INSURANCE

CHAPTER 261

HOUSE BILL NO. 1406

(Representatives Ruby, Berg, Haas)
(Senator Tollefson)

INSURANCE COMMISSIONER ANNUAL REPORTS

AN ACT to amend and reenact subsection 8 of section 26.1-01-03 of the North Dakota Century Code, relating to the duty of the insurance commissioner to send annual reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 26.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

8. ~~Send~~ Upon request, send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 262

SENATE BILL NO. 2144

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

INSURANCE PRODUCER LICENSING

AN ACT to create and enact sections 26.1-26-13.1, 26.1-26-13.2, 26.1-26-13.3, 26.1-26-25.1, 26.1-26-30.1, 26.1-26-45.1, and 26.1-26-47.1 of the North Dakota Century Code, relating to the licensing of insurance producers; to amend and reenact subdivision n of subsection 1 of section 10-04-11, subsections 15, 16, and 22 of section 26.1-01-07, subsection 6 of section 26.1-02-06, section 26.1-02-24.1, subsection 3 of section 26.1-02.1-01, subdivision a of subsection 1 of section 26.1-02.1-02, subsections 2 and 3 of section 26.1-02.1-04, subsection 2 of section 26.1-03.1-08, subsection 2 of section 26.1-03.2-08, subsection 12 of section 26.1-04-03, sections 26.1-04-04, 26.1-04-05, 26.1-04-06, 26.1-04-07, 26.1-04-16, 26.1-04-17, and 26.1-05-07.2, subdivisions a and b of subsection 3 of section 26.1-06.1-04, subsection 4 of section 26.1-06.1-13, subdivision c of subsection 1 of section 26.1-06.1-21, subdivision a of subsection 3 of section 26.1-06.1-21, subdivision a of subsection 1 of section 26.1-06.1-32, subsection 1 of section 26.1-06.1-51, subsection 3 of section 26.1-08-11, sections 26.1-09-03, 26.1-09-11, and 26.1-09-13, subdivisions b and j of subsection 1 of section 26.1-10-02, subsection 9 of section 26.1-11-01, sections 26.1-11-07, 26.1-15.1-33, 26.1-16-12, 26.1-16-13, 26.1-17-23, and 26.1-17.1-15, subsection 1 of section 26.1-17.1-18, subsection 13 of section 26.1-18.1-01, subsection 2 of section 26.1-18.1-18, section 26.1-19-10, subsection 5 of section 26.1-19-14, subsection 3 of section 26.1-20.1-01, subsection 3 of section 26.1-20.1-02, subdivision b of subsection 1 of section 26.1-20.1-06, subsection 2 of section 26.1-20.1-06, subsection 1 of section 26.1-20.1-09, sections 26.1-22-21, 26.1-24-08, 26.1-24-09, 26.1-25-16, 26.1-26-01, 26.1-26-02, 26.1-26-03, 26.1-26-04, 26.1-26-05, 26.1-26-06, 26.1-26-07, 26.1-26-09, 26.1-26-10, 26.1-26-11, 26.1-26-17, 26.1-26-20, 26.1-26-25, 26.1-26-26, 26.1-26-30, 26.1-26-31, 26.1-26-31.1, 26.1-26-31.8, 26.1-26-32, 26.1-26-33, 26.1-26-34, 26.1-26-36, 26.1-26-41, 26.1-26-42, 26.1-26-43, 26.1-26-48, 26.1-26-52, 26.1-26.1-01, 26.1-26.1-02, 26.1-26.1-03, and 26.1-26.1-04, subdivision b of subsection 3 of section 26.1-26.3-01, subsections 1 and 2 of section 26.1-26.3-02, subdivision c of subsection 10 of section 26.1-26.3-03, subsection 6 of section 26.1-26.3-04, subdivision b of subsection 1 of section 26.1-26.3-06, subdivision h of subsection 1 of section 26.1-26.6-05, subsection 4 of section 26.1-27-01, sections 26.1-28-02, 26.1-28-03, 26.1-28-04, 26.1-29-26, and 26.1-30.1-01.1, subsection 4 of section 26.1-31.1-01, subsection 8 of section 26.1-33-28, subdivision b of subsection 1 of section 26.1-36-04, sections 26.1-36-40 and 26.1-36.1-09, subsection 29 of section 26.1-36.3-01, subsection 1 of section 26.1-38.1-16, subdivision d of subsection 3 of section 26.1-38.1-16, section 26.1-39-06, subsections 1 and 2 of section 26.1-39-11, subsections 2 and 3 of section 26.1-39-12, subsection 4 of section 26.1-39-16, section 26.1-39-17, subsection 1 of section 26.1-39-18, sections 26.1-39-19, 26.1-39-22, and 26.1-39-23, subsections 1 and 2 of section 26.1-40-01, section 26.1-40-07, subsections 2 and 3 of section 26.1-40-10, sections 26.1-40-11, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06,

26.1-44-08, and 26.1-45-04.1, paragraph 2 of subdivision a of subsection 2 of section 26.1-45-09, sections 26.1-45-11 and 26.1-45-12, subsections 3, 4, and 10 of section 26.1-46-03, subsection 8 of section 26.1-46-06, subsection 1 of section 26.1-46-08, subsection 2 of section 26.1-46-08.1, and section 26.1-46-11 of the North Dakota Century Code, relating to the licensing of insurance producers; to repeal sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1, 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28, 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code, relating to the licensing of insurance producers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision n of subsection 1 of section 10-04-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an ~~agent,~~ ~~broker~~ insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 2. AMENDMENT. Subsections 15, 16, and 22 of section 26.1-01-07 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15. For issuing and each annual renewal of ~~an~~ ~~insurance~~ ~~broker's,~~ a surplus lines insurance ~~broker's,~~ producer's or insurance consultant's license, ten dollars.

16. For issuing an insurance ~~agent's~~ producer's license, one hundred dollars.

22. For each insurance company appointment and renewal of an appointment of an insurance ~~agent~~ producer, ten dollars.

SECTION 3. AMENDMENT. Subsection 6 of section 26.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

6. Directly or indirectly acting as an ~~agent~~ insurance producer for or otherwise representing or aiding on behalf of another, any person or insurance company in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed, in this state. This subsection does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer.

SECTION 4. AMENDMENT. Section 26.1-02-24.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-24.1. Definition. For the purpose of this section and section 26.1-02-24.2, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, ~~broker~~ insurance producer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which the person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

SECTION 5. AMENDMENT. Subsection 3 of section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Insurer" includes an authorized insurer, self-insurer, reinsurer, broker, insurance producer, or any agent thereof.

SECTION 6. AMENDMENT. Subdivision a of subsection 1 of section 26.1-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

a. Presents or causes to be presented to an insurer, reinsurer, insurance producer, ~~broker,~~ or any agent thereof, any oral or written statement knowing that the statement contains any false or misleading information concerning any fact material to an application for the issuance of an insurance policy;

SECTION 7. AMENDMENT. Subsections 2 and 3 of section 26.1-02.1-04 of the North Dakota Century Code are amended and reenacted as follows:

2. Except in prosecution for perjury or insurance fraud, and in the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides or receives information regarding any suspected fraudulent insurance act to or from an authorized agency, the national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to provide evidence or testimony is not subject to a criminal proceeding or to a civil penalty with respect to any act concerning which the person testifies to or produces relevant matter.

3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides information regarding any suspected fraudulent insurance act to an authorized agency, the national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to furnish evidence or provide testimony, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against the person, for filing reports, providing

information, or otherwise cooperating with an investigation or examination of any of these entities.

SECTION 8. AMENDMENT. Subsection 2 of section 26.1-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislative assembly that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, ~~agent, broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 9. AMENDMENT. Subsection 2 of section 26.1-03.2-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any health organization, or of any component derived in the calculation, by any health organization, ~~agent, broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other

amount to the health organization's risk-based capital levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 10. AMENDMENT. Subsection 12 of section 26.1-04-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, ~~agent,~~ ~~broker~~ insurance producer, or individual.

SECTION 11. AMENDMENT. Section 26.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-04. Coercing purchaser or borrower to insure with particular company or ~~agent~~ insurance producer prohibited.

1. No person, engaged in selling property or in the business of financing the purchase of property or of lending money on the security of property and no trustee, director, officer, agent, or other employee of the person may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of the property or to lending money upon the security of a mortgage thereon or for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person purchasing the property or for whom the purchase is to be financed or to whom the money is to be loaned or for whom the extension, renewal, or other act is to be granted, or performed, negotiate any insurance policy or renewal thereof covering the property through a particular insurance company~~,~~ ~~agent, solicitor,~~ or ~~broker~~ insurance producer.

2. This section does not prevent the exercise by any person of the right to designate reasonable financial requirements as to the insurance company, the terms and provisions of the policy, and the adequacy of the coverage with respect to insurance on property pledged or mortgaged to the person; nor does this section prohibit the right of any person from voluntarily negotiating or soliciting the placing of such insurance; nor does this section forbid the securing of insurance or renewal thereof at the request of the purchaser or borrower or because of the failure of the purchaser or borrower to furnish the necessary insurance or renewal thereof.

3. Violation of this section constitutes an unfair insurance practice. The person violating this section must be proceeded against under this chapter.

SECTION 12. AMENDMENT. Section 26.1-04-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-05. Discrimination by life companies and rebates and inducements by ~~agents~~ insurance producers prohibited. A life insurance company doing business in this state may not make or permit any distinction or discrimination between insureds of the same class and with equal expectation of life in the amount or payment of premiums or rate charges for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contracts which it makes. No life insurance company, and no ~~agent or solicitor~~ insurance producer therefor, either personally or by any other person, may:

1. Make any insurance contract, or agreement with reference thereto, other than such as is expressed plainly in the policy issued thereon.

2. Offer, promise, allow, give, set off, or pay any rebate of the whole or any part of the premium payable on the policy or the ~~agent's~~ insurance producer's commission thereon, or any special favor or advantage in the dividends, earnings, profits, or other benefit founded, arising, accruing, or to accrue thereon or therefrom.

3. Offer, promise, allow, or give any special advantage in the date of the policy or the age at which the same is issued.

4. Offer, promise, allow, or give any paid employment or contract for services of any kind, or any other valuable inducement or consideration whatever not specified in the insurance policy or contract.

5. Offer, promise, give, option, sell, or purchase, or offer to give, sell, or purchase, as inducement to insurance or in connection therewith, any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever not specified in the policy.

This section does not prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

SECTION 13. AMENDMENT. Section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates. An insurance ~~broker, limited insurance representative,~~ producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not 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~~ producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, 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 14. AMENDMENT. Section 26.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-07. Misrepresentation of terms of policy and future dividends prohibited. An insurance or surety company, reciprocal, benevolent society, or any

other insurance organization or association, however constituted or entitled, doing business in this state, and an officer, director, agent, or solicitor of the company, society, or organization, and an insurance ~~broker or limited insurance representative~~ producer, may not 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 the company, society, or 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 the policy, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

SECTION 15. AMENDMENT. Section 26.1-04-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-16. Penalty for violating provisions relating to misrepresentation and discrimination. Any officer, agent, ~~solicitor~~ insurance producer, or representative of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization, or association, or any other person, who violates section 26.1-04-05, 26.1-04-06, 26.1-04-07, or 26.1-04-17 is guilty of a class A misdemeanor. The commissioner may, after a hearing upon fifteen days' notice, revoke the license to transact business in this state of any insurance organization violating section 26.1-04-05 or 26.1-04-06.

SECTION 16. AMENDMENT. Section 26.1-04-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-17. Revocation or suspension of insurance ~~broker's, limited insurance representative's, and agent's~~ producer's license for misrepresentation or discrimination. Upon satisfactory evidence of the violation of any provision of this chapter relating to misrepresentation or discrimination by any insurance ~~broker, limited insurance representative, agent, or solicitor~~ producer of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, the commissioner may suspend or revoke the license of the offending ~~solicitor or agent~~ insurance producer.

SECTION 17. AMENDMENT. Section 26.1-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-07.2. Effects of redomestication. In the discretion of the commissioner, the certificate of authority, ~~agent~~ insurance producer appointments and licenses, rates, and other items in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this state or another state by merger, consolidation, or any other lawful method, continue in effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. An outstanding policy of a transferring insurer remains in effect and does not need to be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing forms with appropriate endorsements as approved by the commissioner. A transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

SECTION 18. AMENDMENT. Subdivisions a and b of subsection 3 of section 26.1-06.1-04 of the North Dakota Century Code are amended and reenacted as follows:

a. If the person served is an ~~agent, broker,~~ insurance producer or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

b. If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an ~~agent or broker~~ insurance producer of or for the reinsurer, in any action on or incident to the reinsurance contract;

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, ~~agent, broker~~ insurance producer, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

SECTION 20. AMENDMENT. Subdivision c of subsection 1 of section 26.1-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

c. By first-class mail to all insurance ~~agents~~ producers of the insurer;

SECTION 21. AMENDMENT. Subdivision a of subsection 3 of section 26.1-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Notice under subsection 1 to ~~agents~~ insurance producers of the insurer and to potential claimants who are policyholders must include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

SECTION 22. AMENDMENT. Subdivision a of subsection 1 of section 26.1-06.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. a. An ~~agent, broker~~ insurance producer, premium finance company, or any other person, other than the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs, or both, may not be allowed to an ~~agent, broker,~~ insurance producer or premium finance company for any amounts advanced to the insurer by the ~~agent, broker,~~ insurance producer or premium finance company on behalf of, but in the absence of a payment by, the insured.

SECTION 23. AMENDMENT. Subsection 1 of section 26.1-06.1-51 of the North Dakota Century Code is amended and reenacted as follows:

1. The domiciliary liquidator of an insurer domiciled in a reciprocal state, except as to special deposits and security on secured claims under subsection 3 of section 26.1-06.1-52, is vested by operation of law with the title to all of the assets, property, contracts and rights of action, ~~agents'~~ insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting must be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting or property in the domiciliary state. Otherwise, the date of vesting must be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from ~~agents~~ insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 26.1-06.1-52.

SECTION 24. AMENDMENT. Subsection 3 of section 26.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

3. All licensed accident and health insurance ~~agents~~ producers may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an ~~agent's~~ insurance producer's referral fee of twenty-five dollars to each licensed accident and health insurance ~~agent~~ insurance producer who refers an applicant to the association plan, if the applicant is accepted. The referral fees must be paid to the lead carrier from moneys received as premiums for the association plan.

SECTION 25. AMENDMENT. Section 26.1-09-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-03. Reciprocal or interinsurance contracts - Execution. Reciprocal or interinsurance contracts may be executed by an attorney, ~~agent~~ insurance producer, or other representative, in this chapter designated as an attorney, duly authorized and acting for the subscribers. The attorney may be a corporation. The office of the attorney may be maintained at the place designated by the subscribers in the power of attorney.

SECTION 26. AMENDMENT. Section 26.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-11. Appointment of ~~agents~~ insurance producers by attorney - ~~Agent's~~ Insurance producer's license fee. The attorney may appoint ~~agents~~ insurance producers to represent the attorney in this state, but the ~~agents~~ insurance producers, before writing or soliciting any of the insurance provided for under this chapter, must receive a certificate of authority from the commissioner. The fee for the certificate is that specified in section 26.1-01-07.

SECTION 27. AMENDMENT. Section 26.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-13. Solicitation without certificate of authority - Limitation. For the purpose of organization, and upon the issuance of a permit by the commissioner, powers of attorney may be solicited without a license or certificate of authority, but an

attorney, ~~agent~~ insurance producer, or other person may not effect any insurance contract under this chapter until in compliance with this chapter.

[138] **SECTION 28. AMENDMENT.** Subdivisions b and j of subsection 1 of section 26.1-10-02 of the North Dakota Century Code are amended and reenacted as follows:

b. Acting as an insurance ~~broker or as insurance agent~~ producer for its parent or for any of its parent's insurance company subsidiaries.

j. Financing of insurance premiums, ~~agents~~ insurance producers, and other forms of consumer financing.

SECTION 29. AMENDMENT. Subsection 9 of section 26.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

9. Agreed to appoint, and will appoint, as its ~~agents~~ insurance producers in this state only residents of this state except as otherwise provided in chapter 26.1-26.

SECTION 30. AMENDMENT. Section 26.1-11-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, there may not be any requirement that an ~~agent~~ insurance producer resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an ~~agent~~ insurance producer resident in that state on an insurance policy written by a nonresident ~~agent or nonresident broker~~ insurance producer of that state, then any insurance policy written by an ~~agent~~ insurance producer resident of that state licensed as a nonresident ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an ~~agent~~ insurance producer resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an ~~agent~~ insurance producer resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the ~~agent~~ insurance producer in that state at the request of a nonresident ~~agent or nonresident broker~~ insurance producer of that state, then the ~~agent~~ insurance producer resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

SECTION 31. AMENDMENT. Section 26.1-15.1-33 of the North Dakota Century Code is amended and reenacted as follows:

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[138] Section 26.1-10-02 was also amended by section 4 of House Bill No. 1176, chapter 264.

26.1-15.1-33. Licensing of agents. ~~Agents~~ Insurance producers of societies must be licensed under chapter 26.1-26.

SECTION 32. AMENDMENT. Section 26.1-16-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-12. Territorial restrictions on society - Voluntary contribution plan benefits regulated by chapter. Any society organized under this chapter shall confine its activities, insofar as solicitation by ~~agents~~ insurance producers is concerned, to this state. No benefits on the voluntary contribution plan may be provided by any society except as provided in this chapter.

SECTION 33. AMENDMENT. Section 26.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-13. Licensing of ~~agents~~ - ~~Residence~~ ~~requirements~~ insurance producers. All ~~agents~~ insurance producers of a benevolent society must be ~~residents~~ ~~of~~ ~~this~~ ~~state~~ ~~and~~ ~~must~~ ~~be~~ licensed in the same manner as ~~agents~~ insurance producers for insurance companies generally are licensed.

SECTION 34. AMENDMENT. Section 26.1-17-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-23. Licensing of sales representatives. The sales representatives of any health service corporation are subject to the laws pertaining to insurance ~~agents~~ producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal is prescribed in section 26.1-01-07.

SECTION 35. AMENDMENT. Section 26.1-17.1-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17.1-15. ~~Agents~~ Insurance producers. No individual may apply, procure, negotiate, or place for others any policy or contract of a prepaid limited health service organization unless that individual holds a license or is otherwise duly authorized to sell accident and health insurance policies, health, hospital or medical service contracts, or health maintenance organization contracts.

SECTION 36. AMENDMENT. Subsection 1 of section 26.1-17.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A prepaid limited health service organization shall maintain in force a fidelity bond in its own name on its officers and employees in an amount not less than fifty thousand dollars or in any other amount prescribed by the commissioner. Except as otherwise provided by this subsection, the bond must be issued by an insurance company that is licensed to do business in this state or, if the fidelity bond required by this subsection is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a licensed surplus lines ~~agent~~ ~~resident~~ insurance producer in this state shall satisfy the requirements of this subsection.

SECTION 37. AMENDMENT. Subsection 13 of section 26.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Health maintenance organization producer" means an insurance ~~agent or insurance broker~~ producer, as defined in section 26.1-26-02, who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for that person, or a person who advertises or otherwise holds out to the public as such.

SECTION 38. AMENDMENT. Subsection 2 of section 26.1-18.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. Every health maintenance organization and provider shall submit its books and records for the examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and ~~agents~~ insurance producers of, the health maintenance organization and the principals of the providers concerning their business.

SECTION 39. AMENDMENT. Section 26.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-19-10. Licensing of sales representatives. The sales representatives of a prepaid legal services organization are subject to the laws pertaining to insurance ~~agents~~ producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal thereof shall be prescribed in section 26.1-01-07.

SECTION 40. AMENDMENT. Subsection 5 of section 26.1-19-14 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purpose of examination, the commissioner may issue subpoenas, administer oaths to, and examine the officers and ~~agents~~ insurance producers of the prepaid legal services organization, as well as any providers of services.

SECTION 41. AMENDMENT. Subsection 3 of section 26.1-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance ~~agent or broker~~ producer in payment of premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums where a life or disability insurance policy is made the security or collateral for the repayment of a debt.

SECTION 42. AMENDMENT. Subsection 3 of section 26.1-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. This chapter does not apply to ~~resident~~ insurance ~~agents~~ producers; insurers who finance their own premiums; banks; savings and loan associations; credit unions; annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

SECTION 43. AMENDMENT. Subdivision b of subsection 1 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

b. Contain the name and place of business of the insurance ~~agent or insurance broker~~ producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed including the term and type of policy; and

SECTION 44. AMENDMENT. Subsection 2 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed ~~resident agent~~ insurance producer which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last-known address and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement.

SECTION 46. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. Insurance required - Excess loss reinsurance. The commissioner shall procure and shall keep in force, an excess loss reinsurance contract naming the fund as the reinsured. The reinsurance contract must meet the following minimum specifications:

1. Reimburse the fund for all losses in excess of one million dollars incurred by the fund under policies issued by the fund and arising out of each occurrence of a peril included in the fund policies.

2. The limit of liability of such reinsurance contract must be no less than one hundred million dollars for each loss occurrence.

3. A sixty-day cancellation notice.

4. The quoted rate must be the guaranteed rate for the two-year bid period.

The cost of the excess loss reinsurance must be paid out of the premium income of the fund. This excess loss reinsurance must be procured by the commissioner and the fund only through bids as hereinafter provided and must be written only by a company or companies authorized to do business within this state. The contract must be ~~negotiated with and~~ countersigned by a licensed North Dakota resident insurance ~~agent~~ producer. On or before the third Monday in June of each odd-numbered year the commissioner shall publish in the official newspaper of Burleigh County a notice that on the last Monday in June of that year the commissioner will accept bids at the commissioner's office in the state capitol. A copy of the notice must be posted at the office of the fund. A copy of the notice must be mailed to each insurance company licensed to write fire insurance in this state. On the last Monday in June of each odd-numbered year, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance with the company or group of companies submitting the lowest and best bid for the two-year period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.

SECTION 47. AMENDMENT. Section 26.1-24-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-08. Security agreement to secure premium payment must be in separate instrument - Penalty. It is unlawful for any insurance company, or any ~~agent or solicitor~~ insurance producer therefor within this state, to take or procure to be taken upon the property to be insured, or upon any other property, a security agreement securing the payment of the premium due or to become due, including policy fees, or any part thereof, unless the security agreement is printed or written upon a paper which is separate and distinct from the application. Any security agreement given in violation of this section is void. Any insurance company violating this section is guilty of a class A misdemeanor, and forfeits its right to do business in this state.

SECTION 48. AMENDMENT. Section 26.1-24-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-09. Sale or negotiation of premium note prohibited - Penalty. A promissory note taken in settlement of the first premium on any life, health, or accident insurance policy may not be sold or negotiated in any manner prior to the applicant's medical examination, where one is required, nor a binding receipt for the

premium signed by an authorized ~~agent~~ insurance producer of the insurance company has been delivered to the applicant, nor until the insurance company has received the application and medical examination. Any person violating this section is guilty of a class B misdemeanor.

SECTION 49. AMENDMENT. Section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-16. Rebates prohibited. No ~~broker or agent~~ insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed ~~agents or brokers~~ insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

SECTION 50. AMENDMENT. Section 26.1-26-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance ~~agents, insurance brokers~~ producers, insurance consultants, and surplus lines insurance ~~brokers~~ producers. This chapter applies to all lines of insurance and types of insurers including prepaid legal service organizations and health maintenance organizations.

SECTION 51. AMENDMENT. Section 26.1-26-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.

3. "Insurance" ~~includes annuities~~ means any of the lines of authority in section 26.1-26-11.

~~2. "Insurance agent" means an individual, partnership, limited liability partnership, corporation, or limited liability company appointed by an~~

~~insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.~~

~~3. "Insurance broker" means any individual, partnership, limited liability partnership, corporation, or limited liability company which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.~~

4. "Insurance consultant" means ~~an individual, partnership, limited liability partnership, corporation, or limited liability company~~ a person that, for a fee, holds oneself 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 insurance policy that could be issued in this state.

5. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

6. "Insurer" means all types of insurance companies as well as prepaid legal service organizations and health maintenance organizations.

7. "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

8. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

9. "Person" means an individual or a business entity.

10. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

11. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

12. "Surplus lines insurance ~~broker~~ producer" means ~~an individual, partnership, limited liability partnership, corporation, or limited liability company which~~ a person that sells, solicits, negotiates, or procures an insurance policy from an insurer not licensed to transact business in this state which cannot be procured from an insurer licensed to do business in this state.

13. "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

14. "Uniform application" means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.

15. "Uniform business entity application" means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

SECTION 52. AMENDMENT. Section 26.1-26-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-03. License required - Acting as ~~agent, broker,~~ insurance producer or consultant without license prohibited - Penalty. No person may act as or hold oneself out to be an insurance ~~agent, insurance broker~~ producer, insurance consultant, or surplus lines insurance ~~broker~~ producer unless licensed under this chapter. ~~No insurance agent, insurance broker, or surplus lines insurance broker may apply for, procure, negotiate for, or place for others, any policy for any line of insurance as to which that person is not then qualified and licensed under this chapter.~~ A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed for that line of authority in accordance with this chapter. Any person willfully violating this section is guilty of a class C felony.

SECTION 53. AMENDMENT. Section 26.1-26-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04. ~~Payment to or acceptance by unlicensed person of commission prohibited - When payment or assignment of commissions permitted~~ Commissions. ~~No insurer, insurance agent, insurance broker, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. In the case of an insurance agent, the agent must also be properly appointed under this chapter before the insurer may pay, or the agent may accept, any commission or other valuable consideration for services as an insurance agent. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid, to a partnership or limited liability partnership of which that person is a member, employee, or agent, to a corporation of which that person is an officer, employee, or agent, or to a limited liability company of which that person is a manager, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.~~

1. An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.

2. A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in

this state if that person is required to be licensed under this chapter and is not licensed.

3. Renewal or other deferred compensation may be paid to a person for selling, soliciting, or negotiating insurance in this state if that person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.

4. An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons that do not sell, solicit, or negotiate insurance in this state, unless the payment violates section 26.1-04-06.

SECTION 54. AMENDMENT. Section 26.1-26-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance ~~agent, insurance broker,~~ producer or surplus lines insurance ~~broker~~ producer who sells, solicits, or negotiates an insurance policy on behalf of an insurer is an insurance ~~agent~~ producer within the intent of this chapter~~,~~ and is liable for all the duties, requirements, liabilities, and penalties to which an insurance ~~agent~~ producer of the insurer is subject. An insurer accepting business from an unlicensed person through any of its officers, ~~agents~~ insurance producers, or employees thereby acknowledges that person as ~~its agent~~ an insurance producer acting on its behalf in the transaction. ~~A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the negotiations of such insurance, is an insurance broker within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are subject.~~

SECTION 55. AMENDMENT. Section 26.1-26-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-06. Insurance ~~agent~~ producer - Agent of insurer. ~~Every~~ An insurance ~~agent~~ producer who sells, solicits, or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer.** This section does not affect the apparent authority of an agent.

SECTION 56. AMENDMENT. Section 26.1-26-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-07. ~~Broker~~ Insurance producer - Agent of insured. ~~Every~~ An insurance ~~broker~~ producer or surplus lines insurance ~~broker who solicits an application for insurance of any kind, in any controversy between the insured or the insured's beneficiary and the insurer issuing any policy upon the application~~ producer, who is not an appointed insurance producer of the insurer with which an insurance policy is placed and who acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself, is regarded as representing the insured or the insured's beneficiary and not the insurer. ~~However, any insurer that directly or through its agents delivers in this state to any insurance broker a policy of insurance pursuant to the application or request of the broker, acting for an insured other than oneself, is deemed to have~~

~~authorized the broker to receive on its behalf payment of any premium which is due on the insurance policy at the time of its issuance or delivery.~~

SECTION 57. AMENDMENT. Section 26.1-26-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-09. Exceptions to licensing requirements. ~~No license as an insurance agent, insurance broker, or surplus lines insurance broker is required of:~~

1. ~~Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.~~ Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

2. ~~Any~~ A license as an insurance producer is not required of the following:

   a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and;

      (1) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

      (2) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

      (3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

   b. A person who secures and furnishes information for the purpose of group ~~or wholesale~~ life insurance, group property and casualty insurance, group annuities, ~~or~~ group~~,~~ or blanket~~, or franchise~~ accident and health insurance, or for the purpose of enrolling individuals under ~~such~~ plans or ~~issuing certificates under such plans or~~ otherwise assisting in administering ~~such~~ plans, or performs administrative services related to mass-marketed property and casualty insurance, where no commission is paid to the person for the service.

~~3.~~ c. ~~Employers~~ An employer or association or ~~their~~ its officers ~~or~~, directors, employees, or the trustees of ~~any~~ an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of ~~any~~ a program of employee benefits for ~~their own~~

~~employees~~ the employer's or association's own employees or the employees of ~~their~~ its subsidiaries or affiliates ~~involving~~, which program involves the use of insurance issued by ~~a licensed insurance company;~~ ~~provided,~~ ~~that~~ an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the ~~insurance~~ company issuing the ~~insurance~~ contracts.

~~4. Employees of a creditor who enrolls debtors under a group policy; provided, that the employees receive no commission or other compensation directly related to the enrollment.~~

d. An employee of an insurer or an organization employed by an insurer or an organization who inspects, rates, or classifies risks or supervises the training of insurance producers and who is not individually engaged in the sales, solicitation, or negotiation of insurance.

e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

g. A salaried full-time employee who counsels or advises that person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

h. An employee of an insurer or of an insurance producer who responds to requests from existing policyholders on existing policies provided that employee is not directly compensated based on the volume of premiums that may result from these services and provided that employee does not sell, solicit, or negotiate insurance.

SECTION 58. AMENDMENT. Section 26.1-26-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-10. Consultant - Exceptions to licensing requirement. ~~An individual, partnership, limited liability partnership, corporation, or limited liability company~~ A person may not act as an insurance consultant until licensed as such by the commissioner. However, a license as an insurance consultant is not required of:

1. An attorney licensed to practice law in this state acting in the attorney's professional capacity.

2. A licensed insurance ~~agent,~~ ~~insurance~~ ~~broker,~~ producer or surplus lines insurance ~~broker~~ producer.

3. A trust officer of a bank acting in the normal course of the trust officer's employment.

4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or the certified public accountant's professional capacity.

[139] **SECTION 59. AMENDMENT.** Section 26.1-26-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of ~~agent or broker~~ insurance producer - Lines of insurance. An insurance ~~agent,~~ ~~insurance~~ ~~broker,~~ producer or surplus lines insurance ~~broker~~ producer may receive a license to market products under one or more of the following lines:

1. Life and annuity means insurance coverage on human lives including benefits of endowment, annuities, and credit life.

2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.

3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.

4. Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.

5. Variable life and annuity means insurance coverage provided under variable life insurance contracts~~,~~ and variable annuities~~, or any other life insurance or annuity that reflects the investment experience of a separate account~~.

The product types found under each of the above lines of insurance are those adopted pursuant to section ~~26.1-15-02.1~~ 26.1-05-02.1.

SECTION 60. Section 26.1-26-13.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.1. Appointments.

1. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

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[139] Section 26.1-26-11 was also amended by section 8 of House Bill No. 1049, chapter 55.

2. To appoint an insurance producer as its agent, the appointing insurer shall file a notice of appointment within thirty days from the later of the date the agency contract is executed or the first insurance application is submitted. The notice must be in a format approved by the insurance commissioner. An insurer may also appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

3. An insurer shall pay an appointment fee for each insurance producer appointed by the insurer in the amount and method of payment set forth in section 26.1-01-07.

4. An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in section 26.1-01-07.

SECTION 61. Section 26.1-26-13.2 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.2. Application for examination.

1. A resident individual applying for an insurance producer license or an insurance consultant license must pass a written examination unless exempt under section 26.1-26-25. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or consultant, and the insurance laws and regulations of this state. The individual must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the individual seeks qualification.

2. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 26.1-01-07.

3. An individual applying for an examination must remit a nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.

4. An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination provided the individual remits all required fees and forms before being rescheduled for another examination.

SECTION 62. Section 26.1-26-13.3 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.3. Application for license.

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:

a. Is at least eighteen years of age;

b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;

c. Has completed, within six months of the filing of the application for licensure, an approved prelicensing course of study for the lines of authority for which the individual has applied;

d. Has paid the fees set forth in section 26.1-01-07; and

e. Has successfully passed the examinations for the lines of authority for which the individual has applied.

2. A business entity acting as an insurance producer must obtain an insurance producer license. Application must be made using the uniform business entity application. Before approving the application, the commissioner must find that:

a. The business entity has paid the fee set forth in section 26.1-01-07;

b. The business entity has designated a licensed individual principal insurance producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and

c. The individual designated as the licensed principal insurance producer of the business entity has taken the examination required by section 26.1-26-13.2. The business entity may only be licensed for those lines of insurance for which one or more of its principal insurance producers is licensed. The business entity shall inform the commissioner within ten working days of any change in the status of its principal insurance producer or producers.

d. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 63. AMENDMENT. Section 26.1-26-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-17. License requirement - Surplus lines insurance ~~broker~~ - ~~Resident insurance agent's or insurance broker's license~~ producer. An applicant for a license as a surplus lines insurance ~~broker~~ producer must be licensed in this state as ~~a resident insurance agent or~~ an insurance ~~broker~~ producer qualified as to the line or lines to be written.

SECTION 64. AMENDMENT. Section 26.1-26-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-20. Nonresident ~~license - Must hold like license elsewhere~~ licensing. ~~An applicant may qualify for a nonresident license if the applicant holds a like resident license from a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee.~~

1. Unless denied licensure pursuant to this chapter, the commissioner shall issue a nonresident person a nonresident insurance producer license if:

   a. The person is currently licensed as a resident and is in good standing in the person's home state;

   b. The person has submitted the proper request for licensure and has paid the fees required by section 26.1-01-07;

   c. The person has submitted or transmitted to the commissioner either the person's home state application for licensure or a completed uniform application; and

   d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.

2. The commissioner may verify the insurance producer's licensing status through the insurance producer data base maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.

3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. A fee or license application is not required.

4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in the person's home state is entitled to receive a nonresident surplus lines insurance producer license pursuant to subsection 1. Except as to subsection 1, nothing in this section otherwise amends or supersedes any provision of chapter 26.1-44.

5. Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 26.1-26-11.

6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars.

SECTION 65. AMENDMENT. Section 26.1-26-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. ~~An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next~~

~~preceding the date of application, unless the previous license was suspended or revoked by the commissioner.~~ An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's insurance producer data base records, maintained by the national association of insurance commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.

2. ~~A nonresident applicant may be licensed without examination if the public official having supervision of insurance in 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 the written examination was required, of a license like the license being applied for in this state.~~ A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence in this state to become a resident licensee pursuant to section 26.1-26-13.2. A prelicensing education or examination may not be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule.

3. ~~An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.~~

~~4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and five pertaining to state laws and rules.~~

~~5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines three and four pertaining to state laws and rules.~~

~~6.~~ An applicant may be licensed without examination to market a specific product type if the commissioner finds by rule the specific product type does not require the same professional competency demanded for other product types.

~~7.~~ 4. An applicant for a license to write only a specific product type may be licensed subject to reduced examination requirements if the commissioner finds by rule that the requirements for licensure would otherwise be too burdensome and unrelated to that specific product type.

SECTION 66. Section 26.1-26-25.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-25.1. Assumed names. An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner before using the assumed name.

SECTION 67. AMENDMENT. Section 26.1-26-26 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-26. Temporary license as an ~~agent or broker~~ insurance producer. The commissioner may issue a temporary license as an insurance ~~agent or insurance broker~~ producer for a period not to exceed ~~ninety~~ one hundred eighty days without requiring an examination if the commissioner determines that the 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~~ producer who died, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance ~~agent or insurance broker~~ producer who became disabled.

2. To a member or employee of a ~~partnership, officer or employee of a corporation, or manager or employee of a limited liability company~~ business entity, licensed as an insurance ~~agent~~ producer, upon the death or disability of an individual ~~registered with~~ designated as the principal insurance producer in the business entity application or the license.

3. To the designee of a licensed insurance ~~agent~~ producer entering upon active service in the armed forces of the United States.

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

SECTION 68. AMENDMENT. Section 26.1-26-30 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-30. Contents of license. The license shall state the name, ~~resident~~ address, social security number, personal identification number, or internal revenue service identification number of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

SECTION 69. Section 26.1-26-30.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-30.1. Vendor authority. In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliates or subsidiaries that the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to insurance producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

SECTION 70. AMENDMENT. Section 26.1-26-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31. Term of license. A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;

2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;

3. The licensee dies or in the case of a ~~corporation, partnership, limited liability partnership, or limited liability company~~ business entity, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;

4. The licensee no longer meets the residence requirements of section 26.1-26-19;

5. ~~The insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;~~

~~6.~~ The ~~insurance broker or~~ surplus lines insurance ~~broker~~ producer has failed ~~to maintain a bond as required by section 26.1-26-18, has failed~~ to maintain a resident or nonresident license as an insurance ~~agent~~ producer as required by section ~~26.1-26-16~~ 26.1-26-17, or has failed to pay the annual renewal fee to the commissioner; or

~~7.~~ 6. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

SECTION 71. AMENDMENT. Section 26.1-26-31.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.1. Continuing education required - Exceptions.

1. Except as otherwise provided in this ~~section~~ chapter, any person licensed as an insurance ~~agent, insurance broker, surplus lines insurance broker,~~ producer or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom hours. The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any person having a license limited to a specific product type. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each

two-year period following licensure. No continuing education is required of an ~~agent licensed for the sale of life insurance or sickness, accident, and health~~ insurance~~, or both,~~ producer who is at least sixty-two years of age~~,~~ and who has a combined total years of continuous licensure as ~~such agent~~ an insurance producer and years of age which equals eighty-five~~, and whose commissions from new business each year do not exceed ten thousand dollars. No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness~~.

2. The commissioner shall by rule divide the persons subject to this section into two equal segments for the purpose of reporting, as follows:

   a. One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.

   b. One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every even-numbered year.

3. All persons licensed after January 1, 1989, shall report within thirty days of the first day of January of the year following the second anniversary of the person's licensure.

SECTION 72. AMENDMENT. Section 26.1-26-31.8 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.8. License revocation.

1. The commissioner shall suspend the license of any person if, after holding a hearing, the commissioner finds that the person failed to meet the requirements imposed by subdivision c of subsection 1 of section ~~26.1-26-15.1~~ 26.1-26-13.3 and sections 26.1-26-31.1 through 26.1-26-31.8. Any license suspended under this subsection must remain suspended until the person has demonstrated, to the satisfaction of the commissioner, compliance with the requirements of section 26.1-26-15.1 and sections 26.1-26-31.1 through 26.1-26-31.8 and other applicable laws.

2. The commissioner, after holding a hearing, shall suspend the license of any person who has submitted a false or fraudulent certificate of compliance.

SECTION 73. AMENDMENT. Section 26.1-26-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance ~~agent~~ producer and the license of ~~an insurance broker,~~ a surplus lines insurance ~~broker,~~ producer or insurance consultant terminates upon failure to pay the prescribed annual renewal fees before May first.

SECTION 74. AMENDMENT. Section 26.1-26-33 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-33. Notification of address change - Duty of licensee. Every licensee shall notify the commissioner of any change in the licensee's residential or business address or legal name within thirty days of the change. Any licensee who ceases to maintain residency in this state shall deliver the insurance license to the commissioner by personal delivery or by mail within thirty days after terminating residency.

SECTION 75. AMENDMENT. Section 26.1-26-34 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-34. ~~Termination reports by insurer - Duty of insurer - Information furnished privileged in civil action~~ Notification to commissioner of termination. ~~If an appointment is terminated for any of the grounds listed in this chapter, or for cause as defined by the insurer involved, the insurer shall promptly give written notice of the termination and the effective date of the termination 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 notify the licensee.~~

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

~~Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.~~

1. Termination for cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 26.1-26-42 or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 26.1-26-42. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.

2. Termination without cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 26.1-26-42, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

3. Ongoing notification requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection 1 had the insurer then known of the information's existence.

4. Copy of notification to be provided to insurance producer.

a. Within fifteen days after making the notification required by subsections 1, 2, and 3, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last-known address. If the insurance producer is terminated for cause for any of the reasons listed in section 26.1-26-42, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last-known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

b. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments become a part of the commissioner's file and must accompany every copy of a report distributed or disclosed for any reason about the insurance producer as permitted under subsection 6.

5. Immunities.

a. In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies is not subject to civil liability, and a civil cause of action of any nature does not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

b. In any action brought against a person who may have immunity under subdivision a for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision a does not apply because the person making the statement or providing the information did so with actual malice.

c. Subdivision a or b does not abrogate or modify any existing statutory or common law privileges or immunities.

6. Confidentiality.

a. Any documents, materials, or other information in the control or possession of the insurance department that is furnished by an insurer, insurance producer, or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner, in an investigation pursuant to this section is confidential and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

b. Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision a.

c. In order to assist in the performance of the commissioner's duties under this chapter, the commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision a, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(4) A privilege or claim of confidentiality in the documents, materials, or information shall not be waived as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph 3.

(5) Nothing in this chapter prohibits the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection to a data base or other clearinghouse service maintained by the national association of insurance commissioners, its affiliates, or subsidiaries of the national association of insurance commissioners.

7. Penalties for failing to report. An insurer, the authorized representative of the insurer, or insurance producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with sections 26.1-26-42, 26.1-26-43, and 26.1-26-50.

SECTION 76. AMENDMENT. Section 26.1-26-36 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-36. Surplus lines insurance ~~broker's~~ producer's authority. A surplus lines insurance ~~broker~~ producer may act as a surplus lines insurance ~~broker~~ producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance ~~broker~~ producer may accept business from any licensed ~~agent~~ insurance producer for an admitted company and may compensate the ~~agent~~ insurance producer for the business, provided the insurance is written in conformity with this title.

SECTION 77. AMENDMENT. Section 26.1-26-41 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or limited liability company with nor receive any remuneration whatsoever from any licensed insurance ~~agent, insurance broker~~ producer, surplus lines insurance ~~broker~~ producer, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance ~~agent, insurance broker,~~ producer or surplus lines insurance ~~broker~~ producer in any line.

SECTION 78. AMENDMENT. Section 26.1-26-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.

2. An acquisition or attempt to acquire a license through misrepresentation or fraud.

3. The applicant has been found to have been cheating on an examination for an insurance license.

4. 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.

5. ~~A conviction~~ The applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to

serve the public as an insurance ~~agent, insurance broker~~ producer, insurance consultant, or surplus lines insurance ~~broker~~ producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

7. A misrepresentation of the terms of any actual or proposed insurance contract.

8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary, or excessive insurance coverage to any person.

9. The licensee has forged another's name to an application for insurance.

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.

12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.

13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.

14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.

15. Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.

16. The licensee knowingly accepts insurance business from an individual who is not licensed.

17. The applicant or licensee knowingly fails to comply with a court order imposing child support obligation.

18. The applicant or licensee knowingly fails to pay state income tax or comply with a court order directing payment of state income tax.

SECTION 79. AMENDMENT. Section 26.1-26-43 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-43. License suspension, revocation, or refusal - ~~Partnership, corporation, or limited liability company~~ Business entity - Additional ground. The license of a ~~partnership, corporation, or limited liability company~~ business entity 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, corporation, or limited liability company~~ business entity and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

SECTION 80. Section 26.1-26-45.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-45.1. Reporting of actions.

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

2. Within thirty days after a criminal conviction, an insurance producer shall report to the commissioner any criminal conviction of the insurance producer taken in any jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.

SECTION 81. Section 26.1-26-47.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-47.1. Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the insurance producer's home state, except the requirements imposed by section 26.1-26-20, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

2. A nonresident insurance producer's satisfaction of the insurance producer's home state's continuing education requirements for licensed insurance producers constitutes satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

SECTION 82. AMENDMENT. Section 26.1-26-48 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-48. Commissioner may make examinations and investigations. Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer or insurance producer, whether located within or without this state, all books, records, and papers of the insurer or insurance producer and any books, records, and papers of any insured within this state, and may examine under oath,

the officers, managers, and ~~agents~~ insurance producers of the insurer, or the insured, as to the violation.

SECTION 83. AMENDMENT. Section 26.1-26-52 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-52. Insurance license for automobile rental agencies - Exception. A license as an insurance ~~agent or limited insurance representative~~ producer is not required for the counter sales personnel of an automobile rental company or its franchisee if:

1. The automobile rental company is appropriately licensed in this state under subsection 2 of section ~~26.1-26-08~~ 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota ~~agent~~ insurance producer.

2. The coverage offered by the counter sales personnel is limited to the following:

   a. Personal accident insurance covering the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;

   b. Supplemental liability insurance that must include uninsured and underinsured motorist coverage, either offered separately or in combination with other liability insurance, and that provides coverage to renters and other authorized drivers for liability arising from the operation of the rental vehicle;

   c. Personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period;

   d. Roadside assistance and emergency sickness protection programs; and

   e. Any other coverage that a rental company offers in connection with and incidental to the rental of vehicles.

3. The rental period is ninety days or less.

4. The automobile rental company files an acknowledgement with the commissioner that its counter sales personnel act on its behalf and that it is responsible for any representations made by the counter sales personnel relating to insurance products offered through the automobile rental company or its franchisee. The acknowledgement must state that the commissioner has the right to take any administrative action contemplated in this title, including revocation or suspension of the license required under subsection 1.

5. The automobile rental company provides basic training to counter sales personnel in the insurance products offered under this section. The training must require counter sales personnel to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed ~~agents~~ insurance producers employed by the

automobile rental company or to written brochures or other materials that:

a. Summarize the material terms of the coverage, including the identity of the insurer;

b. Disclose that the policies offered by the automobile rental company may duplicate coverage already provided by other insurance the renter may have;

c. State that the purchase of insurance is not required to rent the vehicle; and

d. Describe the process of filing a claim.

6. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the automobile rental company from including the insurance products in an overall employee performance compensation incentive program.

SECTION 84. AMENDMENT. Section 26.1-26.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-01. Definitions. For the purposes of this chapter, an "independent insurance ~~agent~~ producer" means any licensed property and casualty insurance ~~agent~~ producer representing a property and casualty insurance company on an independent contractor basis and not as an employee. This term includes only those ~~agents~~ producers not obligated by contract to place property and casualty insurance accounts with any insurance company or group of companies. This chapter only applies to contracts which have been in effect for more than one year between an independent insurance ~~agent~~ producer and a property and casualty insurance company.

SECTION 85. AMENDMENT. Section 26.1-26.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-02. ~~Agent~~ Producer and company rehabilitation. In an effort to avoid termination, a property and casualty insurance company and an independent insurance ~~agent~~ producer may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed upon by them. Any written plan agreed upon must identify the problem areas and specify what the ~~agent~~ insurance producer must do in order to avoid termination.

SECTION 86. AMENDMENT. Section 26.1-26.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-03. Notice of termination. Contracts between an independent insurance ~~agent~~ producer and any property and casualty insurance company may not be terminated or amended by the company except by mutual agreement or unless ninety-day prior written notice has been provided to the independent insurance ~~agent~~ producer. The rate of commission and renewal terms must be in accordance with those in effect immediately prior to the termination.

SECTION 87. AMENDMENT. Section 26.1-26.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-04. Termination of ~~agents~~ insurance producers for cause - Exceptions. This chapter does not apply to terminations for abandonment, insolvency of the terminating company, gross and willful misconduct, refusal, suspension, revocation, or termination of the ~~agent's~~ insurance producer's license by the commissioner of insurance, sale or material change or ownership of agency, fraud, material misrepresentation or failure to pay an independent insurance ~~agent's~~ producer's account less the independent insurance ~~agent's~~ producer's commission and any disputed items within thirty days after written demand by the company.

SECTION 88. AMENDMENT. Subdivision b of subsection 3 of section 26.1-26.3-01 of the North Dakota Century Code is amended and reenacted as follows:

b. Acts as an ~~agent~~ insurance producer for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(1) Adjusts or pays claims in excess of an amount determined by the commissioner; or

(2) Negotiates reinsurance on behalf of the insurer.

SECTION 89. AMENDMENT. Subsections 1 and 2 of section 26.1-26.3-02 of the North Dakota Century Code are amended and reenacted as follows:

1. No individual, partnership, corporation, or limited liability company may act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the individual, partnership, corporation, or limited liability company is licensed as an insurance ~~agent~~ producer in this state.

2. An individual, partnership, corporation, or limited liability company may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the individual, partnership, corporation, or limited liability company is licensed as either a resident or nonresident insurance ~~agent~~ producer in this state pursuant to the provisions of this title.

SECTION 90. AMENDMENT. Subdivision c of subsection 10 of section 26.1-26.3-03 of the North Dakota Century Code is amended and reenacted as follows:

c. Appoint any ~~agent~~ insurance producer without assuring that the ~~agent~~ insurance producer is licensed in the appropriate lines of insurance.

SECTION 91. AMENDMENT. Subsection 6 of section 26.1-26.3-04 of the North Dakota Century Code is amended and reenacted as follows:

6. An insurer shall review its books and records each quarter to determine if any of its ~~agents~~ insurance producers have become, by operation of subsection 3 of section 26.1-26.3-01, a managing general agent as defined in that section. If the insurer determines that an ~~agent~~ insurance producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the ~~agent~~ insurance producer and the commissioner of the determination and the insurer and ~~agent~~ insurance producer shall fully comply with the provisions of this chapter within thirty days.

SECTION 92. AMENDMENT. Subdivision b of subsection 1 of section 26.1-26.3-06 of the North Dakota Century Code is amended and reenacted as follows:

b. Revocation or suspension of the insurance producer's license; and

SECTION 93. AMENDMENT. Subdivision h of subsection 1 of section 26.1-26.6-05 of the North Dakota Century Code is amended and reenacted as follows:

h. Knowingly employing a person whose ~~agent~~ insurance producer license has been revoked, suspended, or denied in this or any other state.

SECTION 94. AMENDMENT. Subsection 4 of section 26.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A life or health ~~agent or broker~~ insurance producer licensed in this state, whose activities are limited exclusively to the sale of insurance.

SECTION 95. AMENDMENT. Section 26.1-28-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-02. Sale of insurance through vending machines under certain conditions. ~~Resident insurance agents~~ Insurance producers licensed by the commissioner under this title to solicit applications for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of vending machines supervised by them and placed in locations for the convenience of the traveling public, upon the following conditions:

1. That each policy is reasonably suited for sale and issuance through a vending machine, and that use of a vending machine in a proposed location would be of material convenience to the traveling public.

2. That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose.

3. That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of the benefits, limitations, and exclusions of the policy, the premium rates, the name and address of the ~~agent~~ insurance producer, and the name and home office address of the insurer.

4. That the vending machine is constructed and operated to retain, or is provided with a suitable place for deposit and safekeeping of, a copy of

the application, which shows the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance.

5. That no policy of insurance sold through a vending machine may be for a period of time longer than the duration of a specified one-way or round trip not exceeding one hundred eighty days.

6. That the vending machine has provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through the machine, or that the policy itself, if designed to permit the procedure, may be mailed without an envelope; provided, however, that the commissioner may modify or waive this requirement, by a writing delivered to the ~~agent~~ insurance producer.

7. That each vending machine is supervised, inspected, and tested by the ~~agent~~ insurance producer with such frequency as may reasonably be required by the commissioner, and if any machine is not in good working condition the ~~agent~~ insurance producer shall promptly cause a notice to be displayed on the machine that the machine is out of order, and cause the machine to be promptly removed from service until it is in proper working order.

8. That prompt refund by the ~~agent~~ insurance producer is provided to each applicant or prospective applicant of money deposited in any defective vending machine and for which no insurance, or a less amount than paid for, is actually received.

The commissioner may adopt by rule additional conditions for types and locations of vending machines, their maintenance and operation, and the methods to be used by the ~~agent~~ insurance producer in the solicitation and sale of insurance by means of vending machines as are reasonable and necessary.

SECTION 96. AMENDMENT. Section 26.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-03. Licensing of vending machine devices - Expiration date. The insurance ~~agent~~ producer shall apply for a license for each vending machine to be used. The commissioner shall prescribe the form of the application. A fee of two dollars for each vending machine must be paid at the time of making the application. Upon approval of the application the commissioner shall issue to the ~~agent~~ insurance producer a special vending machine license. The license applies to a specific vending machine or to any machine of identical type which, after written notice by the ~~agent~~ insurance producer to the commissioner, is substituted for it. The license must specify the name and address of the ~~agent~~ insurance producer, the name and home-office address of the insurer, the name or other identifying information of the policy or policies to be sold, the serial number or other identification of the vending machine, and the address, including the location on the premises, where the machine is to be in operation. A vending machine for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of the transfer. The license for each vending machine expires April thirtieth of each year, but may be renewed from year to year by the commissioner upon approval of the application of the ~~agent~~ insurance producer, the furnishing of information requested by the commissioner, and the payment of two dollars for each

license year or part thereof for each machine. Proof of the existence of a subsisting license must be displayed on or about each vending machine in use in the manner the commissioner may reasonably require.

SECTION 97. AMENDMENT. Section 26.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-04. Suspension, revocation, or refusal of license - Notice and opportunity to be heard. The license for each vending machine is subject to expiration, suspension, or revocation coincidentally with that of the ~~agent~~ insurance producer or the insurer. The commissioner also may suspend, revoke, or refuse to renew the license as to any vending machine concerning which the commissioner finds any conditions upon which the machine was licensed or referred to in section 26.1-28-02 have been violated, or no longer exist, or that the machine is being used or operated by the ~~agent~~ insurance producer in violation of the laws of this state. Before suspending, revoking, or refusing to renew a license for a vending machine, the commissioner shall conduct a hearing and shall make a determination upon the basis of the standards, conditions, and requirements of this section.

SECTION 98. AMENDMENT. Section 26.1-29-26 of the North Dakota Century Code is amended and reenacted as follows:

26.1-29-26. Representations on information and belief. When a person insured has no personal knowledge of a fact, the person may repeat information which that person has upon the subject and which that person believes to be true with the explanation that that person does so on the information of others, or that person may submit the information in its whole extent to the insurer. In neither case is the person responsible for the truth of the representation unless it proceeds from an ~~agent~~ insurance producer of the insured who has a duty to give the information.

SECTION 99. AMENDMENT. Section 26.1-30.1-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-30.1-01.1. Unlawful grounds for declination. The declination or termination of a commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an insurer~~, agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is based solely upon any of the following reasons:

1. The race, religion, nationality, ethnic group, disability, age, sex, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.

2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer~~, agent,~~ or ~~broker~~ insurance producer that limits its market to one lawful occupation or profession or to several related occupations or professions.

3. The age or location of the property of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.

4. The principal location of the insured motor vehicle, unless the decision is for a business purpose which is not a mere pretext for unfair discrimination.

5. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

6. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

SECTION 100. AMENDMENT. Subsection 4 of section 26.1-31.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Licensed producer" means an ~~agent,~~ ~~broker,~~ insurance producer or reinsurance intermediary licensed pursuant to the applicable provision of this title.

SECTION 101. AMENDMENT. Subsection 8 of section 26.1-33-28 of the North Dakota Century Code is amended and reenacted as follows:

8. A policy delivered outside this state through an ~~agent~~ insurance producer or other representative of the company issuing the policy.

SECTION 102. AMENDMENT. Subdivision b of subsection 1 of section 26.1-36-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. A provision that no ~~agent~~ insurance producer has authority to change the policy or to waive any of its provisions.

SECTION 103. AMENDMENT. Section 26.1-36-40 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-40. General penalty - License suspension or revocation. Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

SECTION 104. AMENDMENT. Section 26.1-36.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.1-09. General penalty - License suspension or revocation. Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

SECTION 105. AMENDMENT. Subsection 29 of section 26.1-36.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29. "Producer" means insurance ~~agent or insurance broker~~ producer.

SECTION 106. AMENDMENT. Subsection 1 of section 26.1-38.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No person, including an insurer, ~~agent~~ insurance producer, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by chapter 26.1-38.1. Provided, however, that this section does not apply to the North Dakota life and health insurance guaranty association or any other entity that does not sell or solicit insurance.

SECTION 107. AMENDMENT. Subdivision d of subsection 3 of section 26.1-38.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

d. State that the insurer and its ~~agents~~ insurance producers are prohibited by law from using the existence of the North Dakota life and health guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

SECTION 108. AMENDMENT. Section 26.1-39-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-06. Standard fire insurance policy. No fire insurance contract or policy, including a renewal, may be made, issued, used, or delivered by any insurer or by any ~~agent~~ insurance producer or representative of the insurer on property in this state other than such as conform in all particulars as to blanks, size of type, context, provisions, agreements, and conditions with the 1943 standard fire insurance policy of the state of New York, a copy of which must be filed in the office of the commissioner as the standard policy for this state. The cancellation provisions contained in the standard policy are superseded to the extent sections 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different provision, agreement, condition, or clause may be made a part of the contract or policy or be endorsed on the contract or policy or delivered with the contract or policy, except as follows:

1. The name of the insurer, its location and place of business, the date of its incorporation or organization, and the state or county under which the insurer is organized, the amount of paid-up capital stock, whether it is a stock or mutual company, the names of its officers, the number and the date of the policy, and appropriate company emblems may be printed on policies issued on property in this state; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on

any particular risk, which facts or conditions may not be inconsistent with or a waiver of any of the provisions or conditions of the standard policy, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of contracts, supplemental contracts, or endorsements, whereby the interest in the property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions and stipulations inconsistent with the standard policy if applicable only to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies any provision which it is required by law to insert in the policies if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.

4. There may be endorsed in writing on the outside of any policy the name, with the word "~~Agent~~ Producer or ~~Agents~~ Producers" and place of business, of any insurance ~~agent~~ producer or ~~agents~~ producers. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.

5. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.

6. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.

7. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.

8. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or proportion of the loss than the

ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.

9. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.

10. This section does not apply to inland marine, ocean marine, or automobile insurance.

[140] **SECTION 109. AMENDMENT.** Subsections 1 and 2 of section 26.1-39-11 of the North Dakota Century Code are amended and reenacted as follows:

1. "Declination" means the refusal of an insurer to issue a property insurance policy upon receipt of a written nonbinding application or written request for coverage from its ~~agent~~ insurance producer or an applicant. For the purposes of sections 26.1-39-10 through 26.1-39-21, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage is considered a declination.

2. "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on property insurance policies subject to sections 26.1-39-10 through 26.1-39-21, whether the payments are directly payable to the insurer or its ~~agent~~ insurance producer or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

SECTION 110. AMENDMENT. Subsections 2 and 3 of section 26.1-39-12 of the North Dakota Century Code are amended and reenacted as follows:

2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requires insurance coverage from the insurer.

3. No ~~agent or broker~~ insurance producer, for any reason set out in section 26.1-39-17, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

SECTION 111. AMENDMENT. Subsection 4 of section 26.1-39-16 of the North Dakota Century Code is amended and reenacted as follows:

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[140] Section 26.1-39-11 was also amended by section 3 of House Bill No. 1198, chapter 270.

4. Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew must be retained for a period of not less than one year by the insurer or ~~agent or broker~~ insurance producer giving the notice.

SECTION 112. AMENDMENT. Section 26.1-39-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-17. Prohibited reasons for declination or termination of property and casualty policies. The declination or termination of a property insurance policy subject to sections 26.1-39-10 through 26.1-39-21 by an insurer~~, agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is based upon any of the following reasons:

1. The race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured.

2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer that limits its market to one lawful occupation or profession or to several related lawful occupations or professions.

3. The age or location of the residence of the applicant or named insured unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.

4. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

5. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

SECTION 113. AMENDMENT. Subsection 1 of section 26.1-39-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the commissioner, upon the filing of a complaint or through the commissioner's own investigation has reason to believe that an insurer~~, agent,~~ or ~~broker~~ insurance producer has engaged in practices which violate sections 26.1-39-10 through 26.1-39-21 and that a proceeding would be in the public interest, the commissioner shall conduct a hearing.

SECTION 114. AMENDMENT. Section 26.1-39-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-19. Immunity. There is no liability on the part of and no claim for relief arises against the commissioner, any insurer or its authorized representatives, agents, or employees, any licensed insurance ~~agent or broker~~ producer, or any person furnishing information to an insurer as to reasons for a termination or declination for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a declination or termination under these sections. This section does not apply to statements made in bad faith with malice in fact.

SECTION 115. AMENDMENT. Section 26.1-39-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-22. Termination of property and casualty insurance agency contracts. Any insurer authorized to transact property or casualty business in this state, upon termination of an ~~agent's~~ insurance producer's appointment by the insurer, shall permit the renewal and endorsement of all insurance contracts written by the ~~agent~~ insurance producer for a period of one year from the date of the termination, as determined by the individual underwriting requirements of the insurer. If any contract does not meet the underwriting requirements, the insurer shall give the ~~agent~~ insurance producer sixty days' notice of its intention not to renew the contract. This section does not apply if the contract is terminated because of the ~~agent's~~ insurance producer's failure, after receiving a written demand, to pay over moneys due the insurer.

SECTION 116. AMENDMENT. Section 26.1-39-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-23. Temporary insurance - Use of binders. A binder or contract for temporary farm and personal lines of insurance may be made orally or in writing and is deemed to include all the terms of a standard fire insurance policy and all applicable endorsements as may be designated in the binder. However, the cancellation clause of the standard fire insurance policy and the clause specifying the hour of the day at which the insurance commences may be superseded by the express terms of the binder. A duly authorized binder must be accepted as evidence of insurance coverage required as a condition of financing the purchase of property, except that a mortgagee or lender is not required to accept a renewal or extension of the binder. Any insurance ~~agent~~ producer who has express authority to bind farm and personal lines of insurance coverage, and who orally agrees on behalf of an insurer to provide insurance coverage, if requested, shall execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time of the oral agreement.

[141] **SECTION 117. AMENDMENT.** Subsections 1 and 2 of section 26.1-40-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Declination" means the refusal of an insurer to issue a policy upon receipt of a written nonbinding application or written request for coverage from its ~~agent~~ insurance producer or an applicant. The offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, is a declination.

2. "Nonpayment of premium" means failure of the insured to discharge when due any of the insured's obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its ~~agent~~

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[141] Section 26.1-40-01 was also amended by section 4 of House Bill No. 1198, chapter 270.

insurance producer or indirectly under any premium finance plan or extension of credit.

SECTION 118. AMENDMENT. Section 26.1-40-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-07. Proof of notice of termination. A postal service certificate of mailing to the named insured at the address shown in the policy is sufficient proof of notice. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insured's willingness to renew, must be retained for a period of one year by the insurer or ~~agent or broker~~ insurance producer giving the notice.

SECTION 119. AMENDMENT. Subsections 2 and 3 of section 26.1-40-10 of the North Dakota Century Code are amended and reenacted as follows:

2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the insurer.

3. No ~~agent or broker~~ insurance producer, for any reason set out in section 26.1-40-11, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

SECTION 120. AMENDMENT. Section 26.1-40-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-11. Terminations - Declinations - Prohibited reasons. The declination of an application for, or the termination of, a policy by an insurer~~, agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is:

1. Based upon the race, religion, nationality, or ethnic group of the applicant or named insured.

2. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision does not apply to any insurer~~, agent,~~ or ~~broker~~ insurance producer which limits its market to one lawful occupation or profession or to several related lawful occupations or professions.

3. Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not mere pretext for unfair discrimination.

4. Based solely upon the age, sex, or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based upon age, sex, or marital status.

5. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

6. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

SECTION 121. AMENDMENT. Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-02. Affidavit as prerequisite of insurance - Contents. A surplus lines insurance ~~broker~~ producer licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within fifteen days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state.

SECTION 122. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines in solvent insurers. A surplus lines insurance ~~broker~~ producer may not knowingly place surplus line insurance with an insurer that is financially unsound. The surplus lines insurance ~~broker~~ producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance ~~broker~~ producer may not so insure with:

1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.

2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

SECTION 123. AMENDMENT. Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-04. Service of process. Any insurer desiring to transact any business under this chapter, by any surplus lines insurance ~~broker~~ producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

SECTION 124. AMENDMENT. Section 26.1-44-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-44-05. Endorsement of policy. Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES ~~BROKER'S~~ PRODUCER'S LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance ~~broker~~ producer shall properly complete the endorsement by typing or printing the ~~broker's~~ producer's full name in the space provided and shall sign and date the endorsement.

SECTION 125. AMENDMENT. Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-06. Record of business - Filing of statement - Content. Every surplus lines insurance ~~broker~~ producer shall keep a separate account of the business under the ~~broker's~~ producer's license 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 a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, 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 authorized insurance companies. If a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.

SECTION 126. AMENDMENT. Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-08. 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~~ producer who fails or refuses to make and file the annual statement, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquence. The 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 the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner shall revoke the surplus lines insurance ~~broker's~~ producer's license of the ~~broker~~ producer if any surplus lines insurance ~~broker~~ producer fails to make and file the annual statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the ~~broker's~~ producer's records of the business transacted by the ~~broker~~ producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines insurance ~~broker~~ producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines insurance ~~broker~~ producer until two years have elapsed from the effective date of the revocation, nor until all taxes and

fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

SECTION 127. AMENDMENT. Section 26.1-45-04.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-04.1. Adoption of long-term care benefits comparison guides by commissioner. The commissioner of insurance shall adopt rules to create a long-term care benefits comparison guide to be presented at the point of sale between the client and ~~agent~~ insurance producer. The guide must include information regarding nursing home coverage and alternatives to nursing home coverage.

SECTION 128. AMENDMENT. Paragraph 2 of subdivision a of subsection 2 of section 26.1-45-09 of the North Dakota Century Code is amended and reenacted as follows:

(2) In the case of ~~agent~~ insurance producer solicitations, an ~~agent~~ insurance producer must deliver the outline of coverage prior to the presentation of an application or enrollment form.

SECTION 129. AMENDMENT. Section 26.1-45-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-11. Rulemaking authority. The commissioner may adopt reasonable rules to establish minimum standards for correcting abusive marketing practices, replacement forms, ~~agent~~ insurance producer testing, penalties, and reporting practices for long-term care insurance.

SECTION 130. AMENDMENT. Section 26.1-45-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-12. Penalties. In addition to any other penalties provided by the laws of this state, any insurer and any ~~agent~~ insurance producer found to have violated any requirement of this title relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

SECTION 131. AMENDMENT. Subsections 3, 4, and 10 of section 26.1-46-03 of the North Dakota Century Code are amended and reenacted as follows:

3. Taxation.

a. All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that are applicable to foreign-admitted insurers.

b. To the extent ~~agents or brokers~~ insurance producers are utilized, ~~they~~ the insurance producers shall report and pay the taxes for the premiums for risks which ~~they~~ the insurance producers have placed with or on behalf of a risk retention group not chartered in this state.

c. To the extent the ~~agents or brokers~~ insurance producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

d. This subsection does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.

e. To the extent that insurance ~~agents or brokers~~ producers are utilized pursuant to section 26.1-46-11, each ~~agent or broker~~ insurance producer shall keep a complete and separate record of all policies procured from each risk retention group, which record must be open to examination by the commissioner, as provided in sections 26.1-03-19.1 through 26.1-03-22. These records must, for each policy and each kind of insurance provided thereunder, include the limit of liability, the time period covered, the effective date, the name of the risk retention group which issued the policy, the gross premium charged, and the amount of return premiums, if any.

4. Compliance with prohibited practices chapter. Any risk retention group, its ~~agents~~ insurance producers and representatives, shall comply with chapter 26.1-04.

10. Any risk retention group, its ~~agents~~ insurance producers, and representatives shall comply with chapter 26.1-04. The terms of any insurance policy issued by any risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

SECTION 132. AMENDMENT. Subsection 8 of section 26.1-46-06 of the North Dakota Century Code is amended and reenacted as follows:

8. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance ~~agent or broker~~ producer residing in this state.

SECTION 133. AMENDMENT. Subsection 1 of section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed ~~agent or broker~~ insurance producer acting pursuant to the surplus lines laws and regulations of such state.

SECTION 134. AMENDMENT. Subsection 2 of section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Paid first by such insurance source, and if not by such source, by the ~~agent or broker~~ insurance producer for the purchasing group, and if not by such ~~agent or broker~~ insurance producer, then by the purchasing

group, and if not by such purchasing group, then by each of its members.

SECTION 135. AMENDMENT. Section 26.1-46-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-11. Duty of ~~agents or brokers~~ insurance producers to obtain license. Any person acting, or offering to act, as an ~~agent or broker~~ insurance producer for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, shall, before commencing any such activity, obtain a license from the commissioner. This section does not apply to any person acting as an ~~agent or broker~~ insurance producer for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

SECTION 136. REPEAL. Sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1, 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28, 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code are repealed.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 263

SENATE BILL NO. 2127

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

INSURANCE INFORMATION DISCLOSURE

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to prohibiting disclosure by an insurer of nonpublic personal information; and to amend and reenact section 26.1-03-11.3 of the North Dakota Century Code, relating to the insurance commissioner sharing confidential information with other state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

Disclosing nonpublic personal information. An insurance company, nonprofit health service corporation, or health maintenance organization may not disclose nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act [Pub. L. 106-102; 113 Stat. 1436]. The commissioner may adopt rules as may be necessary to carry out this section. The rules must be consistent with and not more restrictive than the model regulation adopted by the national association of insurance commissioners entitled "Privacy of Consumer Financial and Health Information Regulation". This section does not create a private right of action.

SECTION 2. AMENDMENT. Section 26.1-03-11.3 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-11.3. Confidentiality. The commissioner shall maintain, as confidential, any confidential documents or information received from the national association of insurance commissioners or state or federal regulatory or law enforcement officials of this state and other states or jurisdictions. The information may not be disclosed by the department and is exempt from section 44-04-18. The commissioner may share information that is confidential under the laws of this state with the national association of insurance commissioners and with state or federal regulatory or law enforcement officials from this state and other states or jurisdictions providing that the officials are required, under their law, to maintain its confidentiality.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 264

HOUSE BILL NO. 1176

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

INSURANCE COMPANY INVESTMENTS

AN ACT to amend and reenact sections 26.1-05-18, 26.1-05-19, 26.1-05-31, 26.1-10-02, subsections 1 and 6 of section 26.1-10-05, sections 26.1-24-10, 26.1-31.2-01, and 26.1-31.2-02 of the North Dakota Century Code, relating to authorized investment of funds of insurance companies and reinsurance credit for a domestic insurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-18. Investment of funds must be authorized by directors - Prohibited investment practices. An investment or loan, except a policy loan, may not be made by any domestic insurance company unless the investment or loan first has 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. A domestic insurance company may not:

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 the company jointly with any other person, firm, or corporation, except for authorized real estate joint ventures ~~and~~, partnerships, and limited liability companies.

3. Enter into any agreement to withhold any of its property from sale, but the disposition of its property at all times is within the control of its board of directors, except for authorized real estate joint ventures ~~and~~, partnerships, and limited liability companies.

4. Invest any of its funds in, or loan the funds upon, the shares of stock of any corporation except as otherwise provided in this chapter.

5. Invest any of its funds in, or loan the funds 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 in this chapter.

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.

SECTION 2. AMENDMENT. Section 26.1-05-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-05-19. Authorized investment of funds of insurance companies. A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.

2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including loan-backed securities, those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.

5. Bonds issued by the industrial commission under chapter 4-36.

6. Bonds guaranteed under chapter 6-09.2.

7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.

8. Bonds issued by the state board of higher education under chapter 15-55.

9. Revenue bonds issued by the state water commission.

10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.

11. Warrants issued by a city under chapter 40-24.

12. Bonds or notes issued pursuant to chapter 40-33.2.

13. Bonds or other obligations issued pursuant to chapter 40-58.

14. Bonds issued under chapter 40-61.

15. Bonds issued under chapter 54-30.

16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.

17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.

18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.

19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.

20. ~~Mortgage~~ Obligations, including bonds ~~and debentures of~~ or evidences of indebtedness, or participation in those bonds or evidences of indebtedness, or loan-backed securities, which are issued, assumed, guaranteed, or insured by any solvent ~~industrial public utility or financial corporation~~ legal entity duly incorporated and authorized under the laws of the United States of America or of any state or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:

    a. ~~The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase.~~ Investments in preferred, guaranteed, and common stocks issued or guaranteed by a single person may not exceed three percent of the insurance company's admitted assets.

    b. ~~The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value~~

~~of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase.~~ Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate the greater of twenty-five percent of admitted assets or one hundred percent of the capital and surplus of a nonlife insurance company.

c. ~~The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.~~

~~d.~~ Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.

For purposes of this section, preferred stock includes mandatory sinking fund preferred stock. Common stock includes shares of mutual funds, master limited partnerships trading as common stock, and American deposit receipts that are traded on a nationally recognized securities exchange or on the national association of securities dealers automated quotations system.

22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.

23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.

24. Notes secured by mortgages on ~~improved~~ unencumbered real estate, including construction loans and leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. An investment in a construction loan covering any single parcel of real estate may not exceed one quarter of one percent of the admitted assets of the company. Investments in construction loans in the aggregate may not exceed two percent of the admitted assets of the

company. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed ~~seventy-five~~ eighty percent of the value of the property upon which it is a lien, provided that the loan requires immediate scheduled payment in periodic installments of principal and interest and periodic payments are made no less frequently than annually. A loan that does not meet these requirements may not exceed seventy-five percent of the value of the property. ~~The~~ A loan may be made in an amount exceeding ~~seventy-five percent so long as any amount over seventy-five percent of~~ these percentage limitations if the value of the property mortgaged in excess of the limitation is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture, limited liability company, or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.

26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:

    a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.

    b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.

    c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.

    d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.

    e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner.

27. 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 any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business~~ owned by the company in which the square footage of the property is more than fifty percent occupied by the company and its affiliates.

    b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.

    c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.

28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if its aggregate cost does not exceed ~~five~~ three percent of the ~~admitted assets of the company~~ company's capital and surplus and the cost of the components constituting the system is fully amortized over a period of not to exceed ~~seven~~ five years. If a data processing system consists of separate

components acquired at different times, then the cost of each component must be amortized over a period not to exceed ~~seven~~ five years commencing with the date of acquisition of each component.

29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.

30. Ownership of, or loans secured by first liens upon:

    a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.

    b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, which interests or rights may be subject to production payments of the nature described in subdivision a.

    No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

31. Obligations secured by a pledge of personal property, as follows:

    a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.

    b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

33. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

34. Loans, securities, or investments in a North Dakota low-risk incentive fund organized under chapter 26.1-50. The aggregate admitted value of the company's investment under this subsection may not at anytime exceed the lesser of five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law. A company making an investment under this subsection may value at par any investment purchased at par.

35. Foreign investments of substantially the same types as those permitted under subsections 20 and 21, subject to the following restrictions and limitations:

    a. Foreign investments issued, assumed, guaranteed, or insured by a single person may not exceed three percent of the insurance company's admitted assets.

    b. Foreign investments in a single foreign jurisdiction may not exceed in the aggregate ten percent of the insurance company's admitted assets as to a foreign jurisdiction that has a sovereign debt rating of one as determined by the securities valuation office of the national association of insurance commissioners or three percent of the insurance company's admitted assets as to any other foreign jurisdiction.

    c. Foreign investments may not exceed in the aggregate twenty percent of the insurance company's admitted assets.

    Investments acquired under this subsection shall be aggregated with investments of the same type made under subsection 21 for purposes of determining compliance with the limitations contained in that subsection. For purposes of this subsection, a foreign investment means an investment in a foreign jurisdiction or an investment in a legal entity domiciled in a foreign jurisdiction. A foreign jurisdiction is any jurisdiction other than the United States, any state or possession of the

United States, the Dominion of Canada, or any province of the Dominion of Canada.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

SECTION 3. AMENDMENT. Section 26.1-05-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-31. Salaries and expenses of officers and agents of domestic life insurance company - Restrictions. A domestic life insurance company may not:

1. Pay any salary, compensation, or emolument to any senior officer, trustee, or director thereof, amounting in any one year to more than ~~fifty~~ one hundred thousand dollars, unless the payment thereof first is authorized by the board of directors of the company.

2. Grant any pension to any officer, director, or trustee thereof, or to any member of the officer's, director's, or trustee's family after death, except that it may provide a pension in pursuance of the terms of a retirement plan adopted by the board of directors and approved by the commissioner for any person who is or has been a salaried officer or employee of the corporation and who may retire by reason of age or disability.

[142] **SECTION 4. AMENDMENT.** Section 26.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-02. Subsidiaries - Additional investment authority - Exception from investment restrictions.

1. Any domestic insurance company, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries ~~engaged in the following kinds~~. A subsidiary may conduct any kind of business~~:~~

   ~~a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.~~

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[142] Section 26.1-10-02 was also amended by section 28 of Senate Bill No. 2144, chapter 262.

~~b. Acting as an insurance broker or as insurance agent for its parent or for any of its parent's insurance company subsidiaries.~~

~~c. Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.~~

~~d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.~~

~~e. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.~~

~~f. Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.~~

~~g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.~~

~~h. Ownership and management of assets which the parent corporation could itself own or manage.~~

~~i. Acting as administrative agent for a governmental instrumentality performing an insurance function.~~

~~j. Financing of insurance premiums, agents, and other forms of consumer financing.~~

~~k. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business.~~

~~l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section~~ and its authority to do so is not limited because it is a subsidiary of a domestic insurer.

2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections, a domestic insurance company may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ~~five~~ ten percent of the insurance company's admitted assets or fifty percent of the company's surplus as regards policyholders; provided, that after the investments the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there must be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in subdivision a of subsection 2. "The total investment of the insurance company" includes:

(1) Any direct investment by the company in an asset.

(2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.

c. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after such investment the insurance company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.

3. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of insurance companies.

4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined ~~immediately after~~ before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.

5. If an insurance company ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner prescribes, unless at any time after the investment has been made, the investment has met the requirements for investment under any other section, and the company has so notified the commissioner.

SECTION 5. AMENDMENT. Subsections 1 and 6 of section 26.1-10-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Transactions within a holding company system to which an insurance company subject to registration is a party are subject to the following standards:

   a. The terms must be fair and reasonable.

   b. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions including that accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.

   c. The insurance company's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs.

   d. Charges or fees for services performed must be reasonable.

   e. Expenses incurred and payment received must be allocated to the insurance company in conformity with ~~customary~~ ~~insurance~~ statutory accounting practices consistently applied.

6. For purposes of this chapter, in determining whether an insurance company's surplus as regards policyholders is reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

   a. The size of the insurance company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

   b. The extent to which the insurance company's business is diversified among the several lines of insurance.

   c. The number and size of risks insured in each line of business.

   d. The extent of the geographical dispersion of the insurance company's insured risks.

   e. The nature and extent of the insurance company's reinsurance program.

   f. The quality, diversification, and liquidity of the insurance company's investment portfolio.

   g. The recent past and projected future trend in the size of the insurance company's investment portfolio.

   h. The surplus as regards policyholders maintained by other comparable insurance companies.

i. The adequacy of the insurance company's reserves.

j. The quality and liquidity of investments in ~~subsidiaries made pursuant to section 26.1-10-02~~ affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

SECTION 6. AMENDMENT. Section 26.1-24-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-10. Insurer's audit to determine premium - Time limitation. An insurer providing commercial insurance may conduct an audit to determine the premium due or to be refunded only within one hundred eighty days after the expiration date of the policy unless the insured agrees in writing to extend that period of time. ~~During the period allowed to conduct the audit, the insurer may not estimate the amount of premium to be refunded to or paid by the insured.~~

SECTION 7. AMENDMENT. Section 26.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-31.2-01. Credit allowed a domestic ceding insurer. Credit for reinsurance must be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of either subsection 1, 2, 3, 4, or 5. Credit will be allowed under subsection 1, 2, or 3 only with respect to cessions of a kind or class of business that the assuming insurer is licensed or otherwise allowed to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. If meeting the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit must be allowed when the reinsurance is ceded to an assuming insurer or nonprofit health service corporation which is licensed to transact insurance or reinsurance in this state.

2. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

   a. Files with the commissioner evidence of its submission to this state's jurisdiction;

   b. Submits to this state's authority to examine its books and records;

   c. Is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

   d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of

domicile and a copy of its most recent audited financial statement; and either

(1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or

(2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit may be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

3. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

a. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

b. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of subdivision a of subsection 3 does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to ~~business written in the~~ reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars. In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars must be held jointly for the benefit of United States ceding insurers of any member of the group for all years of account; the

incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members~~;~~ ~~and~~. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall ~~make available~~ provide to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator ~~and its~~ or if a certification is unavailable, financial statements prepared by each underwriter's independent public accountants.

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group plus the group shall maintain a joint trusteed surplus of which one hundred million dollars must be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities~~,~~ ~~and~~. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and financial statements of each underwriter member prepared by its independent public accountant.

c. The trust and any amendments to the trust must be established in a form approved by the commissioner of ~~insurance~~ the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February twenty-eighth of each year the trustees of the trust shall report to the commissioner in writing setting forth the

balance of the trust and listing the trust's investments at the preceding yearend and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.

5. Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4 but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

6. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

   a. In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

   b. To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

   This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 8. AMENDMENT. Section 26.1-31.2-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-31.2-02. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03. This security may be in the form of:

1. Cash.

2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.

3. Clean, irrevocable, ~~and~~ unconditional, and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of section 26.1-31.2-03, effective no later than December thirty-first in respect of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

~~4. Any other form of security acceptable to the commissioner.~~

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 265

HOUSE BILL NO. 1137

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

HEALTH INSURANCE BENEFITS AND PLANS

AN ACT to amend and reenact sections 26.1-08-06 and 26.1-08-06.1 of the North Dakota Century Code, relating to minimum benefits and medicare supplement plans of a qualified comprehensive health plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-08-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06. Minimum benefits of a qualified comprehensive plan.

1. A plan of health coverage is a qualified comprehensive plan if it otherwise meets the requirements established by ~~chapter~~ chapters 26.1-36~~,~~ and 26.1-36.4 and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

   a. The minimum benefits for covered individuals must, subject to subsection 2, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than one million dollars.

   b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:

      (1) Hospital services.

      (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.

      (3) Drugs requiring a physician's prescription.

      (4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.

      (5) Service of a home health agency up to a maximum of two hundred seventy visits per year.

(6) Use of radium or other radioactive materials.

(7) Oxygen.

(8) Anesthetics.

(9) Prostheses.

(10) Rental or purchase, as appropriate, of durable medical equipment.

(11) Diagnostic X-rays and laboratory tests.

(12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.

(13) Services of a physical therapist.

(14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(15) Substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.

c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.

d. Covered expenses for the services or articles specified in this subsection do not include:

(1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.

(2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.

(3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.

(5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

(6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.

2. A qualified comprehensive plan also must offer the eligible person the choice of an annual deductible of not less than one thousand dollars per person instead of that provided in subdivision a of subsection 1.

SECTION 2. AMENDMENT. Section 26.1-08-06.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06.1. Qualified medicare supplement plan. A qualified medicare supplement plan ~~is a~~ includes medicare supplement ~~plan~~ plans A and F. ~~This plan is~~ These plans are available to individuals who are eligible for medicare by reason of age or disability.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 266

SENATE BILL NO. 2326

(Senators Lee, Flakoll)
(Representatives Devlin, Price)

HEALTH INSURANCE TERMINATION

AN ACT to amend and reenact section 26.1-08-13 of the North Dakota Century Code, relating to termination of comprehensive health association health coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-08-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-08-13. Termination of coverage. Coverage ~~pursuant to~~ under this chapter terminates:

1. Upon request of the covered person.

2. For failure to pay the required premium subject to a thirty-one-day grace period.

3. When the lifetime maximum benefit amount has been reached under subdivision a of subsection 1 of section 26.1-08-06.

4. If the covered person qualifies for health benefits under other plans or policies.

5. ~~When~~ If the covered ~~person ceases to be a resident of~~ individual physically resides outside this state for more than one hundred eighty-two days of each plan year, except for an association participant who is absent from the state for a verifiable medical reason as determined by the association board.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 267

HOUSE BILL NO. 1303

(Representatives Monson, Gulleson, Nicholas, Wald)
(Senators Kelsh, Traynor)

COUNTY MUTUAL INSURANCE COMPANIES

AN ACT to create and enact a new section to chapter 26.1-13 of the North Dakota Century Code, relating to county mutual insurance companies; and to amend and reenact sections 26.1-13-01 and 26.1-13-02 of the North Dakota Century Code, relating to county mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-01. County mutual insurance company - Organization. A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than ~~twenty~~ thirty counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure. A county mutual insurance company organized under this chapter shall maintain a surplus of at least fifty thousand dollars.

SECTION 2. AMENDMENT. Section 26.1-13-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required. Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner and to the attorney general the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. Upon a showing of good cause, the territory of operations of the merged company may exceed thirty counties. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.

2. The name of the city in or near which the business office of the company is to be located.

3. The intended duration of the company, which is perpetual.

SECTION 3. A new section to chapter 26.1-13 of the North Dakota Century Code is created and enacted as follows:

County mutual insurance company - Reports to commissioner. Each county mutual insurance company shall file an annual report with the commissioner no later than March first of each year which must be verified by at least two principal officers of the company and which must cover the preceding calender year. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter. The reports must be on forms prescribed by the commissioner. The commissioner may also require a company that operates in more than twenty counties to file audited financial statements as deemed necessary.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 268

HOUSE BILL NO. 1143

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

BOILER INSPECTION FEES

AN ACT to amend and reenact sections 26.1-22.1-07, 26.1-22.1-08, 26.1-22.1-09, and 26.1-22.1-10 of the North Dakota Century Code, relating to fees for inspection of boilers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the commissioner.

2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous on-line analysers, that will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts.

~~3.~~ In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

SECTION 2. AMENDMENT. Section 26.1-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-08. Special inspector.

1. Upon written request of the employer, the commissioner may appoint as a special inspector an inspector in the employ of any insurance company authorized to insure boilers in this state against loss from explosion or any self-insured company that has employees for the purpose of inspecting its own boilers in this state. No person may be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.

2. Every inspection made by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the commissioner in the time, manner, and form as prescribed by the commissioner.

3. If a complete report is not filed with the commissioner within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless extensions of time are granted by the chief boiler inspector. For that inspection, the insurance company or self-insured company shall pay all appropriate inspection fees in accordance with section 26.1-22.1-09 for a special inspection.

4. The chief boiler inspector may inspect any boiler to which a special inspection applies.

5. The commissioner may, for cause, suspend or revoke the appointment of any special inspector.

SECTION 3. AMENDMENT. Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-09. Inspection and certificate fees. Upon completion of inspection, the owner or user of a boiler ~~inspected by the chief boiler inspector~~ shall pay to the commissioner fees or a combination of inspection and certificate fees ~~which must be determined by the commissioner~~. Inspection fees must be determined by the commissioner. Certificate fees are determined by section 26.1-22.1-10. The commissioner must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than one hundred fifty dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for any one inspection of a steam traction engine except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed ~~two~~ three hundred ~~eighty-five~~ fifty dollars

per day or ~~one~~ two hundred ~~fifty~~ dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the commissioner. The annual fee for the issuance of a reciprocal commission card for a special inspector is ~~twenty~~ twenty-five dollars and the annual fee for the issuance of a welder-qualified card is ten dollars.

SECTION 4. AMENDMENT. Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-10. Certificate of inspection - Certificate to be posted. The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of ~~fifteen~~ twenty dollars for each certificate of inspection issued as the result of inspections authorized under ~~section~~ sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the ~~insurance company~~ owner or ~~self-insured company~~ user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, twenty-four months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 269

SENATE BILL NO. 2302

(Senators Espegard, Kilzer)

RETROACTIVE UTILIZATION REVIEWS

AN ACT to amend and reenact section 26.1-26.4-02, subsection 1 of section 26.1-26.4-04, subdivision c of subsection 4 of section 26.1-26.4-04, and subsection 10 of section 26.1-26.4-04 of the North Dakota Century Code, relating to retroactive reviews as part of utilization review.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-02. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Commissioner" means the insurance commissioner.

2. "Emergency medical condition" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman the health of the woman or her unborn child, in serious jeopardy.

3. "Emergency services" means health care services, supplies, or treatments furnished or required to screen, evaluate, and treat an emergency medical condition.

4. "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents.

5. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.

6. "Provider of record" means the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment, and services rendered to an individual.

7. "Retrospective" means utilization review of medical necessity which is conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

8. "Utilization review" means a system for prospective, retrospective, and concurrent review of the necessity and appropriateness in the allocation of health care resources and services that are subject to state insurance regulation and which are given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.

~~8.~~ 9. "Utilization review agent" means any person or entity performing utilization review, except:

a. An agency of the federal government; or

b. An agent acting on behalf of the federal government or the department of human services, but only to the extent that the agent is providing services to the federal government or the department of human services.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notification of a determination by the utilization review agent must be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review. In the case of a retrospective review, the utilization review agent has five business days after receipt of all information necessary to complete the review to notify the provider of record, enrollee, or appropriate individual.

SECTION 3. AMENDMENT. Subdivision c of subsection 4 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal. The expedited appeals process is not applicable to retrospective reviews.

SECTION 4. AMENDMENT. Subsection 10 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. When an initial appeal to reverse a determination is unsuccessful, a subsequent determination regarding hospital, medical, or other health care services provided or to be provided to a patient which may result in a denial of third-party reimbursement or a denial of precertification for that service must include the evaluation, findings, and concurrence of a physician trained in the relevant specialty to make a final determination that care provided or to be provided was, is, or may be medically inappropriate. Subsequent determinations for retrospective reviews must be completed no later than thirty days from the date the appeal is filed and all information necessary to complete the appeal is received.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 270

HOUSE BILL NO. 1198

(Representative Keiser)
(Senator Krebsbach)

INSURANCE POLICY TRANSFER

AN ACT to create and enact a new section to chapter 26.1-30.1, a new section to chapter 26.1-39, and a new section to chapter 26.1-40 of the North Dakota Century Code, relating to transfer of policies within an insurance holding company system; and to amend and reenact subsection 4 of section 26.1-39-11 and subsection 5 of section 26.1-40-01 of the North Dakota Century Code, relating to transfer of policies within an insurance holding company system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-30.1 of the North Dakota Century Code is created and enacted as follows:

Policy transfer.

1. A policy transferred to an insurer within the same insurance holding company system is not subject to sections 26.1-30.1-02, 26.1-30.1-03, 26.1-30.1-03.1, and 26.1-30.1-06.

2. The transferring insurer shall give notice to the policyholder of the policy transfer.

SECTION 2. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of transfer. The insurer transferring a policy to another insurer within the same insurance holding company system shall give notice to the policyholder of the transfer.

[143] **SECTION 3. AMENDMENT.** Subsection 4 of section 26.1-39-11 of the North Dakota Century Code is amended and reenacted as follows:

4. "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in subsection 3. For purposes of sections 26.1-39-10 through 26.1-39-21, the transfer of a ~~policyholder~~ policy between companies within the same insurance ~~group~~ holding company system is ~~considered~~ not a termination. Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable

[143] Section 26.1-39-11 was also amended by section 109 of Senate Bill No. 2144, chapter 262.

reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

[144] **SECTION 4. AMENDMENT.** Subsection 5 of section 26.1-40-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Termination" means either a cancellation or nonrenewal of automobile insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination. The transfer of a policy between companies within the same insurance holding company system is not a termination.

SECTION 5. A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Notice to transfer. The insurer transferring a policy to an insurer within the same insurance holding company system shall give notice to the policyholder of the transfer.

Approved March 21, 2001
Filed March 21, 2001

[144] Section 26.1-40-01 was also amended by section 117 of Senate Bill No. 2144, chapter 262.

CHAPTER 271

SENATE BILL NO. 2150

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

VIATICAL SETTLEMENT CONTRACTS

AN ACT to create and enact chapter 26.1-33.2 of the North Dakota Century Code, relating to viatical settlement contracts; to amend and reenact subdivision a of subsection 16 of section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts; to repeal chapter 26.1-33.1 of the North Dakota Century Code, relating to viatical settlement contracts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 16 of section 10-04-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter ~~26.1-33.1~~ 26.1-33.2;

SECTION 2. Chapter 26.1-33.2 of the North Dakota Century Code is created and enacted as follows:

26.1-33.2-01. Definitions.

1. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or the internet, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

2. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts or purchase agreements.

3. "Chronically ill" means:

   a. Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;

   b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

c. Having a level of disability similar to that described in subdivision a as determined by the secretary of health and human services.

4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

(1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(2) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

b. "Financing entity" does not include a nonaccredited investor or viatical settlement purchaser.

5. "Fraudulent viatical settlement act" includes:

a. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in, acts including:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(a) An application for the issuance of a viatical settlement contract or insurance policy;

(b) The underwriting of a viatical settlement contract or insurance policy;

(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(d) Premiums paid on an insurance policy;

(e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

(f) The reinstatement or conversion of an insurance policy;

(g) In the solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

(h) The issuance of written evidence of viatical settlement contract or insurance; or

(i) A financing transaction.

(2) Employing any device, scheme, or artifice to defraud related to viaticated policies.

b. In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits its employees or its agents to:

(1) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(4) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner.

c. Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance.

d. Recklessly entering into, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, of the purpose of misleading another, information concerning any fact material to the policy, when the viator or the viator's agent intended to defraud the policy's issuer. "Recklessly" means engaging in the conduct of conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

e. Attempting to commit, assisting, aiding, or abetting in the commission of or conspiracy to commit the acts or omissions specified in this subsection.

6. "Person" means a natural person or a legal entity, including an individual, partnership, limited liability company, association, trust, or corporation.

7. "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this

state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

8. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

9. "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets to a financing entity or viatical settlement provider.

10. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

11. "Viatical settlement broker" means a person who on behalf of a viator and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

12. "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

13. "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

b. The issuer of a life insurance policy providing accelerated benefits;

c. An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

e. A financing entity;

f. A special purpose entity;

g. A related provider trust;

h. A viatical settlement purchaser; or

i. An accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider.

14. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

15. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

26.1-33.2-02. License requirements - Penalty.

1. A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. A person may not operate as a viatical settlement broker without first obtaining an insurance producer license from the commissioner.

2. Application for a viatical settlement provider must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee of two hundred fifty dollars.

3. Application for a viatical settlement broker license must be made to the commissioner by the applicant on a form prescribed by the commissioner and the application must be accompanied by a fee of two hundred fifty dollars.

4. Licenses must be renewed from year to year on the anniversary date upon payment of the annual renewal fees of one hundred fifty dollars. Failure to pay the fees by the renewal date results in expiration of the license.

5. The applicant shall provide information on forms required by the commissioner. An applicant shall fully disclose the identity of all stockholders, partners, officers, members, and employees. The commissioner may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.

6. A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers as applicable, under the license, and all those persons must be named in the application and any supplements to the application.

7. Upon the filing of an application and the payment of the license fee, the commissioner shall issue a license if the commissioner finds that the applicant:

   a. If a viatical settlement provider, has provided a detailed plan of operation;

   b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

   c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for;

   d. If a legal entity, provides a certificate of good standing from the state of its domicile; and

   e. If a viatical settlement provider or viatical settlement broker has provided an antifraud plan that meets the requirements of subsection 6 of section 26.1-33.2-10.

8. The commissioner may not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

9. A person may not act or hold oneself out to be a viatical settlement provider unless licensed under this chapter. Any person willfully violating this section is guilty of a class C felony.

26.1-33.2-03. License revocation and denial.

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

a. There was any material misrepresentation in the application for the license;

b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

d. The licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

e. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this chapter;

f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

g. The licensee no longer meets the requirements for initial licensure;

h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, financing entity, special purpose entity, or related provider trust;

i. The licensee knowingly has provided materially untrue information to a life insurance company that issued a policy of life insurance that is the subject of a viatical settlement contract; or

j. The licensee has violated any provision of this chapter.

2. If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with chapter 28-32.

26.1-33.2-04. Approval of viatical settlement contracts and disclosure statements. A person may not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed and approved by the commissioner. Any viatical settlement contract form filed with the commissioner must be deemed approved if it has not been disapproved within sixty days of filing. The commissioner may disapprove a viatical settlement contract form or disclosure statement form if the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. All viatical settlement contracts and applications for viatical settlements issued or delivered in this state must contain the following statement:

Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

The lack of a statement as required in this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

26.1-33.2-05. Reporting requirements and confidentiality.

1. Each viatical settlement provider shall file with the commissioner on or before March first of each year an annual statement containing information regarding business transacted in this state for the previous calendar year:

   a. For each policy viaticated:

      (1) The date the viatical settlement was entered.

      (2) The life expectancy of the viator at time of contract.

      (3) The face amount of the policy.

      (4) The amount paid by the viatical settlement provider to viaticate the policy and the percentage that amount represents of the face amount.

      (5) If the viator has died:

         (a) The date of death.

         (b) The total insurance premiums paid by the viatical settlement provider to maintain the policy in force.

   b. A breakdown, by disease category, of applications received, accepted, and rejected.

   c. A breakdown of policies viaticated by issuer and policy type.

   d. The number of secondary market versus primary transactions.

   e. The total number of policies viaticated.

   f. The amount of outside borrowings.

2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency, or company, or any other person with actual knowledge of an insured's identity, may not disclose the insured's identity or the insured's financial or medical information to any other person unless the disclosure:

   a. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

   b. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency;

   c. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider; or

d. Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider or a viatical settlement purchaser and the insured has provided prior consent to the disclosure.

26.1-33.2-06. Examination or investigations.

1. When the commissioner deems it reasonably necessary to protect the interest of the public, the commissioner may examine any licensee or applicant for a license. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state. The expenses incurred in conducting any examination must be paid by the licensee or applicant. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

2. a. Names and individual identification data for all viators are confidential information and may not be disclosed by the commissioner, unless required by law.

b. Records of all transactions of viatical settlement contracts must be maintained by the licensee and must be made available to the commissioner for inspection during reasonable business hours.

26.1-33.2-07. Disclosure.

1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker must provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and must provide the following information:

a. Possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

b. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

c. Proceeds of the viatical settlement could be subject to the claims of creditors.

d. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

e. The viator has the right to rescind a viatical settlement contract within thirty days from the date of the contract or fifteen calendar days after receipt of the viatical settlement proceeds by the viator,

whichever is earlier, as provided in subsection 3 of section 26.1-33.2-08. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider or purchaser.

f. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

g. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.

h. Disclosure to a viator must include distribution of a brochure describing the process of viatical settlements.

i. The disclosure document must contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity, medical, and financial information or the identity of family members, a spouse, or significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase."

j. The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

2. A viatical settlement provider must provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and provide the following information:

a. State the affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.

b. The document must include the name, address, and telephone number of the viatical settlement provider.

c. A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation

and all offers received including the name of the settlement provider making the offer.

d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

e. State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits.

f. State the name, business address, and telephone number of the independent third party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

3. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty days after the change.

26.1-33.2-08. General rules.

1. a. A viatical settlement provider entering into a viatical settlement contract must first obtain:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;

(2) A witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily, and, if applicable for the purposes of determining payments for persons who are terminally or chronically ill, acknowledges that the insured is terminally ill or is chronically ill and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued; and

(3) A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, viatical settlement broker, and the insurance

company that issued the life insurance policy covering the life of the insured.

b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider must give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision c in their entirety.

c. The viatical provider must deliver a copy of the medical release required under paragraph 3 of subdivision a and a copy of the viator's application for the viatical settlement contract to the insurer that issued the life insurance policy that is the subject of the viatical transaction along with the notice required under subdivision b.

2. All medical information solicited or obtained by any licensee is subject to the applicable provision of state law relating to confidentiality of medical information.

3. All viatical settlement contracts entered into in this state must provide the viator with an unconditional right to rescind the contract for at least thirty calendar days from the date of the contract or fifteen days from the receipt of the viatical settlement proceeds, whichever is less. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.

4. The viatical settlement provider must instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the escrow agent shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider. Upon the licensed provider's receipt of the acknowledgement of the transfer of ownership, assignment, or designation of beneficiary from the insurance company, the licensed provider shall instruct the escrow agent to pay the settlement proceeds to the viator. Payment must be made within three business days of the date the provider received the acknowledge forms from the insurance company.

5. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to subdivision f of subsection 1 of section 26.1-33.2-07 renders the viatical settlement

contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

6. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred must only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and is limited to once every three months for insureds with a life expectancy of more than one year and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

7. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements are the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. Advertisements must be truthful and not misleading in fact or by implication.

26.1-33.2-09. Prohibited practices. It is a violation of this chapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, if the coverage has been continuous and under the same group sponsorship.

2. The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. 501(c)(3).

3. The owner of the policy is not a natural person, such as a corporation, limited liability company, or partnership.

4. a. The viator or owner submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

   (1) The owner or insured is diagnosed with an illness or condition that is either life threatening or that requires a course of treatment for a period of at least two years or long-term care or home health care, or both;

   (2) The owner's or insured's spouse dies;

   (3) The owner or insured divorces that person's spouse;

(4) The owner or insured retires from full-time employment;

(5) The owner or insured becomes physically or mentally disabled and a physician determines that the disability prevents the owner or insured from maintaining full-time employment;

(6) The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

(7) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner or insured, adjudicating the owner or insured bankrupt or insolvent, or approving a petition seeking reorganization of the owner or insured or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's or insured's assets; or

(8) The owner of the policy experiences a significant decrease in income that is unexpected by the owner and that impairs the owner's reasonable ability to pay the policy premium.

b. The independent evidence must be submitted to the insurer when the viatical settlement provider submits a request to the insurer to effect transfer of policy or certificate to the viatical settlement provider. The insurer shall respond to the request in a timely manner. Nothing in this section prohibits an insurer from exercising its right to contest the validity of any policy on the grounds of fraud.

5. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subsection 4 when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy must be deemed to conclusively establish that the viatical settlement contract is valid and enforceable and the insurer shall timely respond to the request.

26.1-33.2-10. Fraud prevention and control.

1. A person may not commit a fraudulent viatical settlement act. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter. A person in the business of viatical settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

2. A person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed must notify the commissioner.

3. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been

committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

4. Civil liability may not be imposed on and a cause of action does not arise from a person acting without actual malice and furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

   a. The commissioner or the commissioner's employees, agents, or representatives;

   b. Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

   c. A person involved in the prevention and detection of fraudulent viatical settlement act or that person's agents, employees, or representatives;

   d. The national association of insurance commissioners, national association of securities dealers, North American securities administrators association, or their employees, agents, or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

   e. The life insurer that issued the life insurance policy covering the life of the insured.

5. The documents and evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts are confidential and are not subject to discovery or subpoena in a civil or criminal action.

6. Viatical settlement providers and viatical settlement brokers shall submit to the commissioner an antifraud plan that must reasonably detect, prosecute, and prevent fraudulent viatical settlement acts. Antifraud plans must include at least:

   a. Fraud investigators, who may be viatical settlement provider employees or independent contractors.

   b. A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications.

   c. A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.

   d. A description of the plan for antifraud education and training of underwriters and other personnel.

   e. A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and

investigating unresolved material inconsistencies between medical records and insurance applications.

f. Antifraud plans submitted to the commissioner are confidential and are not subject to discovery or subpoena in a civil or criminal action.

26.1-33.2-11. Injunctions - Civil remedies - Cease and desist. In addition to the penalties and other enforcement provisions of this title, any person who violates this chapter is subject to civil penalties of up to fifty thousand dollars per violation. Imposition of civil penalties must be pursuant to an order of the commissioner issued under chapter 28-32. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.

26.1-33.2-12. Unfair trade practices. A violation of this chapter is an unfair trade practice under chapter 26.1-04 subject to the penalties contained in that chapter.

26.1-33.2-13. Authority to adopt rules. The commissioner may adopt rules implementing this chapter.

SECTION 3. REPEAL. Chapter 26.1-33.1 of the North Dakota Century Code is repealed.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 272

SENATE BILL NO. 2246

(Senators Lee, Watne)
(Representatives Carlson, Rennerfeldt)

LIFE INSURANCE TRUSTEE DUTIES

AN ACT to create and enact a new section to chapter 26.1-33 of the North Dakota Century Code, relating to the duties of a trustee of a life insurance trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-33 of the North Dakota Century Code is created and enacted as follows:

Life insurance policy ownership or retention by trust - Duties of trustee. Notwithstanding any other provision of law, the duties of a trustee regarding the acquisition, retention, or ownership of a life insurance policy upon the life of any one or more of the grantor of the trust, the grantor's spouse, children, grandchildren, or parents include a duty of loyalty and fair dealing, but, except as provided below, do not include a duty to:

1. Determine whether any life insurance policy in the trust is or remains a proper investment;

2. Exercise a policy option, right, or privilege available under a life insurance policy; or

3. Diversify the investment.

A trustee is not liable to the beneficiaries under the trust instrument or to any other person for a loss that is claimed to result from the absence of these duties, except if a trustee acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 273

HOUSE BILL NO. 1144

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

BREAST RECONSTRUCTION SURGERY INSURANCE COVERAGE

AN ACT to create and enact section 26.1-36-09.11 of the North Dakota Century Code, relating to insurance coverage for breast reconstruction surgery; and to amend and reenact subsection 5 of section 26.1-36.3-05 and subsection 5 of section 26.1-36.4-05 of the North Dakota Century Code, relating to renewability of health insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-36-09.11 of the North Dakota Century Code is created and enacted as follows:

26.1-36-09.11. Breast reconstruction surgery. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, or franchise basis unless the policy, contract, or evidence of insurance provides the benefit provisions of the federal Women's Health and Cancer Rights Act of 1998 [Pub. L. 105-277; 112 Stat. 2681-337; 42 U.S.C. 300gg-6]. This section does not apply to individual or group supplemental, specified disease, long-term care, or other limited benefit policies.

SECTION 2. AMENDMENT. Subsection 5 of section 26.1-36.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. At the time of coverage renewal, a health insurance carrier may modify the health insurance coverage for a product offered to a group health plan, if for coverage that is available in such market other than only through one or more bona fide associations, the modification is reasonable, consistent with state law and effective on a uniform basis among group health plans with that product. If coverage is modified, the carrier shall:

   a. Provide advance notice of its decision under this subsection to the commissioner at least three working days prior to mailing the notice to the affected small employers and participants and beneficiaries.

   b. Provide notice of the decision to modify health coverage to all affected small employers, participants, and beneficiaries and the commissioner sixty days prior to the modification of health coverage by the carrier.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-36.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. At the time of coverage renewal, an insurer may modify the health insurance coverage for a product offered to a group or individual, if the modification is reasonable, consistent with state law and effective on a uniform basis. If coverage is modified, the carrier shall:

   a. Provide advance notice of its decision under this subsection to the commissioner at least three working days prior to mailing the notice to the affected employers and participants and beneficiaries.

   b. Provide notice of the decision to modify health coverage to all affected employers, participants, and beneficiaries and the commissioner sixty days prior to the modification of health coverage by the carrier.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 274

HOUSE BILL NO. 1226

(Representatives Porter, Devlin, Keiser, Svedjan)
(Senators Cook, Stenehjem)

INDIVIDUAL AND SMALL EMPLOYER HEALTH INSURANCE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to providing basic health insurance coverage for individuals and small employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Basic health insurance coverage - Exceptions to required coverage.

1. An insurance company, a nonprofit health service corporation, or a health maintenance organization may deliver, issue, execute, and renew a basic health insurance policy, health service contract, or evidence of coverage on an individual basis or an employer group, blanket, franchise, or association basis for employers with fewer than fifty employees.

2. The basic health insurance coverage policy, contract, or evidence of coverage under this section is not subject to sections 26.1-36-06.1, 26.1-36-08, 26.1-36-09.1, 26.1-36-09.3, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-12.1, and 43-13-31. However, the insurance company, nonprofit health service corporation, or health maintenance organization shall make the coverage required under these sections available at the option of the individual or employer and may charge an additional premium for each coverage provided.

3. Any law that becomes effective after January 1, 2001, which provides for an accident and health insurance coverage mandate does not apply to a basic health insurance policy issued under this section unless the law specifically identifies application to a basic health insurance coverage policy.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 275

HOUSE BILL NO. 1365

(Representatives Nottestad, Rennerfeldt, Winrich)
(Senators Lyson, Mutch)

UNIFORM PRESCRIPTION DRUG CARDS

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to issuance of uniform prescription drug cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Uniform prescription drug information card.

1. An insurance company, a nonprofit health service corporation, or a health maintenance organization that provides coverage for prescription drugs and that issues a card or other technology for prescription drug claims processing and an administrator of such coverage, including a third-party administrator for a self-insurance plan, a pharmacy benefits manager, and a state-administered plan may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the insured is also issued a uniform card or other technology containing uniform prescription drug information as provided under this section.

2. The uniform prescription drug information card or other technology must be in the format approved by the national council for prescription drug programs and must include all of the fields the issuer determines necessary to submit a claim and all the fields necessary to conform to the most recent pharmacy information card or technology implementation guide produced by the national council for prescription drug programs, or must include all the fields necessary to conform to a national format acceptable to the commissioner. All information the issuer determines necessary for claims submission of prescription drug benefits, exclusive of information provided on the prescription as required by law or rule, must be included on the card or other technology in a clear, readable, and understandable manner. All information on the card or other technology which is required under this section and which is not specified by the national council for prescription drug programs must be formatted and arranged in a manner that corresponds in content and format acceptable to the commissioner. All information on the card must be formatted and arranged in a manner that corresponds in content and format to the current content and format required by the issuer to process the claim. If an issuer requires a conditional or situation field as defined by the national council for prescription drug programs, the field must conform to the pharmacy information card or technology implementation guide produced by the

national council for prescription drug programs or conform to the national format acceptable to the commissioner.

3. An issuer shall issue a new uniform prescription drug information card or other technology upon enrollment and reissue upon any change in the cardholder's coverage which impacts data in content or format as contained on the card or which affects the data content or format required to be on the card or other technology as required by this section. Newly issued cards or other technology must be updated with the latest coverage information and must conform to the national council for prescription drug programs standards and to the implementation guide or must conform to the format specified by the commissioner. However, the issuer may issue to the insured stickers or other methodologies to temporarily update cards as may be acceptable to the commissioner.

4. The card or other technology may be used for any health insurance coverage. This section does not require any person issuing the card or other technology to issue a separate card for prescription coverage, provided the card or other technology can accommodate the information necessary to process the claim as required by this section.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform prescription drug cards. The board shall provide for issuance of uniform prescription drug cards under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 in the same manner as provided under section 1 of this Act.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 276

HOUSE BILL NO. 1277

(Representatives Wald, Kasper, Tieman)

EMPLOYEE HEALTH INSURANCE PREMIUM PAYMENT

AN ACT to create and enact a new section to chapter 26.1-36.4 of the North Dakota Century Code, relating to acceptable methods of employer payment of employee health insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36.4 of the North Dakota Century Code is created and enacted as follows:

Employer payment of employee premium. An insurer shall accept a personal or business check from an employer as a payment method for premium payment for an employee's individual accident and health insurance policy. This section does not apply to groups as defined under chapter 26.1-36.3.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 277

SENATE BILL NO. 2210

(Senators Tallackson, Mutch)
(Representatives Kasper, Wald)

HEALTH INSURANCE UTILIZATION REPORTS

AN ACT to create and enact a new section to chapter 26.1-36.4 of the North Dakota Century Code, relating to health insurance utilization reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36.4 of the North Dakota Century Code is created and enacted as follows:

Health insurance utilization reports.

1. Once each calendar year, any employer with fifty-one or more eligible employees or upon termination of health insurance coverage for any employer, the employer is entitled to a report from the insurer or administrator of that employer's employee health plan which includes a monthly accounting for the most recent twenty-four-month period of the total number of insured or covered employees, the total premiums paid, and the total benefits paid on behalf of the employer's health plan.

2. Insurers shall provide the report pursuant to subsection 1 to an employer within thirty days of receipt of a request for the information.

3 The information provided pursuant to subsection 1 may not identify specific employee claims or other confidential health care information.

4. Upon notification of termination of health insurance before the end of a benefit period, the terminated insurer, at the request of the employer and within thirty days of the request, shall supply the succeeding or new insurer a report of all deductibles and coinsurance payments for each employee covered by the employer's health insurance plan for the most recent benefit period.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 278

SENATE BILL NO. 2143

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

CREDIT INSURANCE

AN ACT to create and enact section 26.1-37-04.1 of the North Dakota Century Code, relating to credit insurance; to amend and reenact sections 26.1-37-01, 26.1-37-02, 26.1-37-03, 26.1-37-05, 26.1-37-06, 26.1-37-07, 26.1-37-08, 26.1-37-09, 26.1-37-13, and 26.1-37-14 of the North Dakota Century Code, relating to credit insurance; and to repeal sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code, relating to credit insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-01. Scope ~~and construction~~.

1. This chapter may be cited as the "Consumer Credit Insurance Model Act".

2. All ~~life insurance and all accident and health~~ consumer credit insurance issued or sold in connection with loans or other credit transactions ~~are~~ for personal, family, or household purposes is subject to the provisions of this chapter, except ~~such insurance~~:

   a. Insurance written in connection with a ~~loan or other~~ credit transaction ~~of more than twenty years' duration, and except 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. This chapter must be liberally construed~~ that is:

      (1) Secured by a first mortgage or deed of trust;

      (2) Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;

   b. Transactions involving extensions of credit primarily for business or commercial purposes;

   c. Insurance on motor vehicles designed for highway use and on mobile homes;

   d. Creditor-placed insurance;

e. Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor;

f. Insurance for which no identifiable charge is made to the debtor; and

g. Insurance on accounts receivable.

SECTION 2. AMENDMENT. Section 26.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-02. Definitions. For the purpose of this chapter:

1. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.

2. "Collateral" means personal property that is pledged as security for the satisfaction of a debt.

3. "Consumer credit insurance" is a general term used in this chapter to refer to any or all of credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property, or any other credit insurance.

4. "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

5. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.

~~2.~~ 6. "Credit life insurance" means insurance on ~~the life of~~ a debtor or debtors, pursuant to or in connection with a specific loan or other credit transaction, to provide for satisfaction of a debt, in whole or in part, upon the death of an insured debtor.

~~3.~~ 7. "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of the lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them.

8. "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to the collateralized personal property as a result of fire, theft, collision, or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor. It is either single interest insurance or limited dual interest insurance.

9. "Credit property insurance" means any policy, endorsement, rider, binder, certificate, or other instrument or evidence of insurance covering perils to goods purchased through a credit transaction or used as collateral for a credit transaction and which concerns a creditor's interest in the purchased goods or pledged collateral either in whole or in part.

10. "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date or dates.

11. "Credit unemployment insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy.

~~4.~~ 12. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

~~5. "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.~~

13. "Dual interest insurance" means credit property insurance covering the seller's or creditor's interest and at least partially the borrower's interest in the goods purchased through the credit transaction or pledged as collateral for the credit transaction.

14. "Finance charge" means any charge payable directly or indirectly as an incident to or as a condition of the extension of credit, including interest; time price differentials; amount payable under a discount system of additional charges; service, transaction, or carrying charges; loan fees; points or similar charges; appraisal fees; or charges incurred for investigating the credit worthiness of the consumer. The terms do not include charges as a result of default, taxes, license fees, delinquency charges, or filing fees.

15. "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor.

16. "Identifiable charge" means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance, and includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service, or other similar charge made to debtors who are in like circumstances except for the insured or noninsured status of the debtor or of the property used as security for the credit transaction.

17. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump sum payment, excluding all unearned interest and other unearned finance charges.

18. "Open-end credit" means credit extended by a creditor under an agreement in which:

a. The creditor reasonably contemplates repeated transactions;

b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

c. The amount of credit that may be extended to the debtor during the term of the agreement, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

SECTION 3. AMENDMENT. Section 26.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-03. Issuance of policies and certificates. All credit ~~life~~ insurance ~~and credit accident and health insurance policies~~ subject to this chapter may be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and may be issued only through holders of licenses or authorizations issued by the commissioner.

SECTION 4. Section 26.1-37-04.1 of the North Dakota Century Code is created and enacted as follows:

26.1-37-04.1. Types of consumer credit insurance. The types of consumer credit insurance defined in section 26.1-37-02 may each be written separately or in combination with other types of consumer credit insurance on an individual policy or group policy basis. The commissioner may by rule prohibit or limit any combination.

SECTION 5. AMENDMENT. Section 26.1-37-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-05. Amount of consumer credit ~~life~~ insurance ~~and credit accident and health insurance~~.

1. a, Except as otherwise provided in this subsection, the initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness and, ~~where~~ when an indebtedness is repayable in substantially equal installments, the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Insurance on agricultural ~~credit transaction~~ loan commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a nondecreasing or level term plan. Insurance on educational ~~credit transaction~~ loan commitments may be written for ~~the amount of the portion of such commitment that has not been advanced by the creditor~~ unpaid indebtedness plus any unused commitment.

b. In the absence of any preexisting condition exclusions, the amount of insurance payable in the event of death due to natural causes may be limited to the balance as the balance existed six months before the date of death if:

(1) There has been one increase or more in the outstanding balance during the six-month period, other than those due to the accrual of interest or late charges; and

(2) Evidence of individual insurability has not been required during the six-month period.

c. Other patterns of insurance may be used which are not inconsistent with this subsection including those providing coverage for lease payments or lump sum purchase at the end of the lease.

2. a. The total amount of periodic indemnity payable by credit accident and health insurance or by credit unemployment insurance in the event of disability or unemployment, as defined in the policy, may not exceed the aggregate of the periodic scheduled unpaid installments of the ~~indebtedness~~ gross debt; and the amount of each periodic indemnity payment may not exceed the original ~~indebtedness~~ gross debt divided by the number of periodic installments.

b. Notwithstanding subdivision a, for credit accident and health insurance or for credit unemployment insurance written in connection with an open-end credit agreement, the amount of insurance may not exceed the gross debt which would accrue on that amount using the periodic indemnity. Subject to any policy maximums, the periodic indemnity may not be less than the creditor's minimum repayment schedule.

3. a. For credit property insurance sold in conjunction with a closed-end transaction, an insurer may not issue credit property insurance coverage unless the amount financed exceeds three hundred dollars.

b. For credit property insurance sold in conjunction with a closed-end transaction, the amount of credit property insurance may not exceed the underlying credit transaction.

SECTION 6. AMENDMENT. Section 26.1-37-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-06. Term of consumer credit ~~life~~ insurance ~~and credit accident and health insurance~~. ~~The~~

1. Effective date of coverage:

a. For consumer credit insurance made available to and elected by the debtor before or contemporaneous with a credit transaction to which the insurance relates, the term of ~~any credit life~~ the insurance ~~or credit accident and health insurance~~, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor, except that ~~where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy.~~ ~~Where~~ when evidence of individual insurability is required and the evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the credit insurance may commence on the date on which the insurer determines the evidence to be satisfactory~~, and in that event there must be an~~

~~appropriate refund or adjustment of any charge to the debtor for insurance. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in section 26.1-37-08~~.

b. For insurance coverage made available to and elected by the debtor on a date subsequent to the date of the consumer credit transaction to which the insurance relates, the insurance, subject to acceptance by the insurer, commences on a date not earlier than the date the election is made by the debtor nor later than thirty days following the date on which the insurance company accepts the risk for coverage, according to an objective method such as one related to a particular date within a billing or repayment cycle or a calendar month.

c. Notwithstanding the provisions of subdivisions a and b, when a group policy provides coverage with respect to debts existing on the policy effective date, the insurance relating to the debt shall not commence before the effective date of the group policy.

d. A charge for insurance may not be made to the debtor and retained by the creditor or insurer for any time prior to commencement of the consumer credit insurance to which the charge is related.

2. Termination date of coverage:

a. The term of any consumer credit insurance may not extend beyond the termination date specified in the policy. The termination date of insurance may precede, coincide with, or follow the scheduled maturity date of the debt to which it relates, subject to any other requirements and restrictions of this chapter.

b. The term of any consumer credit insurance may not extend more than fifteen days beyond the scheduled maturity date of the debt except when extended without additional cost to the debtor or except when extended pursuant to a written agreement, signed by the debtor, in connection with a variable interest rate credit transaction or a deferral, renewal, refinancing, or consolidation of debt.

c. If the debt is discharged due to renewal, refinancing, or consolidation prior to the scheduled termination date of the insurance, any insurance in force must be terminated before any new insurance may be written in connection with the renewed, refinanced, or consolidated debt.

d. In all cases of termination of insurance prior to the scheduled termination of the insurance, an appropriate refund or credit to the debtor must be made of any unearned insurance charge paid by the debtor for a term of insurance after the date of the termination, except that a refund is not required of a charge made for insurance if the insurance is terminated by performance of the insurer's obligation with respect to the insurance.

e. An insured debtor may terminate consumer credit insurance at any time by providing advance request to the insurer. The individual policy or group certificate may require that the request be in writing or that the debtor surrender the individual policy or group certificate or both. The debtor's right to terminate coverage may also be subject to the terms of the credit transaction contract.

SECTION 7. AMENDMENT. Section 26.1-37-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-07. Provisions of policies and certificates of insurance - Disclosure to debtors.

1. Before the debtor elects to purchase consumer credit insurance in connection with a credit transaction, the following must be disclosed to the debtor in writing:

   a. That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval.

   b. If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverages only as a package.

   c. The conditions of eligibility, if any.

   d. That if the consumer has other insurance that covers the risk, the consumer may not want or need credit insurance.

   e. That within the first thirty days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premiums paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation.

   f. A brief description of the coverage, including a description of the amount, the term, any exceptions, limitations, and exclusions, the insured event, any waiting or elimination period, any deductible, any applicable waiver of premium provision, to whom the benefits would be paid, and the premium rate for each coverage or for all coverages in a package.

   g. That if the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.

2. The disclosures in subsection 1 must be provided in the following manner:

   a. In connection with consumer credit insurance offered contemporaneously with the extension of credit or offered through

direct mail advertisements, disclosure must be made in writing and presented to the consumer in a clear and conspicuous manner.

b. In conjunction with the offer of credit insurance subsequent to the extension of credit by other than direct mail advertisements, disclosure may be provided orally so long as written disclosures are provided to the debtor no later than the earlier of:

(1) Ten days after the election of coverage; or

(2) The date any other written material is provided to the debtor.

3. All consumer credit ~~life~~ insurance ~~and credit accident and health insurance~~ must be evidenced by an individual policy~~,~~ or ~~in the case of~~ a group ~~insurance by a~~ certificate of insurance which must be delivered to the debtor.

~~2.~~ 4. ~~Each~~ The individual policy or group certificate ~~of credit life insurance or credit accident and health insurance~~ must, in addition to other requirements of law, set forth the following:

a. The name and home-office address of the insurer~~, the~~;

b. The name or names of the debtor or debtors or in the case of a group certificate ~~under a group policy~~, the identity by name or otherwise of the debtor or debtors ~~, the~~;

c. The premium or amount of payment~~, if any,~~ by the debtor separately for ~~credit life insurance and credit accident and health insurance, a~~ each kind of coverage or for all coverages in a package, except that for open-end loans, the premium rate and the balance to which the premium rate applies;

d. A full description of the coverage or coverages including the amount and term thereof, and any exceptions, limitations, and ~~restrictions, and must state~~ exclusions;

e. A statement that the benefits will be paid to the creditor to reduce or extinguish the unpaid ~~indebtedness~~ debt or to repair or replace the property and, wherever the amount of insurance benefit exceeds the unpaid ~~indebtedness,~~ debt that any excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate; and

f. If the scheduled term of insurance is less than the scheduled term of the credit transaction, a statement to that effect on the face of the individual policy or group certificate in not less than ten-point bold face type.

~~3. The individual policy or group certificate of insurance must be delivered to the insured at the time the indebtedness is incurred except as provided in subsection 4.~~

~~4.~~ 5. ~~If~~ Unless the individual policy or group certificate of insurance is ~~not~~ delivered to the debtor at the time the ~~indebtedness~~ debt is incurred, or at such other time that the debtor elects to purchase coverage, a copy of

the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home-office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor~~, if any, separately~~ for ~~credit life~~ the insurance and ~~credit accident and health insurance,~~ the amount, term, and a brief description of the coverage provided, must be delivered to the debtor at the time the ~~indebtedness~~ debt is incurred or the election to purchase coverage is made. The copy of the application or notice of proposed insurance must also refer exclusively to insurance coverage, and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth in that material. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the ~~indebtedness~~ debt is incurred or the election to purchase coverage is made, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance must state that upon acceptance by the insurer, the insurance becomes effective as provided in section 26.1-37-06.

6. The application, notice of proposed insurance, or certificate may be used to fulfill all of the requirements of subsections 1 and 4 if it contains all of the information required by those subsections.

7. The debtor has thirty days from the date the debtor receives either the individual policy or the group certificate to review the coverage purchased. At any time within the thirty-day period, the debtor may contact the creditor or insurer issuing the policy or certificate and request that the coverage be canceled. The individual policy or group certificate may require the request to be in writing or that the policy or certificate be returned to the insurer, or both. The debtor must, within thirty days of the request, receive a full refund or credit of all premiums or insurance charges paid by the debtor.

8. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home-office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund must be made within thirty days. If no insurer accepts the risk, then all premiums paid must be refunded or credited within thirty days of application to the person entitled thereto.

9. For the purpose of subsection 5, an individual policy or group certificate delivered in conjunction with an open-end consumer credit agreement or any consumer credit insurance requested by the debtor after the date of the debt must be deemed to be delivered at the time the debt is incurred or election to purchase coverage is made if the delivery occurs within thirty days of the date the insurance is effective.

10. An individual policy or group certificate delivered in conjunction with an open-end credit agreement continues from its effective date through the term of the agreement unless the individual policy or group certificate is terminated in accordance with its terms at an earlier date.

11. Credit property insurance coverage, at a minimum, must include the coverages in the standard fire policy with coverage attachment and extended coverage endorsement and must cover a substantial risk of loss of or damage to the property related to the credit transaction.

SECTION 8. AMENDMENT. Section 26.1-37-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-08. Premiums and refunds.

1. An insurer may revise its schedules of premium rates from time to time and shall file the revised schedules with the commissioner. No insurer may issue any consumer credit ~~life~~ insurance policy ~~or credit accident and health insurance policy~~ or group certificate for which the premium rate exceeds that determined by the schedules of the insurer as on file with the commissioner. The commissioner may adopt rules to assure that the premium rates are reasonable in relation to the benefits provided.

2. Each individual policy or group certificate must provide ~~that~~ for a refund in the event of termination of the insurance prior to the scheduled maturity date of the ~~indebtedness, any~~ insurance and upon notice to the insurer. The refund of an amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than the minimum need be made. Refund formulas which an insurer desires to use must develop refunds that are at least as favorable to the debtor as refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue. The formula to be used in computing the refund must be filed with and approved by the commissioner.

3. If a creditor requires a debtor to make any payment for consumer credit ~~life insurance or credit accident and health~~ insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

4. The amount charged to a debtor for any consumer credit ~~life or credit health and accident~~ insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

5. This chapter does not authorize any payments for insurance prohibited under any law or rule governing credit transactions.

SECTION 9. AMENDMENT. Section 26.1-37-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-09. Applicability of credit life and health policy simplification standards.

~~1.~~ ~~Except as provided in subsection 3, sections 26.1-37-09 through 26.1-37-12 apply to all~~ All individual and group credit life insurance and credit accident and health insurance policies and insurance certificates

~~under group credit life and accident and health insurance policies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections 26.1-37-09 through 26.1-37-12. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-37-09 through 26.1-37-12 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 6 of section 26.1-37-10~~ must comply with sections 26.1-33-29 through 26.1-33-32 and 26.1-36-13 through 26.1-36-16, respectively.

~~2. The commissioner may extend the dates in subsection 1.~~

~~3. Sections 26.1-37-09 through 26.1-37-12 do not apply to:~~

~~a. Any policy that is a security subject to federal jurisdiction.~~

~~b. Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-37-09 through 26.1-37-12.~~

~~c. The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under sections 26.1-37-09 through 26.1-37-12.~~

~~4. No other state law setting language simplification standards applies to policy form.~~

SECTION 10. AMENDMENT. Section 26.1-37-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-13. Claims.

1. All claims must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims must be settled as soon as possible and in accordance with the terms of the insurance contract.

2. All claims must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.

3. No plan or arrangement may be used whereby any person, firm, or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts ~~or~~, checks, or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

SECTION 11. AMENDMENT. Section 26.1-37-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-14. Existing insurance - Choice of insurer. When consumer credit ~~life insurance or credit accident and health~~ insurance is required as additional security for any ~~indebtedness~~ debt, the debtor shall, upon request to the creditor, ~~has~~ have the option of furnishing the required amount of insurance through existing insurance policies owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state.

SECTION 12. REPEAL. Sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code are repealed.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 279

SENATE BILL NO. 2192
(Senator Grindberg)

INSURANCE GUARANTY ASSOCIATIONS AND INSURANCE CONTRACTS

AN ACT to create and enact a new subsection to section 26.1-38.1-05 of the North Dakota Century Code, relating to the powers and duties of a life and health insurance guaranty association; and to amend and reenact subsection 3 of section 26.1-38.1-01 of the North Dakota Century Code, relating to equity indexed life and annuity insurance contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-38.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. This chapter does not provide coverage for:

   a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy owner or contract owner;

   b. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

   c. Any portion of a policy or contract to the extent that the rate of interest on which ~~it~~ the portion of the policy or contract is based or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value:

      (1) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

      (2) On and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

d. A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that such plan or program is self-funded or uninsured including benefits payable by an employer association or other person under:

(1) A multiple employer welfare arrangement as defined in 29 U.S.C. section 1144;

(2) A minimum premium group insurance plan;

(3) A stop-loss group insurance plan; or

(4) An administrative services only contract;

e. Any portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;

f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

g. Any unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association of natural persons benefit plan or a government lottery;

i. A portion of a policy or contract to the extent that the assessments required by section 26.1-38.1-06 with respect to the policy or contract are preempted by federal or state law;

j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(1) Claims based on marketing materials;

(2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(3) Misrepresentations of or regarding policy benefits;

(4) Extracontractual claims; or

(5) A claim for penalties or consequential or incidental damages; ~~and~~

k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; and

l. A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or changes in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and is not subject to forfeiture.

SECTION 2. A new subsection to section 26.1-38.1-05 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Subject to approval of the receivership court, the association, in carrying out association duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, may issue substitute coverage for a policy or contract that provides a rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value by issuing an alternative policy or contract if:

a. Instead of the index or other external reference provided in the replaced policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or different method for calculating interest or changes in value;

b. There is no requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 280

HOUSE BILL NO. 1378

(Representatives Severson, Berg, Kasper)

AUTOMOBILE INSURANCE LIMITATIONS AND EXCLUSIONS

AN ACT to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on automobile insurance; and to amend and reenact sections 26.1-40-16 and 26.1-40-16.1 of the North Dakota Century Code, relating to persons excluded from automobile insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating a motor vehicle in which the individual is specifically excluded.

SECTION 2. AMENDMENT. Section 26.1-40-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16. Exclusion of ~~spouse of~~ named ~~insured~~ persons - Restrictive endorsements. ~~No insurer is responsible under~~ By written agreement with the named insured, a private passenger automobile insurance policy covering an automobile or other motor vehicle registered or principally garaged in this state ~~from any liability for any claims resulting from the operation of the motor vehicle by a spouse of the named insured who resides in the same household if an endorsement on the policy excludes that spouse from coverage under the policy and the spouse excluded signs the endorsement. If the named insured expressly or impliedly consents to the operation of a secured motor vehicle by a spouse excluded under the policy, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02~~ may exclude a named individual, individuals, or class of individuals from coverage. The policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage while the vehicle is operated by a named individual or class of individuals. However, if the policy does provide liability coverage to a person named in a restrictive endorsement, the coverage may not be less than the minimum provided under section 26.1-40-15.2, section 26.1-40-15.3, subsection 2 of section 26.1-41-01, and section 39-16.1-11. If the policy excludes a named individual, individuals, or class of individuals from all coverage and the named insured expressly or impliedly consents to the operation of a secured motor vehicle by the excluded party, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02.

SECTION 3. AMENDMENT. Section 26.1-40-16.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16.1. Payment of benefits to family members of a policyholder. An automobile insurance policy that provides coverage for bodily injury may not contain any provision limiting payment of benefits or reducing the amount of benefits payable to a person because the person to whom benefits are being paid under that policy is related to the policyholder by blood, marriage, or adoption, or is a foster child, and resides in the same household as the policyholder. However, a relative may be excluded from coverage under section 26.1-40-16.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 281

SENATE BILL NO. 2288

(Senators Fischer, Wardner)
(Representatives Devlin, Kasper)

INSURANCE COMMISSIONER MEDICAL EXAMINATION REPORT

AN ACT to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. INSURANCE COMMISSIONER - INDEPENDENT MEDICAL EXAMINATION REPORT TO LEGISLATIVE COUNCIL. Before November 1, 2002, the insurance commissioner shall submit a report to the legislative council regarding motor vehicle insurance independent medical examinations. The report must include an analysis of the impact independent medical examinations have on the provision of motor vehicle insurance benefits in the state; a review of the medical service providers who perform independent medical examinations; a review of how other states regulate independent medical examinations; and any recommendations.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 282

SENATE BILL NO. 2330

(Senators T. Mathern, Thane)
(Representative Fairfield)

AUGMENTATIVE COMMUNICATION DEVICE INSURANCE STUDY

AN ACT to provide for a legislative council study relating to insurance coverage for augmentative communication devices and services for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2001-2002 interim, the coordination of benefits for children with special needs under the age of twenty-one among the department of public instruction, the department of human services, and private insurance companies, with the purpose of optimizing and coordinating resources and expanding services including augmentative communication devices and therapy services. The study, if conducted, must include reports from any private insurance company's task force concerning the coordination of these services. If the study is conducted, the legislative council shall report its findings and recommendations, together with any legislation required to implement its recommendations, to the fifty-eighth legislative assembly.

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