

HOUSE BILL NO. 1132

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact sections 26.1-10-06.1, 26.1-10-06.2, and 26.1-10-13 of
2 the North Dakota Century Code, relating to insurance holding company systems; to amend and
3 reenact sections 26.1-10-01, 26.1-10-02, 26.1-10-03, 26.1-10-03.1, 26.1-10-04, 26.1-10-05,
4 26.1-10-05.1, 26.1-10-06, 26.1-10-07, 26.1-10-08, 26.1-10-09, 26.1-10-10, 26.1-10-10.1, and
5 26.1-10-11 of the North Dakota Century Code, relating to insurance holding company systems;
6 and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 26.1-10-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **26.1-10-01. Definitions.**

11 As used in this chapter, unless the context or subject matter otherwise requires:

- 12 1. "Affiliate" means a person that directly, or indirectly through one or more
13 intermediaries, controls, or is under the control of, or is under common control with,
14 the person specified.
- 15 2. "Control" means the possession, direct or indirect, of the power to direct or cause the
16 direction of the management and policies of a person, whether through the ownership
17 of voting securities, by contract other than a commercial contract for goods or
18 nonmanagement services, or otherwise, unless the power is the result of an official
19 position with or corporate office held by the person. Control is presumed to exist if any
20 person, directly or indirectly, owns, controls, holds with the power to vote, or holds
21 proxies representing ten percent or more of the voting securities of any other person.
22 This presumption may be rebutted by a showing made in the manner provided for in
23 subsection 9 of section 26.1-10-04, that control does not exist in fact. The
24 commissioner may determine, after furnishing all persons in interest notice and

1 opportunity to be heard and making specific findings of fact to support such
2 determination, that control exists in fact, notwithstanding the absence of a presumption
3 to that effect.

4 3. ~~"Insurance company" means an insurer as described in section 26.1-29-02, except~~
5 ~~that it does not include:~~

6 a. ~~Agencies, authorities, or instrumentalities of the United States and its~~
7 ~~possessions, Commonwealth of Puerto Rico, or a state or political subdivision of~~
8 ~~a state.~~

9 b. ~~Fraternal benefit societies.~~

10 e. ~~Nonprofit health service corporations~~"Enterprise risk" means any activity,
11 circumstance, event, or series of events involving one or more affiliates of an
12 insurer which, if not remedied promptly, is likely to have a material adverse effect
13 upon the financial condition or liquidity of the insurer or the insurer's insurance
14 holding company system as a whole including anything that would cause the
15 insurer's risk-based capital to fall into company action level as set forth in section
16 26.1-03.1-03 or would cause the insurer to be in hazardous financial condition as
17 set forth in North Dakota Administrative Code section 45-03-13-01.

18 4. "Groupwide supervisor" means the regulatory official authorized to engage in conducting
19 and coordinating groupwide supervision activities who is determined or
20 acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient
21 significant contacts with the internationally active insurance group.

22 5. ~~"Insurance holding company system" means two or more affiliated persons, one or~~
23 ~~more of which is an insurance company~~insurer.

24 ~~5-6.~~ "Insurer" has the same definition as provided in section 26.1-29-02, except the term
25 does not include an agency, authority, or instrumentality of the United States or its
26 possessions or a state or political subdivision of a state.

27 ~~5-6-7.~~ "Internationally active insurance group" means an insurance holding company system
28 that includes an insurer registered under section 26.1-10-04, and meets the following
29 criteria:

30 a. Premiums written in at least three countries;

1 b. The percentage of gross premiums written outside United States is at least ten
2 percent of the insurance holding company system's total gross written premiums;
3 and

4 c. Based on a three-year rolling average, the total assets of the insurance holding
5 company system are at least fifty billion dollars or the total gross written
6 premiums of the insurance holding company system are at least ten billion
7 dollars.

8 8. "Person" means an individual, a corporation, a limited liability company, a partnership,
9 an association, a joint stock company, a trust, or an unincorporated organization or
10 any similar entity or any combination of the foregoing acting in concert. The term does
11 not include any securities broker performing no more than the usual and customary
12 broker's function joint venture partnership exclusively engaged in owning, managing,
13 leasing, or developing real or tangible personal property.

14 6-7-9. "Securityholder" of a specified person means the owner of any security of the person,
15 including common stock, preferred stock, debt obligations, and any other security
16 convertible into or evidencing the right to acquire any of the foregoing.

17 7-8-10. "Subsidiary" of a specified person means an affiliate under the control of the person
18 directly, or indirectly through one or more intermediaries.

19 8-9-11. "Voting security" includes any security convertible into or evidencing a right to acquire
20 a voting security.

21 **SECTION 2. AMENDMENT.** Section 26.1-10-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **26.1-10-02. Subsidiaries – ~~Additional investment authority – Exception from~~**
24 **~~investment restrictions of insurers.~~**

25 1. Any domestic ~~insurance company~~insurer, either by itself or in cooperation with one or
26 more persons, may organize or acquire one or more subsidiaries. A subsidiary may
27 conduct any kind of business and its authority to do so is not limited because it is a
28 subsidiary of a domestic insurer.

29 2. In addition to investments in common stock, preferred stock, debt obligations, and
30 other securities permitted under all other sections of this chapter, a domestic
31 ~~insurance company~~insurer may also:

- 1 a. Invest, in common stock, preferred stock, debt obligations, and other securities of
2 one or more subsidiaries, amounts which do not exceed the lesser of ten percent
3 of the ~~insurance company's admitted~~insurer's assets or fifty percent of the
4 ~~company's~~insurer's surplus as regards policyholders; provided, that after the
5 investments the ~~company's~~insurer's surplus as regards policyholders will be
6 reasonable in relation to the ~~company's~~insurer's outstanding liabilities and
7 adequate to meet its financial needs. In calculating the amount of the
8 investments, investments in domestic or foreign insurance subsidiaries and
9 health maintenance organizations shall be excluded, and there must be included:
10 (1) Total net moneys or other consideration expended and obligations assumed
11 in the acquisition or formation of a subsidiary, including all organizational
12 expenses and contributions to capital and surplus of such subsidiary
13 whether or not represented by the purchase of capital stock or issuance of
14 other securities; and
15 (2) All amounts expended in acquiring additional common stock, preferred
16 stock, debt obligations, and other securities, and all contributions to the
17 capital or surplus; of a subsidiary subsequent to its acquisition or formation.
18 b. Invest any amount in common stock, preferred stock, debt obligations, and other
19 securities of one or more subsidiaries; engaged or organized to engage
20 exclusively in the ownership and management of assets authorized as
21 investments for the insurer, provided; that each subsidiary agrees to limit its
22 investments in any asset so that the investments will not cause the amount of the
23 total investment of the ~~insurance company~~insurer to exceed any of the
24 investment limitations specified in subdivision a. "The total investment of the
25 ~~insurance company~~insurer" includes:
26 (1) Any direct investment by the ~~company~~insurer in an asset; and
27 (2) The ~~company's~~insurer's proportionate share of any investment in an asset
28 by any subsidiary of the ~~company~~insurer which must be calculated by
29 multiplying the amount of the subsidiary's investment by the percentage of
30 the ~~company's~~ ownership of ~~such~~the subsidiary.

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

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

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

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

23 **SECTION 3. AMENDMENT.** Section 26.1-10-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-10-03. Acquisition of control of or merger with domestic company – Filing –**
26 **requirements – Hearings – Exceptions – Violations – Jurisdiction – Consent to service of**
27 **process**insurer - Penalties.

28 1. a. A person other than the issuer may not make a tender offer for or a request or
29 invitation for tenders of, or enter into any agreement to exchange securities for,
30 seek to acquire, or acquire, in the open market or otherwise, any voting security
31 of a domestic ~~insurance company~~insurer if, after consummation, the person

1 would, directly or indirectly, or by conversion or by exercise of any right to
2 acquire, be in control of the ~~companyinsurer~~, and a person may not enter into an
3 agreement to merge with or otherwise to acquire control of a domestic insurance-
4 ~~companyinsurer or any person controlling a domestic insurer~~ unless, at the time
5 the offer, request, or invitation is made or the agreement is entered into, or prior
6 to the acquisition of the securities if no offer or agreement is involved, the person
7 has filed with the commissioner and has sent to the ~~companyinsurer~~, and the
8 ~~company has sent to its shareholders~~, a statement containing the information
9 required by this section and the offer, request, invitation, agreement, or
10 acquisition has been approved by the commissioner in the manner hereinafter
11 prescribed in this chapter.

12 b. For purposes of this section, any controlling person of a domestic insurer seeking
13 to divest the person's controlling interest in the domestic insurer, in any manner,
14 shall file with the commissioner, with a copy to the insurer, confidential notice of
15 the person's proposed divestiture at least thirty days before the cessation of
16 control. The commissioner shall determine those instances in which a party
17 seeking to divest or to acquire a controlling interest in an insurer, will be required
18 to file for and obtain approval of the transaction. The information remains
19 confidential until the conclusion of the transaction unless the commissioner
20 determines confidential treatment will interfere with enforcement of this section. If
21 the statement referred to in subdivision a is otherwise filed, this subdivision does
22 not apply.

23 c. With respect to a transaction subject to this section, the acquiring person shall file
24 a preacquisition notification with the commissioner which must contain the
25 information set forth in subdivision a of subsection 3 of section 26.1-10-03.1.
26 Failure to file the notification may result in penalties specified in subdivision e of
27 subsection 5 of section 26.1-10-03.1.

28 d. For purposes of this section, a domestic insurance ~~companyinsurer~~ includes any
29 other person in control of a domestic insurance ~~companyinsurer~~ unless the other
30 person, as determined by the commissioner, is either directly or through its
31 affiliates primarily engaged in business other than the business of insurance. For

1 purposes of this section, the term "person" does not include a securities broker
2 holding, in the usual and customary broker's function, less than twenty percent of
3 the voting securities of an insurer or of any person that controls an insurer.

4 2. The statement to be filed with the commissioner must be made under oath or
5 affirmation and must contain the following information:

6 a. The name and address of each person by whom or on whose behalf the merger
7 or other acquisition of control referred to in subsection 1 is to be effected,
8 hereinafter called the "acquiring party":

9 (1) If the person is an individual, the individual's principal occupation and all
10 offices and positions held during the past five years, and any conviction of
11 crimes other than minor traffic violations during the past ten years.

12 (2) If the person is not an individual, a report of the nature of its business
13 operations during the past five years or for any lesser period as the person
14 and any predecessors thereof have been in existence; an informative
15 description of the business intended to be done by the person and the
16 person's subsidiaries; and a list of all individuals who are or who have been
17 selected to become directors or executive officers of the person, or who
18 perform or will perform functions appropriate to these positions. The list
19 must include for each individual the information required by this subsection.

20 b. The source, nature, and amount of the consideration used or to be used in
21 effecting the merger or other acquisition of control, a description of any
22 transaction ~~wherein~~that funds were or are to be obtained for any such purpose,
23 including any pledge of the insurer's stock, or the stock of any of the insurer's
24 subsidiaries or controlling affiliates, and the identity of persons furnishing the
25 consideration; provided, however, that ~~when~~if a source of the consideration is a
26 loan made in the lender's ordinary course of business, the identity of the lender
27 must remain confidential, if the person filing the statement so requests.

28 c. Fully audited financial information as to the earnings and financial condition of
29 each acquiring party for the preceding five fiscal years of each acquiring party, or
30 for any lesser period as the acquiring party and any predecessors thereof have

- 1 been in existence, and similar unaudited information as of a date not earlier than
2 ninety days prior to the filing of the statement.
- 3 d. Any plans or proposals which each acquiring party may have to liquidate the
4 ~~insurance company~~insurer, to sell its assets or merge or consolidate it with any
5 person, or to make any other material change in its business or corporate
6 structure or management.
- 7 e. The number of shares of any security referred to in subsection 1 which each
8 acquiring party proposes to acquire, and the terms of the offer, request, invitation,
9 agreement, or acquisition referred to in subsection 1, and a statement as to the
10 method used to arrive at the fairness of the proposal.
- 11 f. The amount of each class of any security referred to in subsection 1 which is
12 beneficially owned or concerning which there is a right to acquire beneficial
13 ownership by each acquiring party.
- 14 g. A full description of any contracts, arrangements, or understandings with respect
15 to any security referred to in subsection 1 in which any acquiring party is
16 involved, including transfer of any of the securities, joint ventures, loan or option
17 arrangements, puts or calls, guarantees of loans, guarantees against loss or
18 guarantees of profits, division of losses or profits, or the giving or withholding of
19 proxies. The description must identify the persons who have entered into the
20 contracts, arrangements, or understandings.
- 21 h. A description of the purchase of any security referred to in subsection 1 during
22 the twelve calendar months preceding the filing of the statement, by any
23 acquiring party, including the dates of purchase, names of the purchasers, and
24 consideration paid or agreed to be paid ~~therefor~~.
- 25 i. A description of any recommendations to purchase any security referred to in
26 subsection 1 made during the twelve calendar months preceding the filing of the
27 statement, by any acquiring party, or by anyone based upon interviews or at the
28 suggestion of the acquiring party.
- 29 j. Copies of all tender offers for, requests or invitations for tenders of, exchange
30 offers for, and agreements to acquire or exchange any securities referred to in
31 subsection 1, and, if distributed, of additional soliciting material relating thereto.

- 1 k. The term of any agreement, contract, or understanding made with or proposed to
2 be made with any broker-dealer as to solicitation of securities referred to in
3 subsection 1 for tender, and the amount of any fees, commissions, or other
4 compensation to be paid to broker-dealers with regard thereto.
- 5 l. An agreement by the person required to file the statement referred to in
6 subsection 1 to provide the annual report, specified in subsection 12 of section
7 26.1-10-04, for so long as control exists.
- 8 m. An acknowledgment by the person required to file the statement referred to in
9 subsection 1, that the person and all subsidiaries within the person's control in
10 the insurance holding company system will provide information to the
11 commissioner upon request as necessary to evaluate enterprise risk to the
12 insurer.
- 13 n. Any additional information the commissioner by rule prescribes as necessary or
14 appropriate for the protection of policyholders ~~and securityholders~~ of the
15 ~~insurance company~~insurer or in the public interest.

16 If the person required to file the statement referred to in subsection 1 is a
17 partnership, limited partnership, syndicate, or other group, the commissioner may
18 require that the information called for by subdivisions a through h must be given with
19 respect to each partner of the partnership or limited partnership, each member of the
20 syndicate or group, and each person who controls the partner or member. If any
21 partner, member, or person is a corporation or the person required to file the statement
22 referred to in subsection 1 is a corporation, the commissioner may require that the
23 information called for by subdivisions a through h must be given with respect to the
24 corporation, each officer and director of the corporation, and each person who is
25 directly or indirectly the beneficial owner of more than ten percent of the outstanding
26 voting securities of the corporation.

27 If any material change occurs in the facts ~~combined~~set forth in the statement filed
28 with the commissioner and sent to the ~~insurance company~~insurer pursuant to this
29 section, an amendment setting forth the change, together with copies of all documents
30 and other material relevant to the change, must be filed with the commissioner and

- 1 sent to the ~~insurance company~~insurer within two business days after the person learns
2 of the change. ~~The insurance company shall send the amendment to its shareholders.~~
- 3 3. If any offer, request, invitation, agreement, or acquisition referred to in subsection 1 is
4 proposed to be made by means of a registration statement under the Securities Act of
5 1933 or in circumstances requiring the disclosure of similar information under the
6 Securities Exchange Act of 1934, or under a state law requiring similar registration or
7 disclosure, the person required to file the statement referred to in subsection 1 may
8 utilize those documents in furnishing the information called for by that statement.
- 9 4. a. The commissioner shall approve any merger or other acquisition of control
10 referred to in subsection 1 unless, after a public hearing, the commissioner finds
11 that:
- 12 a. (1) After the change of control, the domestic ~~insurance company~~insurer
13 referred to in subsection 1 would not be able to satisfy the requirements for
14 the issuance of a certificate of authority to write the lines of insurance for
15 which it is presently licensed.
- 16 b. (2) The effect of the merger or other acquisition of control would be
17 substantially to lessen competition in insurance in this state or tend to create
18 a monopoly therein. In applying the competitive standard in this subdivision:
- 19 (a) The information requirements of subdivision a of subsection 3 of
20 section 26.1-10-03.1 and the standards of subdivision b of
21 subsection 4 of section 26.1-10-03.1;
- 22 (b) The merger or other acquisition may not be disapproved if the
23 commissioner finds that any of the situations meeting the criteria
24 provided by subdivision c of subsection 4 of section 26.1-10-03.1
25 exist; and
- 26 (c) The commissioner may condition the approval of the merger or other
27 acquisition on the removal of the basis of disapproval within a
28 specified period of time.
- 29 e. (3) The financial condition of any acquiring party might jeopardize the financial
30 stability of the ~~insurance company~~insurer or prejudice the interest of its
31 policyholders.

- 1 d. ~~(4)~~ The plans or proposals which the acquiring party has to liquidate the
2 ~~insurance company~~insurer, sell its assets or consolidate or merge it with any
3 person, or to make any other material change in its business or corporate
4 structure or management, are unfair and unreasonable to policyholders of
5 the ~~company~~insurer and not in the public interest.
- 6 e. ~~(5)~~ The competence, experience, and integrity of those persons who would
7 control the operation of the ~~insurance company~~insurer are such that it would
8 not be in the interest of policyholders of the ~~company~~insurer and of the
9 public to permit the merger or other acquisition of control.
- 10 f. ~~(6)~~ The acquisition is likely to be hazardous or prejudicial to the insurance
11 buying public.
- 12 b. ~~The commissioner shall hold the public hearing referred to in this-~~
13 ~~subsection~~subdivision a must be held within thirty days after the statement
14 required by subsection 1 is filed and ~~shall give~~ at least twenty days' notice must
15 be given by the commissioner to the person filing the statement. Not less than
16 seven days' notice of the hearing must be given by the person filing the
17 statement to the ~~insurance company~~insurer and to other persons designated by
18 the commissioner. The commissioner shall make a determination within ~~thirty-~~
19 ~~days after the conclusion of the hearing~~the sixty-day period preceding the
20 effective date of the proposed transaction. At the hearing, the person filing the
21 statement, the ~~insurance company~~insurer, any person to whom notice of hearing
22 was sent, and any other person whose interests may be affected have the right to
23 present evidence, examine and cross-examine witnesses, and offer oral and
24 written arguments and in connection therewith are entitled to conduct discovery
25 proceedings in the same manner allowed in district court of this state. All
26 discovery proceedings must be concluded not later than three days prior to the
27 hearing.
- 28 c. If the proposed acquisition of control will require the approval of more than one
29 commissioner, the public hearing referred to in subdivision b may be held on a
30 consolidated basis upon request of the person filing the statement referred to in
31 subsection 1. Within five days of making the request for a public hearing, the

1 person shall file the statement referred to in subsection 1 with the national
2 association of insurance commissioners. A commissioner may opt out of a
3 consolidated hearing and shall provide notice to the applicant of the opt out within
4 ten days of the receipt of the statement referred to in subsection 1. A hearing
5 conducted on a consolidated basis is public and must be held within the United
6 States before the commissioners of the states in which the insurers are
7 domiciled. The commissioners shall hear and receive evidence. A commissioner
8 may attend the hearing in person or by telecommunication.

9 d. In connection with a change of control of a domestic insurer, any determination
10 by the commissioner that the person acquiring control of the insurer must be
11 required to maintain or restore the capital of the insurer to the level required by
12 the laws and rules of this state must be made not later than sixty days after the
13 date of notification of the change in control submitted pursuant to subdivision a of
14 subsection 1.

15 e. The commissioner may retain at the acquiring person's expense any attorneys,
16 actuaries, accountants, and other experts not otherwise a part of the
17 commissioner's staff as may be reasonably necessary to assist the commissioner
18 in reviewing the proposed acquisition of control. ~~The commissioner may waive~~
19 the hearing if the companies involved and all the policyholders of the domestic
20 companies involved consent to waiving the hearing.

21 5. This section does not apply to:

22 a. Any transaction which is subject to the provisions of chapter 26.1-07, dealing with
23 the merger or consolidation of two or more ~~insurance companies~~insurers.

24 b. Any offer, request, invitation, agreement, or acquisition which the commissioner
25 by order ~~has excepted~~exempts as:

26 (1) ~~Not~~ not having been made or entered into for the purpose and not having
27 the effect of changing or influencing the control of a domestic ~~insurance-~~
28 ~~company;~~insurer or

29 (2) ~~As~~ as otherwise not comprehended within the purposes of this section.

30 6. The following is a violation of this section:

- 1 a. The failure to file any statement, amendment, or other material required to be
2 filed pursuant to subsection 1 or 2.
- 3 b. The effectuation or any attempt to effectuate an acquisition of control of,
4 divestiture of, or merger with, a domestic insurance companyinsurer without the
5 approval of the commissioner.
- 6 7. The courts of this state have jurisdiction over every person not resident, domiciled, or
7 authorized to do business in this state who files a statement with the commissioner
8 under this section, and over all actions involving the person arising out of violations of
9 this section, and each person is deemed to have performed acts equivalent to and
10 constituting appointment of the commissioner as the person's attorney upon whom
11 may be served all lawful process in any action, suit, or proceeding arising out of
12 violations of this section. Copies of all lawful process must be served on the
13 commissioner and transmitted by registered mail by the commissioner to the person at
14 the person's last-known address.

15 **SECTION 4. AMENDMENT.** Section 26.1-10-03.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **26.1-10-03.1. Acquisitions involving ~~insurance companies~~insurers not otherwise**
18 **covered –Penalty.**

- 19 1. For the purpose of this section:
 - 20 a. "Acquisition" means any agreement, arrangement, or activity the consummation
21 of which results in a person acquiring directly or indirectly the control of another
22 person, and includes the acquisition of voting securities, the acquisition of assets,
23 bulk reinsurance, and mergers.
 - 24 b. An "involved ~~insurance company~~insurer" includes an insurance companyinsurer
25 which either acquires or is acquired, is affiliated with an acquirer or acquired, or is
26 the result of a merger.
- 27 2. a. Except as exempted in subdivision b, this section applies to any acquisition in
28 which there is a change in control of an insurance companyinsurer authorized to
29 do business in this state.
- 30 b. This section does not apply to ~~the following~~:

- 1 (1) ~~An acquisition subject to approval or disapproval by the commissioner~~
2 ~~pursuant to section 26.1-10-03.~~
- 3 (2) A purchase of securities solely for investment purposes so long as the
4 securities are not used by voting or otherwise to cause or attempt to cause
5 the substantial lessening of competition in any insurance market in this
6 state. If a purchase of securities results in a presumption of control under
7 subsection 2 of section 26.1-10-01, it is not solely for investment purposes
8 unless the commissioner of the ~~insurance company's~~insurer's state of
9 domicile accepts a disclaimer of control or affirmatively finds that control
10 does not exist and ~~such~~the disclaimer action or affirmative finding is
11 communicated by the domiciliary commissioner to the commissioner of this
12 state.
- 13 (3)(2) The acquisition of a person by another person when both persons are
14 neither directly nor through affiliates primarily engaged in the business of
15 insurance, if preacquisition notification is filed with the commissioner in
16 accordance with subdivision a of subsection 3 thirty days prior to the
17 proposed effective date of the acquisition. However, the preacquisition
18 notification is not required for exclusion from this section if the acquisition
19 would otherwise be excluded from this section by any other paragraph of
20 this subdivision.
- 21 (4)(3) The acquisition of already affiliated persons.
- 22 (5)(4) An acquisition if, as an immediate result of the acquisition:
23 (a) In no market would the combined market share of the involved
24 ~~insurance companies~~insurers exceed five percent of the total market;
25 (b) There would be no increase in any market share; or
26 (c) In no market would the combined market share of the involved
27 ~~insurance companies~~insurers exceed twelve percent of the total
28 market, and in no market would the market share increase by more
29 than two percent of the total market.
- 30 For the purpose of this paragraph, a "market" means direct written
31 insurance premium in this state for a line of business as contained in the

1 annual statement required to be filed by ~~insurance companies~~insurers
2 licensed to do business in this state.

3 (6)(5) An acquisition for which a preacquisition notification would be required
4 pursuant to this section due solely to the resulting effect on the ocean
5 marine insurance line of business.

6 (7)(6) An acquisition of an ~~insurance company~~insurer whose domiciliary
7 commissioner affirmatively finds that the ~~insurance company~~insurer is in
8 failing condition, there is a lack of feasible alternative to improving the
9 ~~insurance company's~~insurer's condition, the public benefits of improving the
10 ~~insurance company's~~insurer's condition through the acquisition exceed the
11 public benefits that would arise from not lessening competition, and ~~such~~the
12 findings are communicated by the domiciliary commissioner to the
13 commissioner of this state.

14 3. An acquisition covered by subsection 2 may be subject to an order pursuant to
15 subsection 5 unless the acquiring person files a preacquisition notification and the
16 waiting period has expired. The acquired person may file a preacquisition notification.
17 The commissioner shall give confidential treatment to information submitted under this
18 subsection in the same manner as provided in section 26.1-10-07.

19 a. The preacquisition notification must be in the form and contain the information
20 prescribed by the national association of insurance commissioners relating to
21 those markets which, under paragraph 54 of subdivision b of subsection 2, cause
22 the acquisition not to be exempted from the provisions of this section. The
23 commissioner may require additional material and information as the
24 commissioner deems necessary to determine whether the proposed acquisition,
25 if consummated, would violate the competitive standard of subsection 4. The
26 required information may include an opinion of an economist as to the
27 competitive impact of the acquisition in this state accompanied by a summary of
28 the education and experience of such person indicating that person's ability to
29 render an informed opinion.

30 b. The waiting period required begins on the date of receipt of the commissioner of
31 a preacquisition notification and ends on the earlier of the thirtieth day after the

1 date of its receipt, or termination of the waiting period by the commissioner. Prior
2 to the end of the waiting period, the commissioner on a one-time basis may
3 require the submission of additional needed information relevant to the proposed
4 acquisition, in ~~which~~the event the waiting period ends on the earlier of the thirtieth
5 day after receipt of the additional information by the commissioner or termination
6 of the waiting period by the commissioner.

7 4. a. The commissioner may enter an order under subdivision a of subsection 5 with
8 respect to an acquisition if there is substantial evidence that the effect of the
9 acquisition may be substantially to lessen competition in any line of insurance in
10 this state or tend to create a monopoly therein or if the ~~insurance company~~insurer
11 fails to file adequate information in compliance with subsection 3.

12 b. In determining whether a proposed acquisition would violate the competitive
13 standard of subdivision a, the commissioner shall consider the following:

14 (1) Any acquisition covered under subsection 2 involving two or more ~~insurance~~
15 ~~companies~~insurers competing in the same market is prima facie evidence of
16 violation of the competitive standards:

17 (a) If the market is highly concentrated and the involved ~~insurance~~
18 ~~companies~~insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 4% | 4% or more |
| 10% | 2% or more |
| 15% | 1% or more |

23 (b) Or, if the market is not highly concentrated and the involved ~~insurance~~
24 ~~companies~~insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 5% | 5% or more |
| 10% | 4% or more |
| 15% | 3% or more |
| 19% | 1% or more |

30 A highly concentrated market is one in which the share of the four
31 largest ~~insurance companies~~insurers is seventy-five percent or more

1 of the market. Percentages not shown in the tables are interpolated
2 proportionately to the percentages that are shown. If more than two
3 ~~insurance companies~~insurers are involved, exceeding the total of the
4 two columns in the table is prima facie evidence of violation of the
5 competitive standard in subdivision a. For the purpose of this
6 paragraph, the ~~insurance company~~insurer with the largest share of the
7 market must be deemed to be insurer A.

8 (2) There is a significant trend toward increased concentration when the
9 aggregate market share of any grouping of the largest ~~insurance~~
10 ~~companies~~insurers in the market, from the two largest to the eight largest,
11 has increased by seven percent or more of the market over a period of time
12 extending from any base year five to ten years prior to the acquisition up to
13 the time of the acquisition. Any acquisition or merger covered under
14 subsection 2 involving two or more ~~insurance companies~~insurers competing
15 in the same market is prima facie evidence of violation of the competitive
16 standard in subdivision a if:

- 17 (a) There is a significant trend toward increased concentration in the
18 market;
- 19 (b) One of the ~~insurance companies~~insurers involved is one of the
20 insurance companies in a grouping of large ~~insurance~~
21 ~~companies~~insurers showing the requisite increase in the market
22 share; and
- 23 (c) Another involved ~~insurance company's~~insurer's market is two percent
24 or more.

25 (3) For the purposes of this subdivision:

- 26 (a) The term "~~insurance company~~insurer" includes any company or group
27 of companies under common management, ownership, or control.
- 28 (b) The term "market" means the relevant product and geographical
29 markets. In determining the relevant product and geographical
30 markets, the commissioner shall give due consideration to, among
31 other things, the definitions or guidelines, if any, promulgated by the

1 national association of insurance commissioners and to information, if
2 any, submitted by parties to the acquisition. In the absence of
3 sufficient information to the contrary, the relevant product market is
4 assumed to be the direct written insurance premium for a line of
5 business, such line being that used in the annual statement required
6 to be filed by ~~insurance companies~~insurers doing business in this
7 state, and the relevant geographical market is assumed to be this
8 state.

9 (c) The burden of showing prima facie evidence of violation of the
10 competitive standard rests upon the commissioner.

11 (4) Even though an acquisition is not prima facie violative of the competitive
12 standard under paragraphs 1 and 2, the commissioner may establish the
13 requisite anticompetitive effect based upon other substantial evidence. Even
14 though an acquisition is prima facie violative of the competitive standard
15 under paragraphs 1 and 2, a party may establish the absence of the
16 requisite anticompetitive effect based upon other substantial evidence.
17 Relevant factors in making a determination under this paragraph include the
18 following: market shares, volatility of ranking of market leaders, number of
19 competitors, concentration, trend of concentration in the industry, and ease
20 of entry into and exit from the market.

21 c. An order may not be entered under subdivision a of subsection 5 if:

22 (1) The acquisition will yield substantial economies of scale or economies in
23 resource utilization that cannot be feasibly achieved in any other way, and
24 the public benefits which would arise from such economies exceed the
25 public benefits which would arise from not lessening competition; or

26 (2) The acquisition will substantially increase the availability of insurance, and
27 the public benefits of such increase exceed the public benefits which would
28 arise from not lessening competition.

29 5. a. If an acquisition violates the standards of this section, the commissioner may
30 enter an order:

- 1 (1) Requiring an involved ~~insurance company~~insurer to cease and desist from
2 doing business in this state with respect to the line or lines of insurance
3 involved in the violation; or
4 (2) Denying the application of an acquired or acquiring ~~insurance-~~
5 ~~company~~insurer for a license to do business in this state.
- 6 b. The order may not be entered unless there is :
- 7 (1) There is a hearing, ~~notice~~;
- 8 (2) Notice of ~~such~~the hearing is issued prior to the end of the waiting period and
9 not less than fifteen days prior to the hearing; ~~and the~~
- 10 (3) The hearing is concluded and the order is issued no later than sixty days
11 after the ~~end~~date of the ~~waiting period~~filing of the preacquisition notification
12 with the commissioner. Every order must be accompanied by a written
13 decision of the commissioner setting forth findings of fact and conclusions of
14 law.
- 15 c. ~~An order entered under this subsection may not become final sooner than thirty-~~
16 ~~days after it is issued, during which time the involved insurance company may~~
17 ~~submit a plan to remedy the anticompetitive impact of the acquisition within a~~
18 ~~reasonable time. Based upon the plan or other information, the commissioner~~
19 ~~shall specify the conditions, if any, under the time period during which the aspects-~~
20 ~~of the acquisition causing a violation of the standards of this section would be~~
21 ~~remedied and the order vacated or modified.~~
- 22 d. An order pursuant to this subsection does not apply if the acquisition is not
23 consummated.
- 24 e.d. Any person who violates a cease and desist order of the commissioner under this
25 subsection and while the order is in effect, after notice and hearing and upon
26 order of the commissioner, may be subject at the discretion of the commissioner
27 to any one or both of the following:
- 28 (1) A monetary penalty of not more than ten thousand dollars for every day of
29 violation.
- 30 (2) Suspension or revocation of ~~such~~the person's license.

- 1 a. The capital structure, general financial condition, ownership, and management of
2 the ~~insurance company~~insurer and any person in control of the ~~insurance-~~
3 ~~company~~insurer.
- 4 b. The identity and relationship of every member of the insurance holding company
5 system.
- 6 c. The following agreements in force, ~~relationships subsisting,~~ and transactions
7 currently outstanding or which have occurred during the last calendar year
8 between the ~~insurance company~~insurer and its affiliates:
- 9 (1) Loans, other investments, or purchases, sales, or exchanges of securities of
10 the affiliates by the ~~insurance company~~insurer or of the ~~insurance-~~
11 ~~company~~insurer by its affiliates.
- 12 (2) Purchases, sales, or exchange of assets.
- 13 (3) Transactions not in the ordinary course of business.
- 14 (4) Guarantees or undertakings for the benefit of an affiliate which result in an
15 actual contingent exposure of the ~~insurance company's~~insurer's assets to
16 liability, other than insurance contracts entered into in the ordinary course of
17 the ~~insurance company's~~insurer's business.
- 18 (5) All management agreements, service contracts, and all cost-sharing
19 arrangements.
- 20 (6) Reinsurance agreements.
- 21 (7) Dividends and other distributions to shareholders.
- 22 (8) Consolidated tax allocation agreements.
- 23 d. Any pledge of the ~~insurance company's~~insurer's stock, including stock of any
24 subsidiary or controlling affiliate, for a loan made to any member of the insurance
25 holding company system.
- 26 e. If requested by the commissioner, the insurer shall include financial statements of
27 or within an insurance holding company system, including all affiliates. A financial
28 statement may include an annual audited financial statement filed with the United
29 States securities and exchange commission pursuant to the federal Securities
30 Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities
31 Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial

1 statement pursuant to this subdivision may satisfy the request by providing the
2 commissioner with the most recently filed parent corporation financial statements
3 that have been filed with the United States securities and exchange commission.

- 4 f. Other matters concerning transactions between registered insurance-
5 companiesinsurers and any affiliates as may be included from time to time in any
6 registration forms adopted or approved by the commissioner.
- 7 g. Statements for whichthat the insurer's board of directors areis responsible for and
8 which the board supervises-and, relating to corporate governance and internal
9 controls that the insurer's officers or senior management have approved,
10 implemented, and continue to maintain and monitor.

11 h. Any other information required by the commissioner by rule.

12 3. No information need be disclosed on the registration statement filed pursuant to
13 subsection 2 if the information is not material for the purposes of this section. Unless
14 the commissioner by rule or order provides otherwise, sales, purchases, exchanges,
15 loans or extensions of credit, or investments, or guarantees involving one-half of one
16 percent or less of an ~~insurance company's~~insurer's admitted assets as of December
17 thirty-first next preceding are not material for purposes of this section.

18 4. In addition to the annual filing requirement under subsection 1, each registered
19 ~~insurance company~~insurer shall keep current the information required to be disclosed
20 in its registration statement by reporting all material changes or additions on
21 amendment forms approved by the commissioner within fifteen days after the end of
22 the month in which it learns of each change or addition; provided, however, that
23 subject to subsections 7, 8, and 9 of section 26.1-10-05, each registered ~~insurance-~~
24 ~~company~~insurer shall report all dividends and other distributions to shareholders within
25 five business days following the declaration and no less than ten business days prior
26 to payment thereof.

27 5. The commissioner shall terminate the registration of any ~~insurance company-~~
28 ~~whichinsurer that~~ demonstrates that it no longer is a member of an insurance holding
29 company system.

30 6. The commissioner may require or allow two or more affiliated ~~insurance-~~
31 ~~companiesinsurers~~ subject to registration hereunder to file a consolidated registration

1 ~~statement or consolidated reports amending their consolidated registration statement-~~
2 ~~or their individual registration statements.~~

3 7. The commissioner may allow an ~~insurance company~~insurer which is authorized to do
4 business in this state and which is part of an insurance holding company system to
5 register on behalf of any affiliated ~~insurance company~~insurer which is required to
6 register under subsection 1 to file all information and material required to be filed
7 under this section.

8 8. This section does not apply to any ~~insurance company~~insurer, information, or
9 transaction if and to the extent excepted by the commissioner by rule or order.

10 9. Any person may file with the commissioner a disclaimer of affiliation with any
11 authorized ~~insurance company~~insurer or a disclaimer may be filed by the ~~insurance-~~
12 ~~company~~insurer or any member of an insurance holding company system. The
13 disclaimer must fully disclose all material relationships and bases for affiliation
14 between the person and the ~~insurance company~~insurer as well as the basis for
15 disclaiming the affiliation. ~~After a disclaimer has been filed, the insurance company is~~
16 ~~relieved of any duty to register or report under this section which arises out of the~~
17 ~~insurance company's relationship with the person unless and until the commissioner~~
18 ~~disallows the disclaimer. The commissioner shall disallow the disclaimer only after~~
19 ~~furnishing all parties in interest with notice and opportunity to be heard and after~~
20 ~~making specific findings of fact to support the disallowance~~A disclaimer of affiliation is
21 deemed to have been granted unless the commissioner, within thirty days following
22 receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In
23 the event of disallowance, the disclaiming party may request an administrative
24 hearing, which must be granted. The disclaiming party is relieved of its duty to register
25 under this section if approval of the disclaimer has been granted by the commissioner
26 or if the disclaimer is deemed to have been approved.

27 10. All registration statements must contain a summary outlining all items in the current
28 registration statement representing changes from the prior registration statement.

29 11. Any person within an insurance holding company system subject to registration must
30 provide complete and accurate information to an ~~insurance company~~insurer, when the

1 information is reasonably necessary to enable the ~~insurance company~~insurer to
2 comply with the provisions of this chapter.

3 12. The ultimate controlling person of every insurer subject to registration shall file an
4 annual enterprise risk report. To the best of the ultimate controlling person's
5 knowledge and belief, the report must identify the material risks within the insurance
6 holding company system which could pose enterprise risk to the insurer. The report
7 must be filed with the lead state commissioner of the insurance holding company
8 system as determined by the procedures within the financial analysis handbook
9 adopted by the national association of insurance commissioners.

10 13. The failure to file a registration statement or any summary of the registration statement
11 ~~therefor~~ enterprise risk filing required by this section within the time specified for the
12 filing is a violation of this section.

13 **SECTION 6. AMENDMENT.** Section 26.1-10-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **26.1-10-05. Standards ~~– Transactions with affiliates – Adequacy of surplus – Dividends~~**
16 **~~and other distributions~~ and management of an insurer with an insurance holding**
17 **company system.**

18 1. Transactions within ~~aan insurance~~ holding company system to which an ~~insurance-~~
19 ~~company~~insurer subject to registration is a party are subject to the following standards:

20 a. The terms must be fair and reasonable.

21 b. Agreements for cost-sharing services and management must include provisions
22 as required by rules adopted by the commissioner.

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

27 ~~e.d.~~ The ~~insurance company's~~insurer's surplus as regards to policyholders following
28 any dividends or distributions to shareholder affiliates must be reasonable in
29 relation to the ~~insurance company's~~insurer's outstanding liabilities and adequate
30 to its financial needs.

31 ~~d.e.~~ Charges or fees for services performed must be reasonable.

- 1 e.f. Expenses incurred and payment received must be allocated to the ~~insurance-~~
2 ~~companyinsurer~~ in conformity with statutory accounting practices consistently
3 applied.
- 4 2. The following transactions involving a domestic ~~insurance-companyinsurer~~ and any
5 person in its insurance holding company system, including an amendment or
6 modification of an affiliate agreement previously filed pursuant to this section, which is
7 subject to any materiality standards contained in subdivisions a through g, may not be
8 entered into unless the ~~insurance-companyinsurer~~ has notified the commissioner in
9 writing of its intention to enter into the transaction at least thirty days prior thereto, or a
10 shorter period as the commissioner may permit, and the commissioner has not
11 disapproved it within that period. The notice for an amendment or modification must
12 include the reason for the change and the financial impact on the domestic insurer.
13 Within thirty days after a termination of a previously filed agreement, informal notice
14 must be reported to the commissioner for determination of the type of filing required, if
15 any.
- 16 a. Sales, purchases, exchanges, loans, or extensions of credit, ~~guarantees,~~ or
17 investments provided the transactions are equal to or exceed:
- 18 (1) With respect to nonlife ~~insurance-companiesinsurers,~~ the lesser of three
19 percent of the ~~insurance-company'sinsurer's~~ admitted assets or twenty-five
20 percent of surplus as regards policyholders as of December thirty-first next
21 preceding.
- 22 (2) With respect to life ~~insurance-companiesinsurers,~~ three percent of the
23 ~~insurance-company'sinsurer's~~ admitted assets as of December thirty-first
24 next preceding.
- 25 b. Loans or extensions of credit to any person ~~whothat~~ is not an affiliate, ~~whenif~~ the
26 ~~insurance-companyinsurer~~ makes the loans or extensions of credit with the
27 agreement or understanding that the proceeds of the transactions, in whole or in
28 substantial part, are to be used to make loans or extensions of credit to, to
29 purchase assets of, or to make investments in any affiliate of the ~~insurance-~~
30 ~~companyinsurer~~ making the loans or extensions of credit provided the
31 transactions are equal to or exceed:

- 1 (1) With respect to nonlife ~~insurance companies~~insurers, the lesser of three
2 percent of the ~~insurance company's~~insurer's admitted assets or twenty-five
3 percent of surplus as regards policyholders as of December thirty-first next
4 preceding.
- 5 (2) With respect to life ~~insurance companies~~insurers, three percent of the
6 ~~insurance company's~~insurer's admitted assets as of December thirty-first
7 next preceding.
- 8 c. Reinsurance agreements or modifications thereto, including:
- 9 (1) All reinsurance pooling agreements.
- 10 (2) Agreements in which the reinsurance premium or a change in the insurance-
11 company'sinsurer's liabilities, or the projected reinsurance premium or a
12 change in the insurer's liabilities in any of the next three years, equals or
13 exceeds five percent of the ~~insurance company's~~insurer's surplus as
14 regards policyholders, as of December thirty-first next preceding, including
15 those agreements which may require as consideration the transfer of assets
16 from an ~~insurance company~~insurer to a nonaffiliate, if an agreement or
17 understanding exists between the ~~insurance company~~insurer and
18 nonaffiliate that any portion of such assets will be transferred to one or more
19 affiliates of the ~~insurance company~~insurer.
- 20 d. All management agreements, service contracts, tax allocation agreements,
21 guarantees, and all cost-sharing arrangements.
- 22 e. Any guarantee made by a domestic insurer; however, a guarantee that is
23 quantifiable as to amount is not subject to the notice requirements of this
24 subsection unless the guarantee exceeds the lesser of one-half of one percent of
25 the insurer's admitted assets or ten percent of surplus as regards policyholders
26 as of December thirty-first next preceding. Additionally, all guarantees that are not
27 quantifiable as to amount are subject to the notice requirements of this
28 subsection.
- 29 f. Any direct or indirect acquisition or investment in a person that controls the
30 insurer or in an affiliate of the insurer in an amount that, together with its present
31 holdings in such investments, exceeds two and one-half percent of the insurer's

1 surplus to policyholders. A direct or indirect acquisition or investment in a
2 subsidiary acquired pursuant to section 26.1-10-02, or authorized under any
3 other section of this chapter, or in a nonsubsidiary insurance affiliate that is
4 subject to this chapter, is exempt from this requirement.

5 g. Any material transactions, specified by rule, which the commissioner determines
6 may adversely affect the interests of the ~~insurance company's~~insurer's
7 policyholders.

8 Nothing herein ~~contained in this subsection~~ may be deemed to authorize or permit any
9 transactions which, in the case of an ~~insurance company~~insurer which is not a
10 member of the same insurance holding company system, would be otherwise contrary
11 to law.

12 3. A domestic ~~insurance company~~insurer may not enter into transactions ~~which~~that are
13 part of a plan or series of like transactions with persons within the insurance holding
14 company system if the purpose of those separate transactions is to avoid the statutory
15 threshold amount and thus avoid the review that would occur otherwise. If the
16 commissioner determines that the separate transactions were entered ~~into~~ over any
17 twelve-month period for that purpose, the commissioner may exercise the
18 commissioner's authority under the penalty sections of this chapter.

19 4. The commissioner, in reviewing transactions pursuant to subsection 2, shall consider
20 whether the transactions comply with the standards set forth in subsection 1 and
21 whether they may adversely affect the interests of the policyholders.

22 5. The commissioner must be notified within thirty days of any investment of the
23 domestic ~~insurance company~~insurer in any one corporation if the total investment in
24 that corporation by the insurance holding company system exceeds ten percent of the
25 corporation's voting securities.

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

- 1 a. The size of the ~~insurance company~~insurer as measured by its assets, capital and
2 surplus, reserves, premium writings, insurance in force, and other appropriate
3 criteria.
- 4 b. The extent to which the ~~insurance company's~~insurer's business is diversified
5 among the several lines of insurance.
- 6 c. The number and size of risks insured in each line of business.
- 7 d. The extent of the geographical dispersion of the ~~insurance company's~~insurer's
8 insured risks.
- 9 e. The nature and extent of the ~~insurance company's~~insurer's reinsurance program.
- 10 f. The quality, diversification, and liquidity of the ~~insurance company's~~insurer's
11 investment portfolio.
- 12 g. The recent past and projected future trend in the size of the ~~insurance-~~
13 ~~company's~~insurer's investment portfolio.
- 14 h. The surplus as regards policyholders maintained by other comparable ~~insurance-~~
15 ~~companies~~insurers.
- 16 i. The adequacy of the ~~insurance company's~~insurer's reserves.
- 17 j. The quality and liquidity of investments in affiliates. The commissioner may treat
18 the investment as a disallowed asset for purposes of determining the adequacy
19 of surplus as regards policyholders whenever in the commissioner's judgment the
20 investment so warrants.
- 21 k. ~~The quality of the company's earnings and the extent to which the reported-~~
22 ~~earnings include extraordinary items.~~
- 23 7. ~~An insurance company subject to registration under section 26.1-10-04 may not~~A
24 domestic insurer may not pay any extraordinary dividend or make any other
25 extraordinary distribution to its shareholders until:
 - 26 a. ~~Thirty~~ thirty days after the commissioner has received notice of the declaration
27 thereof and has not within ~~such~~that period disapproved the payment; or
 - 28 b. ~~The~~ until the commissioner has approved the payment within the thirty-day
29 period.
- 30 8. For purposes of this section, an extraordinary dividend or distribution includes any
31 dividend or distribution of cash or other property, when the fair market value together

1 with that of other dividends or distributions made within the preceding twelve months
2 exceeds the ~~greater~~lesser of:

3 a. Ten percent of the ~~insurance company's~~insurer's surplus as regards policyholders
4 as of December thirty-first next preceding; or

5 b. The net gain from operations of the ~~insurance company~~insurer, if the
6 ~~company~~insurer is a life ~~insurance company~~insurer, or the net income, if the
7 company is not a life ~~insurance company~~insurer, not including realized capital
8 gains, for the twelve-month period ending December thirty-first next preceding,
9 but shall not include pro rata distributions of any class of the ~~insurance-~~
10 ~~company's~~insurer's own securities.

11 9. In determining whether a dividend or distribution is extraordinary under subsection 8,
12 an insurer other than a life insurer may carry forward net income from the previous two
13 calendar years which has not already been paid out as dividends. This carry-forward
14 must be computed by taking the net income from the second and third preceding
15 calendar years, not including realized capital gains, less dividends paid in the second
16 and immediate preceding calendar years.

17 10. Notwithstanding any other provision of law, an ~~insurance company~~insurer may declare
18 an extraordinary dividend or distribution which is conditional upon the commissioner's
19 approval thereof, and the declaration confers no rights upon shareholders until:

20 a. The commissioner has approved the payment of the dividend or distribution; or

21 b. The commissioner has not disapproved the payment within the thirty-day period
22 referred to in subsection 7.

23 **SECTION 7. AMENDMENT.** Section 26.1-10-05.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-10-05.1. Dividends and other distribution.**

26 1. The board of directors of any company subject to this chapter may declare and the
27 company may pay dividends and other distributions on its outstanding shares and
28 cash, property, or its own shares and on its treasury stock in its own shares, subject to
29 the following provisions:

30 a. No dividend or other distribution may be declared or paid at any time except out
31 of earned, as distinguished from contributed, surplus, nor when the surplus of the

1 company is less than the surplus required by law for the kind or kinds of business
2 authorized to be transacted by ~~such company~~the insurer, nor when the payment
3 of a dividend or other distribution would reduce its surplus to less than such
4 amount.

5 b. Except in the case of share dividends, surplus for determining whether dividends
6 or other distributions may be declared may not include surplus arising from
7 unrealized appreciation in value, or revaluation of assets, or from unrealized
8 profits upon investments.

9 c. No dividend or other distribution may be declared or paid contrary to any
10 restriction contained in the articles of incorporation.

11 d. No dividend or other distribution may be declared or paid contrary to section
12 26.1-10-05.

13 2. No payment may be made to policyholders by way of dividends unless the
14 ~~company~~insurer possesses admitted assets in the amount of such payment in excess
15 of its capital, minimum required surplus, and all liabilities.

16 **SECTION 8. AMENDMENT.** Section 26.1-10-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **26.1-10-06. Examination –~~Consultants~~–Expenses.**

19 1. Subject to the limitations contained in this section and in addition to the powers which
20 the commissioner has relating to the examination of ~~insurance companies~~insurers, the
21 commissioner may examine any insurer registered under section 26.1-10-04 and the
22 insurer's affiliates to ascertain the financial condition of the insurer, including the
23 enterprise risk to the insurer by the ultimate controlling party, or by any entity or
24 combination of entities within the insurance holding company system, or by the
25 insurance holding company system on a consolidated basis.

26 2. The commissioner may order any insurance company~~insurer~~ registered under section
27 26.1-10-04 to produce any record, book, or other information paper in the possession
28 of the ~~insurance company~~insurer or its affiliates necessary to ~~ascertain the financial~~
29 ~~condition or legality of conduct of the insurance company.~~ ~~If the insurance company~~
30 ~~fails to comply with the order, the commissioner may examine the affiliates to obtain~~
31 ~~the information~~determine compliance with this chapter.

1 ~~2.3.~~ The commissioner may exercise the power under subsection 1 only if the examination-
2 of the insurance company, under other provisions of the law, is inadequate or the
3 interests of the policyholders of the insurance company may be adversely affected. To
4 determine compliance with this chapter, the commissioner may order any insurer
5 registered under section 26.1-10-04 to produce information not in the possession of
6 the insurer if the insurer can obtain access to such information pursuant to a
7 contractual relationship, statutory obligation, or other method. If the insurer cannot
8 obtain the information requested by the commissioner, the insurer shall provide the
9 commissioner a detailed explanation of the reason the insurer cannot obtain the
10 information and the identity of the holder of the information. If the commissioner
11 determines the detailed explanation is without merit, the commissioner may require,
12 after notice and hearing, the insurer to pay a penalty of one thousand dollars for each
13 day's delay, or may suspend or revoke the insurer's license.

14 ~~3.4.~~ The commissioner may retain at the registered insurance company's ~~insurer's~~ expense
15 any attorneys, actuaries, accountants, and other experts, not otherwise a part of the
16 commissioner's staff, as are reasonably necessary to assist in the conduct of the
17 examination under subsection 1. Any persons so retained are under the direction and
18 control of the commissioner and shall act in a purely advisory capacity.

19 ~~4.5.~~ Each registered insurance company ~~insurer~~ producing any record, book, or other
20 information paper for examination pursuant to subsection 1 is liable for and shall pay
21 the expense of the examination.

22 6. If the insurer fails to comply with an order, the commissioner may examine the
23 affiliates to obtain the information. The commissioner may issue a subpoena,
24 administer oaths, and examine under oath any person for purposes of determining
25 compliance with this section. Upon the failure or refusal of any person to obey a
26 subpoena, the commissioner may petition a court of competent jurisdiction, and upon
27 proper showing, the court may enter an order compelling the witness to appear and
28 testify or produce documentary evidence. Failure to obey the court order is punishable
29 as contempt of court. When subpoenaed, a person shall attend as a witness at the
30 place specified in the subpoena, anywhere within the state. The witness is entitled to
31 receive the same fees and mileage as a witness in an administrative hearing or in

1 district court, which fees, mileage, and actual expense, if any, necessarily incurred in
2 securing the attendance of witnesses, and their testimony, must be itemized and
3 charged against, and be paid by, the insurer being examined.

4 **SECTION 9.** Section 26.1-10-06.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **26.1-10-06.1. Supervisory colleges.**

- 7 1. With respect to any insurer registered under section 26.1-10-04, and in accordance
8 with subsection 3, the commissioner may participate in a supervisory college for any
9 domestic insurer that is part of an insurance holding company system with
10 international operations to determine compliance by the insurer with this chapter. The
11 powers of the commissioner with respect to a supervisory college include:
- 12 a. Initiating the establishment of a supervisory college;
 - 13 b. Clarifying the membership and participation of other supervisors in the
14 supervisory college;
 - 15 c. Clarifying the functions of the supervisory college and the role of other regulators,
16 including the establishment of a groupwide supervisor;
 - 17 d. Coordinating the ongoing activities of the supervisory college, including planning
18 meetings, supervisory activities, and establishing processes for information
19 sharing; and
 - 20 e. Establishing a crisis management plan.
- 21 2. Each registered insurer subject to this section shall pay the reasonable expenses of
22 the commissioner's participation in a supervisory college in accordance with
23 subsection 3, including reasonable travel expenses. For purposes of this section, a
24 supervisory college may be convened as either a temporary or permanent forum for
25 communication and cooperation between the regulators charged with the supervision
26 of the insurer or the insurer's affiliates, and the commissioner may establish a regular
27 assessment to the insurer for the payment of expenses.
- 28 3. To assess the business strategy, financial position, legal and regulatory position, risk
29 exposure, risk management, and governance processes, and as part of the
30 examination of an individual insurer in accordance with section 26.1-10-06, the
31 commissioner may participate in a supervisory college with other regulators charged

1 with supervision of the insurer or the insurer's affiliates, including other state, federal,
2 and international regulatory agencies. The commissioner may enter an agreement in
3 accordance with subsection 3 of section 26.1-10-07 providing the basis for
4 cooperation between the commissioner and the other regulatory agencies, and the
5 activities of the supervisory college. This section does not delegate to the supervisory
6 college the authority of the commissioner to regulate or supervise the insurer or the
7 insurer's affiliates within the commissioner's jurisdiction.

8 **SECTION 10.** Section 26.1-10-06.2 of the North Dakota Century Code is created and enacted
9 as follows:

10 **26.1-10-06.2. Groupwide supervision of internationally active insurance groups.**

- 11 1. a. The commissioner may act as the groupwide supervisor for any internationally
12 active insurance group in accordance with this section. However, the
13 commissioner may otherwise acknowledge another regulatory official as the
14 groupwide supervisor if the internationally active insurance group:
15 (1) Does not have substantial insurance operations in the United States;
16 (2) Has substantial insurance operations in the United States but not in this
17 state; or
18 (3) Has substantial insurance operations in the United States and this state, but
19 the commissioner has determined under the factors set forth in
20 subsections 2 and 6 the other regulatory official is the appropriate
21 groupwide supervisor.
- 22 b. An insurance holding company system that does not otherwise qualify as an
23 internationally active insurance group may request the commissioner make a
24 determination or acknowledgment as to a groupwide supervisor under this
25 section.
- 26 2. In cooperation with other state, federal, and international regulatory agencies, the
27 commissioner shall identify a single groupwide supervisor for an internationally active
28 insurance group and may determine the commissioner is the appropriate groupwide
29 supervisor for an internationally active insurance group that conducts substantial
30 insurance operations concentrated in this state. However, the commissioner may
31 acknowledge a regulatory official from another jurisdiction is the appropriate

1 groupwide supervisor for the internationally active insurance group. The commissioner
2 shall consider the following factors when making a determination or acknowledgment
3 under this subsection:

4 a. The place of domicile of the insurers within the internationally active insurance
5 group which hold the largest share of the group's premiums, assets, or liabilities;

6 b. The place of domicile of the top-tiered insurers in the insurance holding company
7 system of the internationally active insurance group;

8 c. The location of the executive offices or largest operational offices of the
9 internationally active insurance group;

10 d. Whether another regulatory official is acting or is seeking to act as the groupwide
11 supervisor under a regulatory system the commissioner determines to be:

12 (1) Substantially similar to the system of regulation provided under the laws of
13 this state; or

14 (2) Otherwise sufficient in terms of providing for groupwide supervision,
15 enterprise risk analysis, and cooperation with other regulatory officials; and

16 e. Whether another regulatory official acting or seeking to act as the groupwide
17 supervisor provides the commissioner with reasonably reciprocal recognition and
18 cooperation. However, a commissioner identified under this section as the
19 groupwide supervisor may determine it is appropriate to acknowledge another
20 supervisor to serve as the groupwide supervisor. The acknowledgment of the
21 groupwide supervisor must be made after the consideration of the factors listed in
22 subdivisions a through e, and must be made in cooperation with and subject to
23 the acknowledgment of other regulatory officials involved with supervision of
24 members of the internationally active insurance group, and in consultation with
25 the internationally active insurance group.

26 3. a. Notwithstanding any other provision of law, when another regulatory official is
27 acting as the groupwide supervisor of an internationally active insurance group,
28 the commissioner shall acknowledge that regulatory official as the groupwide
29 supervisor unless the commissioner determines there has been a significant
30 material change in the internationally active insurance group that results in:

- 1 (1) The internationally active insurance group's insurers domiciled in this state
2 holding the largest share of the group's premiums, assets, or liabilities; or
3 (2) This state being the place of domicile of the top-tiered insurers in the
4 insurance holding company system of the internationally active insurance
5 group.
- 6 b. If such a material change has occurred, the commissioner shall make a
7 determination or acknowledgment as to the appropriate groupwide supervisor
8 under subsection 2.
- 9 4. Under section 26.1-10-06, the commissioner may collect from any insurer registered
10 under section 26.1-10-04 all information necessary to determine whether the
11 commissioner may act as the groupwide supervisor of an internationally active
12 insurance group or if the commissioner may acknowledge another regulatory official to
13 act as the groupwide supervisor. Before issuing a determination that an internationally
14 active insurance group is subject to groupwide supervision by the commissioner, the
15 commissioner shall notify the insurer registered under section 26.1-10-04 and the
16 ultimate controlling person within the internationally active insurance group. The
17 internationally active insurance group must be provided not less than thirty days to
18 provide the commissioner with additional information pertinent to the pending
19 determination. The commissioner shall publish on the commissioner's internet website
20 the identity of internationally active insurance groups the commissioner has
21 determined are subject to groupwide supervision by the commissioner.
- 22 5. If the commissioner is the groupwide supervisor for an internationally active insurance
23 group, the commissioner may engage in any of the following groupwide supervision
24 activities:
- 25 a. Assess the enterprise risks within the internationally active insurance group to
26 ensure:
- 27 (1) The material financial condition and liquidity risks to the members of the
28 internationally active insurance group which are engaged in the business of
29 insurance are identified by management; and
30 (2) Reasonable and effective mitigation measures are in place.

- 1 b. Request, from any member of an internationally active insurance group subject to
2 the commissioner's supervision, information necessary and appropriate to assess
3 enterprise risk, including information about the members of the internationally
4 active insurance group regarding:
- 5 (1) Governance, risk assessment, and management;
6 (2) Capital adequacy; and
7 (3) Material intercompany transactions.
- 8 c. Coordinate and, through the authority of the regulatory officials of the jurisdictions
9 where members of the internationally active insurance group are domiciled,
10 compel development and implementation of reasonable measures designed to
11 ensure the internationally active insurance group is able to timely recognize and
12 mitigate enterprise risks to members of that internationally active insurance
13 groups which are engaged in the business of insurance.
- 14 d. Communicate with other state, federal, and international regulatory agencies for
15 members within the internationally active insurance group and share relevant
16 information subject to the confidentiality provisions of section 26.1-10-07 through
17 supervisory colleges as set forth in section 26.1-10-06.1 or otherwise.
- 18 e. Enter agreements with or obtain documentation from any insurer registered
19 under section 26.1-10-04; any member of the internationally active insurance
20 group; and any other state, federal, and international regulatory agency for
21 members of the internationally active insurance group, providing the basis for or
22 otherwise clarifying the commissioner's role as groupwide supervisor, including
23 provisions for resolving disputes with other regulatory officials. The agreement or
24 documentation may not serve as evidence in any proceeding any insurer or
25 person within an insurance holding company system not domiciled or
26 incorporated in this state is doing business in this state or is otherwise subject to
27 jurisdiction in this state.
- 28 f. Other groupwide supervision activities, consistent with the authorities and
29 purposes enumerated in this section, as considered necessary by the
30 commissioner.

1 6. If the commissioner acknowledges another regulatory official from a jurisdiction that is
2 not accredited by the national association of insurance commissioners is the
3 groupwide supervisor, the commissioner may cooperate reasonably, through
4 supervisory colleges or otherwise, with groupwide supervision undertaken by the
5 groupwide supervisor, provided:

6 a. The commissioner's cooperation is in compliance with the laws of this state; and

7 b. The regulatory official acknowledged as the groupwide supervisor also
8 recognizes and cooperates with the commissioner's activities as a groupwide
9 supervisor for other internationally active insurance groups as applicable. If such
10 recognition and cooperation is not reasonably reciprocal, the commissioner may
11 refuse recognition and cooperation.

12 7. The commissioner may enter an agreement with or obtain documentation from any
13 insurer registered under section 26.1-10-04; any affiliate of the insurer; and other
14 state, federal, and international regulatory agency for members of the internationally
15 active insurance group which provide the basis for or otherwise clarify a regulatory
16 official's role as groupwide supervisor.

17 8. The commissioner may adopt rules necessary for the administration of this section.

18 9. A registered insurer subject to this section is liable for and shall pay the reasonable
19 expenses of the commissioner's participation in the administration of this section,
20 including the engagement of an attorney, actuary, and any other professional and all
21 reasonable travel expenses.

22 **SECTION 11. AMENDMENT.** Section 26.1-10-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **~~26.1-10-07. Information confidential~~Confidential treatment.**

25 1. Any document, material, or other information in the possession or control of the North
26 Dakota insurance department which is obtained by or disclosed to the commissioner
27 or any other person in the course of an examination or investigation made pursuant to
28 section 26.1-10-06 and all information reported pursuant to subdivisions l and m of
29 subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 must be
30 given is confidential treatment and is and privileged, not subject to section 44-04-18, not
31 subject to subpoena and may not be made public by the commissioner or any other

1 ~~person, except to insurance departments of other states, and not subject to discovery~~
2 ~~or admissible in evidence in any private civil action. However, the commissioner may~~
3 ~~use the document, material, or other information in the furtherance of any regulatory or~~
4 ~~legal action brought as a part of the commissioner's official duties. The commissioner~~
5 ~~may not otherwise make the document, material, or other information public without~~
6 ~~the prior written consent of the insurance company insurer to which it pertains unless~~
7 ~~the commissioner, after giving the insurance company insurer and its affiliates who that~~
8 ~~would be affected thereby, notice and opportunity to be heard, determines that the~~
9 ~~interests of policyholders, shareholders, or the public will be served by the publication~~
10 ~~thereof, in which event the commissioner may publish all or any part thereof in any~~
11 ~~manner the commissioner deems appropriate.~~

12 2. Neither the commissioner nor any person that received any document, material, or
13 other information while acting under the authority of the commissioner or with whom
14 such document, material, or other information is shared under this chapter is permitted
15 or required to testify in any private civil action concerning any confidential document,
16 material, or information subject to subsection 1.

17 3. To assist in the performance of the commissioner's duties:

18 a. If the recipient agrees in writing to maintain the confidentiality and privileged
19 status of the document, material, or other information, and has verified in writing
20 the legal authority to maintain confidentiality, the commissioner may share any
21 document, material, or other information, including the confidential and privileged
22 document, material, or information subject to subsection 1, with any other state,
23 federal, and international regulatory agency, the national association of insurance
24 commissioners and its affiliates and subsidiaries, and any state, federal, or
25 international law enforcement authority, including members of any supervisory
26 college described in section 26.1-10-06.1;

27 b. Notwithstanding subdivision a, the commissioner may share a confidential and
28 privileged document, material, or information reported under subsection 12 of
29 section 26.1-10-04 only with a commissioner of a state having statutes or
30 regulations substantially similar to subsection 1 and who has agreed in writing
31 not to disclose the information;

- 1 c. The commissioner may receive any document, material, or information, including
2 any otherwise confidential and privileged document, material, or information from
3 the national association of insurance commissioners and its affiliates and
4 subsidiaries and from any regulatory and law enforcement official of other foreign
5 or domestic jurisdiction, and shall maintain as confidential or privileged any
6 document, material, or information received with notice or the understanding the
7 document, material, or information is confidential or privileged under the laws of
8 the jurisdiction that is the source of the document, material, or information; and
- 9 d. The commissioner shall enter a written agreement with the national association
10 of insurance commissioners governing sharing and use of information provided
11 under this chapter consistent with this subsection and which must:
- 12 (1) Specify procedures and protocols regarding the confidentiality and security
13 of information shared with the national association of insurance
14 commissioners and its affiliates and subsidiaries under this chapter,
15 including procedures and protocols for sharing by the national association of
16 insurance commissioners with any other state, federal, or international
17 regulator;
- 18 (2) Specify ownership of information shared with the national association of
19 insurance commissioners and its affiliates and subsidiaries under this
20 chapter remains with the commissioner, and the national association of
21 insurance commissioner's use of the information is subject to the direction
22 of the commissioner;
- 23 (3) Require prompt notice to be given to an insurer if the insurer's confidential
24 information in the possession of the national association of insurance
25 commissioners under this chapter is subject to a request or subpoena to the
26 national association of insurance commissioners for disclosure or
27 production; and
- 28 (4) Require the national association of insurance commissioners and its
29 affiliates and subsidiaries to consent to intervention by an insurer in any
30 judicial or administrative action in which the national association of
31 insurance commissioners and its affiliates and subsidiaries may be required

1 to disclose confidential information about the insurer shared with the
2 national association of insurance commissioners and its affiliates and
3 subsidiaries under this chapter.

4 4. The sharing of information by the commissioner under this chapter does not constitute
5 a delegation of regulatory authority or rulemaking, and the commissioner is solely
6 responsible for the administration, execution, and enforcement of this chapter.

7 5. Waiver of any applicable privilege or claim of confidentiality in any document, material,
8 or information may not occur as a result of disclosure to the commissioner under this
9 section or as a result of sharing as authorized in subsection 3.

10 6. Any document, material, or other information in the possession or control of the
11 national association of insurance commissioners under this chapter is confidential and
12 privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to
13 discovery or admissible in evidence in any private civil action.

14 **SECTION 12. AMENDMENT.** Section 26.1-10-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **26.1-10-08. Injunctions - Prohibitions against voting securities - Sequestration of**
17 **voting securities.**

18 1. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any
19 director, officer, employee, or agent thereof has committed or is about to commit a
20 violation of this chapter or of any rule or order issued by the commissioner under this
21 chapter, the commissioner may apply to the district court for the county in which the
22 principal office of the ~~insurance company~~insurer is located or if the ~~insurance-~~
23 ~~company~~insurer has no principal office in this state then to the district court of Burleigh
24 County for an order enjoining the ~~insurance company~~insurer or the director, officer,
25 employee, or agent thereof from violating or continuing to violate this chapter or any
26 rule or order, and for any other equitable relief as the nature of the case and the
27 interests of the ~~insurance company's~~insurer's policyholders, creditors, and
28 shareholders or the public may require.

29 2. A security which is the subject of any agreement or arrangement regarding acquisition,
30 or which is acquired or to be acquired, in contravention of this chapter or any rule or
31 order issued by the commissioner hereunder may not be voted at any shareholders'

1 meeting; or ~~may be~~ counted for quorum purposes, and any action of shareholders
2 requiring the affirmative vote of a percentage of shares may be taken as though the
3 securities were not issued and outstanding, but any action taken at the meeting is not
4 invalidated by the voting of those securities, unless the action would materially affect
5 control of the ~~insurance company~~insurer or unless the courts of this state have so
6 ordered. If an ~~insurance company~~insurer or the commissioner has reason to believe
7 that any security of the ~~insurance company~~insurer has been or is about to be acquired
8 in contravention of this chapter or any rule or order issued by the commissioner
9 hereunder, the ~~insurance company~~insurer or the commissioner may apply to the
10 district court of Burleigh County or to the district court of the county in which the
11 ~~insurance company~~insurer has its principal place of business to enjoin any offer,
12 request, invitation, agreement, or acquisition made in contravention of section
13 26.1-10-03 or any rule or order issued by the commissioner thereunder to enjoin the
14 voting of any security so acquired, to void any vote of the security already cast at any
15 meeting of shareholders, and for any other equitable relief as the nature of the case
16 and the interests of the ~~insurance company's~~insurer's policyholders, creditors, and
17 shareholders or the public may require.

18 3. When a person has acquired or is proposing to acquire any voting securities in
19 violation of this chapter or any rule or order issued by the commissioner hereunder,
20 the district court of Burleigh County or the district court of the county in which the
21 ~~insurance company~~insurer has its principal place of business may, on the notice the
22 court deems appropriate and upon the application of the ~~insurance company~~insurer or
23 the commissioner, seize or sequester any voting securities of the ~~insurance-~~
24 ~~company~~insurer owned directly or indirectly by the person and issue any orders with
25 respect thereto as may be appropriate to effectuate this chapter.

26 4. Notwithstanding any other provision of law, for the purpose of this chapter the site of
27 the ownership of the securities of domestic ~~insurance companies~~insurers is deemed to
28 be in this state.

29 **SECTION 13. AMENDMENT.** Section 26.1-10-09 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-10-09. Revocation, suspension, and nonrenewal of license.**

2 Whenever it appears to the commissioner that any person has committed a violation of this
3 chapter which makes the continued operation of an ~~insurance company~~insurer contrary to the
4 interests of policyholders or the public, the commissioner, after giving notice and an opportunity
5 to be heard, may suspend, revoke, or refuse to renew the ~~insurance company's~~insurer's license
6 or authority to do business in this state for any period the commissioner finds is required for the
7 protection of policyholders or the public. Any determination must be accompanied by specific
8 findings of fact and conclusions of law.

9 **SECTION 14. AMENDMENT.** Section 26.1-10-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **26.1-10-10. Receivership.**

12 Whenever it appears to the commissioner that any person has committed a violation of this
13 chapter which so impairs the financial condition of a domestic ~~insurance company~~insurer as to
14 threaten insolvency or make the further transaction of business by it hazardous to its
15 policyholders, creditors, shareholders, or the public, then the commissioner may proceed as
16 provided in chapter 26.1-06.1 to take possession of the property of the ~~insurance~~
17 ~~company~~insurer and to carry on its business.

18 **SECTION 15. AMENDMENT.** Section 26.1-10-10.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-10-10.1. Recovery.**

- 21 1. ~~Subject to other limitations of this section, if~~ an order for liquidation, ~~conservation,~~ or
22 rehabilitation of a domestic ~~insurance company~~insurer has been entered, ~~and if~~
23 distribution of payment identified in subdivision a or b is made at any time during the
24 one year preceding the petition for liquidation, ~~conservation,~~ or rehabilitation, the
25 receiver appointed under the order may recover on behalf of the ~~insurance~~
26 ~~company~~insurer:
- 27 a. From any parent corporation, ~~limited liability company,~~ or holding company or
28 person or affiliate ~~whethat~~ otherwise controlled the ~~insurance company~~insurer,
29 the amount of distributions other than distributions of shares of the same class of
30 stock, paid by the ~~insurance company~~insurer on its capital stock; or

- 1 b. Any payment in the form of a bonus, termination settlement, or extraordinary
2 lump sum salary adjustment made by the ~~insurance company~~insurer or its
3 subsidiaries to a director, officer, or employee, if the distribution or payment under
4 this subsection is made at any time during the one year preceding the petition for
5 liquidation, conservation, or rehabilitation subject to the limitations of subsections
6 2, 3, and 4.
- 7 2. A distribution may not be recovered if the parent or affiliate shows that, when paid, the
8 distribution was lawful and reasonable, and that the ~~insurance company~~insurer did not
9 know and could not reasonably have known that the distribution might adversely affect
10 the ability of the ~~insurance company~~insurer to fulfill its contractual obligations.
- 11 3. Any person ~~whethat~~ was a parent corporation, ~~limited liability company~~, or holding
12 company or a person ~~whethat~~ otherwise controlled the ~~insurance company~~insurer or
13 affiliate at the time the distributions were paid is liable up to the amount of distributions
14 or payments under subsection 1 the person received. Any person ~~whethat~~ otherwise
15 controlled the ~~insurance company~~insurer at the time the distributions were declared is
16 liable up to the amount of distributions the person would have received if the person
17 had been paid immediately. If two or more persons are liable with respect to the same
18 distributions, they are jointly and severally liable.
- 19 4. The maximum amount recoverable under this ~~subsection~~section is the amount needed
20 in excess of all other available assets of the impaired or insolvent ~~insurance-~~
21 ~~company~~insurer to pay the contractual obligations of the impaired or insolvent
22 ~~insurance company~~insurer and to reimburse any guaranty funds.
- 23 5. To the extent that any person liable under subsection 3 is insolvent or otherwise fails
24 to pay claims due from it ~~pursuant to subsection 3~~, its parent corporation, ~~limited-~~
25 ~~liability company~~, or holding company or person ~~whethat~~ otherwise controlled it at the
26 time the distribution was paid must be jointly and severally liable for any resulting
27 deficiency in the amount recovered from the parent corporation, ~~limited liability-~~
28 ~~company~~, or holding company or person ~~whethat~~ otherwise controlled it.

29 **SECTION 16. AMENDMENT.** Section 26.1-10-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-10-11. Criminal proceedings-- Penalty.**

2 1. Any ~~insurance company~~insurer failing, without just cause, to file any registration
3 statement as required in this chapter must be required, after notice and hearing, to pay
4 a penalty of one hundred dollars for each day's delay. The commissioner may reduce
5 the penalty if the ~~insurance company~~insurer demonstrates to the commissioner that
6 the imposition of the penalty would constitute a financial hardship to the ~~insurance-~~
7 ~~company~~insurer.

8 2. Every director or officer of an insurance holding company system who knowingly
9 violates, participates in, or assents to, or who knowingly permits any of the officers or
10 agents of the ~~insurance company~~insurer to engage in transactions or make
11 investments which have not been properly reported or submitted pursuant to sections
12 26.1-10-04 and 26.1-10-05, or which violate this chapter, shall pay, in their individual
13 capacity, a civil penalty of not more than one thousand dollars per violation, after
14 notice and hearing before the commissioner. In determining the amount of the civil
15 penalty, the commissioner shall take into account the appropriateness of the penalty
16 with respect to the gravity of the violation, the history of previous violations, and such
17 other matters as justice may require.

18 3. Whenever it appears to the commissioner that any ~~insurance company~~insurer subject
19 to this chapter or any director, officer, employee, or agent thereof has engaged in any
20 transaction or entered ~~into~~ a contract which is subject to section 26.1-10-05 and which
21 would not have been approved had ~~such~~the approval been requested, the
22 commissioner may order the ~~insurance company~~insurer to cease and desist
23 immediately any further activity under that transaction or contract. After notice and
24 hearing, the commissioner may also order the ~~insurance company~~insurer to void
25 the~~any~~ contracts and restore the status quo if it is in the best interest of the
26 policyholders, creditors, or the public.

27 4. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any
28 director, officer, employee, or agent thereof has committed a willful violation of this
29 chapter, the commissioner may institute criminal proceedings in the district court of the
30 county in which the principal office of the ~~insurance company~~insurer is located or if the
31 ~~insurance company~~insurer has no principal office in the state, then in the district court

1 of Burleigh County against the ~~insurance company~~insurer or the responsible director,
2 officer, employee, or agent of the company. Any ~~insurance company~~insurer that
3 willfully violates this chapter is ~~guilty of a class B misdemeanor~~may be fined not more
4 than fifty thousand dollars. Any individual who willfully violates this chapter is ~~guilty of a~~
5 ~~class A misdemeanor~~may be fined in the individual's capacity not more than ten
6 thousand dollars.

7 5. Any officer, director, or employee of an insurance holding company system, who
8 willfully and knowingly subscribes to or makes or causes to be made any false
9 statements or false reports or false filings with the intent to deceive the commissioner
10 in the performance of the commissioner's duties under this chapter, ~~may have criminal~~
11 ~~proceedings instituted against them. Any individual who violates this chapter is guilty~~
12 ~~of a class A misdemeanor~~ may be fined not more than fifty thousand dollars. Any fines
13 imposed must be paid by the officer, director, or employee in the person's individual
14 capacity.

15 6. If it appears to the commissioner any person has committed a violation of section
16 26.1-10-03 which prevents the full understanding of the enterprise risk to the insurer
17 by affiliates or by the insurance holding company system, the violation may serve as
18 an independent basis for disapproving dividends or distributions and for placing the
19 insurer under an order of supervision in accordance with chapter 26.1-06.2.

20 **SECTION 17.** Section 26.1-10-13 of the North Dakota Century Code is created and enacted
21 as follows:

22 **26.1-10-13. Judicial review - Mandamus.**

- 23 1. Any person aggrieved by any act, determination, rule, order, or any other action of the
24 commissioner under this chapter may appeal to the district court for Burleigh County.
25 The court shall conduct the review without a jury and by trial de novo, except if all
26 parties, including the commissioner, so stipulate, the review must be confined to the
27 record. Portions of the record may be introduced into evidence by stipulation in a trial
28 de novo as to those parties so stipulating.
- 29 2. The filing of an appeal under this section stays the application of any rule, order, or
30 other action of the commissioner to the appealing party unless the court, after giving

1 the party notice and an opportunity to be heard, determines a stay would be
2 detrimental to the interest of policyholders, shareholders, creditors, or the public.
3 3. Any person aggrieved by any failure of the commissioner to act or make a
4 determination required by this chapter may petition the district court for Burleigh
5 County for a writ in the nature of a mandamus or a peremptory mandamus directing
6 the commissioner to act or make a determination.