



TESTIMONY

John Arnold, Deputy Commissioner

House Industry, Business and Labor Committee

March 18, 2025

Chairman Warrey and members of the committee, thank you for the opportunity to testify today. I am here today in support of Senate Bill 2374, a bill that represents a targeted, expert-driven modernization of our state's insurance laws. This legislative proposal resulting from a study that was conducted during the interim. For background, Commissioner Godfread requested and received funding from the Emergency Commission and Budget Section to proactively address unsustainable upward pressure on insurance premiums being felt in the property and casualty market. The Commissioner firmly believes that the best solution is to take steps to increase competition in this sector and tells industry that North Dakota is both a good risk and a good state in which to conduct business.

This legislation is based on the recommendations of industry experts who were specifically tasked with identifying ways to make North Dakota's property insurance market more competitive, resilient, and flexible in the face of rapidly changing economic and environmental risks. Additionally, both while SB 2374 was being considered by your sister committee on in the weeks since it was passed in the Senate, we have worked with stakeholders to make this bill as strong as possible. Today, in addition to testifying on the first engrossment of the bill, I will also be speaking to the compromises that have been made with stakeholders and can be seen in the attached proposed amendment.

The North Dakota property insurance market is facing increasing pressures. Rising costs due to inflation, higher reinsurance rates, more frequent catastrophic weather events, and supply chain disruptions are all contributing to a tightening commercial insurance market. These challenges make it essential for our state to remain attractive to insurers while also providing commercial buyers with more tools to negotiate and secure the coverage they need.

Senate Bill 2374 seeks to achieve this by introducing reasonable, targeted regulatory flexibility—particularly for large commercial policyholders—while maintaining strong oversight where it is truly needed.

Key Provisions of Senate Bill 2374:

Sections 1 - 4: Recognizing Large Commercial Risks as Sophisticated Buyers

One of the key components of SB 2374 is recognizing that large commercial policyholders are fundamentally different from individual consumers or small businesses in their insurance needs, risk management expertise, and bargaining power. These policyholders typically:

- Have total insured property values of at least \$25 million or annual gross revenues of at least \$50 million, but does not include farming and ranching.
- Employ dedicated risk managers or external insurance consultants to negotiate policies.
- Engage in highly customized insurance transactions that are not standardized like personal or small-business policies.

Because of these factors, overregulating their insurance transactions does not provide consumer protection—it creates unnecessary barriers and costs.

To address this, SB 2374:

- Section 1: Allows access to unauthorized (non-admitted) insurers, ensuring North Dakota businesses can obtain the customized coverage they need, especially in a hardening market.
- Section 2: Defines "large commercial risks" and provides these policyholders with greater flexibility in structuring their insurance coverage.
- Section 3: Clarifies that producers cannot rebate and carves out crop insurance customers from receiving items of value that are exceptions to the rebating laws.
- Section 4: Exempts large commercial risks from notice requirements related to additional policy fees.

Sections 5 - 8: Strengthening Legal Clarity & Efficiency in Claims Handling

SB 2374 also introduces important legal clarity around arbitration, claims reopening, and bad faith litigation. These changes will help reduce costs and uncertainty for insurers, which in turn leads to more affordable coverage options for businesses and consumers alike.

Specifically, the bill:

- Section 5: Allows commercial policyholders to opt into arbitration agreements, helping reduce costly litigation and streamline dispute resolution.
 - Proposed Amendment: In subsection 6, remove surplus lines from these requirements
- Section 6: Creates a managed repair program framework, ensuring insurers can efficiently coordinate repairs while still allowing policyholders to select their own contractors.
 - Proposed Amendments: Requiring policyholders that receive an incentive, such as premium reduction, is required to use the managed repair program.
- Sections 7 & 8: New language that clarifies the timeline for filing supplemental and reopened claims, preventing abuse of the system while still ensuring legitimate claims are paid.

These provisions help balance fairness for policyholders with stability for insurers, creating a more predictable and efficient market.

Sections 9 – 10 and 15: Enhancing the Surplus Lines Market to Provide More Coverage Options

Another critical component of SB 2374 is modernizing North Dakota's surplus lines laws to ensure that businesses can quickly and efficiently access the specialized insurance coverage they need.

Currently, surplus line brokers must perform a diligent search—meaning they must first attempt to obtain coverage from a licensed North Dakota insurer before turning to an unlicensed (but still regulated) surplus lines insurer. This requirement adds time and cost to securing coverage, even when it is clear that no North Dakota-licensed insurer is willing to underwrite the risk.

SB 2374 removes this outdated barrier, following the lead of at least four other states (Louisiana, Mississippi, Virginia, and Wisconsin) that have already done so. This will:

- Reduce delays in placing coverage, ensuring businesses are not left exposed while brokers search for coverage that isn't available.
- Make North Dakota a more attractive insurance market, increasing competition and improving pricing.
- Ensure protections remain in place, as surplus lines insurers will still be required to meet solvency and financial responsibility standards.

Section 11 - 14: Providing Clarity for Risk Retention Groups & Purchasing Groups

Senate Bill 2374 provides important regulatory clarity for Risk Retention Groups and Purchasing Groups—two alternative risk-financing mechanisms designed to help businesses manage liability coverage more effectively. While these concepts may not be familiar to everyone, they play an essential

role in providing coverage for certain industries and professions, particularly when traditional insurance options are limited or cost-prohibitive.

Risk Retention Group (RRGs):

A RRG is a specialized type of insurance company, formed under the federal Liability Risk Retention Act of 1986. It allows businesses with similar liability risks to pool together and self-insure against those risks. Unlike traditional insurers, RRGs are regulated primarily by the state in which they are domiciled and can operate in multiple states without needing a separate license in each one.

- RRGs are often used by industries where liability insurance is expensive or difficult to obtain, such as healthcare providers, trucking companies, and construction firms.
- Members of an RRG own and control the group, meaning the risk is shared exclusively among them.

SB 2374 clarifies that compliant RRGs are recognized as authorized insurers, ensuring that businesses using these groups can meet legal insurance requirements without unnecessary barriers. This update provides certainty to policyholders, regulators, and insurers alike while ensuring that RRGs continue to function effectively in North Dakota.

Purchasing Group (PG):

A PG is different from an RRG in that it does not self-insure but instead buys insurance as a group from a traditional insurer. Also established under the federal Liability Risk Retention Act, a PG consists of businesses or individuals with similar liability risks who join together to negotiate better insurance terms than they could obtain individually.

- PGs provide greater bargaining power, allowing members to reduce costs and secure more tailored coverage.
- Unlike RRGs, a PG does not form its own insurance company; rather, it buys policies from licensed insurers on behalf of its members.

Proposed Amendment: At the top of page 18, we are proposing removal of language that we are told is not in compliance with federal law.

These sections clarify and strengthen the regulation of risk retention groups and purchasing groups, ensuring that businesses using these alternative risk-financing mechanisms have clear guidelines. The bill:

- Clarifies that compliant risk retention groups are treated as authorized insurers, allowing them to meet statutory coverage requirements.
- Allows purchasing groups to buy a shared aggregate limit, enabling members to pool risk efficiently.
- Ensures transparency in fees charged by purchasing groups, protecting policyholders while maintaining operational flexibility.

Chairman Warrey and members of the committee, in summary SB 2374 is about:

- Recognizing the sophistication of large commercial policyholders and allowing them the flexibility to secure coverage in an increasingly complex market.
- Removing unnecessary barriers that make it harder for businesses to obtain the insurance they need.

- Keeping North Dakota competitive by ensuring our insurance laws reflect modern market realities.
- Balancing regulatory oversight with market efficiency, ensuring that consumer protections remain in place where they are needed but do not unnecessarily stifle competition.

At a time when commercial insurance rates are rising, when businesses are struggling to find adequate coverage, and when North Dakota must compete for insurance capital, this bill provides practical, expert-driven solutions to strengthen our market and protect our policyholders.

For these reasons, I respectfully ask for your discussion of the proposed amendments and then ultimately for your support of Senate Bill 2374.

Thank you for your time, and I am happy to take any questions.

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2374**

FIRST ENGROSSMENT

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

A BILL for an Act to create and enact two new sections to chapter 26.1-30, two new sections to chapter 26.1-39, a new section to chapter 26.1-44, and a new subsection to section 26.1-46-03 of the North Dakota Century Code, relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; to amend and reenact sections 26.1-02-05, 26.1-25-02.1, 26.1-25-16, 26.1-26-04.1, 26.1-44-03, 26.1-46-01, 26.1-46-08, and 26.1-46-08.1 of the North Dakota Century Code, relating to exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; to repeal section 26.1-44-03.3 of the North Dakota Century Code, relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-05. Unauthorized insurance prohibited - Exceptions.

An insurance company may not transact insurance business in this state, as set forth in section 26.1-02-06, without a certificate of authority from the commissioner. This section does not apply to:

1. The lawful transaction of surplus lines insurance.
2. The lawful transaction of reinsurance by insurers.

- 1 3. Transactions involving a policy lawfully solicited, written, and delivered outside of this
2 state covering only subjects of insurance not resident, located, or expressly to be
3 performed in this state at the time of issuance, and which transactions are subsequent
4 to the issuance of such policy.
- 5 4. Transactions involving life insurance, health insurance, or annuities provided to
6 educational or religious or charitable institutions organized and operated without profit
7 to any private shareholder or individual, for the benefit of the institutions and
8 individuals engaged in the service of the institutions.
- 9 5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of
10 claims or losses.
- 11 6. Transactions involving group life, accident, and health, or blanket accident and health
12 insurance, or group annuities if the master policy of the group was lawfully issued and
13 delivered in and pursuant to the laws of a state in which the insurance company was
14 authorized to do an insurance business, to a group organized for purposes other than
15 the procurement of insurance, and where the policyholder is domiciled or otherwise
16 has a bona fide situs.
- 17 7. Transactions involving any insurance policy or annuity contract issued before July 1,
18 1973.
- 19 8. Transactions relative to a policy issued or to be issued outside this state involving
20 insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection
21 and indemnity or other risk, including strikes and war risks commonly insured under
22 ocean or wet marine forms of policy.
- 23 9. Transactions involving insurance contracts issued to one or more industrial insureds;
24 provided, that this does not relieve an industrial insured from taxation imposed upon
25 independently procured insurance. An industrial insured is an insured:
 - 26 a. Which procures the insurance of any risk or risks other than life and annuity
27 contracts by use of the services of a full-time employee acting as an insurance
28 manager or buyer or the services of a regularly and continuously retained
29 qualified insurance consultant;
 - 30 b. Whose aggregate annual premiums for insurance on all risks total at least
31 twenty-five thousand dollars; and
 - 32 c. Which has at least twenty-five full-time employees.

- 1 10. Transactions involving insurance contracts covering a large commercial risk as
2 defined in section 26.1-25-02.1, provided an industrial insured is not relieved from
3 taxation imposed upon independently procured insurance.

4 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-25-02.1. Definitions.**

- 7 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
8 either has two or more member insurers or is controlled either directly or indirectly by
9 two or more insurers, and which assists insurers in ratemaking-related activities as
10 enumerated in this chapter. Two or more insurers having a common ownership or
11 operating in this state under common management or control constitute a single
12 insurer for purposes of this definition.
- 13 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 14 3. "Competitive market" means a commercial risk market that has not been found to be
15 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
16 except crop hail, farmowners, and medical malpractice insurance are presumed to be
17 competitive.
- 18 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
19 standard actuarial techniques, to eliminate the effect of differences between current
20 payment or reserve estimates and those needed to provide actual ultimate loss
21 including loss adjustment expense payments.
- 22 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
23 collection expenses, general expenses, taxes, licenses, and fees.
- 24 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
25 coverage for a commercial risk pursuant to which two or more insurers jointly contract
26 with the insured at a price and under policy terms agreed upon between the insurers.
- 27 7. "Large commercial risk" means an insured that has:
28 a. Total insured property values of twenty-five million dollars or more;
29 b. Total annual gross revenue of fifty million dollars or more; or
30 c. A total premium of one hundred thousand dollars or more for property insurance,
31 one hundred thousand dollars or more for general liability insurance, or
32 two hundred thousand dollars or more for multiperil insurance.

1 d. The term does not include farming or ranching.

2 8. "Loss trending" means any procedure for projecting developed losses to the average
3 date of loss for the period during which the policies are to be effective.

4 ~~8-9.~~ "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
5 insurance markets together with any other line of commercial risk insurance that has
6 not been found by the commissioner to have a reasonable degree of competitiveness
7 within the market considering:

8 a. Market concentration and changes in market concentration determined through
9 the use of the Herfindahl-Hirschman index and the United States department of
10 justice merger guidelines for an unconcentrated market;

11 b. The existence of financial and other barriers that prevent a company from
12 entering the market;

13 c. The number of insurers or groups of affiliated insurers providing coverage in the
14 market;

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

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

18 f. The availability of insurance coverage to consumers in the markets by specific
19 geographic area, by line of insurance, and by class of risk; and

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

22 A determination that a market is noncompetitive may not be based solely on the
23 consideration of any one factor.

24 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
25 mobile homes, and other property and casualty insurance for personal, family, or
26 household needs.

27 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
28 which two or more insurers participate in the sharing of risks on a predetermined
29 basis. The pool may operate through an association, syndicate, or other pooling
30 agreement.

31 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
32 for expenses other than loss adjustment expenses, or profit, and are based on

1 historical aggregate losses and loss adjustment expenses adjusted through
2 development to their ultimate value and projected through trending to a future point in
3 time.

4 ~~42.13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
5 member or as a prospective loss cost with an adjustment to account for the treatment
6 of expenses, profit, and individual insurer variation in loss experience, prior to any
7 application of individual risk variations based on loss or expense considerations, and
8 does not include minimum premium.

9 ~~43.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
10 by law, involving participation by insurers in the equitable apportionment among them
11 of insurance which may be afforded applicants who are unable to obtain insurance
12 through ordinary methods.

13 ~~44.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
14 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
15 plan, and any other similar information needed to determine the applicable rate in
16 effect or to be in effect.

17 ~~45.16.~~ "Supporting information" means:

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

23 **SECTION 3. AMENDMENT.** Section 26.1-25-16 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-25-16. Rebates prohibited - Exception.**

- 26 1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or
27 receive a premium for any insurance policy except in accordance with this chapter. No
28 insurer or employee of an insurer, and no insurance producer, broker or agent may
29 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an
30 inducement to insurance, or after insurance has been effected, any rebate, discount,
31 abatement, credit, or reduction of the premium named in an insurance policy, or any
32 special favor or advantage in the dividends or other benefits to accrue on the policy, or

any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. A person insured by a federal crop insurance policy is not eligible to receive the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give an item of value to a person insured by a federal crop insurance policy. Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be

contingent on the purchase, continued purchase, or renewal of a policy.

Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a contract of insurance.

3. The provisions in this section may not be construed as including within the definition of discrimination or rebates any of the following practices:

a. The offer or provision by an insurer or producer, by or through an employee, an affiliate, or a third-party representative, of value-added products or services at no or reduced cost if the products or services are not specified in the policy of insurance if the product or service:

(1) Relates to the insurance coverage and is designed to satisfy one or more of the following:

(a) Provide loss mitigation or loss control;

(b) Reduce claims costs or claim settlement costs;

(c) Provide education about liability risk or risk of loss to persons or property;

(d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(e) Enhance health;

(f) Enhance financial wellness through items such as education of financial planning services;

(g) Provide post-loss services;

(h) Incent behavioral changes to improve the health or reduce the risk of death or disability of an individual defined as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant; or

(i) Assist in the administration of the employee or retiree benefit insurance coverage.

(2) If offered by the insurer or producer, the insurer or producer, upon request, shall ensure the person is provided with contact information to assist the person with questions regarding the product or service.

(3) Is based on fair documented criteria and offered in a manner not unfairly discriminatory. The documented criteria must be maintained by the insurer or producer and produced at the request of the commissioner.

(4) Is reasonable in comparison to that person's premiums or insurance coverage for the policy class.

b. If an insurer or producer does not have sufficient evidence, but has a good-faith belief the product or service meets the criteria in subdivision a, the provision by the insurer or producer of a product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice.

4. An insurer, producer, or representative of an insurer or producer may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use of the words "free" or "no cost" or words of similar import in an advertisement.

5. The commissioner may adopt regulations when implementing the permitted practices set forth in this regulation to ensure consumer protection. Consistent with applicable law, the topics addressed by the regulations may include consumer data protections and privacy, consumer disclosure, and unfair discrimination.

SECTION 4. AMENDMENT. Section 26.1-26-04.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04.1. Fees for services - Rules.

1. Notwithstanding any other provision of this title, an insurance producer may charge a fee for any services rendered in connection with the sale, solicitation, negotiation, placement, or servicing of an insurance contract, if the following conditions are met:

a. The fees may not be charged on a personal lines account, such as personal homeowners and automobile, personal life, and health insurance.

b. Before rendering the services and accepting any payment, a written disclosure must be provided to the party to be charged on a form approved by the commissioner disclosing:

(1) The nature of the services for which the fees will be charged along with a separate itemization of the amount of the fees;

- 1 (2) That the fees are charged in addition to any premiums paid;
- 2 (3) That if the insurance producer is also an appointed agent of an insurer with
- 3 which coverage is being considered for placement, a statement that the
- 4 insurance producer also represents the insurer in the transaction and owes
- 5 a duty of loyalty to the insurer; and
- 6 (4) That if the insurance producer is to receive a commission from the sale of
- 7 an insurance policy related to the services rendered, a statement clearly
- 8 and completely disclosing that the:
- 9 (a) Insurance producer will receive a commission from the insurer which
- 10 is paid from the premiums owed for the insurance; and
- 11 (b) Amount of commission received by the insurance producer may differ
- 12 depending on the product sold and the insurer.
- 13 c. The disclosure required by this section must be signed and dated by both the
- 14 producer and the party to be charged.
- 15 d. The producer shall retain the signed disclosure required by this section for not
- 16 less than five years following the completion of the service. A copy of the signed
- 17 disclosure must be available to the commissioner for inspection upon request.
- 18 e. The insurance producer may not pay or return, or offer to pay or return, all or part
- 19 of a fee charged as an inducement to purchase a specific policy, or coverage
- 20 within a policy, or coverage from a particular insurer.
- 21 f. Any fee charged under this section must bear a reasonable relationship to the
- 22 services provided and may not be discriminatory.
- 23 2. An insurance producer charging a fee for services rendered for risk management
- 24 services under this section owes the person to be charged a higher standard of care
- 25 than the ordinary standard of care otherwise owed by an insurance producer to fully
- 26 advise the party to be charged as to the party's insurance needs, including the duty to
- 27 inform the person to be charged as to a potential source of risk and to recommend, if
- 28 available, insurance coverage for that risk.
- 29 3. An insurance producer may charge an individual, for personal or commercial lines, a
- 30 fee for paying agency-billed premiums and fees by credit card or other electronic
- 31 means, if the fee is disclosed to the client in writing and agreed to by the client in
- 32 writing.

4. Subdivisions b through d of subsection 1 do not apply to a large commercial risk as defined in section 26.1-25-02.1.

5. The commissioner may adopt rules determined necessary by the commissioner for the administration of this section.

SECTION 5. A new section to chapter 26.1-30 of the North Dakota Century Code is created and enacted as follows:

Mandatory arbitration endorsements for property insurance - Written acceptance - Penalty.

1. A property insurance policy may be issued or delivered in this state with mandatory binding arbitration provisions if the:

- a. Mandatory binding arbitration provisions are contained in a separate endorsement;
- b. Named insured accepts the mandatory binding arbitration endorsement in writing in accordance with subsection 2; and
- c. Property insurance policy does not require mandatory binding arbitration upon request.

2. The written acceptance of the insured required under subsection 1 must:

- a. Be on a form separate from the policy application and other policy forms;
- b. Clearly state the rights being waived in exchange for the premium discount, including the right to a trial by jury; and
- c. Include the following statement in at least twelve-point bold font:
"By signing this form, I agree to resolve all covered property insurance claims through mandatory binding arbitration. I understand that by agreeing to mandatory binding arbitration:
I am giving up my right to have disputes resolved in court.
I am giving up my right to a jury trial.
I am accepting these terms in exchange for a premium discount of [dollar amount or percentage of premium amount].
This agreement is binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless I request removal of the mandatory binding arbitration endorsement in writing".

3. All arbitration proceedings under this section must:

- 1 a. Be conducted in this state if involving a resident of this state;
- 2 b. Be governed by state law; and
- 3 c. Not require arbitration in another state.
- 4 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
- 5 insureds under the policy and remains effective upon policy renewal, replacement, or
- 6 reinstatement unless the named insured requests a change in writing.
- 7 5. This section applies to all property and casualty insurance policies issued or renewed
- 8 after the effective date of this Act.
- 9 6. This section does not apply to a:
- 10 a. Voluntary arbitration agreement entered after a dispute has arisen;
- 11 b. Large commercial risk as defined in section 26.1-25-02.1; or
- 12 c. Commercial surplus line insurance policy; ~~unless this state is the home state as~~
- 13 ~~defined in chapter 26.1-44, and one hundred percent of the risk insured is located~~
- 14 ~~in this state~~ placed in accordance with section 26.1-44-03.
- 15 7. The commissioner shall enforce this section.
- 16 8. The commissioner may assess a penalty on an insurer in violation of this section, as
- 17 determined by the commissioner.

18 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Managed repair programs - Penalty.**

- 21 1. A property insurance policy may be issued or delivered in this state with a managed
- 22 repair program provision ~~and offer~~ offering premium incentives for managed repair
- 23 program participation. As used in this section, "managed repair program" means ~~any~~
- 24 ~~an insurance policy providing a program with a specified reduction in premium or other~~
- 25 ~~specified incentive for participation in a program in which an insurer restricts~~ restricting
- 26 an insured's choice of repair vendors or contractors for covered repairs.
- 27 2. An insurer offering a managed repair program shall:
- 28 a. Prominently disclose on the policy declarations page the policy restricts the
- 29 insured's right to choose repair vendors;
- 30 b. Specify any premium benefits for program participation;
- 31 c. Include a separate disclosure form, written in at least twelve-point font, which
- 32 explains the restrictions on vendor selection, including:

- (1) The process for repairs under the program;
- (2) The insured's rights and responsibilities; and
- (3) Any warranty or guarantee provided for repairs.

3. ~~An insured retains the option to select the insured's own contractor, subject to standard policy terms, and request an alternate program contractor~~ This section shall not apply to contractor referral, managed or direct repair programs that do not provide a specified reduction in premium or other incentive.

4. This section ~~applies~~ applies to ~~all property and casualty~~ insurance policies issued or renewed after the effective date of this Act.

5. The commissioner shall enforce this section.

6. The commissioner may assess a penalty on an insurer in violation of this section, as determined by the commissioner.

SECTION 7. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Civil remedy actions against property insurers.

Notwithstanding any provision under title 26.1, before a named insured may proceed with a bad faith claim against a property insurer, the named insured shall establish through an adverse adjudication by a court of law the property insurer breached the insurance contract and a final judgment or decree must have been rendered against the insurer.

SECTION 8. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of property insurance claim.

1. As used in this section:

- a. "Reopened claim" means a claim an insurer closed and reopened upon an insured's request for additional reimbursement of damage arising out of the original occurrence, and not previously identified or disclosed to the insurer.
- b. "Supplemental claim" means a claim for additional loss or costs from the same occurrence the insurer previously compensated the insured.

2. A reopened claim under an insurance policy that provides property insurance, including a policy issued by an eligible surplus lines insurer, for loss or damage is barred unless notice of the claim was given to the insurer within one year after the date of loss. A supplemental claim is barred unless notice of the supplemental claim

1 was given to the insurer of the policy within twelve months after the date of the last
2 payment issued by the insurer for that element of the loss.

- 3 3. The time limitations under subsection 2 are tolled during any term of deployment for a
4 named insured service member to a combat zone or combat support posting that
5 materially affects the ability of the named insured to file a claim, supplemental claim,
6 or reopened claim.

7 SECTION 9. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-44-03. Surplus lines insurance.**

10 The placement of nonadmitted insurance is subject to this section only if the insured's home
11 state is this state. Surplus lines insurance may be placed by a surplus lines producer if:

- 12 1. Each insurer is an eligible surplus lines insurer;
- 13 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
- 14 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
15 ~~admitted to do business in this state. The full amount or type of insurance may be~~
16 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
17 ~~among the insurers who are admitted to transact and are actually writing the particular~~
18 ~~type of insurance in this state if any are writing it;~~
- 19 4. At the time of placement the surplus lines producer has determined that the
20 nonadmitted insurer:
- 21 a. Has established satisfactory evidence of good repute and financial integrity and
22 has capital and surplus or its equivalent under the laws of its domiciliary
23 jurisdiction which equals the greater of:
- 24 (1) (a) The minimum capital and surplus requirements under the law of this
25 state; or
- 26 (b) Fifteen million dollars.
- 27 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
28 less than the minimum capital and surplus upon an affirmative finding of
29 acceptability by the commissioner. The finding must be based upon such
30 factors as quality of management, capital and surplus of any parent
31 company, company underwriting profit and investment income trends,
32 market availability, and company record and reputation within the industry.

1 The commissioner may not make an affirmative finding of acceptability
2 when the nonadmitted insurer's capital and surplus is less than four million
3 five hundred thousand dollars; or

4 b. For an insurer not domiciled in the United States or its territories, the insurer is
5 listed on the quarterly listing of alien insurers maintained by the national
6 association of insurance commissioners international insurers department; and

7 ~~5.4.~~ All other requirements of this chapter are met.

8 **SECTION 10.** A new section to chapter 26.1-44 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Surplus lines insurance policies.**

11 A surplus lines insurer may not issue a policy designed to satisfy any law mandating
12 insurance coverage by a licensed insurance company.

13 **SECTION 11. AMENDMENT.** Section 26.1-46-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **26.1-46-01. Definitions.**

16 As used in this chapter, ~~unless the context requires otherwise:~~

- 17 1. "Commissioner" means the North Dakota insurance commissioner or the
18 commissioner, director, or superintendent of insurance in any other state.
- 19 2. "Completed operations liability" means liability arising out of the installation,
20 maintenance, or repair of any product at a site which is not owned or controlled by any
21 person who performs that work or any person who hires an independent contractor to
22 perform that work, but includes liability for activities which are completed or
23 abandoned before the date of the occurrence giving rise to the liability.
- 24 3. "Domicile", for purposes of determining the state in which a purchasing group is
25 domiciled, means:
- 26 a. For a corporation or limited liability company, the state in which the purchasing
27 group is incorporated or organized.
- 28 b. For an entity which is not a corporation or limited liability company, the state of its
29 principal place of business.
- 30 4. "Hazardous financial condition" means that, based on its present or reasonably
31 anticipated financial condition, a risk retention group, although not yet financially
32 impaired or insolvent, is unlikely to be able to do either of the following:

- 1 a. To meet obligations to policyholders with respect to known claims and reasonably
2 anticipated claims.
- 3 b. To pay other obligations in the normal course of business.
- 4 5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
5 insurance, and any other arrangement for shifting and distributing risk which is
6 determined to be insurance under the laws of this state.
- 7 6. a. "Liability" means legal liability for damages, including costs of defense, legal
8 costs and fees, and other claims expenses because of injuries to other persons,
9 damage to their property, or other damage or loss, including contractual claims
10 and expenses, to such other persons resulting from or arising out of either of the
11 following:
 - 12 a- (1) Any business whether profit or nonprofit, trade, product, services including
13 professional services, premises, or operations.
 - 14 b- (2) Any activity of any state or local government, or any agency or political
15 subdivision thereof.
 - 16 b. The term does not include personal risk liability and an employer's liability with
17 respect to its employees other than legal liability under the federal Employer's
18 Liability Act [45 U.S.C. 51 et seq.].
- 19 7. "Personal risk liability" means liability for damages because of injury to any person,
20 damage to property, or other loss or damage resulting from any personal, familial, or
21 household responsibilities or activities, rather than from responsibilities or activities
22 referred to in subsection ~~56~~.
- 23 8. "Plan of operation or a feasibility study" means an analysis which presents the
24 expected activities and results of a risk retention group, including, at a minimum, all of
25 the following:
 - 26 a. For each state in which it intends to operate, the coverages, deductibles,
27 coverage limits, rates, and rating classification systems for each line of insurance
28 the group intends to offer.
 - 29 b. Historical and expected loss experience of the proposed members and national
30 experience of similar exposures to the extent that this experience is reasonably
31 available.
 - 32 c. Pro forma financial statements and projections.

- 1 d. Appropriate opinions by a qualified independent casualty actuary, including a
- 2 determination of minimum premium or participation levels required to commence
- 3 operations and to prevent a hazardous financial condition.
- 4 e. Identification of management, underwriting and claims procedures, marketing
- 5 methods, managerial oversight methods, reinsurance agreements, and
- 6 investment policies.
- 7 f. Such other matters as may be prescribed by the commissioner for liability
- 8 insurance companies authorized by the insurance laws of the state in which the
- 9 risk retention group is chartered.
- 10 g. Information sufficient to verify that its members are engaged in businesses or
- 11 activities similar or related with respect to the liability to which such members are
- 12 exposed by virtue of any related, similar, or common business, trade, product,
- 13 services, premises, or operations.
- 14 h. Identification of each state in which the risk retention group has obtained, or
- 15 sought to obtain, a charter and license, and a description of its status in each
- 16 such state.
- 17 9. "Product liability" means liability for damages because of any personal injury, death,
- 18 emotional harm, consequential economic damage, or property damage, including
- 19 damages resulting from the loss of use of property, arising out of the manufacture,
- 20 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
- 21 does not include the liability of any person for those damages if the product involved
- 22 was in the possession of such a person when the incident giving rise to the claim
- 23 occurred.
- 24 10. "Purchasing group" means any group which meets all of the following:
- 25 a. The group has as one of its purposes the purchase of liability insurance on a
- 26 group basis.
- 27 b. The group purchases ~~such~~ insurance only for its group members and only to
- 28 cover their similar or related liability exposure, as described in subdivision c.
- 29 c. The group is composed of members whose business or activities are similar or
- 30 related with respect to the liability to which members are exposed by virtue of any
- 31 related, similar, or common business, trade, product, services, premises, or
- 32 operations.

d. The group is domiciled in any state.

11. "Risk retention group" means any corporation or other limited liability association:

a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. Which is organized for the primary purpose of conducting the activity described under subdivision a.

c. Which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

g. Whose activities do not include the provision of insurance other than:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members; ~~except a nonmaterial amount of commercial property coverage incidental to the liability exposure of its group members also may be insured.~~

(2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.

h. The name of which includes the phrase "risk retention group".

12. "State" means any state of the United States or the District of Columbia.

SECTION 12. A new subsection to section 26.1-46-03 of the North Dakota Century Code is created and enacted as follows:

A risk retention group that is not chartered in this state but is in compliance with this section is deemed an authorized insurer for the satisfaction of any requirement, under the laws of this state, that insurance coverage be placed with an authorized insurer.

SECTION 13. AMENDMENT. Section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08. Restrictions on insurance purchased by purchasing groups.

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 insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; ~~however, coverage may provide for a deductible or self-insured retention applicable to individual members~~

1 unless the purchasing group uses a policyholder's disclosure statement approved by
2 the commissioner which clearly explains in simplified language the policy is subject to
3 a group deductible or self-insured retention and provides a detailed explanation of the
4 process of the satisfaction of the deductible or self-insured retention among members.

5 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
6 ~~regarding aggregate limits which are applicable to all purchases of group insurance. A~~
7 purchasing group may not purchase insurance providing for a shared aggregate limit
8 applicable to the group as a whole unless the purchasing group uses a policyholder's
9 disclosure statement approved by the commissioner which clearly explains in
10 simplified language the policy is subject to a group aggregate limit and coverage for
11 each individual member could be exhausted by claims from other members. The
12 insurance must allow for an individual member to purchase additional limits in the
13 event of exhaustion and this option must be described in the disclosure statement.

14 SECTION 14. AMENDMENT. Section 26.1-46-08.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **26.1-46-08.1. Purchasing group taxation - Fees.**

17 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
18 located in this state by a purchasing group or any members of the purchasing
19 group must be:

- 20 4- (1) Imposed at the same rate and subject to the same interest, fines, and
21 penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid
22 for similar coverage from a similar insurance source by other insureds; and
23 2- (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
24 insurance producer for the purchasing group, and if not by ~~such~~the
25 insurance producer, then by the purchasing group, ~~and if not by such~~
26 ~~purchasing group, then by each of its members.~~

27 b. To the extent any administrative fee is charged under subsection 2, the fee may
28 not be considered a premium and is not subject to premium tax.

29 2. A purchasing group's administrator, manager, or other related party may charge
30 reasonable fees provided the fees are:

31 a. For reimbursement of expenses incurred by the administrator, manager, or other
32 related party in performing its administrative duties for the purchasing group; and

- 1 b. Disclosed to all members of the risk purchasing group on a form approved by the
2 commissioner which states the nature of the administrative duties for which the
3 fees will be charged along with separate itemization of the amount of fees to be
4 paid by each member.

5 SECTION 15. **REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
6 repealed.