

**SENATE BILL NO. 2194**

Introduced by

Senators Klein, Krebsbach

Representatives Keiser, Wald

1 A BILL for an Act to amend and reenact section 26.1-02-21 and 26.1-06.1-31 of the North  
2 Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or  
3 dissolution and reinsurer's liability in delinquency proceedings.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-02-21 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution.**

8 ~~No credit~~

9 1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to  
10 any ceding insurer for reinsurance; ~~unless the reinsurance is contract provides, in~~  
11 ~~substance, that in the event of the insolvency of the ceding insurer, the reinsurance~~  
12 ~~must be payable under one or more contracts reinsured~~ by the assuming insurer  
13 on the basis of ~~the liability of the ceding insurer under the contract or contracts~~  
14 ~~reinsured reported claims allowed by the liquidation court~~ without diminution  
15 because of the insolvency of the ceding insurer ~~or to its domiciliary liquidator or~~  
16 ~~receiver except when.~~ The payments must be made directly to the ceding insurer  
17 or to the ceding insurer's domiciliary liquidator except if:

18 4. a. The contract or other written agreement specifically provides another payee of  
19 such reinsurance in the event of the insolvency of the ceding insurer; ~~and or~~

20 2. b. The assuming insurer, with the consent of the direct insured, has assumed  
21 such policy obligations of the ceding insurer as direct obligations of the  
22 assuming insurer to the payees under the policies and in substitution for the  
23 obligations of the ceding insurer to the payees.

- 1           2. Notwithstanding subsection 1, if a life and health insurance guaranty association  
2           has elected to succeed to the rights and obligations of the insolvent insurer under  
3           the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims  
4           continues under the contract of reinsurance, subject to the payment to the  
5           reinsurer of the reinsurance premiums for such coverage. Payment for such  
6           reinsured claims may only be made by the reinsurer pursuant to the direction of the  
7           guaranty association or the guaranty association's designated successor. Any  
8           payment made at the direction of the guaranty association or the guaranty  
9           association's designated successor by the reinsurer will discharge the reinsurer of  
10           all further liability to any other party for the claim payment.
- 11          3. The reinsurance agreement may provide that the domiciliary liquidator of and  
12           insolvent ceding insurer shall give written notice to the assuming insurer of the  
13           pendency of a claim against such ceding insurer on the contract reinsured within a  
14           reasonable time after the claim is filed in the liquidation proceeding. During the  
15           pendency of the claim, any assuming insurer may investigate the claim and  
16           interpose, at the assuming insurer's own expense, in the proceeding in which the  
17           claim is to be adjudicated any defenses the assuming insurer determines available  
18           to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed  
19           as a claim against the insolvent ceding insurer to the extent of a proportionate  
20           share of the benefit which may accrue to the ceding insurer solely as a result of the  
21           defense undertaken by the assuming insurer. If two or more assuming insurers are  
22           involved in the same claim and a majority in interest elect to interpose one or more  
23           defenses to the claim, the expense must be apportioned in accordance with the  
24           terms of the reinsurance agreement as though the expense had been incurred by  
25           the ceding insurer.

26           **SECTION 2. AMENDMENT.** Section 26.1-06.1-31 of the North Dakota Century Code  
27 is amended and reenacted as follows:

28           **26.1-06.1-31. Reinsurer's liability.**

- 29           1. The amount recoverable by the liquidator from reinsurers may not be reduced as a  
30           result of the delinquency proceedings, ~~regardless of any provision in the~~  
31           ~~reinsurance contract or other agreement. Payment made directly to an insured or~~

- 1           ~~other creditor does not diminish the reinsurer's obligation to the insurer's estate~~  
2           ~~except when the reinsurance contract provided for direct coverage of a named~~  
3           ~~insured and the payment was made in discharge of that obligation unless the~~  
4           ~~reinsurance contract provides, in substance, that in the event of the insolvency of~~  
5           ~~the ceding insurer, the reinsurance must be payable under one or more reinsured~~  
6           ~~by the assuming insurer on the basis of reported claims allowed by the liquidation~~  
7           ~~court without diminution because of the insolvency of the ceding insurer. The~~  
8           ~~payments must be made directly to the ceding insurer or to the ceding insurer's~~  
9           ~~domiciliary liquidator except if:~~
- 10          a.   The contract or other written agreement specifically provides another payee of  
11            such reinsurance in the event of the insolvency of the ceding insurer; or  
12          b.   The assuming insurer, with the consent of the direct insured, has assumed  
13            such policy obligations of the ceding insurer as direct obligations of the  
14            assuming insurer to the payees under the policies and in substitution for the  
15            obligations of the ceding insurer to such payees.
- 16          2.   Notwithstanding subsection 1, if a life and health insurance guaranty association  
17            has elected to succeed to the rights and obligations of the insolvent insurer under  
18            the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims  
19            continues under the contract of reinsurance, subject to the payment to the  
20            reinsurer of the reinsurance premiums for such coverage. Payment for such  
21            reinsured claims may only be made by the reinsurer pursuant to the direction of the  
22            guaranty association or the guaranty association's designated successor. Any  
23            payment made at the direction of the guaranty association or the guaranty  
24            association's designated successor by the reinsurer will discharge the reinsurer of  
25            all further liability to any other party for the claim payment.