

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1177

Introduced by

Industry, Business and Labor Committee

(At the request of the Commissioner of Insurance)

1 A BILL for an Act to create and enact a new subdivision to subsection 1 of section 26.1-25-02
2 of the North Dakota Century Code, relating to property and casualty insurance rates; and to
3 amend and reenact sections 26.1-02-05, 26.1-25-02.1, 26.1-25-04, subsection 4 of section
4 26.1-30-19, sections 26.1-30.1-01, and 26.1-44-02 of the North Dakota Century Code, relating
5 to insurance contracts issued to industrial concerns, exempt commercial policyholders, rate
6 filings, filing of policy forms, cancellation and nonrenewal of commercial insurance, and surplus
7 lines insurance.

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

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

11 **26.1-02-05. Unauthorized insurance prohibited - Exceptions.** An insurance
12 company may not transact insurance business in this state, as set forth in section 26.1-02-06,
13 without a certificate of authority from the commissioner. This section does not apply to:

- 14 1. The lawful transaction of surplus lines insurance.
- 15 2. The lawful transaction of reinsurance by insurers.
- 16 3. Transactions involving a policy lawfully solicited, written, and delivered outside of
17 this state covering only subjects of insurance not resident, located, or expressly to
18 be performed in this state at the time of issuance, and which transactions are
19 subsequent to the issuance of such policy.
- 20 4. Transactions involving life insurance, health insurance, or annuities provided to
21 educational or religious or charitable institutions organized and operated without
22 profit to any private shareholder or individual, for the benefit of the institutions and
23 individuals engaged in the service of the institutions.

- 1 5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of
2 claims or losses.
- 3 6. Transactions involving group life, accident, and health, or blanket accident and
4 health insurance, or group annuities where the master policy of the group was
5 lawfully issued and delivered in and pursuant to the laws of a state in which the
6 insurance company was authorized to do an insurance business, to a group
7 organized for purposes other than the procurement of insurance, and where the
8 policyholder is domiciled or otherwise has a bona fide situs.
- 9 7. Transactions involving any insurance policy or annuity contract issued before
10 July 1, 1973.
- 11 8. Transactions relative to a policy issued or to be issued outside this state involving
12 insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine
13 protection and indemnity or other risk, including strikes and war risks commonly
14 insured under ocean or wet marine forms of policy.
- 15 9. ~~Transactions involving insurance contracts issued to one or more industrial~~
16 ~~insureds; provided, that this does not relieve an industrial insured from taxation~~
17 ~~imposed upon independently procured insurance. An industrial insured is an~~
18 ~~insured:~~
- 19 a. ~~Which procures the insurance of any risk or risks other than life and annuity~~
20 ~~contracts by use of the services of a full time employee acting as an~~
21 ~~insurance manager or buyer or the services of a regularly and continuously~~
22 ~~retained qualified insurance consultant;~~
- 23 b. ~~Whose aggregate annual premiums for insurance on all risks total at least~~
24 ~~twenty five thousand dollars; and~~
- 25 e. ~~Which has at least twenty five full time employees.~~

26 **SECTION 2.** A new subdivision to subsection 1 of section 26.1-25-02 of the North
27 Dakota Century Code is created and enacted as follows:

28 Insurance issued to "exempt commercial policyholders".

29 **SECTION 3. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code
30 is amended and reenacted as follows:

31 **26.1-25-02.1. Definitions.**

- 1 1. "Advisory organization" means any entity, including its affiliates or subsidiaries,
2 which either has two or more member insurers or is controlled either directly or
3 indirectly by two or more insurers, and which assists insurers in ratemaking-related
4 activities as enumerated in this chapter. Two or more insurers having a common
5 ownership or operating in this state under common management or control
6 constitute a single insurer for purposes of this definition.
- 7 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 8 3. "Developed losses" means losses including loss adjustment expenses, adjusted,
9 using standard actuarial techniques, to eliminate the effect of differences between
10 current payment or reserve estimates and those needed to provide actual ultimate
11 loss including loss adjustment expense payments.
- 12 4. "Exempt commercial policyholder" means a large commercial risk who has
13 certified to the commissioner that it employs the services of an insurance agent or
14 broker, meets three of the following seven criteria, and requests exemption from
15 policy form and rate regulatory oversight:
- 16 a. Has net worth of over twenty-five million dollars;
17 b. Has net revenue or sales of over fifty million dollars;
18 c. Has more than five hundred employees per individual company or one
19 thousand employees per holding company aggregate;
20 d. Procures its insurance through an employee acting as a full-time risk
21 manager or qualified consulting risk manager;
22 e. Generates aggregate annual property casualty insurance premiums of over
23 five hundred thousand dollars, excluding contract bonds, crop insurance
24 premiums, and workers' compensation premiums;
25 f. Is a not-for-profit or public entity with an annual budget or assets of at least
26 twenty-five million dollars; or
27 g. Is in a municipality with a population of over twenty-five thousand.
- 28 5. "Expenses" means that portion of a rate attributable to acquisition, field
29 supervision, collection expenses, general expenses, taxes, licenses, and fees.
- 30 6. "Joint underwriting" means a voluntary arrangement established to provide
31 insurance coverage for a commercial risk pursuant to which two or more insurers

- 1 jointly contract with the insured at a price and under policy terms agreed upon
2 between the insurers.
- 3 ~~6.~~ 7. "Loss trending" means any procedure for projecting developed losses to the
4 average date of loss for the period during which the policies are to be effective.
- 5 ~~7.~~ 8. "Personal risk" means homeowners, tenants, private passenger nonfleet
6 automobiles, mobile homes, and other property and casualty insurance for
7 personal, family, or household needs.
- 8 ~~8.~~ 9. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant
9 to which two or more insurers participate in the sharing of risks on a predetermined
10 basis. The pool may operate through an association, syndicate, or other pooling
11 agreement.
- 12 ~~9.~~ 10. "Prospective loss costs" means that portion of a rate that does not include
13 provisions for expenses other than loss adjustment expenses, or profit, and are
14 based on historical aggregate losses and loss adjustment expenses adjusted
15 through development to their ultimate value and projected through trending to a
16 future point in time.
- 17 ~~10.~~ 11. "Rate" means that cost of insurance per exposure unit whether expressed as a
18 single member or as a prospective loss cost with an adjustment to account for the
19 treatment of expenses, profit, and individual insurer variation in loss experience,
20 prior to any application of individual risk variations based on loss or expense
21 considerations, and does not include minimum premium.
- 22 ~~11.~~ 12. "Residual market mechanism" means an arrangement, either voluntary or
23 mandated by law, involving participation by insurers in the equitable apportionment
24 among them of insurance which may be afforded applicants who are unable to
25 obtain insurance through ordinary methods.
- 26 ~~12.~~ 13. "Supplementary rating information" includes any manual or plan of rates,
27 classification, rating schedule, minimum premium, policy fee, rating rule,
28 underwriting rule, statistical plan, and any other similar information needed to
29 determine the applicable rate in effect or to be in effect.
- 30 ~~13.~~ 14. "Supporting information" means:

- 1 a. The experience and judgment of the filer and the experience or ~~date~~ data of
- 2 other insurers or advisory organizations relied upon by the filer;
- 3 b. The interpretation of any other data relied upon by the filer; and
- 4 c. Descriptions of methods used in making the rates and any other information
- 5 required by the commissioner to be filed.

6 **SECTION 4. AMENDMENT.** Section 26.1-25-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-25-04. Rate filings.**

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

- 1 A filing and any supporting information is open to public inspection after the filing
2 becomes effective. Specific inland marine rates on risks specially rated, made by
3 an advisory organization, must be filed with the commissioner.
- 4 2. After reviewing an insurer's filing, the commissioner may require that the insurer's
5 rates be based upon the insurer's own loss and expense information. If the
6 insurer's loss or allocated loss adjustment expense information is not actuarially
7 credible, as determined by the commissioner, the insurer may use or supplement
8 its experience with information filed with the commissioner by an advisory
9 organization. Insurers utilizing the services of an advisory organization must
10 provide with their rate filing, at the request of the commissioner, a description of
11 the rationale for such use, including its own information and method of utilization of
12 the advisory organization's information. This chapter does not require any insurer
13 to become a member of or a subscriber to any advisory organization.
- 14 3. The commissioner shall review filings as soon as reasonably possible after they
15 have been made in order to determine whether they meet the requirements of this
16 chapter.
- 17 4. Subject to the exceptions specified in ~~subsection~~ subsections 5 and 6, each filing
18 must be on file for a waiting period of sixty days before it becomes effective. The
19 period may be extended by the commissioner for an additional period not to
20 exceed fifteen days if the commissioner gives written notice within the waiting
21 period to the insurer or advisory organization which made the filing that the
22 commissioner needs the additional time for the consideration of the filing. Upon
23 written application by the insurer or advisory organization, the commissioner may
24 authorize a filing which the commissioner has reviewed to become effective before
25 the expiration of the waiting period or any extension thereof. A filing is deemed to
26 meet the requirements of this chapter unless disapproved by the commissioner
27 within the waiting period or any extension thereof.
- 28 5. Any special filing with respect to a surety or guaranty bond required by law or by
29 court or executive order or by order or rule of a public body, not covered by a
30 previous filing, becomes effective when filed and is deemed to meet the
31 requirements of this chapter until such time as the commissioner reviews the filing

1 and so long thereafter as the filing remains in effect. Specific inland marine rates
2 on risks specially rated by an advisory organization become effective when filed
3 and are deemed to meet the requirements of this chapter until such time as the
4 commissioner reviews the filing and so long thereafter as the filing remains in
5 effect.

6 6. Commercial risk rate changes, except crop insurance, of no more than five percent
7 increase or decrease for a class of risk are presumed to meet the requirements of
8 this chapter upon implementation. The changes may be made only once in any
9 twelve-month period and must be filed for informational purposes with the
10 commissioner within sixty days of implementation.

11 7. Under any rules the commissioner may adopt, the commissioner may, by written
12 order, suspend or modify the requirement of filing as to any kind of insurance,
13 subdivision, or combination thereof, or as to classes of risks, the rates for which
14 cannot practicably be filed before they are used. The orders and rules must be
15 made known to insurers and advisory organizations affected thereby. The
16 commissioner may make any examination the commissioner deems advisable to
17 ascertain whether any rates affected by the order meet the standards set forth in
18 subdivision e of subsection 1 of section 26.1-25-03.

19 ~~7.~~ 8. Upon the written application of the insured, stating the insured's reasons therefor,
20 filed with and approved by the commissioner, a rate in excess of that provided by a
21 filing otherwise applicable may be used on any specific risk.

22 ~~8.~~ 9. No insurer may make or issue a contract or policy except in accordance with the
23 filings that have been approved and are in effect for the insurer as provided in this
24 chapter or in accordance with subsection ~~6 or 7~~ or 8.

25 ~~9.~~ 10. Nothing in this chapter may be construed to require an advisory organization or its
26 members or its subscribers to immediately refile final rates or premium charges
27 previously approved by the commissioner. Members or subscribers of an advisory
28 organization are authorized to continue to use insurance rates or premium charges
29 approved before July 1, 1991, or decreases from those rates or premium charges
30 filed by the advisory organization and subsequently approved after July 1, 1991.

1 **SECTION 5. AMENDMENT.** Subsection 4 of section 26.1-30-19 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 4. No casualty or fire and property insurance policy, certificate, contract, or
4 agreement may be issued for delivery or delivered to any person in this state nor
5 may any application, rider, or endorsement be used in connection therewith until
6 the form thereof has been filed and approved by the commissioner to the extent
7 rates are filed and approved pursuant to chapter 26.1-25 or filed for informational
8 purposes under subsection 6 of section 26.1-25-04.

9 **SECTION 6. AMENDMENT.** Section 26.1-30.1-01 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **26.1-30.1-01. Application.** This chapter applies to policies primarily insuring risks
12 arising from the conduct of a commercial or industrial enterprise except workers' compensation
13 policies, private passenger automobile policies, inland marine policies, excess umbrella liability
14 policies, errors and omissions policies, ~~and~~ officers and directors liability policies, and
15 exempted commercial policyholders as defined in section 26.1-25-02.1.

16 **SECTION 7. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **26.1-44-02. Affidavit as prerequisite of insurance - Contents.** A surplus lines
19 insurance broker licensed under chapter 26.1-26 shall in every case execute and file with the
20 commissioner within fifteen days of the effective date of any surplus line insurance policy,
21 indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an
22 inability exists to procure the insurance, indemnity contract, or surety bond desired from an
23 insurer authorized to do business in this state. There is a presumption that such inability exists
24 and that a diligent search has been made if the insurance, indemnity contract, or surety bond
25 provides coverage listed by the commissioner as an approved surplus lines coverage or if the
26 risk qualifies as an exempt commercial policyholder as defined in section 26.1-25-02.1. If the
27 commissioner concurs in the allegation in the affidavit, the commissioner may authorize the
28 procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do
29 business in this state.