

# INSURANCE

## CHAPTER 248

SENATE BILL NO. 2176

(Committee on State and Federal Government)  
(At the request of the Insurance Commissioner)

### TERM OF OFFICE OF INSURANCE COMMISSIONER

AN ACT to amend and reenact section 26-01-01 of the North Dakota Century Code, relating to the term of office of the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-01-01. COMMISSIONER OF INSURANCE - ELECTION, SEAL, EMPLOYMENT OF ASSISTANTS, DEPUTY.) The commissioner of insurance shall be chosen by the qualified electors of the state and shall hold office for the term of four years and until his successor is elected and qualified. He shall have attained the age of twenty-five years, shall be a citizen of the United States of America, and shall be an elector of this state. He shall have an official seal and shall keep an impression thereof on file in the office of the secretary of state. He shall employ a deputy and other competent officials and clerks to discharge such duties as he may assign to them. When he is absent temporarily from his office, his deputy shall have the authority to sign his name and perform such other duties as are required by law pertaining to his office.

Approved March 13, 1975

## CHAPTER 249

SENATE BILL NO. 2151  
(Committee on State and Federal Government)  
(At the request of the Insurance Commissioner)

## INSURANCE COMMISSIONER FEES

AN ACT to amend and reenact section 26-01-04 of the North Dakota Century Code, relating to fees chargeable by the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-01-04. FEES CHARGEABLE BY COMMISSIONER OF INSURANCE.)  
The commissioner of insurance shall charge and collect the following fees except that county mutual insurance companies and benevolent societies shall be liable only for the fees mentioned in subsections 3, 4, 5, 6, 9, 12, and 16:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars;
2. For filing an annual statement, twenty-five dollars;
3. For each original certificate of authority issued upon admittance, fifty dollars, and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, twenty-five dollars;
4. For a copy of any paper filed in his office, twenty cents per folio;
5. For affixing his official seal on a copy of any paper filed in his office and certifying such copy, one dollar;
6. For an official examination, the actual expense and per diem incurred; such per diem charge not to exceed thirty-five dollars;
7. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of such certificate, five dollars;

8. For filing an annual report of a fraternal benefit society, and issuing a license or permit to such society, and for each renewal thereof, twenty-five dollars;
9. For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, three dollars;
10. For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate, three dollars;
11. For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars;
12. For each abstract of the annual statement of an insurance company for publication, three dollars;
13. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 3;
14. For issuing a license to a resident agent for the attorney for a reciprocal exchange, three dollars;
15. For receiving the service of process as attorney, whether he is served with such process or admits service thereon, two dollars;
16. For written licensees' examination administered by the office of the insurance commissioner, such examination not to exceed two lines of insurance at any one sitting, ten dollars;
17. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, (each) one dollar;
18. For filing of articles of merger, or copies thereof, thirty dollars;
19. For filing bylaws or amendments thereof, five dollars;
20. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars;
21. For issuing a nonresident insurance broker's, surplus lines insurance broker's and insurance consultant's license, or duplicate thereof, fifteen dollars;
22. For issuing a resident insurance broker's, surplus lines insurance broker's and insurance consultant's license,

or duplicate thereof, ten dollars;

23. For a written licensee's examination not administered by the office of the insurance commissioner under a contract with a testing service, the actual cost of such examination, not to exceed fifteen dollars, which shall be paid to the testing service;
24. Nonprofit hospital, medical, vision and dental service corporations, and health maintenance organizations shall be subject to the same fees as any other insurance company.

Approved March 13, 1975

## CHAPTER 250

HOUSE BILL NO. 1328  
(A. Hausauer)

## CONSIDERATIONS FOR ANNUITIES

AN ACT to amend and reenact subsection 1 of section 26-01-11 of the North Dakota Century Code, to provide for the exemption of considerations for annuities from the insurance premium tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 26-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. From every insurance company doing business in this state except stock and mutual companies organized under the laws of this state, a tax equal in amount to two and one-half percent of the gross amount of premiums, membership fees, and policy fees received in this state during the preceding year, such tax to be payable at the time when the annual statement of business required by law is filed; provided, however, that this tax shall not apply to considerations for annuities.

Approved April 8, 1975

## CHAPTER 251

SENATE BILL NO. 2342  
(Hoffner)

## CONTINUED COVERAGE FOR PRISONERS

AN ACT to create and enact sections 26-03A-12, 26-26-22, 26-27-23, 26-27.1-27, and 26-27.2-26 of the North Dakota Century Code, relating to continued insurance coverage of an insured prisoner while incarcerated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 26-03A-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-03A-12. PRISONER'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Insurance companies licensed within this state shall continue coverage of a prisoner insured under a policy of accident and sickness insurance while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the policy premiums. Under no circumstance shall a prisoner's incarceration be a basis for cancellation of his or her policy of accident and sickness insurance.

SECTION 2.) Section 26-26-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-26-22. PRISONER'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Hospital service corporations licensed within this state shall continue coverage of a prisoner insured under a hospital service contract while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a prisoner's incarceration be a basis for cancellation of his or her hospital service contract.

SECTION 3.) Section 26-27-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27-23. PRISONER'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit medical service corporations licensed within this state shall continue coverage of a prisoner insured

under a medical service contract while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a prisoner's incarceration be a basis for cancellation of his or her medical service contract.

SECTION 4.) Section 26-27.1-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27.1-27. PRISONER'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit dental service corporations licensed within this state shall continue coverage of a prisoner insured under a dental service contract while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a prisoner's incarceration be a basis for cancellation of his or her dental service contract.

SECTION 5.) Section 26-27.2-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27.2-26. PRISONER'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit vision service corporations licensed within this state shall continue coverage of a prisoner insured under a vision service contract while the prisoner is incarcerated and under state supervision to the same extent as the general public is covered as long as the prisoner meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a prisoner's incarceration be a basis for cancellation of his or her vision service contract.

Approved March 27, 1975

## CHAPTER 252

SENATE BILL NO. 2257  
(Lips)

## INVESTMENT OF INSURANCE COMPANY FUNDS

AN ACT to amend and reenact section 26-08-10 of the North Dakota Century Code, relating to the authorization required for investment of funds with loans of a domestic insurance company, and prohibited investment practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-08-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-08-10. INVESTMENT OF FUNDS MUST BE AUTHORIZED BY DIRECTORS - INVESTMENT PRACTICES WHICH ARE PROHIBITED.) No investment or loan, except a policy loan, shall be made by any domestic insurance company unless the same first shall have been authorized by the board of directors of the company or by an investment committee appointed by the board of directors of the company charged with the duty of supervising the making of loans or investments by the company. No domestic insurance company shall:

1. Subscribe to or participate in any underwriting of the purchase or sale of securities or property;
2. Enter into any transaction for the purchase or sale of any securities or property on account of said company jointly with any other person, firm, or corporation;
3. Enter into any agreement to withhold any of its property from sale, but the disposition of its property at all times shall be within the control of its board of directors;
4. Invest any of its funds in, or loan the same upon, the shares of stock of any corporation except as otherwise provided herein;
5. Invest any of its funds in, or loan the same upon, any bonds or obligations, except government, state, or municipal securities, which are not secured by adequate collateral security to the full extent of the investment, except as otherwise provided herein;
6. Invest its capital, surplus funds, or other assets in, or loan the same upon, any property owned by any officer or director of the company, or by any of the immediate members of the family of any such officer or director, nor in any manner which will permit any such officer or director to gain through the investment of funds of the company.

Approved March 13, 1975



## CHAPTER 253

HOUSE BILL NO. 1119  
(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## INVESTMENTS IN BUILDINGS BY INSURANCE COMPANIES

AN ACT to create and enact a new subsection to section 26-08-11 of the North Dakota Century Code and to amend and reenact section 26-08-12 of the North Dakota Century Code, relating to authorized investment of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) A new subsection to section 26-08-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Land and buildings used as home or regional offices,  
subject to the following provisions and limitations:

- a. Land and buildings thereon in which it has its principal office and such other real estate including regional offices as shall be requisite for its convenient accommodation in the transaction of its business.
- b. Investments or total commitment in such land and buildings shall not aggregate more than ten percent of the insurer's admitted assets without the consent of the commissioner of insurance.
- c. Such real estate, including the cost of improvements, shall be valued at cost and the improvements shall be depreciated annually at an average rate of not less than two percent of the original cost.

SECTION 2. AMENDMENT.) Section 26-08-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-08-12. LIMITATION ON PURCHASE AND CONVEYANCE OF REAL PROPERTY.) A domestic insurance company may acquire, hold, and convey only such real property as shall:

1. Have been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due to it;

2. Have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;
3. Have been purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings; and
4. Have been acquired as an investment for the production of income or has been acquired to be improved or developed for an investment for the production of income as provided by law.

Any company may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

Approved March 12, 1975

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## CHAPTER 254

SENATE BILL NO. 2454  
(Kautzmann)

## AVAILS OF LIFE INSURANCE

AN ACT to amend and reenact section 26-10-18 of the North Dakota Century Code, relating to avails of life insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-10-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-18. AVAILS OF LIFE INSURANCE POLICY PAYABLE TO DECEASED OR TO HIS HEIRS, PERSONAL REPRESENTATIVES, OR ESTATE - EXEMPTION - DISTRIBUTION.) The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the deceased, to the personal representatives of the deceased, to his heirs, or to his estate, shall not be subject to the debts of the decedent upon the death of such insured or member of such society except by special contract. Such avails shall be inventoried as a part of the estate of the decedent and shall be considered as part of the general assets of the estate. The insured may transfer the avails of such life insurance policy or contract either by will or by contract. Nothing contained in this section shall:

1. Affect, in any manner, any life insurance policy or beneficiary certificate which is made payable to a designated person, including the spouse of the insured, or to persons or to members of a family designated as a class, such as "all children" or "all brothers and sisters", even though the members of such class are not designated by name; or
2. Permit any insured to dispose of the avails of a contract by a mutual or fraternal society by will to anyone who could not be a beneficiary in such contract under the charter or bylaws of such society.

Approved March 14, 1975

## CHAPTER 255

SENATE BILL NO. 2258  
(Lips)

COMPENSATION OF INSURANCE  
COMPANY OFFICERS

AN ACT to amend and reenact subsection 1 of section 26-11-10 of the North Dakota Century Code, relating to the salaries and expenses of officers and agents of domestic life insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 26-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-11-10. SALARIES AND EXPENSES OF OFFICERS AND AGENTS OF DOMESTIC LIFE INSURANCE COMPANIES - REGULATION AND RESTRICTIONS.) No domestic life insurance company shall:

1. Pay any salary, compensation, or emolument to any officer, trustee, or director thereof, nor any salary, compensation, or emolument to any one person, firm, or corporation amounting in any one year to more than thirty thousand dollars, unless the payment thereof first is authorized by the board of directors of the company;

Approved March 13, 1975

## CHAPTER 256

HOUSE BILL NO. 1222

(Berg, Haugland, Nicholas, Langley, Weber)

### COUNTY MUTUAL INSURANCE

AN ACT to create and enact section 26-15-02.1 of the North Dakota Century Code, and to amend sections 26-15-05, 26-15-08, 26-15-13, 26-15-15, and 26-15-18 of the North Dakota Century Code, relating to the maximum insurance on a single risk, extending the territorial limits of a county mutual insurance company and authorizing county mutual insurance companies to charge premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 26-15-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-15-02.1. MAXIMUM AMOUNT OF INSURANCE ON SINGLE RISK.) The maximum amount of insurance which a county mutual insurance company shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten percent of the admitted assets of the county mutual insurance company or thirty thousand dollars, whichever is the larger amount.

SECTION 2. AMENDMENT.) Section 26-15-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-15-05. ANNUAL MEETING - WHEN HELD - QUORUM.) The annual meeting of a county mutual insurance company shall be held on the second Thursday in March in each year unless it is provided otherwise in the bylaws of the company. Twenty members shall constitute a quorum for the transaction of business at an annual meeting.

SECTION 3. AMENDMENT.) Section 26-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-15-08. MEMBERS OF COUNTY MUTUAL INSURANCE COMPANY - POLICYHOLDERS - NOTICE OF MEETINGS.) Every person insured by a county mutual insurance company shall be a member thereof while he has a policy in force. He shall be entitled to one vote only, and shall be notified of the time and place of the holding of the meetings of the company by a written notice thereof or by an

imprint on the face of each policy, receipt, or certificate of renewal, as follows:

The assured is hereby notified that by virtue of this policy he is a member of the \_\_\_\_\_ mutual insurance company, and that the annual meetings of such company are held at its home office on the \_\_\_\_\_ day of \_\_\_\_\_ in each year at \_\_\_\_\_ o'clock.

The blanks in such notice shall be filled and the same shall be deemed a sufficient notice of the time and place of the meetings of the company.

SECTION 4. AMENDMENT.) Section 26-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-15-13. TERRITORIAL LIMITS OF COMPANY'S OPERATIONS - TERMS OF POLICIES - PROPERTY INSURABLE.) A company formed under the provisions of this chapter shall not insure any property beyond the limits of the territory comprised in the formation of the company except as provided in subsection 3 of section 26-15-02 and except that this territorial limitation shall not apply to reinsurance contracts. Its policies shall be issued for not to exceed five years. No policy shall be issued covering property located within the platted limits of any incorporated municipality in this state, except that policies may be issued providing coverage on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof as specified in section 26-15-01 and section 26-15-01.1 to existing members within the platted limits of any incorporated municipality in this state. The company is authorized to insure all property located outside of incorporated cities in this state.

Policies issued by the company, if the policies so provide, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

SECTION 5. AMENDMENT.) Section 26-15-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-15-15. INSURED TO GIVE UNDERTAKING TO PAY PRO RATA SHARE OF LOSSES - CASH PAYMENT OR PREMIUM REQUIRED.) Every person insured by a company organized under the provisions of this chapter shall give his undertaking, bearing even date with the policy issued to him, binding himself, his heirs and assigns, to pay to the company his pro rata share of all losses or damages as specified in section 26-15-01 and section 26-15-01.1 which may be sustained by any member thereof. Such undertaking shall be filed with the secretary in the office of the company before the issuance of the policy, and shall remain on file in the office except when it is required to be produced in court as evidence. He also, at the time of receiving the insurance, shall pay in cash such percentage or such reasonable sum named in the policy as may be required by the rules and bylaws of the company, or pay premiums as provided in section 26-15-18.

SECTION 6. AMENDMENT.) Section 26-15-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-15-18. PERMANENT EXPENSE AND LOSS FUND - ASSESSMENT OR PREMIUMS - DELINQUENT LOSS ASSESSMENTS CREDITED.) The board of directors of a county mutual insurance company may levy and collect an assessment or may charge premiums on its policies for the purpose of providing funds for the payment of the current expenses of the company or for the purpose of establishing a permanent loss fund. Such fund at no time shall exceed two percent of the amount of insurance in force in the company, except that where mutual insurance companies write a combined policy of fire and windstorm insurance, they shall be allowed to maintain a permanent loss fund not to exceed four percent of the amount of insurance in force in the company. Assessments levied for the purposes specified in this section shall be collected as assessments made for the payment of current losses are collected. If a delinquent loss assessment is collected after other assessments to cover such loss have been made and collected, the amount collected on the delinquent loss assessment shall be added to the permanent loss fund.

Approved April 8, 1975

## CHAPTER 257

HOUSE BILL NO. 1138

(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## INSURANCE AGENTS AND BROKERS

AN ACT to create and enact chapter 26-17.1 of the North Dakota Century Code; and to amend and reenact subsection 9 of section 26-09-01, sections 26-09B-01, 26-09B-02, 26-09B-06, 26-09B-07, 26-09B-10, 26-09B-11, 26-09B-12, 26-10-10, 26-10-11, 26-10-13.1, 26-13-17, and 26-14-22 of the North Dakota Century Code, all relating to the qualifications and procedures for the licensing of insurance agents, insurance brokers, surplus lines brokers, insurance consultants, and limited insurance representatives and grounds for license denial, nonrenewal, or termination; and to repeal section 26-07-02, subsection 10 of section 26-09-01, sections 26-09B-03, 26-10-08, and 26-10-12, and chapter 26-17 of the North Dakota Century Code, relating to the agency relationship of a person handling insurance and to the qualifications and procedures for the licensing of insurance agents; and providing a penalty for the violation thereof.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 9 of section 26-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Agreed to appoint, and shall appoint, as its agents in this state only residents thereof except as otherwise provided in chapter 26-17.1;

SECTION 2. AMENDMENT.) Section 26-09B-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-01. DEFINITION OF TERMS.) The words, "commissioner" or "insurance commissioner", as used in this chapter, refer to the commissioner of insurance of the state of North Dakota. A surplus lines insurance broker is one to whom a license has been issued by the commissioner under the provisions of chapter 26-17.1.

SECTION 3. AMENDMENT.) Section 26-09B-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:



26-09B-02. ISSUANCE OF LICENSE - AUTHORITY CONFERRED BY LICENSE.) Upon the issuance of a license to a surplus lines insurance broker as provided in chapter 26-17.1, such license shall permit the surplus lines insurance broker named therein to act as a surplus lines insurance broker in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing policies of insurance, contracts of indemnity or surety bonds on property located in, or undertakings to be carried out in, this state for such companies.

SECTION 4. AMENDMENT.) Section 26-09B-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-06. SERVICE OF PROCESS.) Any company desiring to transact any business under the terms of this chapter, by any surplus lines insurance broker or brokers in this state, shall appoint in writing the commissioner of insurance to be its true and lawful attorney, upon whom legal process in any action or proceeding against it shall be served, and in such writing, shall agree that any legal process against it, which is served upon such attorney, shall be of the same legal force and validity as if served upon such company, and that said authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment certified by the commissioner of insurance shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Such service must be made in duplicate upon the commissioner of insurance or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such company. When legal process against such company is served upon the commissioner of insurance he shall forthwith forward by registered or certified mail one of the duplicate copies, prepaid, and directed to its secretary or corresponding officer. For each copy of process the commissioner of insurance shall collect two dollars which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable costs if he prevails in the suit. Legal process shall not be served upon such company except in the manner provided herein. In any suit on a policy on behalf of the owner or holder thereof, the service of process shall be made as in this section provided, but the action must be prosecuted in the county of the policyholder's residence.

SECTION 5. AMENDMENT.) Section 26-09B-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-07. RECORD OF BUSINESS - FILING OF STATEMENT - CONTENT.) Every surplus lines insurance broker shall keep a separate account of the business under his license issued under the provisions of chapter 26-17.1 and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom such policy or indemnity contract granting such unauthorized insurance has been issued, the name and home office of each company issuing any such policy or contract, the amount of such

insurance, the rates charged therefor, the gross premiums charged therein or therefor, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of like authorized insurance companies. If a "surplus line" policy covers risks or exposures only partially in this state, the tax so payable shall be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.

SECTION 6. AMENDMENT.) Section 26-09B-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-10. CIVIL PENALTY FOR FAILURE TO FILE STATEMENT AND PAY TAX - ACTION FOR RECOVERY - REVOCATION OF LICENSE - CONDITIONS PREREQUISITE TO REISSUANCE - HEARING PROCEDURE AND JUDICIAL REVIEW.) Every such surplus lines insurance broker who fails or refuses to make and file said annual statement, and to pay the taxes required to be paid thereon prior to the first day of May after such tax is due, shall be liable for a fine of twenty-five dollars for each day of said delinquency. Such tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing him, in any court of competent jurisdiction, and the fine, when so collected, shall be paid to the state treasurer and placed to the credit of the general fund. If any such surplus lines insurance broker shall fail to make and file said annual statement and pay the said taxes, or shall refuse to allow the commissioner to inspect and examine his records of the business transacted by him pursuant to this section, or shall fail to keep such records in manner as required by the commissioner, or shall falsify the affidavit referred to in section 26-09B-04, the surplus line insurance broker's license of such surplus lines insurance broker shall be immediately revoked by the commissioner.

Any action taken by the commissioner of insurance to revoke or suspend a license of a surplus lines insurance broker shall be governed by chapter 28-32 and all proceedings, hearings, and appeals under this section shall be governed by that chapter. In the event of the revocation of a license of a surplus lines insurance broker, whether by the action of the commissioner or by judicial proceedings, another license shall not be issued to that surplus lines insurance broker until two years shall elapse from the effective date of such revocation, nor until all taxes and fines are paid, nor until the commissioner shall be satisfied that full compliance with this section will be had.

SECTION 7. AMENDMENT.) Section 26-09B-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-11. SURPLUS LINES IN SOLVENT INSURERS.) A surplus lines insurance broker shall not knowingly place "surplus line" insurance with insurers unsound financially. The surplus lines insurance broker shall ascertain the financial condition of the

unauthorized insurer before placing insurance therewith. The surplus lines insurance broker shall not so insure with any stock insurer having capital and surplus amounting to less than two hundred fifty thousand dollars; or with any other type of insurer having assets of less than two hundred thousand dollars, of which not less than one hundred thousand dollars is surplus.

SECTION 8. AMENDMENT.) Section 26-09B-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-09B-12. SURPLUS LINES INSURANCE BROKER'S AUTHORITY.) A surplus lines insurance broker duly licensed as provided in this chapter may accept business from any duly licensed agent for an admitted company and may compensate him therefor, provided such insurance is written in conformity with the provisions of the insurance code.

SECTION 9. AMENDMENT.) Section 26-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-10. INSURED PERSONS AND APPLICANTS FOR INSURANCE PROHIBITED FROM ACCEPTING REBATES.) No insurance broker, limited insurance representative, or agent of any insurance or surety company, reciprocal, benevolent society, or any fraternal benefit society, or any other insurance organization or association, however constituted or entitled, shall grant, and no insured person or party or applicant for insurance either directly or indirectly, shall receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any agent's, insurance broker's, limited insurance representative's, or solicitor's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any policy of insurance, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates.

SECTION 10. AMENDMENT.) Section 26-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-11. MISREPRESENTATION OF TERMS OF POLICY AND FUTURE DIVIDENDS PROHIBITED.) No insurance or surety company, reciprocal, benevolent society, or any fraternal benefit society, or any other insurance organization or association, however constituted or entitled, doing business in this state, and no officer, director, agent, or solicitor of such company, society, or insurance organization, and no insurance broker or limited insurance representative, shall issue, circulate, or use, or cause or permit to be issued, circulated, or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by such company, society, or insurance organization, or the benefits or advantages, promised thereby, or make an estimate,

with intent to deceive, of the future dividends or shares of surplus payable under such policy, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

SECTION 11. AMENDMENT.) Section 26-10-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-13.1. REVOCATION OR SUSPENSION OF INSURANCE BROKER'S, LIMITED INSURANCE REPRESENTATIVE'S, AND AGENT'S LICENSE FOR MISREPRESENTATION OR DISCRIMINATION - APPEAL.) Upon satisfactory evidence of the violation of any of the provisions of this chapter relating to misrepresentation or discrimination by any insurance broker, limited insurance representative, agent, or solicitor of any insurance or surety company, reciprocal, benevolent society, or any fraternal benefit society, or any other insurance organization or association, however constituted or entitled, the commissioner may suspend or revoke the license of such offending solicitor or agent. When a license shall be suspended or revoked, the party aggrieved may appeal to the district court of Burleigh County.

SECTION 12. AMENDMENT.) Section 26-13-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-13-17. AGENT MAY ACT ONLY FOR COMPANY HOLDING CERTIFICATE OF AUTHORITY AND MUST BE LICENSED.) No person shall act within this state as agent in receiving or procuring applications for accident insurance or accident and sick benefit insurance for any company organized under the provisions of this chapter, except for the purpose of taking preliminary applications required in the organization thereof, unless the company for which he is acting has received a certificate of authority from the commissioner of insurance. No person shall act as general or traveling agent or solicitor for any such company until he has been licensed to do so by the commissioner in the manner provided in chapter 26-17.1.

SECTION 13. AMENDMENT.) Section 26-14-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-14-22. COMPLIANCE WITH GENERAL INSURANCE LAWS - PROVISIONS OR CONDITIONS IN POLICY.) A mutual company organized under the provisions of this chapter shall comply with the provisions of any law applicable to a stock insurance company effecting the same kind of insurance. A company may insert in any form of policy prescribed by the law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with any law of this state. The policy, in lieu of conforming to the language and form prescribed by such law, may conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if it were in the language and form prescribed by such law and if a copy of such policy and endorsement, if any,

first shall have been filed with, and shall not have been disapproved by, the commissioner of insurance.

SECTION 14.) Chapter 26-17.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-17.1-01. SCOPE.) This chapter governs the qualifications and procedures for the licensing of insurance agents, insurance brokers, surplus lines insurance brokers, insurance consultants, and limited insurance representatives. These provisions shall apply to any and all lines of insurance and types of insurers including but not limited to life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal, benevolent, fraternal, hospital, or medical service plan, as set forth in this title. For purposes of this chapter, all references to insurance shall include annuities unless context otherwise requires.

26-17.1-02. INSURANCE AGENT, INSURANCE BROKER, SURPLUS LINES INSURANCE BROKER, LIMITED INSURANCE REPRESENTATIVE, AND CONSULTANT DEFINED.) As used in this chapter, the following definitions apply:

1. "Insurance agent" means an individual, partnership, or corporation appointed by an insurer to solicit applications for a policy of insurance or to negotiate a policy on its behalf.
2. "Insurance broker" means any individual, partnership, or corporation who, for compensation, not being a licensed agent for the company in which a policy of insurance is placed, acts or aids in any manner in negotiating contracts for insurance or placing risks of effecting insurance for a party other than himself or itself.
3. "Surplus lines insurance broker" means an individual, partnership, or corporation who solicits, negotiates, or procures a policy of insurance in an insurance company not licensed to transact business in this state which cannot be procured from insurers licensed to do business in this state. All transactions under such license shall be subject to chapter 26-09B.
4. "Limited insurance representative" means an individual, partnership, or corporation who is authorized by the commissioner to solicit or negotiate contracts for a particular line of insurance which the commissioner may by regulation deem essential for the transaction of business in this state and which does not require the professional competency demanded for an insurance agent's or insurance broker's license.
5. "Consultant" means an individual, partnership, or corporation who, for a fee, holds himself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service

with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued in this state.

26-17.1-03. UNLICENSED INDIVIDUAL, PARTNERSHIP, OR CORPORATION - EFFECT - AGENT FOR COMPANY.) An individual, partnership, or corporation not duly licensed as an insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative who solicits a policy of insurance on behalf of an insurer shall be an insurance agent within the intent of this chapter, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of such company is subject, and such company by compensating such person through any of its officers, agents, or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction. An individual, partnership, or corporation not licensed as an insurance broker who solicits a policy of insurance on behalf of others or transmits for others an application for a policy of insurance to or from an insurance company, or offers or assumes to act in the negotiations of such insurance, shall be an insurance broker within the intent of this chapter, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which such licensed brokers are subject.

26-17.1-04. AGENT OR LIMITED INSURANCE REPRESENTATIVE - AGENT OF INSURER.) Every agent or limited insurance representative who solicits or negotiates an application for insurance of any kind shall, in any controversy between the insured or his beneficiary and the insurer, be regarded as representing the insurer and not the insured or his beneficiary. This provision shall not affect the apparent authority of an agent.

26-17.1-05. INSURANCE BROKER OR SURPLUS LINES INSURANCE BROKER - AGENT OF INSURED.) Every insurance broker or surplus lines insurance broker who solicits an application for insurance of any kind shall, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, be regarded as representing the insured or his beneficiary and not the insurer; except that any company which directly or through its agents delivers in this state to any insurance broker a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, shall be deemed to have authorized such broker to receive on its behalf payment of any premium which is due on such policy of insurance at the time of its issuance or delivery.

26-17.1-06. ACTING AS INSURANCE AGENT, INSURANCE BROKER, SURPLUS LINES INSURANCE BROKER, OR LIMITED INSURANCE REPRESENTATIVE WITHOUT LICENSE PROHIBITED.) No person, partnership, association, or corporation shall act as or hold himself out to be an insurance agent, insurance broker, surplus lines insurance broker, limited insurance representative, or consultant unless duly licensed. No insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative shall make application for, procure, negotiate for, or place for others, any policy for any lines of insurance as to which he is not then qualified and duly licensed. No insurance agent or limited

insurance representative shall place a policy of insurance with any insurer as to which he does not then hold a license as an insurance agent or limited insurance representative under this chapter.

26-17.1-07. QUALIFICATION FOR LICENSE - LINES OF INSURANCE.) An insurance agent, insurance broker, or surplus lines insurance broker may receive qualification for a license in one or more of the following lines:

1. Life insurance and annuity contracts.
2. Sickness, accident, and health.
3. Credit life insurance and credit accident and health.
4. Fire and allied lines.
5. Vehicle liability and vehicle physical damage insurance.
6. Comprehensive personal and general liability coverage.
7. Marine and transportation.
8. Credit and mortgage guarantee insurance.
9. Burglary and theft insurance.
10. Crop insurance.
11. Bail bonds.
12. Fidelity and surety insurance.
13. Homeowners' and farmowners' multiple peril insurance.
14. Commercial multiple peril insurance.
15. Property and casualty insurance sold in connection with a credit transaction.
16. Industrial fire.

26-17.1-08. LIMITED INSURANCE REPRESENTATIVE - LICENSE WITHOUT EXAMINATION.) A limited insurance representative may receive qualification for a license without examination in one or more of the following lines:

1. Any ticket-selling agent of a common carrier who acts thereunder only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier, or applicants selling limited travel accident insurance in transportation terminals.

2. Any other lines which the commissioner finds by rule or regulation do not require the professional competency demanded for an agent's or broker's license.

26-17.1-09. LICENSING OF ORGANIZATION PERMITTED - CHANGE OF REGISTERED INDIVIDUALS - NOTICE TO COMMISSIONER.) A partnership or corporation may be licensed as an insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this state in soliciting or negotiating policies of insurance shall be registered with the commissioner as to its license, and each such member, officer, director, stockholder, or employee shall also qualify as an individual licensee. An additional license fee shall be paid as to each individual registered as to the organization's license. Provided, however, that this section shall not apply to a management association, partnership, or corporation whose operations do not entail the solicitation of insurance from the public. The partnership or corporate licensee shall within ten working days notify the commissioner of every change relative to the individuals registered with the corporate or partnership license.

26-17.1-10. CONTROLLED BUSINESS PROHIBITED - DEFINITION - FORMULA FOR DETERMINATION.) The commissioner shall not grant, renew, continue, or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. Controlled business shall mean:

1. Insurance written on the interests of the licensee or those of his immediate family or of his employer; or
2. Insurance covering himself or members of his immediate family or a corporation, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, association, or partnership of which he or a member of his immediate family is an officer, director, substantial stockholder, partner, associate, or employee. Provided, however, that nothing in this section shall apply to insurance written in connection with credit transactions.

Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business if the commissioner finds that during any twelve-month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent of the aggregate commission earned on all business written by such applicant or licensee during the same period.

26-17.1-11. PAYMENT TO OR ACCEPTANCE BY UNLICENSED PERSON OF COMMISSION PROHIBITED - WHEN PAYMENT OR ASSIGNMENT OF COMMISSIONS PERMITTED.) No insurer, insurance agent, insurance broker, surplus lines insurance broker, or limited insurance



representative shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative within this state, unless such person held at the time such services were performed a valid license for that line of insurance as required by the laws of this state for such services; nor shall any person, other than a person duly licensed by this state as an insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative at the time such services were performed, accept any such commission, brokerage, or other valuable consideration. Provided, however, any person duly licensed under this chapter may pay his commissions or assign his commissions, or direct that his commissions be paid, to a partnership of which he is a member, employee, or agent, or to a corporation of which he is an officer, employee, or agent; and provided further that this section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

26-17.1-12. CONTENTS OF LICENSE - LICENSE TO SPECIFY APPOINTING INSURER.) The license shall state the name, resident address, social security or IRS identification number of the licensee, date of issue, renewal or expiration date, and the line or lines of insurance covered by the license, and provide such other information as the commissioner deems proper for inclusion in the license. The license of an insurance agent or limited insurance representative shall specify the name of the particular insurer by which the licensee is appointed. An insurance agent or limited insurance representative may represent as many insurers as may appoint him in accordance with this chapter.

26-17.1-13. TERM OF LICENSE.) All licenses issued pursuant to this chapter shall continue in force not longer than twelve months, but shall expire as of 12:01 a.m. on the first day of May next following date of issuance unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for renewal of such license for an ensuing twelve-month period. Such request must be accompanied by payment of the renewal fee as provided in section 26-01-04.

26-17.1-14. EXCEPTIONS TO LICENSING REQUIREMENTS.) No license as an insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative shall be required of the following:

1. Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, surplus lines insurance broker, or limited insurance representative if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
2. Persons who secure and furnish information for the purpose of group or wholesale life insurance, annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates thereunder or otherwise

assisting in administering such plans, where no commission is paid for such service.

3. Employers or their officers or employees or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company, provided, that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.
4. Employees of a creditor who enrolls debtors under a group policy; provided, that such employees receive no commission.

26-17.1-15. LICENSE REQUIREMENTS - APPLICATION - APPOINTMENT BY COMPANY - AGE.) Application shall be made to the commissioner by the applicant on a form prescribed by the commissioner.

The application for an insurance agent or limited insurance representative license shall be accompanied by a written appointment. Such appointment shall be made by an officer of the insurer designating the applicant as an insurance agent or limited insurance representative for such lines of insurance as the applicant will be authorized to write for said insurer. All appointments for any licensee shall be submitted on behalf of the appointing insurer, on a form prescribed by the commissioner, and shall remain in force until the annual renewal date which shall be May 1.

Every applicant for an insurance agent or limited insurance representative license under this chapter, except a partnership or corporation, must be eighteen years or more of age.

26-17.1-16. FEES - FAILURE TO PAY.) All applications shall be accompanied by the applicable fees as provided in section 26-01-04. An appointment shall terminate upon failure to pay the prescribed annual renewal fee.

26-17.1-17. LICENSE REQUIREMENT - INSURANCE BROKER AND SURPLUS LINES INSURANCE BROKER - BOND - MAY BE WAIVED FOR NON-RESIDENT INSURANCE BROKER.) Prior to issuance of a license as an insurance broker or surplus lines insurance broker, the applicant shall file with the commissioner, and thereafter, for as long as the license remains in effect, shall keep in force a bond in the penal sum of not less than twenty thousand dollars with authorized corporate surety approved by the commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the penal sum thereof. No such bond shall be terminated unless at least thirty days' prior written notice thereof is given by the surety to the licensee and the

commissioner. Upon termination of the license for which the bond was in effect, the commissioner shall notify the surety within ten working days. Any licensee who is the holder of both an insurance broker's license and a surplus lines insurance broker's license shall satisfy the above bonding requirements as to each license.

Notwithstanding other provisions of this chapter, no new bond shall be required for a nonresident insurance broker if the commissioner is satisfied that the existing bond covers his insurance business in this state.

26-17.1-18. LICENSE REQUIREMENT - INSURANCE BROKERS - EXPERIENCE.) Each applicant for an insurance broker's license must have had not less than two years' experience as an insurance agent or in comparable employment for an insurance company, agency, or brokerage firm during the three years immediately next preceding the date of application. The application for an insurance broker's license must be accompanied by an affidavit from the employer or insurer to the effect that the applicant was so engaged in such required responsible insurance duties.

26-17.1-19. LICENSE REQUIREMENT - SURPLUS LINES INSURANCE BROKER - MUST HOLD RESIDENT INSURANCE AGENT'S OR INSURANCE BROKER'S LICENSE.) An applicant for a surplus lines insurance broker's license must be licensed in this state as a resident insurance agent or insurance broker qualified as to the line or lines to be written.

26-17.1-20. LICENSE REQUIREMENT - RESIDENCY - ELECTION OF RESIDENCY - WHEN VOID - WHEN RESIDENT LICENSEE ALLOWED TO HOLD RESIDENT LICENSE FROM ANOTHER STATE.) An applicant may qualify as a resident if he resides in this state or maintains his principal place of business in this state. Any license issued pursuant to any such application claiming residency for licensing purposes, as defined herein, in this state shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in, or thereafter claims to be a resident of, any other state or other jurisdiction or ceased to be a resident of this state; provided, however, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify as a resident in such states and hold a license from each state.

26-17.1-21. LICENSE REQUIREMENT - NONRESIDENT - MUST HOLD LIKE LICENSE ELSEWHERE.) An applicant may qualify for a license under the chapter as a nonresident only if he holds a like resident license in a state of the United States, province of Canada, or other foreign country. A license issued to a non-resident of this state shall grant the same rights and privileges afforded a resident licensee, except as provided in section 26-17.1-27.

26-17.1-22. LICENSE REQUIREMENT - NONRESIDENT - DESIGNATION OF COMMISSIONER AS ATTORNEY FOR SERVICE OF PROCESS

- FEE.) The commissioner shall not issue a license to any non-resident applicant until he files with the commissioner his designation of the commissioner and his successors in office, to be his true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this state. Such designation shall constitute an agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person.

Such service of process upon any such licensee in any such action or proceeding in any court of competent jurisdiction of this state may be made by serving the commissioner with appropriate copies thereof and the payment to him of a fee of two dollars. The commissioner shall forward a copy of such process by registered or certified mail to the licensee at his last known address of record or principal place of business, and shall keep a record of all process so served upon him.

26-17.1-23. NONRESIDENT PROCEEDING BY COMMISSIONER - SERVICE OF PROCESS - PROCEDURE.) Service of process upon any nonresident licensee in any action or proceeding instituted by the commissioner under this chapter shall be made by the commissioner by mailing such process by registered or certified mail to the licensee at his last known address of record or principal place of business return receipt requested. Such service of process is sufficient.

26-17.1-24. NONRESIDENT REVOCATION OR SUSPENSION OF LICENSE - NOTIFICATION.) If the commissioner revokes or suspends any nonresident's license through a formal proceeding under this chapter, he shall promptly notify the appropriate commissioner of the licensee's residence of such action and of the particulars thereof.

26-17.1-25. NONRESIDENT - MAY BE LICENSED WITHOUT EXAMINATION.) A nonresident of this state may be licensed without taking an otherwise required written examination if the commissioner of the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time such written examination was required, of a license like the license being applied for in this state.

26-17.1-26. LICENSE REQUIREMENT - CHARACTER.) An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

26-17.1-27. RECIPROCAL PROVISION - RETALIATORY ACTION.) Whenever, by the laws or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon residents of this state who are nonresident applicants or licensees of such other state or jurisdiction in addition to, or in excess of, those imposed on nonresidents under this chapter, the same such

requirements shall be imposed upon such residents of such other state or jurisdiction.

26-17.1-28. EXAMINATION - INDIVIDUALS.) After completion and filing of the application with the commissioner, except as provided in section 26-17.1-35, the commissioner shall subject each applicant for license as an insurance agent, insurance broker, surplus lines insurance broker, consultant, or limited insurance representative to a written examination as to his competence to act as such licensee which he must personally take and pass to the satisfaction of the commissioner.

26-17.1-29. EXAMINATION - PARTNERSHIP OR CORPORATION.) If the applicant is a partnership or corporation, the examination shall be so taken by each individual who is to be named in or registered as to the corporate or partnership license.

26-17.1-30. EXAMINATION - APPROVED BY COMMISSIONER - CONTENTS.) Each examination for a license shall be approved for use by the commissioner and shall reasonably test the applicant's knowledge as to the lines of insurance, policies, and transactions to be handled under the license applied for, the duties and responsibilities of such a licensee, and the pertinent insurance laws of this state.

26-17.1-31. EXAMINATION - LINES OF INSURANCE - TIME AND PLACE - DUTIES OF COMMISSIONER.) All the lines of insurance which the applicant proposes to transact under the license applied for shall have a separate examination.

Examination for licensing shall be at such reasonable times and places as are designated by the commissioner and such times and places shall be made public sixty days after the effective date of this chapter.

The commissioner shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination as between individuals examined.

The applicant must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten days after the examination, the commissioner shall inform the applicant and the appointing insurer, where applicable, as to whether or not the applicant has passed. Formal evidence of said licensing shall be issued by the commissioner to the licensee within a reasonable time.

26-17.1-32. EXAMINATION - FAILURE TO PASS.) An applicant who has failed to pass the first examination for the license applied for may take a second examination after a thirty day waiting period. Examination fees for subsequent examinations shall not be waived.

An applicant who has failed to pass the first two examinations for the license applied for will not be permitted to take a

subsequent examination until the expiration of six months after the last previous examination.

26-17.1-33. DENIAL OF LICENSE - NOTIFICATION OF APPLICANT - REFUND OF APPOINTMENT FEE.) If the commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and promptly notify the applicant and the appointing insurer, in writing, of such denial, stating the grounds therefore.

If a license is refused, the commissioner shall promptly refund the appointment fee tendered with the license application. All other fees accompanying the application for license as insurance agent, insurance broker, surplus lines insurance broker, consultant, and limited insurance representative shall be deemed earned and shall not be refundable.

26-17.1-34. NOTIFICATION OF ADDRESS CHANGE - DUTY OF LICENSEE.) Every licensee shall notify the commissioner of any change in his residential or business address within thirty days of the change.

26-17.1-35. EXEMPTION FROM EXAMINATION.) The following shall be exempt from the requirement for a written examination:

1. Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in this state, other than a temporary license, within the twelve months next preceding the date of application, unless such previous license was revoked or suspended or continuation thereof was refused by the commissioner.
2. An applicant who has been licensed under a like license in another state within twelve months prior to his application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in such other state as to the applicant's license and good standing in such state; provided, however, such applicant shall be required to take that portion of the examination pertaining to rules, regulations, and state laws. A facsimile signature and seal of the certifying public official will be deemed sufficient.
3. An applicant who has attained the designation of chartered life underwriter shall only be required to take that portion of the examination for line 1 pertaining to rules, regulations, and state laws.
4. An applicant who has attained the designation of chartered property and casualty underwriter shall only be required to take that portion of the examination for lines 2 through 16 pertaining to rules, regulations, and state laws.

26-17.1-36. INSURANCE CONSULTANT - LICENSE REQUIRED - EXEMPTION FROM LICENSING REQUIREMENT.) No individual, partnership, or corporation shall engage in the business of an insurance consultant until a license therefore has been issued to him by the commissioner; provided, however, that no consultant license shall be required of the following:

1. Attorneys licensed to practice law in this state acting in their professional capacity.
2. A duly licensed insurance agent, insurance broker, or surplus lines insurance broker.
3. A trust officer of a bank acting in the normal course of his employment.
4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity.

26-17.1-37. INSURANCE CONSULTANT - APPLICATION - EXAMINATION REQUIRED.) An application for a license to act as an insurance consultant shall be made to the commissioner on forms prescribed by the commissioner. Within a reasonable time after receipt of a properly completed application form, the commissioner shall hold a written examination for the applicant, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter which he deems necessary or advisable to determine compliance with this chapter or for the protection of the public.

26-17.1-38. INSURANCE CONSULTANT - AGREEMENT BETWEEN CONSULTANT AND CLIENT - CONTENTS.) In advance of rendering any service set forth in subsection 5 of section 26-17.1-02, a written agreement on a form approved by the commissioner shall be prepared by the consultant, and shall be signed by both the consultant and the client. The agreement shall outline the nature of the work to be performed by the consultant and shall state his fee for the work. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. The copy shall be available to the insurance commissioner.

26-17.1-39. HOLDING INSURANCE CONSULTANT'S LICENSE AND ANOTHER LICENSE IN SAME LINE PROHIBITED.) No person, firm, corporation, or partnership may concurrently hold a consultant's license and a license as an insurance agent, or an insurance broker, or surplus lines insurance broker, or limited insurance representative in any line.

26-17.1-40. AFFILIATION BETWEEN INSURANCE CONSULTANT AND OTHER LICENSEES - PROHIBITED.) No licensed consultant may employ, be employed by, or be in partnership with nor receive any remuneration whatsoever from any licensed insurance agent, insurance broker, surplus lines insurance broker, limited insurance representative, or insurer arising out of his activities as a consultant.

26-17.1-41. INSURANCE CONSULTANT - TERM OF LICENSE - DENIAL, REVOCATION, OR SUSPENSION OF LICENSE - DUTIES OF CONSULTANT.) Such license shall be valid for not longer than twelve months and may be renewed annually and extended in the same manner as an insurance agent's license.

All requirements and standards relating to the denial, revocation, or suspension of an insurance agent's license, including penalties, shall apply to the denial, revocation, and suspension of an insurance consultant's license as nearly as practicable.

A consultant is obligated under his license to serve with objectivity and complete loyalty the interests of his client alone and to render his client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests.

26-17.1-42. LICENSE DENIAL, NONRENEWAL, OR TERMINATION - GROUNDS.) The commissioner may suspend, revoke, or refuse to continue or renew or refuse to issue any license issued under this chapter if, after notice to the licensee and the insurer represented and hearing, he finds as to the licensee any one or more of the following conditions:

1. Any materially untrue statement in the license application.
2. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
3. Violation of, or noncompliance with, any insurance laws, or for violation of any lawful rules, regulation, or order of the commissioner or of a commissioner of another state.
4. Obtaining or attempting to obtain any such license through misrepresentation or fraud.
5. Improperly withholding, misappropriating, or converting to his own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of his insurance business.
6. Misrepresentation of the terms of any actual or proposed insurance contract.
7. Conviction of a felony or misdemeanor involving moral turpitude.
8. The licensee has been found guilty of any unfair trade practice or fraud defined in this title.
9. In the conduct of his affairs under the license, the licensee has used fraudulent, coercive, or dishonest



practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible.

10. His license has been suspended or revoked in any other state, province, district, or territory.
11. Such licensee has forged another's name to an application for insurance.
12. Such applicant has been found to have been cheating on an examination for an insurance license.

26-17.1-43. LICENSE NONRENEWAL OR TERMINATION - PARTNERSHIP OR CORPORATION - ADDITIONAL GROUND.) The license of a partnership or corporation may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and such violation was not reported to the insurance department nor corrective action taken in relation thereto.

26-17.1-44. CIVIL PENALTY FOR VIOLATION OF CHAPTER.) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine of not less than one hundred dollars nor more than one thousand dollars. Such fine may be collected and recovered in an action brought in the name of the state.

26-17.1-45. PROCEEDINGS, HEARINGS, AND APPEALS.) All proceedings, hearings, and appeals under this chapter shall be governed by chapter 28-32.

26-17.1-46. NOTIFICATION OF SUSPENSION, REVOCATION, OR TERMINATION - DUTY OF COMMISSIONER.) The commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or termination of license by the commissioner.

Upon suspension, revocation, or termination of the license of a resident of this state, the commissioner shall notify the central office of the national association of insurance commissioners and the insurance commissioner of each state for whom he has executed a certificate as provided for in accordance with section 26-17.1-25.

26-17.1-47. SUSPENSION, REVOCATION, OR TERMINATION - DUTIES OF LICENSEE.) Upon suspension, revocation, or termination of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

Any licensee who ceases to maintain his residency in this state as defined in section 26-17.1-20 shall deliver his insurance license or licenses to the commissioner by personal delivery or by mail within thirty days after terminating said residency.

26-17.1-48. LOST, STOLEN, OR DESTROYED LICENSE - ISSUANCE OR DUPLICATE ON AFFIDAVIT OF LICENSEE.) The commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon an affidavit of the licensee prescribed by the commissioner concerning the facts of such loss, theft, or destruction.

26-17.1-49. TERMINATION REPORTS BY INSURER - DUTY OF INSURER - INFORMATION FURNISHED PRIVILEGED IN CIVIL ACTION.) If an appointment is terminated, the insurer shall promptly give written notice of said termination and the effective date thereof to the commissioner and to the licensee where reasonably possible. The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to give such notice to the licensee.

All such notices of termination shall be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of such termination.

In the event the termination is for any of the grounds listed in this chapter, the insurer shall so notify the commissioner. Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26-17.1-42, 26-17.1-43, and 26-17.1-44; however, such information shall be deemed privileged in any civil action between the reporting insurer and such terminated licensee.

26-17.1-50. RESIDENT INSURANCE AGENT AND INSURANCE BROKER DEFINED.) As used in this chapter, the term resident insurance agent shall mean a resident of this state who is licensed as an insurance agent; and the term resident insurance broker shall mean a resident of this state who is licensed as an insurance broker.

26-17.1-51. FOREIGN INSURANCE AND SURETY COMPANIES POLICIES REQUIRED TO BE COUNTERSIGNED - EXCEPTIONS.) No foreign surety or insurance company other than a life insurance company, shall issue any surety bond or policy of insurance of any kind on any person, firm, or corporation, or on property within this state except through a resident insurance agent who is appointed by the insurer or resident insurance broker and licensed regularly to transact insurance business therein. The provisions of this chapter relating to resident insurance agents and resident insurance broker, however, shall not apply to:

1. Direct insurance covering the rolling stock of railroad corporations;
2. Direct insurance covering property in transit while the same is in the possession and custody of a railroad corporation or other common carrier;
3. Direct insurance covering movable property of railroads or other common carriers used or employed by them in their business as common carriers;

4. Insurance written or carried by the state of North Dakota;
5. Bid bonds issued by any surety company in connection with any public or private contract.

26-17.1-52. DUTIES, POWERS, AND RIGHTS OF RESIDENT INSURANCE AGENT AND RESIDENT INSURANCE BROKERS - COMMISSIONS.) The resident insurance agent of a foreign surety company or insurance company or resident insurance broker shall:

1. Countersign all surety bonds and contracts of insurance issued by a company within this state with the exception of such as are mentioned in section 26-17.1-51;
2. Make a record of all surety bonds and contracts of insurance so countersigned by him in books provided for that purpose; and
3. Receive the customary and usual commission on all such bonds and contracts when the premium thereon has been paid.

26-17.1-53. FOREIGN COMPANY MAY ISSUE BONDS OR CONTRACTS AT PRINCIPAL OR DEPARTMENT OFFICE - PAYMENT OF COMMISSIONS.) No provision of this chapter shall prevent a foreign surety or insurance company mentioned herein, when authorized to transact business within this state, from issuing bonds or contracts of insurance at its principal or department office, covering any person, firm, or corporation, or any property in this state. Such bonds and contracts, when issued, shall be countersigned by a resident insurance agent or resident insurance broker, and on any bond or contract so written, except a life insurance policy, the resident insurance agent or resident insurance broker shall be paid the usual brokerage commission.

26-17.1-54. TEMPORARY LICENSING - INSURANCE AGENT OR INSURANCE BROKER.) The commissioner may issue a temporary license as an insurance agent or insurance broker for a period not to exceed ninety days without requiring an examination if the commissioner deems that such temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse, next of kin, administrator, executor, or employee of a licensed insurance agent becoming deceased, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance agent or insurance broker who becomes disabled.
2. To a member or employee of a partnership or officer or employee of a corporation, licensed as an insurance agent, upon the death or disability of an individual designated in or registered as to the license.
3. To the designee of a licensed insurance agent entering upon active service in the armed forces of the United States of America.

4. In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of such license.

26-17.1-55. COMMISSIONER TO ESTABLISH RULES AND REGULATIONS.) The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this chapter.

26-17.1-56. COMMISSIONER OF INSURANCE MAY MAKE EXAMINATIONS AND INVESTIGATIONS.) Whenever the commissioner of insurance shall have cause to believe that any provision of this chapter has been violated, he, at the expense of the company involved, may examine, at the offices of such company, whether located within or without this state, all books, records, and papers of such company and any books, records, and papers of any assured within this state, and may examine under oath, the officers, managers, and agents of such company, or the assured, as to such violation or violations.

\*SECTION 15. REPEAL. Section 26-07-02, subsection 10 of section 26-09-01, sections 26-09B-03, 26-10-08, and 26-10-12, and chapter 26-17 of the North Dakota Century Code are hereby repealed.

Approved April 8, 1975

\*NOTE: Section 26-17-01.14 was amended by section 287 of Senate Bill No. 2039, chapter 106.

## CHAPTER 258

SENATE BILL NO. 2016  
(Wenstrom, Lips, Larson, Barth)  
(From Legislative Council Study)

## PUBLIC EMPLOYEE BOND COVERAGE

AN ACT to provide for a periodic review of employee bond coverage, and to amend and reenact sections 26-23-01, 26-23-02.1, 26-23-05, 26-23-06, 26-23-07, 26-23-08, 26-23-09, 26-23-10, 26-23-11, 26-23-15, 26-23-17, 26-23-18, 26-23-19, 26-23-20, 26-23-22, 43-04-06, 43-05-05, 43-10-03, 43-11-07, 43-13-06, 43-15-07, 43-19.1-09, 43-25-06, and 43-35-06, relating to public official and employee bond coverage as provided under the state bonding fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. REVIEW OF PUBLIC OFFICIAL AND EMPLOYEE BOND COVERAGE.) Each state agency, department, industry, and institution shall annually review the amount of blanket bond coverage of its officers and employees. The amount for which such officials and employees shall be bonded shall be based upon the amount of money or property handled and the opportunity for defalcation. As provided in section 26-23-02.1, blanket bond coverage may be greater than but not less than the amount provided for such positions in other statutes.

When conducting an audit examination of such state agencies, departments, industries, and institutions, the state auditor shall evaluate the blanket bond coverage and, if deemed necessary, shall include recommendations for changes in the amount of that coverage in his report.

SECTION 2. AMENDMENT.) Section 26-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-01. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" shall mean the commissioner of insurance;
2. "Public employee" shall mean and include any and all persons employed by the state or any of its political subdivisions, except for persons employed by the occupational and professional boards and commissions under title 43, and by the state bar association;

3. "Blanket bond" shall mean a bond which covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund;
4. "Fund" shall mean the state bonding fund;
5. "Public official" shall mean any officer or deputy, either elected or appointed, of the state or any of its political subdivisions who is required to be bonded by any law of this state, except for officers of the occupational and professional boards and commissions under title 43, and of the state bar association;
6. "Political subdivision" shall mean a county, city, township, school district or park district, or any other unit of local government; and
7. "State" shall mean state departments, agencies, industries, and institutions.

SECTION 3. AMENDMENT.) Section 26-23-02.1 of the North Century Code is hereby amended and reenacted to read as follows:

26-23-02.1. BLANKET BOND COVERAGE AVAILABLE TO STATE DEPARTMENTS, AGENCIES, INDUSTRIES, AND INSTITUTIONS, AND POLITICAL SUBDIVISIONS.) The state bonding fund shall provide coverage as set forth in section 26-23-09 in the form of a blanket bond to state departments, agencies, industries, and institutions, and to political subdivisions, subject to the approval of the commissioner who may exclude certain public employees or groups of public employees. The commissioner shall prescribe the kind or kinds of blanket bond coverage, with or without deductible provisions, available through the fund, the procedure to be followed in obtaining such blanket bond coverage, and the forms upon which blanket bond coverage shall be requested. Public officials required to be bonded by law may be included in such blanket bond coverage, and such blanket bond coverage may be greater but not less than the largest stated bond amount as provided in the law for such positions. Such blanket bond shall fulfill statutory bonding requirements for any position of a public official.

SECTION 4. AMENDMENT.) Section 26-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-05. REPORT OF ELECTION OR APPOINTMENT OF PUBLIC OFFICIAL - PAYMENT OF PREMIUMS.) Before any public official, excluding one whose position is covered by a blanket bond, shall assume his duties, the state auditor, county auditor, city auditor, township clerk, or school district clerk, as the case may be, shall report to the commissioner in such manner and form as the commissioner shall prescribe, the election or appointment of such public

official and the amount of the bond required of him, and shall remit with such report by check, draft, or express or postal money order the premium required under the provisions of this chapter.

SECTION 5. AMENDMENT.) Section 26-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-06. PREMIUMS - AMOUNT TO WHOM PAID - MINIMUM.) The premium for insurance furnished under this chapter, not including the premium for a blanket bond which shall be determined by the commissioner, shall be twenty-five cents per year per one hundred dollars of the amount of the required bond. Premiums shall be paid in advance by the proper authority of the state, or of the political subdivision of the state, which the public official for whom a bond is required was elected or appointed to serve, from its treasury, to the state treasurer who shall keep the same in the fund. The state treasurer shall issue quadruple receipts therefor. He shall file one of such receipts in his office, and shall mail one to the official making such payment, one to the commissioner, and one to the state auditor. The minimum premium for each bond shall be two dollars and fifty cents per year. Unless the term of office or employment shall be for a shorter period, payments shall be made for one year or for such longer terms as the commissioner may prescribe. The bonds of all retiring public officials shall be transferred to their successors for unexpired terms without any additional premium, when written application is made to the director of the state bonding fund. No notice or application shall be required when a public official is covered under a blanket bond. From and after July 1, 1953, the premiums referred to in this section, including premiums charged for a blanket bond, shall be waived until the reserve fund of the state bonding fund shall have been depleted below the sum of two and one-half million dollars. The collection of premiums shall be resumed on the bonds, including blanket bonds, of all public officials and public employees of the state and each political subdivision thereof, at the rates herein set forth, whenever the reserve fund shall be depleted below the sum of two and one-half million dollars. The premiums shall continue to be collected until the reserve fund shall reach a total of three million dollars, at which time all premiums shall again be waived until the reserve fund has been depleted below the sum of two and one-half million dollars.

SECTION 6. AMENDMENT.) Section 26-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-07. EFFECT OF FAILURE TO REPORT ELECTION OR APPOINTMENT OF PUBLIC OFFICIAL OR FOLLOW PROCEDURE PRESCRIBED BY COMMISSIONER, OR TO PAY BOND PREMIUM.) Unless the report required by section 26-23-05 shall be made in the case of an individual bond or the procedure prescribed by the commissioner is followed in the case of a blanket bond and the premium required by section 26-23-06 shall be paid within ten days after the service of a public official has begun, the officer whose duty it is to make such report or follow such procedure and pay such premium, during the term of such default, shall be liable by force of this chapter as a surety

on the bond of such public official with the same effect and to the same extent as if such bond had been signed, approved, and filed as otherwise required by law. In addition thereto, any officer guilty of such default shall be guilty of a class A misdemeanor. No compensation shall be paid to any public official unless his appointment or election has been reported or the procedure prescribed by the commissioner is followed, as the case may be, and the premium payment for such public official's bond or blanket bond shall have been made to the commissioner or a bond shall have been filed in lieu thereof as provided in this chapter.

SECTION 7. AMENDMENT.) Section 26-23-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-08. AUTOMATIC INSURANCE OF STATE AND POLITICAL SUBDIVISIONS.) The public employees and public officials of the state and each political subdivision thereof, as the case may be, shall be insured in the fund according to the provisions of this chapter upon application to the state bonding fund and upon approval by the commissioner of insurance. Unless an application is denied within sixty days from the date it is received by the state bonding fund, the application will be deemed approved and bond coverage in force. The provisions of this chapter and of any statute requiring a bond shall constitute the bond of each and every public official for the purpose of any law of this state requiring such bond and shall constitute the entire contract between the fund and the state or its political subdivisions, respectively, as the obligee in any such bond.

SECTION 8. AMENDMENT.) Section 26-23-09 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-09. CONDITION OF BOND CREATED BY CHAPTER - LIMITATION.) The condition of the bond, including a blanket bond, arising under the provisions of this chapter shall be limited to that of a surety or fidelity bond and shall provide that the public employee or public official, as principal, faithfully and impartially shall discharge and perform the duties of his office or employment, including such duties as are or may be imposed upon him by law, and shall render a true account of all moneys and property of every kind that shall come into his hands as such public employee or public official, and shall pay over and deliver the same according to law. The bond shall not include coverage for claims resulting from the death or injury of any person or for property damage.

SECTION 9. AMENDMENT.) Section 26-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-10. DEFAULT OF PUBLIC EMPLOYEES OR PUBLIC OFFICIALS - DUTY OF PUBLIC OFFICER - LIMITATION ON FILING OF CLAIMS AGAINST FUND.) Immediately upon, and in no event later than sixty days after, the discovery of any default or wrongful act on the part of any public employee or public official, for which the fund is or may become liable, the state auditor, county auditor, city auditor,



township clerk, or school district clerk, or the treasurer of the state or subdivision thereof, if the defaulting officer is the auditor or clerk of the state or political subdivision, and any other officer having supervision of a defaulting public employee or public official, shall file a claim with the commissioner against the fund. Any person injured by such default or wrongful act, if he intends to hold the fund liable therefor, must present his claim to the commissioner within sixty days after the discovery of such default or wrongful act. If a claim is not filed within the time limited by this section, such claim is waived. A claim filed under the provisions of this section shall contain an abstract of the facts upon which it is based and shall be verified by the claimant or by someone in its or his behalf, and, together with all papers relating thereto, shall remain on file with the commissioner.

SECTION 10. AMENDMENT.) Section 26-23-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-11. COMMISSIONER TO NOTIFY STATE AUDITOR OF DEFAULT OF PUBLIC EMPLOYEE OR PUBLIC OFFICIAL - DUTY OF STATE AUDITOR.) If any public employee or public official shall default or create a liability against the fund, the commissioner shall notify the state auditor, who immediately shall check the accounts of such public employee or public official and file a report with the commissioner stating the amount, if any, due from the fund because of such default or wrongful act. For such service, the auditor shall be paid out of the fund the same fees as he is paid for auditing the accounts of county officers.

SECTION 11. AMENDMENT.) Section 26-23-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-15. SUIT BY PARTY INJURED BY DEFAULT OF PUBLIC EMPLOYEE OR PUBLIC OFFICIAL - SUBROGATION - RIGHT OF APPEAL.) Any person or corporation injured by the default or wrongful act of any public employee or public official may sue such public employee or public official and join the fund as codefendant. If a judgment is obtained against such public employee or public official, it shall specify that, to the extent to which the fund is liable upon the bond of such public employee or public official, the judgment shall be paid out of any moneys in the fund or that may accrue thereafter to such fund. If a judgment is paid out of the fund, the fund shall be subrogated to the right of the judgment creditor to recover against such public employee or public official. In all proceedings to enforce such right of subrogation, the commissioner shall act for and in behalf of the fund, and in any action or proceeding, he may appeal from any appealable order or from any judgment against the fund the same as other parties to civil actions may appeal.

SECTION 12. AMENDMENT.) Section 26-23-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-17. COMMISSIONER MAY MAKE EXAMINATIONS - REQUEST FOR ACCOUNTING - REPORTING DEFAULTING OFFICIAL TO GOVERNOR.) If the commissioner shall be of the opinion at any time that the interests of the fund are jeopardized by the misconduct or inefficiency of any public official, he shall make, or request the state auditor to make, an examination, and, if necessary, he shall cause an action for an accounting to be instituted against such public official for the purpose of requiring a complete disclosure of the business of the office of which such public official is an incumbent. Such action shall be brought in the name of the commissioner as plaintiff, and the court in such action may interplead all parties concerned. Whenever the commissioner deems it advisable, he shall make a complaint to the governor requesting the governor to institute an investigation with the purpose of removing from office any defaulting public official or any public official who so conducts the affairs of his office as to endanger the fund.

SECTION 13. AMENDMENT.) Section 26-23-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-18. CANCELLATION OF LIABILITY OF FUND - WHEN PERMITTED - EFFECT.) The commissioner, after due investigation and if in his judgment the interests of the fund require, may cancel the liability of the fund for the acts of any public employee or public official, such cancellation to take effect thirty days after written notice thereof. In such case, the public official whose bond is canceled, or the public employee whose coverage is canceled under a blanket bond, may secure, at his own expense, a bond executed by a duly authorized surety company.

SECTION 14. AMENDMENT.) Section 26-23-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-19. NOTICE OF CANCELLATION - RIGHT TO APPEAL FROM CANCELLATION - PROCEDURE.) The commissioner shall notify the public employee or public official immediately by registered or certified mail when his bond, or coverage under a blanket bond, is ordered canceled, and the public employee or public official shall have twenty days after the receipt of such notice within which to take an appeal from the decision of the commissioner to the district court of the judicial district in which the public employee or public official resides. The court shall hear such appeal at a day to be fixed by the judge thereof not less than ten days nor more than thirty days after the filing of the appeal with the clerk. Notice of such appeal shall be served by the appellant upon the commissioner. The case shall be tried by the court without a jury.

SECTION 15. AMENDMENT.) Section 26-23-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-20. FUND MAY REINSURE RISKS - PREMIUM ON REINSURANCE.) The commissioner may reinsure any part of any liability in excess

of twenty-five thousand dollars upon any one public official, or group of public officials and public employees under a blanket bond, at a cost not exceeding the rate of premium provided for in this chapter, and the expense of such reinsurance shall be paid out of the fund.

SECTION 16. AMENDMENT.) Section 26-23-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-22. PUBLIC OFFICIAL MAY FURNISH PRIVATE BOND - PREMIUMS PAYABLE FROM PUBLIC MONEYS ONLY TO FUND.) Any person elected or appointed to office, in lieu of the bond provided for in this chapter, may furnish a bond issued by a duly authorized surety company, but no officer or board of the state or of any political subdivision shall pay for any such bond or bonds out of any public funds, except for such bonds as are procured to cover an excess over the amount carried in the fund.

SECTION 17. AMENDMENT.) Section 43-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-04-06. OFFICERS OF BOARD - POWER TO ADMINISTER OATH - BOND.) The members of the board shall elect from their number a president, vice president, and secretary-treasurer. The secretary-treasurer of the board shall be bonded for the faithful discharge of his duties in the penal sum of five thousand dollars. The secretary-treasurer and the president of the board may administer oaths.

SECTION 18. AMENDMENT.) Section 43-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-05-05. SECRETARY-TREASURER - BOND.) The secretary-treasurer of the board shall be bonded for the faithful discharge of his duties in the penal sum of not less than one thousand dollars.

SECTION 19. AMENDMENT.) Section 43-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-03. OFFICERS OF BOARD - COMPENSATION OF MEMBERS - TREASURER'S BOND.) The members of the board may elect from their number a president, a secretary, and a treasurer. The treasurer shall be bonded for the faithful discharge of his duties in the penal sum of five hundred dollars. The members of the board shall receive their actual traveling expenses which shall not exceed the amount specified in section 54-06-09 and other necessary expenses and in addition thereto the secretary shall receive one hundred dollars a year for his services.

SECTION 20. AMENDMENT.) Section 43-11-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-07. BOND OF SECRETARY.) Before entering upon the discharge of the duties of her office, the secretary of the board shall be bonded for the faithful discharge of her duties in the penal sum of five thousand dollars, and the premium for such bond shall be paid from the state hairdressers' fund. The bond and oath of office endorsed thereon shall be deposited with the secretary of state and kept in his office.

SECTION 21. AMENDMENT.) Section 43-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-06. SECRETARY OF BOARD - BOND.) The secretary of the board shall be bonded for the faithful discharge of his duties in such amount as may be prescribed by the board.

SECTION 22. AMENDMENT.) Section 43-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-07. OFFICERS OF BOARD - BOND - DUTIES - COMPENSATION.) The secretary and treasurer of the board each shall be bonded for the faithful discharge of his duties in the penal sum of not less than two thousand dollars. The president, secretary, and treasurer of the board shall perform such duties as the board may prescribe. Officers of the board may be allowed, in addition to their compensation as members of the board, such compensation as four-fifths of the members of the board agree upon.

SECTION 23. AMENDMENT.) Section 43-19.1-09 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-19.1-09. RECEIPTS AND DISBURSEMENTS.) The secretary of the board shall receive and account for all moneys derived under the provisions of this chapter, and shall deposit and disburse the same in accordance with section 54-44-12. The secretary shall give a surety bond to the state in such sum as may be required by the board. The premium on said bond shall be regarded as a proper and necessary expense of the board. The secretary shall receive such salary as the board shall determine. The board shall employ such clerical or other assistants as are necessary for the proper performance of its work, and shall make expenditures of this fund for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this chapter, including but not limited to the expenses of the board's delegates to meetings of, and membership fees to, the national council of state boards of engineering examiners and any of its subdivisions. Under no circumstances shall the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.

SECTION 24. AMENDMENT.) Section 43-25-06 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-06. REMOVAL OF MEMBERS OF BOARD OF MASSAGE - OFFICERS OF THE BOARD - MEETING.) The governor may remove from office

members of the North Dakota board of massage for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board of massage, on his or her resignation or death, all such appointees to be practicing masseurs or masseuses in the state.

The board of massage shall within two weeks after their appointment, meet at some convenient place within the state of North Dakota and shall then elect a president from their own members, and a secretary-treasurer. The secretary-treasurer shall be bonded in the sum of one thousand dollars for the faithful discharge of his duties. The board of massage shall hold examinations from time to time at such place or places as said board may designate.

It shall also be the duty of said board from time to time to examine and inspect or cause to be examined or inspected all massage establishments. Said board and its agents and employees shall have and they are hereby given authority to enter and inspect any such massage establishments at any time during which said establishment is open for the transaction of business.

SECTION 25. AMENDMENT.) Section 43-35-06 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-06. SECRETARY-TREASURER BOND.) Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of his duties in such amount as may be prescribed by the board, the premium therefor to be paid from board funds.

Approved March 12, 1975

## CHAPTER 259

HOUSE BILL NO. 1244  
(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## UNFAIR PRACTICES LAW APPLIES TO SERVICE CORPORATIONS

AN ACT to create and enact sections 26-26-01.1, 26-27-02.1, 26-27.1-02.1, and 26-27.2-02.1 of the North Dakota Century Code, relating to hospital service corporations, medical service corporations, dental service corporations, and vision service corporations, and providing that unfair insurance practices applies to them.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 26-26-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-26-01.1. UNFAIR INSURANCE PRACTICES - APPLICABLE TO HOSPITAL SERVICE CORPORATIONS.) Chapter 26-30 shall be construed to apply to hospital service corporations, contracts with hospitals, and contracts with subscribers except to the extent that the commissioner of insurance determines that the nature of hospital service corporations, contracts with hospitals, and contracts with subscribers render such chapter clearly inappropriate.

SECTION 2.) Section 26-27-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27-02.1. UNFAIR INSURANCE PRACTICES - APPLICABLE TO MEDICAL SERVICE CORPORATIONS.) Chapter 26-30 shall be construed to apply to medical service corporations, contracts with doctors of medicine and oral surgeons, and contracts with subscribers except to the extent that the commissioner of insurance determines that the nature of medical service corporations, contracts with doctors of medicine and oral surgeons, and contracts with subscribers render such chapter clearly inappropriate.

SECTION 3.) Section 26-27.1-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27.1-02.1. UNFAIR INSURANCE PRACTICES - APPLICABLE TO DENTAL SERVICE CORPORATIONS.) Chapter 26-30 shall be construed to apply to dental service corporations, contracts with dentists, and contracts with subscribers except to the extent that the

commissioner of insurance determines that the nature of dental service corporations, contracts with dentists, and contracts with subscribers render such chapter clearly inappropriate.

SECTION 4.) Section 26-27.2-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27.2-02.1. UNFAIR INSURANCE PRACTICES - APPLICABLE TO VISION SERVICE CORPORATIONS.) Chapter 26-30 shall be construed to apply to vision service corporations, contracts with practitioners, and contracts with subscribers except to the extent that the commissioner of insurance determines that the nature of vision service corporations, contracts with practitioners, and contracts with subscribers render such chapter clearly inappropriate.

Approved March 27, 1975

## CHAPTER 260

HOUSE BILL NO. 1176

(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## UNFAIR INSURANCE PRACTICES

AN ACT to create and enact subsections 9, 10, and 11 of section 26-30-04 and section 26-30-04.1 of the North Dakota Century Code; to amend and reenact subsection 1 of section 26-30-04 and sections 26-30-07 and 26-30-08 of the North Dakota Century Code; and to repeal section 26-30-09 of the North Dakota Century Code, all relating to unfair insurance practices; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 26-30-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, retain, or surrender his insurance.

SECTION 2.) Subsections 9, 10, and 11 of section 26-30-04 of the North Dakota Century Code are hereby created and enacted to read as follows:

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with such frequency as to indicate a general business practice:

(a) Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.

(b) Failing to acknowledge with reasonable promptness



pertinent communications with respect to claims arising under insurance policies.

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(d) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.

(e) Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

(f) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(g) Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made a part of an application.

(i) Attempting to delay the investigation or payment of claims by requiring an insured and his physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(j) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.

(k) Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.

10. Unfair handling of communications by insurer. Failing to adopt and implement reasonable standards for the prompt handling of written communications, primarily expressing grievances, received by the insurer from insureds or claimants.

11. Refusing to insure risks. Refusing to insure risks solely because of race, color, creed, sex, or national origin.

SECTION 3. Section 26-30-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-30-04.1. REGULATIONS.) The commissioner of insurance may, from time to time, promulgate reasonable rules and regulations, as are necessary to identify specific methods of competition and acts or practices which are prohibited by section 26-30-04; provided, however, such regulations shall not enlarge upon or extend the provisions thereof, and such rules and regulations shall be subject to review in accordance with chapter 28-32.

SECTION 4. AMENDMENT.) Section 26-30-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-30-07. CEASE AND DESIST, PENALTY ORDERS AND MODIFICATIONS THEREOF.)

1. If, after such hearing, the commissioner of insurance shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice. If, after such hearing, the person charged is found to have willfully engaged in a method of competition, act, or practice in violation of section 26-30-04, the commissioner of insurance, in the order served upon such person, may also require such person to pay, in lieu of all other penalties for such violation, a civil penalty which, as to all matters determined in such hearing, shall not exceed ten thousand dollars.
2. Until the expiration of the time allowed under subsection 1 of section 26-30-08 for filing a petition for review by appeal if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner of insurance may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.
3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner of insurance may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

SECTION 5. AMENDMENT.) Section 26-30-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-30-08. JUDICIAL REVIEW OF CEASE AND DESIST, AND PENALTY ORDERS.)

1. Any person required by an order of the commissioner of insurance under section 26-30-07 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 26-30-04 or to pay a civil penalty may obtain a review of such order by filing in the district court of Burleigh County, within thirty days from the date of the service of such order, a written petition praying that the order of the commissioner of insurance be set aside. A copy of such petition shall be forthwith served upon the commissioner of insurance, and thereupon the commissioner of insurance forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of petition and transcript such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the commissioner of insurance, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming, or reversing the order of the commissioner of insurance, in whole or in part. The findings of the commissioner as to the facts, if supported by competent evidence, shall be conclusive.
2. To the extent that the order of the commissioner of insurance is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner of insurance. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner of insurance, the court may order such additional evidence to be taken before the commissioner of insurance and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner of insurance may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which if supported by competent evidence shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

3. An order issued by the commissioner of insurance under section 26-30-07 shall become final:
  - a. Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner of insurance may thereafter modify or set aside his order to the extent provided in subsection 2 of section 26-30-07; or
  - b. Upon the final decision of the court if the court directs that the order of the commissioner of insurance be affirmed or the petition for review dismissed.
4. No order of the commissioner of insurance under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 6. REPEAL.) Section 26-30-09 of the North Dakota Century Code is hereby repealed.

Approved April 8, 1975

## CHAPTER 261

HOUSE BILL NO. 1139  
(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## CREDIT INSURANCE

AN ACT to amend and reenact subsection 2 of section 26-35-02 of the North Dakota Century Code, pertaining to the scope of the regulation of credit insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 26-35-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except such insurance in connection with a loan or other credit transaction of more than twenty years' duration; nor shall insurance be subject to the provisions of this chapter where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

Approved March 12, 1975

## CHAPTER 262

HOUSE BILL NO. 1135

(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

## HEALTH MAINTENANCE ORGANIZATIONS

AN ACT relating to the establishment of health maintenance organizations and to provide for the licensing of such organizations by the state department of health and the commissioner of insurance; to provide for the regulation of such organization by the commissioner of insurance; to provide grounds and procedure for the suspension, revocation, and denial of a certificate of authority for such organizations; and to provide a penalty for the violation of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act:

1. "Commissioner" means the commissioner of insurance;
2. "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services;
3. "Enrollee" means a natural person who has been enrolled in a health care plan;
4. "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which he is entitled;
5. "Health care plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from mere indemnification against the cost of such services, on a prepaid basis through insurance or otherwise;
6. "Health care services" means any services included

in the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness or injury;

7. "Health maintenance organization" means any person which undertakes to provide or arrange for one or more health care plans;
8. "Person" means any natural or artificial person including but not limited to individuals, partnerships, associations, trusts, or corporations;
9. "Provider" means any physician, hospital, or other person which is licensed or otherwise authorized in this state to furnish health care services.

SECTION 2. HEALTH MAINTENANCE ORGANIZATIONS AUTHORIZED - COMPLIANCE WITH ACT.) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may similarly apply for a certificate of authority under this Act, subject to its registration to do business in this state as a foreign corporation under chapter 10-22.

Every health maintenance organization operating in this state as of the effective date of this Act shall submit an application for a certificate of authority under section 3 within thirty days of the effective date of this Act. Each such applicant may continue to operate until the commissioner acts upon its application. In the event that such an application is denied under section 6, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

SECTION 3. APPLICATION FOR CERTIFICATE OF AUTHORITY - FORM - CONTENTS.) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

1. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

2. A copy of the bylaws, rules, regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
3. A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;
4. A copy of any contract made or to be made between any providers or persons listed in subsection 3 and the applicant;
5. A statement generally describing the health maintenance organization, its health care plan or plans, its facilities, and its personnel;
6. A copy of the form of evidence of coverage to be issued to each enrollee;
7. A copy of the form of group contract, if any, which is to be issued to the employer, union, trustees, or other organization;
8. Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information shall be required for the proper administration of this Act;
9. A description of the proposed method of marketing the plan;
10. A description of a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding;
11. A power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;



12. A statement reasonably describing the geographic area or areas to be served;
13. A description of the complaint procedures to be utilized as required under this Act;
14. A description of the procedures and programs to be implemented to meet the quality of health care requirements in section 5;
15. A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section 8;
16. Such other information as the commissioner may require to make the determination required in sections 5 and 6.

SECTION 4. NOTICE OF MODIFICATION - FILING.) A health maintenance organization shall, unless otherwise provided for in this Act, file a notice describing any modification of the operation set out in the information required by section 3. Such notice shall be filed with the commissioner prior to effecting the modification. If the commissioner does not disapprove within fifteen days of filing, such modification shall be deemed approved.

The commissioner may promulgate rules and regulations exempting from the filing requirements of this section those items he deems unnecessary.

SECTION 5. APPLICATION FOR CERTIFICATE OF AUTHORITY - REVIEW PROCEDURE - STATE DEPARTMENT OF HEALTH.) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall forthwith transmit copies of such application and accompanying documents to the state department of health.

The state department of health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

1. Has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility, and continuity of service;
2. Has established arrangements, in accordance with regulations promulgated by the state department of health, for an ongoing quality of health care assurance program concerning health care processes and outcomes; and
3. Has established a procedure, in accordance with regulations of the state department of health, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and such other matters

as may be reasonably required by the state department of health.

Within thirty days of receipt of the application for issuance of a certificate of authority, the state department of health shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the state department of health certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

SECTION 6. REVIEW OF APPLICATION BY COMMISSIONER - ISSUANCE OF CERTIFICATE OF AUTHORITY.) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 3 within a reasonable length of time following receipt of the certification from the state department of health. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed if the commissioner is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are honest, competent, and trustworthy;
2. The state department of health certifies, in accordance with section 5, that the health maintenance organization's proposed plan of operation meets the requirements of that section;
3. The health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments;
4. The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:
  - a. The financial soundness of the health care plan's arrangements for health care services and the schedule of charges used in connection therewith;
  - b. The adequacy of working capital;
  - c. Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

- d. Any agreement with providers for the provision of health care services; and
  - e. Any surety bond or deposit of cash or securities submitted in accordance with section 19 as a guarantee that the obligations will be duly performed.
5. The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section 8;
  6. Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 3 or by independent investigation, is contrary to the public interest; and
  7. Any deficiencies certified by the state department of health have been corrected.

Denial of a certificate of authority shall be effective only after compliance with the requirements of section 28.

SECTION 7. POWERS OF HEALTH MAINTENANCE ORGANIZATION - EXERCISE OF CERTAIN POWERS SUBJECT TO REVIEW BY COMMISSIONER - FILING OF NOTICE - DISAPPROVAL - RULES AND REGULATIONS.) The powers of a health maintenance organization include, but are not limited to the following:

1. The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the organization;
2. The making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities or hospitals or in furtherance of a program providing health care services to enrollees;
3. The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;
4. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, or administration;
5. The contracting with an insurance company licensed in this state, or with a hospital or medical service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization;

6. The offering, in addition to basic health care services, of:
  - a. Additional health care services;
  - b. Indemnity benefits covering out of area or emergency services; and
  - c. Indemnity benefits, in addition to those relating to out of area and emergency services, provided through insurers or hospital or medical service corporations.

A health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in subsections 1 or 2. The commissioner shall disapprove such exercise of power if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within thirty days of such filing, it shall be deemed approved. The commissioner may promulgate rules and regulations exempting from this filing requirement those activities having a de minimis effect.

SECTION 8. GOVERNING BODY - PARTICIPATION BY ENROLLEES.) The governing body of any health maintenance organization may include providers, representatives of providers, other individuals, or a combination of same. Such governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

SECTION 9. FIDUCIARY RESPONSIBILITIES.) Any director, officer, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

SECTION 10. EVIDENCE OF COVERAGE - FILING OF FORMS AND AMENDMENTS - CONTENTS - EXCEPTION.) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a hospital or medical service corporation, whether by option or otherwise, the insurer or the hospital or medical service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

An evidence of coverage shall contain:

1. No provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in section 20; and
2. A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate, of:
  - a. The health care services and the insurance or other benefits, if any, to which the enrollee is entitled under the health care plan;
  - b. Any limitations on the services, kinds of services, benefits, or kinds of benefits, to be provided, including any deductible or copayment feature;
  - c. Where and in what manner information is available as to how services may be obtained;
  - d. The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to an individual contract, and an indication whether the plan is contributory or noncontributory with respect to group certificates; and
  - e. A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

Any subsequent change may be evidenced in a separate document issued to the enrollee.

A copy of the form of evidence of coverage to be used in this state, and any amendment thereto, shall be subject to the filing and approval requirements of this section unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance companies or hospital or medical service corporations in which event the filing and approval provisions of such laws shall apply. To the extent, however, that such provisions do not apply, the requirements in this section shall be applicable.

#### SECTION 11. FILING AND APPROVAL OF SCHEDULE OF CHARGES.)

No schedule of charges for enrollee coverage for health care services, or amendment thereto, may be used in conjunction with any health care plan until a copy of such schedule, or amendment thereto, has been filed with and approved by the commissioner.

Such charges shall be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually

determined and based on the status of his health or physical disability. However, the charges shall not be excessive, inadequate, or unfairly discriminatory. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information. For this purpose, a qualified actuary shall mean a member of the American Academy of Actuaries or such other actuary who may be approved for this purpose by the commissioner.

SECTION 12. DISAPPROVAL OF FORMS OR CHARGES - PROCEDURE.) The commissioner shall, within a reasonable period, approve any form if the requirements of section 10 are met and any schedule of charges if the requirements of section 11 are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves such filing, he shall notify the person filing. In the notice, the commissioner shall specify the reasons for his disapproval. A hearing will be granted within fifteen days after a request in writing by the person filing. If the commissioner does not disapprove any form or schedule of charges within thirty days of the filing of such form or charges, they shall be deemed approved.

SECTION 13. FILING OF RELEVANT INFORMATION - AUTHORITY OF COMMISSIONER.) The commissioner may require the submission of whatever relevant information he deems necessary in determining whether to approve or disapprove a filing made pursuant to sections 10, 11, and 12.

SECTION 14. ANNUAL REPORT - FORM PRESCRIBED BY COMMISSIONER.) Every health maintenance organization shall annually, on or before the first day of March, file a report, verified by at least two principal officers, with the commissioner with a copy to the state department of health covering the preceding calendar year.

Such report shall be on forms prescribed by the commissioner and shall include:

1. A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent public accountant;
2. Any material changes in the information submitted pursuant to section 3;
3. The number of persons enrolled during the year, the number of enrollees terminated during the year, and the number of enrollees as of the end of the year;
4. A summary of information compiled pursuant to section 5 in such form as required by the state department of health; and
5. Such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out his duties under this Act.



SECTION 15. INFORMATION FURNISHED TO ENROLLEES.) Every health maintenance organization shall annually provide to its enrollees:

1. The most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements;
2. A description of the organizational structure and operation of the health care plan and summary of any material changes since the issuance of the last report;
3. A description of services and information as to where and how to secure them; and
4. A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

SECTION 16. OPEN ENROLLMENT - LIMITING MEMBERSHIP.) After a health maintenance organization has been in operation twenty-four months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or disapprove such application within thirty days of the receipt thereof from the health maintenance organization.

Health maintenance organizations providing or arranging for services exclusively on a group contract basis may limit the open enrollment provided for herein to all members of the group or groups covered or to be covered by such contracts.

SECTION 17. COMPLAINT SYSTEM - APPROVAL OF COMMISSIONER - ANNUAL REPORT - CONTENTS - OTHER THAN HEALTH CARE SERVICES COMPLAINTS - EXAMINATIONS.) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner, after consultation with the state department of health, to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

Each health maintenance organization shall submit to the commissioner and the state department of health an annual report in a form prescribed by the commissioner, after consultation with the state department of health, which shall include:

1. A description of the procedures of such complaint system;

2. The total number of complaints handled through such complaint system and a compilation of causes underlying the complaints filed; and
3. The number, amount, and disposition of malpractice claims settled during the year by the health maintenance organization and any of the providers used by it.

The health maintenance organization shall maintain records of written complaints filed with it concerning other than health care services and shall submit to the commissioner a summary report at such times and in such format as the commissioner may require. Such complaints involving other persons shall be referred to such persons with a copy to the commissioner.

The commissioner or the state department of health, or both, may examine such complaint system.

SECTION 18. AUTHORIZED INVESTMENTS.) With the exception of investments made in accordance with subsections 1 and 2 of section 7, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit.

SECTION 19. PROTECTION AGAINST INSOLVENCY - DEPOSIT OF BOND, CASH, OR SECURITIES.) Each health maintenance organization shall furnish a surety bond in an amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to him in at least the same amount as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement whenever satisfied that the assets of the organization or its contracts with insurers, hospital or medical service corporations, governments, or other organizations are such as to reasonably assure the performance of its obligations.

SECTION 20. PROHIBITED PRACTICES - ADVERTISING AND SOLICITATION - CANCELLATION OF ENROLLEES - NAME OF ORGANIZATION.) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

1. A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;
2. A statement or item of information shall be deemed to be misleading, whether or not it may be literally



untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating the existence of any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

3. An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available to enrollees covered under such evidence of coverage.

An enrollee may not be cancelled or nonrenewed except for the failure to pay the proper charge for such coverage, or for such other reasons as may be promulgated by the commissioner.

No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

SECTION 21. UNFAIR INSURANCE PRACTICES - APPLICABLE TO HEALTH MAINTENANCE ORGANIZATIONS.) Chapter 26-30 shall be construed to apply to health maintenance organizations, health care plans, and related evidences of coverage except to the extent that the commissioner determines that the nature of health maintenance organizations, health care plans, and related evidences of coverage render such chapter or portions thereof clearly inappropriate.

SECTION 22. REGULATION OF AGENTS - RULES AND REGULATIONS - DEFINITION.) The commissioner may promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. An agent means a person directly or indirectly associated with a health care plan who engages in solicitation or enrollment.

SECTION 23. POWERS OF INSURERS AND HOSPITAL AND MEDICAL SERVICE CORPORATIONS.) An insurance company licensed in this state, or a hospital or medical service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance

organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies, hospital or medical service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

Notwithstanding any provision of insurance or hospital or medical service corporation laws, an insurer or a hospital or medical service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide uninterrupted coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization constitute a permissible group under such laws. Among other rights under such contracts, the insurer or hospital or medical service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers pursuant to the health care plan.

SECTION 24. EXAMINATIONS BY COMMISSIONER AND STATE DEPARTMENT OF HEALTH - EXPENSES ASSESSED AGAINST ORGANIZATION - EXAMINATION BY OTHER STATES.) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements pursuant to its health care plan as often as he deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

The state department of health may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements pursuant to its health care plan as often as it deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

Every health maintenance organization and provider shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the commissioner and the state department of health may administer oaths to, and examine the officers and agents of the health maintenance organization and the principals of such providers concerning their business.

The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner or the state department of health for whom the examination is being conducted.

In lieu of such examination, the commissioner or the state department of health may accept the report of an examination made

by the commissioner or the state department of health of another state or jurisdiction.

SECTION 25. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY - GROUNDS - PROCEDURE - DUTY OF HEALTH MAINTENANCE ORGANIZATIONS ON SUSPENSION OR REVOCATION.) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if he finds that any of the following exist:

1. The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under sections 2, 3, and 4, unless amendments to such submissions have been filed with and approved by the commissioner;
2. The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of sections 10, 11, 12, and 13;
3. The health care plan does not provide or arrange for basic health care services;
4. The state department of health certifies to the commissioner that:
  - a. The health maintenance organization does not meet the requirements of section 5; or
  - b. The health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its health care plan;
5. The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
6. The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section 8;
7. The health maintenance organization has failed to implement the complaint system required by section 17 in a manner to reasonably resolve valid complaints;
8. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

9. The continued operation of the health maintenance organization would be hazardous to its enrollees;
10. The health maintenance organization has otherwise failed to substantially comply with this Act.

A certificate of authority shall be suspended or revoked only after compliance with the requirements of section 28.

When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

SECTION 26. REHABILITATION, LIQUIDATION, OR CONSERVATION OF HEALTH MAINTENANCE ORGANIZATIONS.) Any rehabilitation, liquidation, or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in section 26-21-02.

SECTION 27. RULES AND REGULATIONS - AUTHORITY OF COMMISSIONER.) The commissioner may promulgate reasonable rules and regulations, as are necessary and proper to carry out the provisions of this Act. Such rules and regulations shall be subject to review in accordance with chapter 28-32.

SECTION 28. ADMINISTRATIVE PROCEDURES.) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the health maintenance organization and the state department of health in writing specifically stating the grounds for denial, suspension, or revocation and fixing a time for a hearing on the matter as provided in chapter 28-32.

The state department of health, or his designated representative, shall be in attendance at the hearing and shall participate in the proceedings. The recommendation and findings of the state department of health with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority, shall be conclusive and binding upon the commissioner. After such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the commissioner shall take action as is deemed advisable on written findings which shall be mailed to the health maintenance organization with a copy thereof to the state department of health. The action of the commissioner and the recommendation and findings of the state department of health shall be subject to review as provided in chapter 28-32. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

The provisions of chapter 28-32 shall apply to proceedings under this section to the extent to which they are not in conflict with the provisions herein.

SECTION 29. FEES.) Every health maintenance organization subject to this Act shall pay to the commissioner a fee as provided in section 26-01-04 for filing an application for a certificate of authority or amendment thereto and for filing each annual report. Such fees charged under this section shall be deposited into the general fund.

SECTION 30. ADMINISTRATIVE FINE - CRIMINAL PENALTY.) The commissioner may, in lieu of suspension or revocation of a certificate of authority under section 25, levy an administrative penalty in an amount not less than five hundred dollars nor more than ten thousand dollars, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation.

Any person who violates this Act shall be guilty of a class A misdemeanor.

SECTION 31. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.) Except as otherwise provided in this Act, neither provisions of the insurance laws nor provisions of hospital or medical service corporation laws shall be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this Act.

Solicitation of enrollees by a health maintenance organization

granted a certificate of authority, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

Any health maintenance organization authorized under this Act shall not be deemed to be practicing medicine and shall be exempt from the laws of this state relating to the practicing of medicine, provided, however, all providers within the health maintenance organization shall be subject to the licensure laws of their respective professions.

SECTION 32. FILINGS AND REPORTS AS PUBLIC DOCUMENTS.)

All applications, filings, and reports required under this Act shall be treated as public documents.

SECTION 33. CONFIDENTIALITY OF MEDICAL INFORMATION.)

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant for enrollment obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.

SECTION 34. STATE DEPARTMENT OF HEALTH'S AUTHORITY TO

CONTRACT.) The state department of health, in carrying out its obligations under sections 5, 24, and 25, may contract with qualified persons to make recommendations concerning the determinations required to be made by it.

SECTION 35. COMMISSIONER MAY REQUIRE OFFICIAL BOND OF

OFFICERS AND EMPLOYEES.) If the commissioner shall deem it necessary for the security of the funds of a health maintenance organization organized and operating under the provisions of this Act, he may require an official bond of each officer and each employee of such organization in an amount not to exceed the sum of money for which each is accountable.

Approved March 19, 1975



## CHAPTER 263

HOUSE BILL NO. 1596

(Royse, Mushik, Kretschmar, Irving)

**MENTAL ILLNESS AND ADDICTION  
INSURANCE COVERAGE**

AN ACT to require health insurance coverage for persons suffering from mental illness, alcoholism, and drug addiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) As used in this Act, unless the context or subject matter otherwise requires:

1. "Licensed treatment facility" means any hospital, as defined in subsection 29 of section 52-01-01 and the state department of health rules and regulations pursuant thereto or as licensed under section 23-17.1-01, offering treatment for the prevention or cure of mental illness, alcoholism, drug addiction, or other related illness.
2. "Partial hospitalization" means that level and intensity of treatment that is greater than outpatient treatment, but less than inpatient treatment.

SECTION 2. INSURANCE COMPANIES TO COMPLY WITH ACT.) No insurance company, nonprofit hospital service corporation, or nonprofit medical service corporation authorized to do business within this state shall deliver, issue, execute, or renew any policy of health insurance on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by such policy and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for such coverage unless such policy shall conform to the requirements of this Act.

SECTION 3. TYPES OF COVERAGE REQUIRED.) Any policy described in section 2 of this Act shall provide benefits, of the same type offered under such policy for other illnesses, for health services to any person covered under such policy, for the diagnosis, evaluation, and treatment of mental illness, alcoholism, drug addiction, or other related illness, in a licensed hospital.

SECTION 4. TYPES OF BENEFITS REQUIRED.) The benefits described in section 3 of this Act may be provided for inpatient treatment and treatment by partial hospitalization:

1. In the case of benefits provided for inpatient treatment, such benefits shall be provided for a minimum of seventy days of service in any calendar year.
2. In the case of benefits provided for partial hospitalization, such benefits shall be provided for a minimum of one hundred forty days of service in any calendar year.
3. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits shall be payable, each day of inpatient treatment shall be equivalent to two days of treatment by partial hospitalization.

SECTION 5. OTHER POLICIES.) The provisions of this Act shall not be construed to prevent any insurance company or non-profit hospital or medical service corporation from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this Act, where such policy or contract is not subject to such provisions.

Approved April 8, 1975



## CHAPTER 264

HOUSE BILL NO. 1614

(Wagner)

(Committee on Delayed Bills)

### MEDICAL MALPRACTICE INSURANCE

AN ACT relating to the establishment of a mutual liability insurance company to provide payments to injured parties for medical malpractice claims resulting from the rendering of or failure to render professional services by physicians, surgeons, or authorized persons; if needed, authorizing a tax on physicians to create the mutual liability insurance company and a means to collect the tax; granting certain tax deductions and exemptions; and providing for duties and powers of directors in relation thereto.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT.) Since there is a nationwide crisis in the field of medical malpractice insurance and physicians practicing medicine within the state of North Dakota are finding, or will find, it increasingly difficult, if not impossible, to obtain medical malpractice insurance; the purpose of this Act is to provide for the payment of indemnities to persons suffering injury arising out of the rendering of or the failure to render professional services by physicians and to provide means whereby physicians may obtain insurance against liability therefor, subject to the limitations and immunities provided in this Act.

SECTION 2. DEFINITIONS.) As used in this Act the following definitions shall apply:

1. "Practice of medicine" means the practice of medicine, surgery, and obstetrics and has the same meaning specified in subsection 1 of section 43-17-01;
2. "Physician" means physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.);
3. "Board" means the state board of medical examiners;
4. "Commissioner" means the commissioner of insurance.

SECTION 3. AUTHORITY.) An incorporated mutual insurance company is authorized, known as the "North Dakota Medical Malpractice Mutual Insurance Company", hereinafter referred to as

"the company". The company shall be subject to and governed by the provisions of this chapter and shall not be subject to the laws of this state relating to insurance and insurance companies except as hereinafter specifically provided. The company has all the powers, privileges, and immunities granted by and is subject to all the obligations imposed upon an incorporated mutual insurance company under the provisions of chapter 26-14 and the North Dakota Nonprofit Corporation Act. If a provision of chapter 26-14 or a provision of the North Dakota Nonprofit Corporation Act and the provisions of this Act are both by their terms applicable, the provisions of this Act shall control.

SECTION 4. BOARD OF DIRECTORS - ARTICLES OF INCORPORATION - BYLAWS - INSURING POWERS.)

1. The company will be governed by a board of directors which shall consist of eleven members. The initial board of directors shall be appointed by the commissioner within thirty days of notification by the board of examiners of its decision for implementation of this Act from fifteen nominees proposed by said board. The initial board shall serve for an initial term of seven months. Thereafter, the directors shall be elected by the members of the company in accordance with the articles of incorporation and bylaws.
2. At least seven of the board of directors shall be licensed physicians and at least two of the directors shall have had insurance underwriting or claims handling experience.
3. Within thirty days of their appointment by the commissioner, the initial board of directors shall cause articles of incorporation and bylaws to be prepared and filed in accordance with chapter 26-14, including the provisions of this Act.
4. Upon filing the articles of incorporation and bylaws with the commissioner of insurance, the articles and bylaws will be operative and the commissioner shall issue a certificate of authority subject only to verification by the commissioner that the required initial surplus of the company has been paid and all deposits have been completed.
5. The certificate of authority shall authorize the company to issue policies of casualty insurance as follows:
  - a. Insurance against liability of physicians for injury arising out of the rendering of or failure to render professional services by the insured;

- b. Insurance against the liability of any person for whose act or omissions a physician is responsible under the provisions of subdivision a, or with whom he is associated, including partners, employees, employers, associates, consultants, or a professional service corporation whose stock is owned by an insured;
- c. Insurance against other liabilities for injury by persons employed in, by property used in, or by activities incidental to, the practice of medicine by the named insured, when issued as incidental coverage with or supplemental to insurance specified in subdivision a.

SECTION 5. INITIAL POLICYHOLDERS SURPLUS - TAX - MEMBERSHIP FEE.)

1. If physicians practicing medicine within North Dakota find it difficult to obtain medical malpractice insurance, the state board of medical examiners, by a majority vote of its membership, may elect to initiate the provisions of this Act. The board by motion adopted by a majority vote of all its members may elect to implement the provisions of this Act. Prior to the expiration of fifteen days from the date the election to implement this Act is made, the board shall certify to the state treasurer a list of all licensed physicians as shown in the latest record of the state board of medical examiners.
2. A special one-time tax for the privilege of practicing medicine in North Dakota will be levied on licensed physicians listed by the state treasurer in accordance with subsection 1 in the amount of five hundred dollars per licensed physician, to be levied, assessed, and collected by the state treasurer. The tax does not apply to any physician who submits a statement, sworn to under penalties of perjury, stating that he has permanently terminated the practice of medicine in the state of North Dakota. The statement shall be in the form established by the state treasurer.
3. The legislature appropriates and dedicates the entire proceeds of the tax provided by this Act as the initial policyholders surplus of the company, and the treasurer and director of accounts and purchases shall promptly pay over the proceeds of the tax to the company.
4. The board of directors of the company may establish membership fees in amounts as they deem reasonable to be paid by members of the company. Any physician who has paid the tax specified in subsection 2 shall be credited the amount of the tax paid against his liability for any membership fee.

5. Upon payment of the specified membership fee, a physician may be insured by the company for any and all hazards customarily insured by the company, subject to any limitation of coverage specified by the company in accordance with policy limitations, exclusions, conditions, deductibles, and loss sharing requirements.

SECTION 6. MINIMUM SURPLUS.) The minimum surplus to be maintained by the company shall be three hundred thousand dollars at all times.

SECTION 7. MANAGEMENT AND ADMINISTRATION OF THE COMPANY.)

1. If, in the judgment of the board of directors, the affairs of the company thereby may be administered suitably and efficiently, the company may enter into a contract, not to exceed five years in duration, whereby the affairs of the company may be administered by a licensed insurer or a licensed nonprofit health service plan, subject to such continuing direction by the board of directors as specified in the articles of incorporation, the bylaws, and the contract.
2. The basis of compensation to the administering licensed insurer or plan in any contract described in this section shall be reimbursement of expenses reasonably allocable to the business of the company plus an appropriate and reasonable additional allowance as specified in the contract. Any additional allowance, if based upon premium volume or size of membership, shall contain a reasonable aggregate dollar maximum. The amount of the fee shall not be made dependent on the underwriting or investment profits of the company.
3. Upon the execution of any contract, the company shall promptly file a true copy with the commissioner. The contract shall become effective thirty days from the date of the filing unless the commissioner, prior to the effective date, disapproves the contract as illegal, unduly onerous, or not in the best interest of the company and states the reasons for his findings.

SECTION 8. RATES AND RATE FILING.) The rates and premiums to be charged for insurance by the company shall be subject to the provisions of chapter 26-28 except that the commissioner may not disapprove or terminate the effectiveness of any rate filing made by or on behalf of the company on the grounds that the rates or premiums are excessive.

SECTION 9. RESERVES FOR MALPRACTICE CLAIMS.)

1. The reserve maintained by the company for outstanding losses under insurance against injury arising out of the rendering of or the failure to render professional services by an insured for all policies written during

the eight years immediately preceding the date of the reserve determination shall be seventy percent of the earned premiums of each of the eight years less all losses and loss expense payments made under policies written in the corresponding years.

2. In any event, the reserves for each of the eight years shall not be less than the aggregate of estimated unpaid losses and loss expenses for claims incurred under liability policies written in the corresponding year computed on an individual case basis as to cases known and reported, plus reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of valuation but not previously reported, including an amount estimated to provide for the expenses of adjustment, settlement, or litigation of the losses or claims.

SECTION 10. DIVIDENDS TO POLICYHOLDERS.) Every policy issued by the company shall include a provision that the company periodically will ascertain and apportion any divisible surplus under the policy which may accrue on policy anniversaries or other dividend dates specified in the contract. This provision shall provide that no apportionment or payment of any divisible surplus may take place until the expiration of at least eight years from the termination of the policy period for which the dividend applies. This provision also shall provide that the dividends may be paid only as directed by the board of directors from divisible surplus after due consideration of the financial condition and operating needs of the company.

SECTION 11. LIMITED LIABILITY OF INSURED.)

1. Any person insured by the company for liability because of injury arising out of the rendering of or the failure to render professional services in limits equal to or greater than five hundred thousand dollars for each claim or suit covered, subject to an aggregate limit of liability for all claims insured in a single policy period equal to or in excess of one million dollars, is immune from all liability in excess of these limits, and further is immune from any liability for sums owing by the company under the terms of the policy regardless of whether or not the company has paid the sums. The immunity established by this section applies to an insured individual or professional service corporations notwithstanding any other provisions of the law.
2. Nothing in this section relieves an insured from his personal share of liability not in excess of a five hundred thousand dollar and one million dollar limitations above specified for a loss, expense, or damage not insured by the company by reason of noncoverage, exclusions, deductibles, loss sharing provisions, or conditions in the

applicable policy of the company.

SECTION 12. OPTIONAL MEMBERSHIP IN INSURANCE GUARANTY ASSOCIATION.) The company shall not be a member insurer under chapter 26-36 unless the board of directors by appropriate resolution, certified to and filed with the commissioner on or before December 31 following the issuance of its certificate of authority, elects to become a member. If there is an affirmative election, the company shall become a member of the insurance guaranty association effective July 1 of the following year. The election is irrevocable. In absence of a timely irrevocable election, no policyholder, claimant, or creditor of the company may receive any payment by the insurance guaranty association.

SECTION 13. TERMS OF COVERAGE - CLASSIFICATIONS.)

1. The terms and conditions of all policies issued by the company to physicians shall be essentially uniform in terms and coverage.
2. Notwithstanding the provision of subsection 1, the company may prescribe reasonable classifications of physicians and insureds activities and exposures based on good faith determination of relative exposures and hazards among classifications and may vary the limits, coverages, exclusions, conditions, and loss sharing provisions among classifications. Additionally the company may describe in the case of an individual physician within a class, reasonable variations in the terms of coverage including, but not limited to, deductibles in loss sharing provisions, based upon the insured's prior loss experience and current professional training and capability.

SECTION 14. EXEMPTION FROM TAXATION.) The property, income, premiums, and activities of the company are exempt from all taxes and assessments and from any fees specified for licenses and certifications of the insurance laws with the exception of any assessment made by the insurance guaranty association in the event that an affirmative election is held in accordance with section 12 of this Act.

SECTION 15. SERVICES TO THE COMPANY.) Any licensed nonprofit health service plan by appropriate action of the board of directors or board of trustees may enter into a contract with the company in accordance with section 7 of this Act, for the furnishing of services to the company. In the performance of the services under any contract, the contracting health service plan is subject to the provisions of this Act applying to the company.

Approved April 8, 1975

## CHAPTER 265

HOUSE BILL NO. 1214  
(Committee on Industry, Business, and Labor)  
(At the request of the Insurance Commissioner)

### AUTO ACCIDENT REPARATIONS ACT

AN ACT to provide for the compensation of injured persons resulting from motor vehicle accidents; for security for motor vehicles on a compulsory basis; for certain mandatory minimum insurance or self-insurance protection benefits payable regardless of fault in cases of accidental bodily injury; for an exemption for secured persons from general damages; for subrogation, intercompany arbitration, and offset of benefits paid against judgments; for an assigned claims plan; for a mandatory offering of excess optional no-fault benefits; to create and enact new subsections to sections 39-04-05 and 39-04-06 relating to the suspension or revocation of motor vehicle registration for failure to have security in effect as required by this Act; providing an effective date; and providing an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. SHORT TITLE.) This Act shall be known and may be cited as the "North Dakota Auto Accident Reparations Act".

SECTION 2. LEGISLATIVE DECLARATION.) The general assembly declares that its purpose in enacting this Act is to avoid inadequate compensation to victims of motor vehicle accidents, to require registrants of motor vehicles in this state to procure insurance covering legal liability arising out of ownership or operation of such motor vehicles and also providing benefits to persons occupying such motor vehicles and to persons injured in accidents involving such motor vehicles; to limit the right to claim damages for noneconomic loss in certain cases; and to organize and maintain an assigned claims plan.

SECTION 3. DEFINITIONS.) As used in this Act, the following definitions shall apply:

1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death resulting therefrom, arising out of the operation of a motor vehicle, and which is accidental as to the person claiming basic or optional excess no-fault benefits.

2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident shall not exceed fifteen thousand dollars, regardless of the number of persons entitled to such benefits or the number of basic no-fault insurers obligated to pay such benefits. Basic no-fault benefits payable shall not exceed one hundred and fifty dollars per week per person prorated for any lesser period for work loss or survivors income loss, or one thousand dollars for funeral, cremation, and burial expenses.
3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
4. "Dependent survivors" of a deceased injured person include the following survivors only:
  - a. The surviving spouse if residing in the deceased's household at the time of his death; and
  - b. Other persons receiving support from the deceased at the time of his death which would qualify them as dependents of the deceased for federal income tax purposes under the Federal Internal Revenue Code.

The dependency of a surviving spouse shall terminate upon remarriage.

5. "Economic loss" means one or more of the following:
  - a. Medical expenses and rehabilitation expenses; and
  - b. Work loss, replacement services loss, survivors income loss, survivors replacement services loss, and funeral, cremation, and burial expenses.
6. "Injured person" means a person who sustains accidental bodily injury.
7. "Medical expenses" means reasonable charges incurred for necessary medical surgical, x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in accordance with a recognized religious healing method. Medical expenses do not include that portion of



the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility or any similar facility in excess of the reasonable and customary charge for semi-private accommodations unless intensive care is medically needed.

8. "Motor vehicle" means a vehicle having more than three load bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
9. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary damage recoverable under the tort law of this state.
10. "Occupying" means to be in or upon a motor vehicle or engaged in the immediate act of entering into or alighting from the motor vehicle.
11. "Operation of a motor vehicle" means operation, maintenance, or use of a motor vehicle as a vehicle. Operation of a motor vehicle does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the injury occurs off the business premises, or conduct in the course of loading and unloading the vehicle unless the injury occurs while occupying it.
12. "Owner" means the person in whose name the motor vehicle has been registered. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person who holds the legal title thereto, or in the event the motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, "owner" means the debtor or lessee.
13. "Pedestrian" means any person not occupying a motor vehicle designed to be driven or drawn by power other than muscular power.
14. "Relative" means any of the following residing in the same household as the owner: a person related to the owner by blood, marriage, or adoption, or a foster child. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

15. "Replacement services loss" means expenses not exceeding fifteen dollars per day in obtaining ordinary and necessary services from others not members of the injured person's household in lieu of those that the injured person would have performed had he not been injured, not for income but for the benefit of himself or his household. Replacement services loss does not include any loss after the death of an injured person.
16. "Secured motor vehicle" means a motor vehicle with respect to which the security required by this Act was in effect at the time of its involvement in the accident resulting in accidental bodily injury.
17. "Secured person" means the owner, operator, or occupant of the secured motor vehicle, and any other person or organization legally responsible for the acts or omissions of such owner, operator, or occupant.
18. "Serious injury" means an accidental bodily injury which results in death, dismemberment, serious and permanent disfigurement or disability beyond sixty days, or medical expenses in excess of one thousand dollars. An injured person who is furnished the services in subsection 7 of this section without charge or at less than the average reasonable charge therefor in this state shall be deemed to have sustained a serious injury if the court determines that the fair and reasonable value of such services exceeds one thousand dollars.
19. "Survivors income loss" means loss sustained after an injured person's death by his dependent survivors during their dependency and consisting of the loss of the contributions they would have received for their support from the decedent out of income from work he would normally have performed had he not died.
20. "Survivors replacement services loss" means expenses not to exceed fifteen dollars per day after the injured person's death by his dependent survivors in obtaining ordinary and necessary services from others not members of the decedent's household in lieu of the services he would have performed not for income but for the benefit of his household.
21. "Work loss" means eighty-five percent of loss of income from work an injured person who would normally be employed in gainful activity during the

period of his disability, would have performed had he not been injured, reduced by any income from substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work which he was capable of performing but unreasonably failed to undertake. Work loss does not include any loss after death of an injured person.

22. "Rehabilitation expense" means the cost of a procedure or treatment for rehabilitation or a course of rehabilitative occupational training if the procedure, treatment, or training is reasonable and appropriate for the particular case, its cost is reasonable in relation to its probable rehabilitative effects, and it is likely to contribute substantially to medical or occupational rehabilitation.

SECTION 4. SECURITY REQUIREMENTS - AUTHORITY OF MOTOR VEHICLE REGISTRAR.)

1. The owner of a motor vehicle required to be registered in this state, or the owner of a motor vehicle operated in this state by him or with his permission, shall continuously provide with respect to such motor vehicle while it is either present or registered in this state security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance.
2. The security may be provided by a policy of insurance complying with this Act issued by an insurer authorized to transact business in this state, or, by self-insurance as approved by the commissioner of insurance.
3. If the motor vehicle is registered in another state, the security may be provided by a policy of insurance issued by an insurer authorized to transact business in either this state or the state in which the motor vehicle is registered, or, by self-insurance as approved by the insurance department of the state in which the motor vehicle is registered.
4. The owner of any motor vehicle required to be registered in this state who operates it or permits it to be operated in this state when he knows or should know that he has failed to comply with the requirement that he provide security under this Act shall have his motor vehicle registration revoked or suspended in accordance with procedures established by the motor vehicle registrar under the motor vehicle

law of this state until he shall provide the security required by this Act.

5. An owner of a motor vehicle with respect to which security is required who fails to have such security in effect at the time of an accident shall be absolutely liable at law for payment of basic no-fault benefits, and shall have all the rights and obligations of a basic no-fault insurer under this Act. This remedy shall be in addition to any other remedy that an injured person may have against such an owner.
6. An insurance policy which purports to provide coverage for basic no-fault benefits or is sold with the representation that it fulfills the requirements of security as required by this Act is deemed to include all coverage required by this Act.
7. The motor vehicle registrar shall have the authority to supervise the enforcement of the compulsory security requirements of this Act and adopt the rules and regulations necessary in respect to the maintenance thereof.

SECTION 5. AUTHORITY OF INSURANCE COMMISSIONER.)

1. The commissioner of insurance shall have the authority to approve:
  - a. The form of the policy of insurance used as security in compliance with this Act; and
  - b. The self-insurance used as security required by this Act, which may be provided by filing in satisfactory form:
    - (1) A continuing undertaking by the owner or other appropriate person to pay basic no-fault benefits and the liabilities covered by motor vehicle liability insurance and to perform all other obligations imposed by this Act;
    - (2) Evidence that appropriate provision exists for the prompt and efficient administration of all claims, benefits, and obligations provided by this Act; and
    - (3) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance for payment of basic no-fault benefits and the liabilities covered by motor vehicle liability insurance and all other

obligations imposed by this Act substantially equivalent to those afforded by a policy of insurance that would comply with this Act.

2. Every insurance company authorized to transact the business of motor vehicle liability insurance in this state shall file with the commissioner of insurance as a condition of its continued transaction of such business within this state a form declaring that its motor vehicle liability policies wherever issued shall be deemed to provide the security required by this Act when the motor vehicle is operated in this state. Any nonadmitted insurer may file such a form.
3. The commissioner shall issue and promulgate all necessary rules and regulations not inconsistent with the provisions of this Act. He shall also have the authority to provide schedules of reasonable maximum benefits payments for specified medical services and rehabilitation expenses which basic no-fault insurers may incorporate into their policies of basic or optional excess coverages afforded pursuant to this Act.

SECTION 6. OPTIONAL EXCESS NO-FAULT BENEFITS.) Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of forty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident. Nothing contained herein shall prevent any basic no-fault insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any basic no-fault insurer from incorporating in such optional excess no-fault coverage such terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide that it be subrogated to the injured person's right of recovery against any responsible third party.

SECTION 7. PERSONS ENTITLED TO BASIC NO-FAULT BENEFITS.) Each basic no-fault insurer of a secured motor vehicle shall pay basic no-fault benefits without regard to fault for economic loss resulting from:

1. Accidental bodily injury sustained within the United States of America, its territories or possessions, or Canada by the owner of the motor vehicle or any relative of the owner:

- a. While occupying any motor vehicle, or
  - b. While a pedestrian as the result of being struck by a motor vehicle which, for the purpose of this subdivision, shall also include a motorcycle.
2. Accidental bodily injury sustained by any other person while occupying the secured motor vehicle if the accident occurs within the United States of America, its territories or possessions, or Canada; and
  3. Accidental bodily injury sustained by any other person as a result of being struck by the secured motor vehicle while a pedestrian in this state.

SECTION 8. PERSONS NOT ENTITLED TO BENEFITS.) Basic or optional excess no-fault benefits shall not be payable to or on behalf of any person while:

1. Occupying the secured motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the secured motor vehicle;
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this Act unless uninsured solely because the insurance company of such owner has not filed a form pursuant to subsection 2 of section 5 of this Act to provide the basic no-fault benefits required by this Act;
3. In the course of a racing or speed contest, or in practice or preparation thereof; or
4. Intentionally causing or attempting to cause injury to himself or another person.

SECTION 9. PAYMENT OF BASIC AND OPTIONAL EXCESS NO-FAULT BENEFITS.)

1. Basic and optional excess no-fault benefits are payable monthly for economic loss sustained by an injured person or his dependent survivors or incurred on his behalf by his spouse, relatives, or guardian. A basic no-fault insurer may pay basic or optional excess no-fault benefits when due to any of the above persons whom it believes has sustained or incurred the economic loss or at its option to the person or organization rendering, for a charge, the services for which such benefits are payable. In the event the injured person dies, a basic no-fault insurer may pay the benefits due directly to those entitled thereto without the appointment of an administrator or executor and unless a court directs otherwise, may pay all



benefits for survivors income loss or replacement services loss to the surviving spouse for the use and benefits of all dependent survivors. A basic no-fault insurer's payments made in good faith in accordance with the provisions of this Act shall discharge its liability to the extent of such payments unless the basic no-fault insurer has been notified in writing of the claim of some other person prior to the making of any such payment.

2. Basic and optional excess no-fault benefits are overdue if not paid within thirty days after the basic no-fault insurer receives reasonable proof of the fact and the amount of loss sustained, except that it may accumulate claims for periods not exceeding one month, and the benefits are not overdue if paid within twenty days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the basic no-fault insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the basic no-fault insurer. Payment is deemed made on the date of mailing. All overdue payments shall bear interest at the rate of eighteen percent per annum.

SECTION 10. PRIORITY OF APPLICABLE SECURITY - COORDINATION OF BENEFITS.)

1. A basic no-fault insurer shall have the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workmen's compensation act shall be subtracted from the basic no-fault benefits otherwise payable for the injury.
2. As between applicable security basic no-fault benefits shall be payable as follows:
  - a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the benefits shall be payable by the basic no-fault insurer of the secured motor vehicle.
  - b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the benefits shall be payable by the basic no-fault insurer affording the benefits to the injured person.

3. Any insurer or nonprofit service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with basic no-fault benefits. Any such insurer or nonprofit service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. Any such coordination of benefits plan shall be approved by the commissioner of insurance.

SECTION 11. MOTOR VEHICLE LIABILITY INSURANCE - EXTRA-TERRITORIAL PROVISION.)

1. Motor vehicle liability insurance applies to the amounts which the owner is legally obligated to pay as damages because of accidental bodily injury and accidental property damage arising out of the ownership or operation of a motor vehicle, if the accident occurs within the United States of America, its territories or possessions, or Canada. Motor vehicle liability insurance shall afford limits of liability not less than those required under the financial responsibility laws of North Dakota. Customary terms and conditions applicable to motor vehicle liability insurance shall apply.
2. If the accident occurs outside this state but within the United States of America, its territories or possessions, or Canada:
  - a. The limits of liability of the financial responsibility or compulsory insurance laws of the applicable jurisdiction exceed the limits of liability of the financial responsibility laws of North Dakota, such motor vehicle liability insurance shall be deemed to comply with the limits of liability of the laws of the applicable jurisdiction; and
  - b. The limits of no-fault benefits of the applicable jurisdiction exceed the limits provided under this Act for no-fault benefits, such no-fault benefits shall be deemed to comply with the limits of such benefits of the laws of the applicable jurisdiction.

SECTION 12. SECURED PERSON EXEMPTION.)

1. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person shall be exempt from liability to pay damages for:



- a. Noneconomic loss unless the injury is a serious injury;
  - b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this Act after subtracting the same elements of loss recoverable under any workmen's compensation act.
2. The exemption described in subsection 1 of this section shall not apply unless the person who has sustained accidental bodily injury is a person who may qualify for basic no-fault benefits pursuant to section 7 of this Act and who is not excluded under section 8 of this Act.

SECTION 13. INSURER'S RIGHT OF SUBROGATION.) A basic no-fault insurer which has paid or may become obligated to pay basic no-fault benefits under this Act shall be subrogated to the extent of its obligations to all of the rights of the injured person against any person or organization other than a secured person. The subrogee shall have a lien to the extent of its obligations, and no release of such rights shall be effective against such rights without the subrogee's consent.

SECTION 14. EQUITABLE ALLOCATION OF LOSSES AMONG INSURERS.) A basic no-fault insurer shall have a right to recover basic no-fault benefits paid to or for the benefit of an injured person from the motor vehicle liability insurer of a secured person if:

1. The injured person has sustained a serious injury;  
or
2. The injury results from an accident involving two or more motor vehicles, at least one of which is a motor vehicle weighing more than six thousand five hundred pounds unloaded.

The right of recovery and the amount thereof shall be determined on the basis of tort law without regard to section 12 by agreement between the basic no-fault insurers involved, or, if they fail to agree, by binding intercompany arbitration under procedures approved by the commissioner of insurance. The amount of recovery under this section shall not exceed the limits of liability of the secured person's motor vehicle liability insurance policy or other security, reduced by the amount of the liability for tort claims against the secured person covered by the policy or other security.

SECTION 15. EXEMPTION OF BENEFITS.) An agreement for assignment of any right to nonmedical benefits payable in the future is unenforceable.

Basic no-fault benefits are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

## SECTION 16. LIMITATION OF ACTIONS.)

1. If no basic or optional excess no-fault benefits have been paid for loss, an action therefor may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or optional excess no-fault benefits have been paid for such loss, an action for recovery of further benefits for such loss by either the same or another claimant, may be commenced not later than two years after the last payment of benefits.
2. If no basic or optional excess no-fault benefits have been paid to the decedent or his dependent survivors, an action for benefits for survivors income loss and replacement services loss and funeral and burial expenses may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivors income loss and replacement services loss benefits have been paid to any dependent survivor, an action for recovery of further survivors income loss or replacement services loss benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits. If basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before his death resulting from the injury, an action for recovery of survivors income loss or replacement services loss benefits may be commenced not later than one year after the death or four years after the last payment of benefits, whichever is earlier.
3. Except as subsections 1 or 2 prescribed a longer period, an action by a claimant on an assigned claim which has been timely presented may be commenced not later than sixty days after the claimant received written notice of rejection of the claim by the basic no-fault insurer to which it was assigned.
4. The time period limitations prescribed in this section shall govern all actions for basic and optional excess no-fault benefits under this Act notwithstanding any limitation prescribed elsewhere in the laws of this state.

SECTION 17. MENTAL AND PHYSICAL EXAMINATIONS.) Whenever the mental or physical condition of a person is material to any claim that has been or may be made for past or future basic or optional excess no-fault benefits, the person shall submit to

mental or physical examination by a physician or physicians, designated by the basic no-fault insurer at a reasonably convenient location. Basic no-fault insurers are authorized to include reasonable provisions of this nature in policies providing basic or excess no-fault benefits.

SECTION 18. DISCOVERY OF FACTS ABOUT AN INJURED PERSON.)

1. Every employer or claimant shall, if a written request is made by a basic no-fault insurer against whom a claim has been made, furnish forthwith, in a form approved by the commissioner of insurance, a sworn statement of the earnings since the time of the accidental bodily injury and for a twelve-month period before the injury, of the person upon whose injury the claim is based.
2. Every physician, coroner or medical officer, hospital, clinic, or other medical institution providing, before or after an accidental bodily injury upon which a claim for basic or optional excess no-fault benefits is based, any products, services, or accommodations in relation to the injury, or in relation to a condition claimed to be connected with the injury, shall, if requested in writing to do so by the basic no-fault insurer against whom the claim has been made:
  - a. Furnish forthwith a written report of the history, condition, treatment, and dates and costs of treatment;
  - b. Permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment; and
  - c. Furnish forthwith autopsy reports.
3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of facts about an injured person's earnings or about history, condition, treatment, and dates and costs of such treatment, a court of record may enter an order for such discovery as justice requires.

SECTION 19. ASSIGNED CLAIMS PLAN.)

1. Basic no-fault insurers authorized to provide basic no-fault benefits in this state are hereby directed to organize, participate in, and maintain an assigned claims plan to provide that an injured person who suffers economic loss, other than a person not entitled to benefits under section 8 of this Act, may obtain basic no-fault benefits through said plan if:

- a. Basic no-fault benefits are not applicable to the injury for some reason other than those specified in section 8 of this Act; or
  - b. Basic no-fault benefits applicable to the injury are inadequate to provide the contracted-for benefits because of financial inability of a basic no-fault insurer to fulfill its obligations. Payments made by the assigned claims plan pursuant to this subsection shall constitute covered claims under the North Dakota Insurance Guaranty Association Act.
2. If a claim qualifies for assignment under this section, the assigned claims plan or any basic no-fault insurer to whom the claim is assigned shall be subrogated to all of the rights of the claimant against any person liable, and against any basic no-fault insurer, its successor in interest or substitute legally obligated to provide basic no-fault benefits to the claimant, for basic no-fault benefits provided by the assignment.
  3. The assigned claims plan shall contain such rules and regulations for the operation of the plan and for the equitable distribution of costs as shall be approved by the commissioner of insurance. Any claim brought through the plan shall be assigned to a basic no-fault insurer in accordance with such regulations and such insurer, after such assignment, shall have the rights and obligations it would have had if prior to such assignment it has issued security providing basic no-fault benefits applicable to the loss. Any person accepting such benefits hereunder shall have such rights and obligations as he would have had under security issued to him providing basic no-fault benefits.

SECTION 20. SEVERABILITY AND CONSTITUTIONALITY.) If any provision of this Act or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this Act without such invalid or unconstitutional provision; provided, that if section 12 is found to be unconstitutional or invalid it shall be conclusively presumed that the legislature would not have enacted the remainder of this Act without section 12 and the entire Act shall be held invalid.

SECTION 21.) A new subsection to section 39-04-05 of the North Dakota Century is hereby created and enacted to read as follows:

For failure to maintain security for payment of basic no-fault benefits and the liabilities covered

under motor vehicle liability insurance on a motor vehicle as required by this Act.

SECTION 22.) A new subsection to section 39-04-06 of the 1973 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

When the department shall determine that a motor vehicle is not covered by security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance as required by this Act.

SECTION 23. APPROPRIATION.) There is hereby appropriated out of any moneys in the motor vehicle registration fund in the state treasury, not otherwise appropriated, the sum of \$55,600.00, or so much thereof as may be necessary, to the motor vehicle registrar for the carrying out of his responsibilities under this Act during the biennium beginning July 1, 1975, and ending June 30, 1977.

SECTION 24. EFFECTIVE DATE.) The effective date of this Act shall be January 1, 1976.

Approved April 9, 1975