

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2318**

Introduced by

Senator Nething

1 A BILL for an Act to amend and reenact subsection 2 of section 26.1-36-04 of the North Dakota  
2 Century Code, relating to accident and health policy provisions.

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

4 **SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-36-04 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6 2. Except as provided in subsection 3, no accident and health insurance policy  
7 delivered or issued for delivery to any person in this state may contain provisions  
8 respecting the matters described in this subsection unless the provisions in the  
9 policy are not less favorable in any respect to the insured or the beneficiary.  
10 a. A provision that if the insured is injured or contracts sickness after having  
11 changed occupation to one classified by the insurer as more hazardous than  
12 that stated in the policy or while doing for compensation anything pertaining to  
13 an occupation so classified, the insurer will pay only such portion of the  
14 indemnities provided in the policy as the premium paid would have purchased  
15 at the rates and within the limits fixed by the insurer for the more hazardous  
16 occupation. If the insured changes occupation to one classified by the insurer  
17 as less hazardous than that stated in the policy, the insurer, upon receipt of  
18 proof of the change of occupation, will reduce the premium rate accordingly,  
19 and will return the excess pro rata unearned premium from the date of change  
20 of occupation or from the policy anniversary date immediately preceding  
21 receipt of proof, whichever is the more recent. The provision must provide  
22 that the classification of occupational risk and the premium rates will be such  
23 as have been last filed by the insurer prior to the occurrence of the loss for  
24 which the insurer is liable or prior to date of proof of change in occupation with

1 the state official having supervision of insurance in the state where the  
2 insured resided at the time the policy was issued; but if the filing was not  
3 required, then the classification of occupational risk and the premium rates will  
4 be those last made effective by the insurer in such state prior to the  
5 occurrence of the loss or prior to the date of proof of change in occupation.

6 b. A provision that if the age of the insured has been misstated, all amounts  
7 payable under the policy will be such as the premium paid would have  
8 purchased at the correct age.

9 c. A provision that if an accident or health or accident and health policy or  
10 policies previously issued by the insurer to the insured are in force  
11 concurrently therewith, making the aggregate indemnity for the type of  
12 coverage or coverages, in excess of the maximum limit of indemnity or  
13 indemnities, the excess insurance is void and all premiums paid for the  
14 excess will be returned to the insured or to the insured's estate. In lieu of this  
15 type of provision, the policy may provide that insurance effective at any one  
16 time on the insured under the policy and a like policy or policies in the insurer  
17 is limited to the one such policy elected by the insured, the insured's  
18 beneficiary, or the insured's estate, as the case may be, and the insurer will  
19 return all premiums paid for all other such policies.

20 d. A provision that upon the payment of a claim under the policy, any premium  
21 then due and unpaid or covered by any note or written order may be deducted  
22 therefrom.

23 e. Subject to chapter 26.1-36.4, a provision that the insurer may cancel the  
24 policy at any time by written notice delivered to the insured, or mailed to the  
25 insured's last address as shown by the records of the insurer, stating when,  
26 not less than five days thereafter, the cancellation is effective; and after the  
27 policy has been continued beyond its original term the insured may cancel the  
28 policy at any time by written notice delivered or mailed to the insurer, effective  
29 upon receipt or on such later date as may be specified in the notice. The  
30 provision must provide that in the event of cancellation, the insurer will return  
31 promptly the unearned portion of any premium paid, and, if the insured

1                   cancels, the earned premium will be computed by the use of the short-rate  
2                   table last filed in the state where the insured resided when the policy was  
3                   issued. The provision must provide that if the insurer cancels, the earned  
4                   premium shall be computed pro rata. The provision must provide that  
5                   cancellation is without prejudice to any claim originating prior to the effective  
6                   date of cancellation.

7                   f. A provision that any provision of the policy which, on its effective date, is in  
8                   conflict with the statutes of the state in which the insured resides on such date  
9                   is amended to conform to the minimum requirements of such statutes.

10                  g. A provision that the insurer is not liable for any loss to which a contributing  
11                  cause was the insured's commission of or attempt to commit a felony or to  
12                  which a contributing cause was the insured's being engaged in an illegal  
13                  occupation.

14                  h. A provision that the insurer is not liable for any loss sustained or contracted in  
15                  consequence of the insured's being intoxicated or under the influence of any  
16                  narcotic unless administered on the advice of a physician.

17                  i. ~~A provision that if, with respect to a person covered under the policy, benefits~~  
18                  ~~for allowable expense incurred during a claim determination period under the~~  
19                  ~~policy together with benefits for allowable expense during such period under~~  
20                  ~~all other valid coverage exceed the total of the person's allowable expense~~  
21                  ~~during such period, the insurer is liable only for such proportionate amount of~~  
22                  ~~the benefits for allowable expense under the policy during such period as (1)~~  
23                  ~~the total allowable expense during such period bears to (2) the total amount of~~  
24                  ~~benefits payable during such period for such expense under the policy and all~~  
25                  ~~other valid coverage, without giving effect to this provision or to any~~  
26                  ~~"overinsurance provision" applying to such other valid coverage, less in both~~  
27                  ~~(1) and (2) any amount of benefits for allowable expense payable under other~~  
28                  ~~valid coverage which does not contain an overinsurance provision. The~~  
29                  ~~provision must provide that in no event does the provision operate to increase~~  
30                  ~~the amount of benefits for allowable expense payable under the policy with~~  
31                  ~~respect to a person covered under the policy above the amount which would~~

1 ~~have been paid in the absence of the provision. The provision must provide~~  
2 ~~that the insurer may pay benefits to any insurer providing other valid coverage~~  
3 ~~in the event of overpayment by such insurer, and any such payment~~  
4 ~~discharges the liability of this insurer as fully as if the payment had been made~~  
5 ~~directly to the insured, the insured's assignee, or the insured's beneficiary.~~  
6 ~~The provision must provide that in the event that the insurer pays benefits to~~  
7 ~~the insured, the insured's assignee, or the insured's beneficiary, in excess of~~  
8 ~~the amount which would have been payable if the existence of other valid~~  
9 ~~coverage had been disclosed, the insurer has a claim for relief against the~~  
10 ~~insured, the insured's assignee, or the insured's beneficiary, to recover the~~  
11 ~~amount which would not have been paid had there been a disclosure of the~~  
12 ~~existence of the other valid coverage. The provision must provide that the~~  
13 ~~amount of other valid coverage which is on a provision of service basis will be~~  
14 ~~computed as the amount the services rendered would have cost in the~~  
15 ~~absence of such coverage. The provision must provide that:~~

16 (1) ~~"Allowable expense" means one hundred ten percent of any necessary,~~  
17 ~~reasonable, and customary item of expense which is covered, in whole~~  
18 ~~or in part, as a hospital, surgical, medical, or major medical expense~~  
19 ~~under this policy or under any other valid coverage.~~

20 (2) ~~"Claim determination period" with respect to any covered person means~~  
21 ~~the initial period, as provided in the policy, but not less than thirty days~~  
22 ~~and each successive period of a like number of days, during which~~  
23 ~~allowable expense covered under the policy is incurred on account of~~  
24 ~~such person. The first period begins on the date when the first expense~~  
25 ~~is incurred, and successive periods begin when successive expense is~~  
26 ~~incurred after expiration of a prior period.~~

27 Or, in lieu thereof:

28 "Claim determination period" with respect to any covered person means  
29 the number of days, as provided in the policy but not less than thirty  
30 days during which allowable expense covered under the policy is  
31 incurred on account of such person.

(3) ~~"Overinsurance provision" means the provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.~~

~~This type of provision may be inserted in all policies providing hospital, surgical, medical, or major medical benefits. The insurer may make this provision applicable to either or both: other valid coverage with other insurers; and, except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer shall include in the provision a definition of "other valid coverage". The definition may include hospital, surgical, medical, or major medical benefits provided by group, blanket, or franchise coverage, individual and family type coverage, blue cross-blue shield coverage, and other prepayment plans, group practice, and individual practice plans, uninsured benefits provided by labor management trustee plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workforce safety and insurance, or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage may not include payments made under third party liability coverage as a result of a determination of negligence. The insurer may require, as part of the proof of claim, the information necessary to administer the provision.~~

j. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percentage of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percentage of the insured's earned income as provided in the policy, at the time of the application, such

1 higher percentage will be used in place of the original percentage provided.  
2 The provision must provide that the adjusted loss-of-time benefit under the  
3 policy for any month will be only such proportion of the loss-of-time benefit  
4 otherwise payable under the policy as (1) the product of the insured's earned  
5 income and the original percent, or, if higher, the alternative percentage,  
6 bears to (2) the total amount of loss-of-time benefits payable for such month  
7 under the policy and all other valid loss-of-time coverage on the insured,  
8 without giving effect to the "overinsurance provision" in this or any other  
9 coverage, less in both (1) and (2) any amount of loss-of-time benefits payable  
10 under other valid loss-of-time coverage which does not contain an  
11 "overinsurance provision". The provision must provide that in making the  
12 computation, all benefits and earnings will be converted to a consistent basis  
13 weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if  
14 the benefit is payable monthly, or otherwise, based upon the time period. If  
15 the numerator of the foregoing ratio is zero or is negative, no benefit is  
16 payable. The provision must provide that in no event does the provision  
17 operate to reduce the total combined amount of loss-of-time benefits for such  
18 month payable under the policy and all other valid loss-of-time coverage  
19 below the lesser of three hundred dollars and the total combined amount of  
20 loss-of-time benefits determined without giving effect to any "overinsurance  
21 provision", nor operate to increase the amount of benefits payable under the  
22 policy above the amount which would have been paid in the absence of the  
23 provision, nor take into account or operate to reduce any benefit other than  
24 the loss-of-time benefit. The provision must provide that:  
25 (1) "Earned income", except when otherwise specified, means the greater  
26 of the monthly earnings of the insured at the time disability commences  
27 and the insured's average monthly earnings for a period of two years  
28 immediately preceding the commencement of the disability, and does  
29 not include any investment income or any other income not derived  
30 from the insured's vocational activities.

(2) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

This type of provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workforce safety and insurance or employer's liability statute, benefits provided by labor-management trusteesd plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved.