excess of the disapproved rate over a rate previously in effect must be placed in a reserve established by the insurer. The court has control over the disbursement of funds from such reserve. Such funds must be distributed as determined by the court in the court's final order except that de minimus refunds to policyholders may not be required.

- 5- ~~A manual, minimum class rate, rating schedule, rating plan, or rating rule, or any modification of any of the foregoing, which has been filed pursuant to the requirements of section 26.1-25-04, may not be disapproved if the rates thereby produced meet the requirements of this chapter.~~

SECTION 7. AMENDMENT. Section 26.1-25-10.5 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-10.5. Joint underwriting, joint reinsurance pool, and residual market activities.

1. Notwithstanding subdivision a of subsection 2 of section 26.1-25-10.2, insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms may not be deemed an advisory organization.
2. ~~Regulation.~~
 - ~~a.~~ Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool, and residual market mechanism activities are subject to the other provisions of this chapter.
 - ~~b.~~ a. If, after hearing, the commissioner finds that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this chapter, the commissioner may issue a written order that specifies in what respects such activity or practice is unfair, unreasonable, anticompetitive, or otherwise inconsistent with the provisions of this chapter and all other applicable law, and require that requires the discontinuance of such activity or practice.
 - ~~c.~~ b. Every pool shall file with the commissioner a copy of ~~its~~ the pool's constitution; ~~its~~ the pool's articles of incorporation, agreement, or association; ~~its~~ the pool's bylaws, rules, and regulations governing ~~its~~ the pool's activities;

1 ~~is the pool's~~ members; the name and address of a resident of this state upon
2 whom notices or orders of the commissioner or process may be served; and
3 any changes in amendments or changes in the foregoing.

4 ~~e.~~ c. Any residual market mechanism, plan, or agreement to implement such a
5 mechanism, and any changes or amendments thereto, must be submitted in
6 writing to the commissioner for consideration and approval, together with
7 such information as may be reasonably required. The commissioner may
8 approve only such agreements as are found to contemplate:

9 (1) ~~The~~ the use of rates that meet the standards prescribed by this
10 chapter; and

11 (2) ~~Activities~~ activities and practices that are not unfair, unreasonable, or
12 otherwise inconsistent with the provisions of this chapter. At any time
13 after such agreements are in effect, the commissioner may review the
14 practices and activities of the adherents to such agreements and if,
15 after a hearing, the commissioner finds that any such practice or
16 activity is unfair or unreasonable, or is otherwise inconsistent with the
17 provisions of this chapter, the commissioner may issue a written order
18 to the parties involved specifying in what respect such operations
19 violate the provisions of this chapter and all other applicable law and
20 either require the discontinuance of such acts or revoke approval of any
21 such agreement.

22 **SECTION 8.** Section 26.1-25-11.1 of the North Dakota Century Code is created and
23 enacted as follows:

24 **26.1-25-11.1. Large commercial policyholder.**

- 25 1. A policy of insurance sold to a financial guaranty insurance policyholder or a large
26 commercial policyholder is not subject to the requirements of this chapter. A
27 financial guaranty insurance policy is not subject to the provisions of this section.
28 2. Each policy issued under this section must contain a conspicuous disclaimer
29 printed in at least ten-point, boldfaced type that states that the policy applied for,
30 including the rates, rating plans, resulting premiums, and the policy forms is not
31 subject to the rate and form requirements of this state and other provisions of the

1 insurance law that apply to other commercial products and may contain significant
2 differences from a policy relating to insured other than large commercial
3 policyholders. The notice must set forth possible differences in policy conditions,
4 forms, and endorsements, as compared to a policy relating to insureds other than
5 large commercial policyholders. The commissioner shall prescribe the format and
6 provisions of the notice. The disclosure notice must include a policyholder's
7 acknowledgement statement, to be signed and dated before the effective date of
8 the coverage, and must remain on file with the insurer.

9 3. In procuring insurance, a large commercial policyholder shall certify on a form
10 approved by the department of insurance that the large commercial policyholder
11 meets the definitional eligibility criteria and specify the criteria that the policyholder
12 has met. A large commercial policyholder shall complete this certification on an
13 annual basis and the certification must remain on file with the insurer.

14 4. A surplus lines broker seeking to obtain or provide insurance for a large
15 commercial policyholder may purchase insurance from any eligible unauthorized
16 insurer without making a diligent search of authorized insurers as required by
17 applicable surplus lines law.

18 **SECTION 9.** Section 26.1-25-20 of the North Dakota Century Code is created and
19 enacted as follows:

20 **26.1-25-20. Records and reports - Exchange of information.**

21 1. In a market found to be noncompetitive, insurers and advisory organizations shall
22 file with the commissioner, and the commissioner shall review, reasonable rules
23 and plans for recording and reporting of loss and expense experience. The
24 commissioner may designate one or more advisory organizations to assist in
25 gathering such experience and making compilations thereof. An insurer may not
26 be required to record or report the insurer's experience in a manner inconsistent
27 with the insurer's own rating system.

28 2. The commissioner and every insurer and advisory organization may:
29 a. Exchange rates and rate information and experience data with insurance
30 regulatory officials, insurers, and advisory organizations in this state and other
31 states.

- 1 b. Consult with insurance regulatory officials, insurers, and advisory
- 2 organizations in this state and other states with respect to the collection of
- 3 statistical data and the application of rating systems.