

SENATE BILL NO. 2194  
with House AmendmentsFifty-ninth  
Legislative Assembly  
of North Dakota

## SENATE BILL NO. 2194

Introduced by

Senators Klein, Krebsbach

Representatives Keiser, Wald

1 A BILL for an Act to amend and reenact section 26.1-02-21 and 26.1-06.1-31 of the North  
2 Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or  
3 dissolution and reinsurer's liability in delinquency proceedings.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-02-21 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution.**8 ~~No credit~~

9 1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to  
10 any ceding insurer for reinsurance; unless the reinsurance is contract provides, in  
11 substance, that in the event of the insolvency of the ceding insurer, the  
12 reinsurance must be payable under one or more contracts reinsured by the  
13 assuming insurer on the basis of the liability of the ceding insurer under the  
14 contract or contracts reinsured reported claims allowed by the liquidation court or  
15 proof of payment of the claim by a guaranty association without diminution  
16 because of the insolvency of the ceding insurer or to its domiciliary liquidator or  
17 receiver except when. The payments must be made directly to the ceding insurer  
18 or to the ceding insurer's domiciliary liquidator except if:

19 4- a. The contract or other written agreement specifically provides another payee  
20 of such reinsurance in the event of the insolvency of the ceding insurer; ~~and~~  
21 or

22 2- b. The assuming insurer, with the consent of the direct insured, has assumed  
23 such policy obligations of the ceding insurer as direct obligations of the

assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

3. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, in the proceeding in which the claim is to be adjudicated any defenses the assuming insurer determines available to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed as a claim against the insolvent ceding insurer as a class 7 claim under section 26.1-06.1-41 to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. If two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

**SECTION 2. AMENDMENT.** Section 26.1-06.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-06.1-31. Reinsurer's liability.**

- 1        1. The amount recoverable by the liquidator from reinsurers may not be reduced as a  
2        result of the delinquency proceedings, regardless of any provision in the  
3        reinsurance contract or other agreement. Payment made directly to an insured or  
4        other creditor does not diminish the reinsurer's obligation to the insurer's estate  
5        except when the reinsurance contract provided for direct coverage of a named  
6        insured and the payment was made in discharge of that obligation unless the  
7        reinsurance contract provides, in substance, that in the event of the insolvency of  
8        the ceding insurer, the reinsurance must be payable under one or more reinsured  
9        by the assuming insurer on the basis of reported claims allowed by the liquidation  
10       court or proof of payment of the claim by a guaranty association without diminution  
11       because of the insolvency of the ceding insurer. The payments must be made  
12       directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except  
13       if:  
14       a. The contract or other written agreement specifically provides another payee  
15       of such reinsurance in the event of the insolvency of the ceding insurer; or  
16       b. The assuming insurer, with the consent of the direct insured, has assumed  
17       such policy obligations of the ceding insurer as direct obligations of the  
18       assuming insurer to the payees under the policies and in substitution for the  
19       obligations of the ceding insurer to such payees.  
20       2. Notwithstanding subsection 1, if a life and health insurance guaranty association  
21       has elected to succeed to the rights and obligations of the insolvent insurer under  
22       the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims  
23       continues under the contract of reinsurance, subject to the payment to the  
24       reinsurer of the reinsurance premiums for such coverage. Payment for such  
25       reinsured claims may only be made by the reinsurer pursuant to the direction of  
26       the guaranty association or the guaranty association's designated successor. Any  
27       payment made at the direction of the guaranty association or the guaranty  
28       association's designated successor by the reinsurer will discharge the reinsurer of  
29       all further liability to any other party for the claim payment.