

**SENATE BILL NO. 2194
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

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
12 reinsurance must be payable under one or more contracts reinsured by the
13 assuming insurer on the basis of the liability of the ceding insurer under the
14 contract or contracts reinsured reported claims allowed by the liquidation court or
15 proof of payment of the claim by a guaranty association without diminution
16 because of the insolvency of the ceding insurer or to its domiciliary liquidator or
17 receiver except when. The payments must be made directly to the ceding insurer
18 or to the ceding insurer's domiciliary liquidator except if:

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

22 2- b. The assuming insurer, with the consent of the direct insured, has assumed
23 such policy obligations of the ceding insurer as direct obligations of the

1 assuming insurer to the payees under the policies and in substitution for the
2 obligations of the ceding insurer to the payees.

3 2. Notwithstanding subsection 1, if a life and health insurance guaranty association
4 has elected to succeed to the rights and obligations of the insolvent insurer under
5 the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims
6 continues under the contract of reinsurance, subject to the payment to the
7 reinsurer of the reinsurance premiums for such coverage. Payment for such
8 reinsured claims may only be made by the reinsurer pursuant to the direction of
9 the guaranty association or the guaranty association's designated successor. Any
10 payment made at the direction of the guaranty association or the guaranty
11 association's designated successor by the reinsurer will discharge the reinsurer of
12 all further liability to any other party for the claim payment.

13 3. The reinsurance agreement may provide that the domiciliary liquidator of an
14 insolvent ceding insurer shall give written notice to the assuming insurer of the
15 pendency of a claim against such ceding insurer on the contract reinsured within a
16 reasonable time after the claim is filed in the liquidation proceeding. During the
17 pendency of the claim, any assuming insurer may investigate the claim and
18 interpose, at the assuming insurer's own expense, in the proceeding in which the
19 claim is to be adjudicated any defenses the assuming insurer determines available
20 to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed
21 as a claim against the insolvent ceding insurer as a class 7 claim under section
22 26.1-06.1-41 to the extent of a proportionate share of the benefit which may accrue
23 to the ceding insurer solely as a result of the defense undertaken by the assuming
24 insurer. If two or more assuming insurers are involved in the same claim and a
25 majority in interest elect to interpose one or more defenses to the claim, the
26 expense must be apportioned in accordance with the terms of the reinsurance
27 agreement as though the expense had been incurred by the ceding insurer.

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

30 **26.1-06.1-31. Reinsurer's liability.**

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