

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1116

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact sections 26.1-38.1-01, 26.1-38.1-02, 26.1-38.1-03,  
2 26.1-38.1-04, 26.1-38.1-05, 26.1-38.1-06, 26.1-38.1-08, 26.1-38.1-09, 26.1-38.1-10,  
3 26.1-38.1-11, 26.1-38.1-13, 26.1-38.1-14, and 26.1-38.1-16 of the North Dakota Century Code,  
4 relating to the North Dakota life and health insurance guaranty association; to repeal section  
5 26.1-38.1-17 of the North Dakota Century Code, relating to application of laws to an insolvent  
6 insurer; and to provide for application.

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

8 **SECTION 1. AMENDMENT.** Section 26.1-38.1-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **26.1-38.1-01. ~~Scope~~Coverage and limitations.**

- 11 1. This section provides coverage for the policies and contracts specified in subsection 2:
- 12 a. To persons, except for nonresident certificate holders under group policies or  
13 contracts, who, regardless of where they reside, are the beneficiaries, assignees,  
14 or payees, including health care providers rendering services covered under  
15 health insurance policies or certificates, of the persons covered under  
16 subdivision b.
- 17 b. To persons who are owners of or certificate holders or enrollees under such  
18 policies or contracts other than unallocated annuity contracts and structured  
19 settlement annuities, and in each case who:
- 20 (1) Are residents; or
- 21 (2) Are not residents, but only under all of the following conditions:
- 22 (a) The member insurer that issued such policies or contracts is  
23 domiciled in this state;

- 1 (b) The states in which the persons reside have associations similar to  
2 the association created under this chapter; and
- 3 (c) The persons are not eligible for coverage by an association in any  
4 other state ~~due to the fact that~~because the insurer or the health  
5 maintenance organization was not licensed in the state at the time  
6 specified in the state's guaranty association law.
- 7 c. For any unallocated annuity contract specified in subsection 2, subdivisions a  
8 and b do not apply, and this chapter, except as provided in subdivisions e and f,  
9 provides coverage to:
- 10 (1) Persons who are the owners of the unallocated annuity contracts if the  
11 contracts are issued to or in connection with a specific benefit plan, the  
12 sponsor of which has its principal place of business in this state; and
- 13 (2) Persons who are owners of unallocated annuity contracts issued to or in  
14 connection with government lotteries if the owners are residents.
- 15 d. For structured settlement annuities specified in subsection 2, subdivisions a and  
16 b do not apply, and this chapter, except as provided in subdivisions e and f,  
17 provides coverage to a person who is a payee under a structured settlement  
18 annuity or beneficiary of a payee if the payee is deceased, if the payee:
- 19 (1) Is a resident, regardless of where the contract owner resides; or  
20 (2) Is not a resident, and:
- 21 (a) The contract owner of the structured settlement annuity is a resident,  
22 or the contract owner of the structured settlement annuity is not a  
23 resident but the insurer that issued the structured settlement annuity  
24 is domiciled in this state and the state in which the contract owner  
25 resides has an association similar to the association created under  
26 this chapter; and
- 27 (b) Neither the payee or beneficiary nor the contract owner is eligible for  
28 coverage by the association of the state in which the payee or  
29 contract owner resides.
- 30 e. This chapter does not provide coverage to:

- 1           (1) A person who is a payee or beneficiary of a contract owner resident of this  
2           state, if the payee or beneficiary is afforded any coverage by the association  
3           of another state; ~~or~~
- 4           (2) A person covered under subdivision ~~b~~c, if any coverage is provided by the  
5           association of another state to the person; or
- 6           (3) A person who acquires rights to receive payments through a structured  
7           settlement factoring transaction as defined in section 589(c)(3)(A) of title 26  
8           of the United States Code, regardless of whether the transaction occurred  
9           before or after this federal law became effective.
- 10          f. This chapter provides coverage to a person who is a resident of this state and, in  
11          special circumstances, to a nonresident. In order to avoid duplicate coverage, if a  
12          person who would otherwise receive coverage under this chapter is provided  
13          coverage under the laws of any other state, the person may not be provided  
14          coverage under this chapter. In determining the application of the provisions of  
15          this subdivision in situations in which a person could be covered by the  
16          association of more than one state, whether as an owner, payee, enrollee,  
17          beneficiary, or assignee, this chapter must be construed in conjunction with other  
18          state laws to result in coverage by only one association.
- 19          2. This chapter provides coverage to the persons specified in subsection 1 for policies or  
20          contracts of direct, nongroup life insurance, health insurance, which for the purposes  
21          of this chapter includes health maintenance organization subscriber contracts and  
22          certificates, or annuity policies or contracts annuities, and supplemental contracts to  
23          any of these, for certificates under direct group policies and contracts, and  
24          supplemental contracts to any of these and for unallocated annuity contracts issued by  
25          member insurers, except as limited by this chapter. Annuity contracts and certificates  
26          under group annuity contracts include guaranteed investment contracts, deposit  
27          administration contracts, unallocated funding agreements, allocated funding  
28          agreements, structured settlement annuities, annuities issued to or in connection with  
29          government lotteries, and any immediate or deferred annuity contracts.

- 1           3.    ~~This~~Except for the portion of a policy or contract, including a rider, which provides  
2            long-term care or any other health insurance benefits, this chapter does not provide  
3            coverage for:
- 4            a.    Any portion of a policy or contract not guaranteed by the member insurer, or  
5                 under which the risk is borne by the policy owner or contract owner;
- 6            b.    Any policy or contract of reinsurance, unless assumption certificates have been  
7                 issued pursuant to the reinsurance policy or contract;
- 8            c.    Any portion of a policy or contract to the extent that the rate of interest on which  
9                 the portion of the policy or contract is based or to the extent that the rate of  
10                interest, crediting of a rate of interest, or similar factor determined by using an  
11                index or other external reference stated in the policy or contract which is  
12                employed in calculating returns or changes in value:
- 13                (1)   Averaged over the period of four years prior to the date on which the  
14                    member insurer becomes an impaired or insolvent insurer under this  
15                    chapter, whichever is earlier, exceeds a rate of interest determined by  
16                    subtracting two percentage points from Moody's corporate bond yield  
17                    average averaged for that same four-year period or for such lesser period if  
18                    the policy or contract was issued less than four years prior to the date on  
19                    which the member insurer becomes an impaired or insolvent insurer under  
20                    this chapter, whichever is earlier; and
- 21                (2)   On and after the date on which the member insurer becomes an impaired or  
22                    insolvent insurer under this chapter, whichever is earlier, exceeds the rate of  
23                    interest determined by subtracting three percentage points from Moody's  
24                    corporate bond yield average as most recently available;
- 25            d.    A portion of a policy or contract issued to a plan or program of an employer,  
26                 association, or other person to provide life, health, or annuity benefits to its  
27                 employees, members, or others, to the extent that such plan or program is  
28                 self-funded or uninsured, including benefits payable by an employer, association,  
29                 or other person under:
- 30                (1)   A multiple employer welfare arrangement as defined in ~~29 U.S.C.~~  
31                    ~~1144~~section 1144 of title 29 of the United States Code;

- 1 (2) A minimum premium group insurance plan;
- 2 (3) A stop-loss group insurance plan; or
- 3 (4) An administrative services only contract;
- 4 e. Any portion of a policy or contract to the extent that it provides for dividends or
- 5 experience rating credits, voting rights, or payment of any fees or allowances to
- 6 any person, including the policy owner or contract owner, in connection with the
- 7 service to or administration of ~~such~~the policy or contract;
- 8 f. Any policy or contract issued in this state by a member insurer at a time when it
- 9 was not licensed or did not have a certificate of authority to issue ~~such~~the policy
- 10 or contract in this state;
- 11 g. Any unallocated annuity contract issued to or in connection with a benefit plan
- 12 protected under the federal pension benefit guaranty corporation regardless of
- 13 whether the federal pension benefit guaranty corporation has yet become liable
- 14 to make any payments with respect to the benefit plan;
- 15 h. Any portion of any unallocated annuity contract which is not issued to, or in
- 16 connection with, a specific employee, union, or association of natural persons
- 17 benefit plan or a government lottery;
- 18 i. A portion of a policy or contract to the extent that the assessments required by
- 19 section 26.1-38.1-06 with respect to the policy or contract are preempted or
- 20 otherwise not permitted by federal or state law;
- 21 j. An obligation that does not arise under the express written terms of the policy or
- 22 contract issued by the member insurer to the enrollee, certificate holder, contract
- 23 owner or policy owner, including:
- 24 (1) Claims based on marketing materials;
- 25 (2) Claims based on side letters, riders, or other documents that were issued by
- 26 the member insurer without meeting applicable policy or contract form filing
- 27 or approval requirements;
- 28 (3) Misrepresentations of or regarding policy or contract benefits;
- 29 (4) Extracontractual claims; or
- 30 (5) A claim for penalties or consequential or incidental damages;

- 1           k. A contractual agreement that establishes the member insurer's obligations to  
2           provide a book value accounting guaranty for defined contribution benefit plan  
3           participants by reference to a portfolio of assets that is owned by the benefit plan  
4           or its trustee, which in each case is not an affiliate of the member insurer;
- 5           l. A portion of a policy or contract to the extent it provides for interest or other  
6           changes in value to be determined by the use of an index or other external  
7           reference stated in the policy or contract, but which has not been credited to the  
8           policy or contract, or as to which the policy owner's or contract owner's rights are  
9           subject to forfeiture, as of the date the member insurer becomes an impaired or  
10          insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's  
11          interest or changes in value are credited less frequently than annually, then for  
12          purposes of determining the values that have been credited and are not subject  
13          to forfeiture under this subdivision, the interest or changes in value determined by  
14          using the procedures defined in the policy or contract will be credited as if the  
15          contractual date of crediting interest or changing values was the date of  
16          impairment or insolvency, whichever is earlier, and is not subject to forfeiture; ~~and~~
- 17          m. A policy or contract providing any hospital, medical, prescription drug, or other  
18          health care benefits pursuant to part C or part D of subchapter XVIII; of chapter 7  
19          of title 42 of the United States Code (, commonly known as Medicare part C and  
20          part D), or subchapter XIX of chapter 7 of title 42 of the United States Code;  
21          commonly known as Medicaid, or any regulations issued pursuant thereto; and
- 22          n. Structured settlement annuity benefits to which a payee or beneficiary has  
23          transferred the payee's or beneficiary's rights in a structured settlement factoring  
24          transactions, as defined in section 5891(c)(3)(A) of title 26 of the United States  
25          Code, regardless of whether the transaction occurred before or after this federal  
26          law became effective.
- 27          4. The benefits that the association may become obligated to cover may in no event  
28          exceed the lesser of:
- 29               a. The contractual obligations for which the member insurer is liable or would have  
30               been liable if it were not an impaired or insolvent insurer; or

- 1           b. (1) With any respect to one life, regardless of the number of policies, or  
2           contracts:
- 3           (a) Three hundred thousand dollars in life insurance death benefits, but  
4           not more than one hundred thousand dollars in net cash surrender  
5           and net cash withdrawal values for life insurance;
- 6           (b) ~~In~~For health insurance benefits:
- 7           [1] One hundred thousand dollars for coverages not defined as  
8           disability income insurance or ~~basic hospital, medical, and-~~  
9           ~~surgical insurance or major medical insurance~~health benefit  
10          plans or long-term care insurance, including any net cash  
11          surrender and net cash withdrawal values.
- 12          [2] Three hundred thousand dollars for disability income insurance,  
13          and three hundred thousand dollars for long-term care  
14          insurance.
- 15          [3] Five hundred thousand dollars for ~~basic hospital, medical, and-~~  
16          ~~surgical insurance or major medical insurance~~health benefit  
17          plans.
- 18          (c) Two hundred fifty thousand dollars in the present value of annuity  
19          benefits, including net cash surrender and net cash withdrawal values;
- 20          (2) With respect to each individual participating in a government retirement  
21          benefit plan established under section 401(k), 403(b), or 457 of the United  
22          States Internal Revenue Code covered by an unallocated annuity contract  
23          or the beneficiaries of each such individual if deceased, in the aggregate,  
24          two hundred fifty thousand dollars in present value annuity benefits,  
25          including net cash surrender and net cash withdrawal values;
- 26          (3) With respect to each payee of a structured settlement annuity or beneficiary,  
27          or beneficiaries of the payee if deceased, two hundred fifty thousand dollars  
28          in present value annuity benefits, in the aggregate, including net cash  
29          surrender and net cash withdrawal values, if any;
- 30          (4) However, in no event shall the association be obligated to cover more than:

- 1 (a) An aggregate of three hundred thousand dollars in benefits with  
2 respect to any one life under paragraphs 1, 2, and 3 of subdivision b  
3 except with respect to the benefits for ~~basic hospital, medical, and~~  
4 ~~surgical insurance and major medical insurance~~ health benefit plans  
5 under subparagraph b of paragraph 1 of subdivision b, in which case  
6 the aggregate liability of the association shall not exceed five hundred  
7 thousand dollars with respect to any one individual; or
- 8 (b) With respect to one owner of multiple nongroup policies of life  
9 insurance, whether the persons insured are officers, managers,  
10 employees, or other persons, more than five million dollars in benefits,  
11 regardless of the number of policies and contracts held by the owner.
- 12 (5) With respect to either one contract owner provided coverage under  
13 ~~subparagraph e of paragraph 2 of subdivision b~~ of subsection 1; or one  
14 plan sponsor whose plans own directly or in trust one or more unallocated  
15 annuity contracts not included in paragraph 2 of subdivision b, five million  
16 dollars in benefits, irrespective of the number of contracts with respect to the  
17 contract owner or plan sponsor. However, in the case in which one or more  
18 unallocated annuity contracts are covered contracts under this chapter and  
19 are owned by a trust or other entity for the benefit of two or more plan  
20 sponsors, coverage must be afforded by the association if the largest  
21 interest in the trust or entity owning the contract or contracts is held by a  
22 plan sponsor whose principal place of business is in this state and in no  
23 event is the association obligated to cover more than five million dollars in  
24 benefits with respect to all these unallocated contracts.
- 25 (6) The limitations set forth in this subsection are limitations on the benefits for  
26 which the association is obligated before taking into account either its  
27 subrogation and assignment rights or the extent to which those benefits  
28 could be provided out of the assets of the impaired or insolvent insurer  
29 attributable to covered policies. The costs of the association's obligations  
30 under this chapter may be met by the use of assets attributable to covered

1 policies or reimbursed to the association pursuant to its subrogation and  
2 assignment rights.

3 5. In performing its obligations to provide coverage under this chapter, the association is  
4 not required to guarantee, assume, reinsure, reissue, or perform, or cause to be  
5 guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of  
6 the insolvent or impaired insurer under a covered policy or contract that do not  
7 materially affect the economic values or economic benefits of the covered policy or  
8 contract.

9 6. For purposes of this chapter, benefits provided by a long-term care rider to a life  
10 insurance policy or annuity contract must be considered the same type of benefits as  
11 the related base life insurance policy or annuity contract.

12 **SECTION 2. AMENDMENT.** Section 26.1-38.1-02 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **26.1-38.1-02. Definitions.**

15 As used in this chapter:

- 16 1. "Account" means either of the two accounts created under section 26.1-38.1-03.  
17 2. "Association" means the North Dakota life and health insurance guaranty association  
18 created under section 26.1-38.1-03.  
19 3. "Authorized assessment" or the term "authorized" when used in the context of  
20 assessments means a resolution by the board of directors has been passed under  
21 which an assessment will be called immediately or in the future from member insurers  
22 for a specified amount. An assessment is authorized when the resolution is passed.  
23 4. "Benefit plan" means a specific employee, union, or association of natural persons  
24 benefit plan.  
25 5. "Called assessment" or "called" when used in the context of assessments means that  
26 a notice was issued by the association to member insurers requiring that an  
27 authorized assessment be paid within the time frame set forth within the notice. An  
28 authorized assessment becomes a called assessment when notice is mailed by the  
29 association to member insurers.  
30 6. "Commissioner" means the insurance commissioner of this state.

- 1           7. "Contractual obligation" means any obligation under a policy or contract or certificate  
2           under a group policy or contract, or portion thereof for which coverage is provided  
3           under section 26.1-38.1-01.
- 4           8. "Covered contract" or "covered policy" means any policy or contract or portion of a  
5           policy or contract for which coverage is provided under this chapter.
- 6           9. "Extracontractual claims" include claims relating to bad faith in the payment of claims,  
7           punitive or exemplary damages, or attorney's fees and costs.
- 8           10. "Health benefit plan" means any hospital or medical expense policy or certificate, any  
9           health maintenance organization subscriber contract, or any other similar health  
10           contract. The term does not include:
- 11           a. Accident only insurance;  
12           b. Credit insurance;  
13           c. Dental only insurance;  
14           d. Vision only insurance;  
15           e. Medicare supplement insurance;  
16           f. Benefits for long-term care, home health care, community-based care, or any  
17           combination of these benefits;  
18           g. Disability income insurance;  
19           h. Coverage for onsite medical clinics; or  
20           i. Specified disease, hospital confinement indemnity, or limited health insurance, if  
21           the types of coverage do not provide coordination of benefits and are provided  
22           under separate policies or certificates.
- 23           11. "Impaired insurer" means a member insurer that, after July 1, 1989, is not an insolvent  
24           insurer, and is placed under an order of rehabilitation or conservation by a court of  
25           competent jurisdiction.
- 26           ~~12.~~ "Insolvent insurer" means a member insurer which, after July 1, 1989, is placed under  
27           an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- 28           ~~13.~~ "Member insurer" means any insurer, ~~including a nonprofit health service corporation,~~  
29           or health maintenance organization licensed or which holds a certificate of authority to  
30           transact in this state any kind of insurance or health maintenance organization  
31           business for which coverage is provided under section 26.1-38.1-01, ~~and. The term~~

1 includes any insurer or health maintenance organization whose license or certificate of  
2 authority in this state may have been suspended, revoked, not renewed, or voluntarily  
3 withdrawn, but does not include:

4 a. ~~A health maintenance organization;~~

5 ~~b.~~ A fraternal benefit society;

6 ~~e.b.~~ A mandatory state pooling plan;

7 ~~d.c.~~ A mutual assessment company or other person that operates on an assessment  
8 basis;

9 e. ~~A nonprofit health service corporation that is participating in a reinsurance plan  
10 that has been approved by the commissioner as an alternative to participation in  
11 the state guaranty association;~~

12 ~~f.d.~~ An insurance exchange;

13 ~~g.e.~~ An organization that has a certificate or license limited to the issuance of  
14 charitable gift annuities under sections 26.1-34.1-01 through 26.1-34.1-07; or

15 ~~h.f.~~ Any entity similar to any of the above.

16 ~~13.14.~~ "Moody's corporate bond yield average" means the monthly average corporates as  
17 published by Moody's investors service, incorporated, or any successor thereto.

18 ~~14.15.~~ "Owner" of a policy or contract and "policyholder", "policy owner" and "contract owner"  
19 mean the person who is identified as the legal owner under the terms of the policy or  
20 contract or who is otherwise vested with legal title to the policy or contract through a  
21 valid assignment completed in accordance with the terms of the policy or contract and  
22 properly recorded as the owner on the books of the member insurer. The terms owner,  
23 contract owner, policyholder, and policy owner do not include persons with a mere  
24 beneficial interest in a policy or contract.

25 ~~15.16.~~ "Person" means any individual, corporation, limited liability company, partnership,  
26 association, governmental entity, or voluntary organization.

27 ~~16.17.~~ "Plan sponsor" means:

28 a. The employer in the case of a benefit plan established or maintained by a single  
29 employer;

30 b. The employee organization in the case of a benefit plan established or  
31 maintained by an employee organization; or

1           c. In the case of a benefit plan established or maintained by two or more employers  
2           or jointly by one or more employers and one or more employee organizations, the  
3           association, committee, joint board of trustees, or other similar group of  
4           representatives of the parties who establish or maintain the benefit plan.

5 ~~17-18.~~ "Premiums" means amounts or considerations, by whatever name called, received ~~in~~  
6 ~~any calendar year~~ on covered policies or contracts less returned premiums,  
7 considerations, and deposits, and less dividends and experience credits. "Premiums"  
8 do not include any amounts or considerations received for any policies or contracts or  
9 for the portions of any policies or contracts for which coverage is not provided under  
10 subsections 2 and 3 of section 26.1-38.1-01 and except that assessable premium shall  
11 not be reduced on account of subdivision c of subsection 3 of section 26.1-38.1-01,  
12 relating to interest limitations, and subsection 3 of section 26.1-38.1-01, relating to  
13 limitations with respect to any one individual, any one participant, and any one policy  
14 or contract owner. "Premiums" do not include:

- 15           a. Premiums in excess of five million dollars on any unallocated annuity contract not  
16           issued under a governmental retirement plan established under section 401(k),  
17           403(b), or 457 of the United States Internal Revenue Code; or  
18           b. With respect to multiple nongroup policies of life insurance owned by one owner,  
19           whether the policy or contract owner is an individual, firm, corporation, or other  
20           person, and whether the persons insured are officers, managers, employees, or  
21           other persons, premiums in excess of five million dollars with respect to these  
22           policies or contracts, regardless of the number of policies or contracts held by the  
23           owner.

24 ~~18-19.~~ a. "Principal place of business" of a plan sponsor or a person other than a natural  
25           person means the single state in which the natural persons who establish policy  
26           for the direction, control, and coordination of the operations of the entity as a  
27           whole primarily exercise that function, determined by the association in its  
28           reasonable judgment by considering the following factors: the state in which the  
29           primary executive and administrative headquarters of the entity is located; the  
30           state in which the principal office of the chief executive officer of the entity is  
31           located; the state in which the board of directors or similar governing person or

1 persons of the entity conducts the majority of its meetings; the state in which the  
2 executive or management committee of the board of directors or similar  
3 governing person or persons of the entity conducts the majority of its meetings;  
4 the state from which the management of the overall operations of the entity is  
5 directed; and in the case of a benefit plan sponsored by affiliated companies  
6 comprising a consolidated corporation, the state in which the holding company or  
7 controlling affiliate has its principal place of business as determined using the  
8 above factors.

9 However, in the case of a plan sponsor, if more than fifty percent of the  
10 participants in the benefit plan are employed in a single state, that state is  
11 deemed to be the principal place of business of the plan sponsor.

12 b. The principal place of business of a plan sponsor of a benefit plan described in  
13 subdivision c of subsection 46~~17~~ is deemed to be the principal place of business  
14 of the association, committee, joint board of trustees, or other similar group of  
15 representatives of the parties who establish or maintain the benefit plan that, in  
16 lieu of a specific or clear designation of a principal place of business, is deemed  
17 to be the principal place of business of the employer or employee organization  
18 that has the largest investment in the benefit plan in question.

19 ~~19-20.~~ "Receivership court" means the court in the insolvent or impaired insurer's state  
20 having jurisdiction over the conservation, rehabilitation, or liquidation of the member  
21 insurer.

22 ~~20-21.~~ "Resident" means any person to whom a contractual obligation is owed and who  
23 resides in this state on the date of entry of a court order that determines a member  
24 insurer to be an impaired insurer or a court order that determines a member insurer to  
25 be an insolvent insurer, whichever occurs first. A person may be a resident of only one  
26 state, which in the case of a person other than a natural person must be its principal  
27 place of business. Citizens of the United States who are residents of foreign countries,  
28 or residents of United States possessions, territories, or protectorates that do not have  
29 an association similar to the association created under this chapter, are deemed  
30 residents of the state of domicile of the member insurer that issued the policies or  
31 contracts.

1 ~~21-22.~~ "State" means a state, the District of Columbia, Puerto Rico, and a United States  
2 possession, territory, or protectorate.

3 ~~22-23.~~ "Structured settlement annuity" means an annuity purchased in order to fund periodic  
4 payments for a plaintiff or other claimant in payment for or with respect to personal  
5 injury suffered by the plaintiff or other claimant.

6 ~~23-24.~~ "Supplemental contract" means any written agreement entered into for the distribution  
7 of proceeds under a life, health, or annuity policy or a life, health, or annuity contract.

8 ~~24-25.~~ "Unallocated annuity contract" means any annuity contract or group annuity certificate  
9 which is not issued to and owned by an individual, except to the extent of any annuity  
10 benefits guaranteed to an individual by an insurer under such contract or certificate.

11 **SECTION 3. AMENDMENT.** Section 26.1-38.1-03 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **26.1-38.1-03. Creation of the association.**

14 1. There is created a nonprofit legal entity to be known as the North Dakota life and  
15 health insurance guaranty association. All member insurers must be and remain  
16 members of the association as a condition of their authority to transact insurance or a  
17 health maintenance organization business in this state. The association shall perform  
18 its functions under the plan of operation established and approved under section  
19 26.1-38.1-07 and shall exercise its powers through a board of directors established  
20 under section 26.1-38.1-04. For purposes of administration and assessment, the  
21 association shall maintain two accounts:

22 a. The life insurance and annuity account that includes the following subaccounts:

23 (1) Life insurance account;

24 (2) Annuity account, which includes annuity contracts owned by a governmental  
25 retirement plan or its trustee established under section 401, 403(b), or 457  
26 of the United States Internal Revenue Code, but otherwise excludes  
27 unallocated annuities; and

28 (3) Unallocated annuity account that excludes contracts owned by a  
29 governmental retirement benefit plan or its trustee established under  
30 section 401, 403(b), or 457 of the United States Internal Revenue Code.

31 b. The health ~~insurance~~ account.

- 1           2.    The association shall come under the immediate supervision of the commissioner and  
2                    is subject to the applicable provisions of the insurance laws of this state. Meetings or  
3                    records of the association may be opened to the public upon majority vote of the board  
4                    of directors of the association.

5           **SECTION 4. AMENDMENT.** Section 26.1-38.1-04 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **26.1-38.1-04. Board of directors.**

- 8           1.    The board of directors of the association shall consist of not less than five nor more  
9                    than nine member insurers serving terms as established in the plan of operation. The  
10                  insurer members of the board must be selected by member insurers, subject to the  
11                  approval of the commissioner. Vacancies on the board must be filled for the remaining  
12                  period of the term by a majority vote of the remaining board members, for member  
13                  insurers, subject to the approval of the commissioner. To select the initial board of  
14                  directors, and initially organize the association, the commissioner shall give notice to  
15                  all member insurers of the time and place of the organizational meeting. In  
16                  determining voting rights of the organizational meeting, each member insurer is  
17                  entitled to one vote in person or by proxy. If the board of directors is not selected  
18                  within sixty days after notice of the organizational meeting, the commissioner may  
19                  appoint the initial members.
- 20           2.    In approving selections or in appointing members to the board, the commissioner shall  
21                    consider, among other things, whether all member insurers are fairly represented.
- 22           3.    Members of the board may be reimbursed from the assets of the association for  
23                    expenses incurred by them as members of the board of directors but members of the  
24                    board may not otherwise be compensated by the association for their services.

25           **SECTION 5. AMENDMENT.** Section 26.1-38.1-05 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **26.1-38.1-05. Powers and duties of the association.**

- 28           1.    If a member insurer is an impaired insurer, the association may, in its discretion, and  
29                    subject to any conditions imposed by the association that do not impair the contractual  
30                    obligations of the impaired insurer, and that are approved by the commissioner:

- 1           a.    Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed,  
2                   reissued, or reinsured, any or all of the policies or contracts of the impaired  
3                   insurer; or
- 4           b.    Provide such moneys, pledges, loans, notes, guarantees, or other means as are  
5                   proper to effectuate subdivision a and assure payment of the contractual  
6                   obligations of the impaired insurer pending action under subdivision a.
- 7        2.    If a member insurer is an insolvent insurer, the association, in its discretion, ~~either~~  
8           shall:
- 9           a.    ~~Provide the moneys, pledges, loans, notes, guarantees, or other means as are~~  
10                   ~~reasonably necessary to:~~
- 11                   (1)   Guarantee, assume, reissue, or reinsure, or cause to be guaranteed,  
12                                assumed, reissued, or reinsured, the policies or contracts of the insolvent  
13                                insurer; ~~or~~
- 14           ~~(2)~~b.   Assure payment of the contractual obligations of the insolvent insurer; ~~or~~
- 15           ~~b.c.~~   Provide moneys, pledges, loans, notes, guarantees, or other means reasonably  
16                   necessary to discharge the association's duties; or
- 17           d.    Provide benefits and coverage in accordance with the following provisions:
- 18                   (1)   With respect to ~~life and health insurance policies and annuities, policies and~~  
19                                ~~contracts~~, assure payment of benefits ~~for premiums identical to the~~  
20                                ~~premiums and benefits, except for terms of conversion and renewability~~; that  
21                                would have been payable under the policies or contracts of the insolvent  
22                                insurer, for claims incurred:
- 23                                (a)   With respect to group policies and contracts, not later than the earlier  
24                                       of the next renewal date under ~~such~~those policies or contracts or  
25                                       forty-five days, but in no event less than thirty days, after the date on  
26                                       which the association becomes obligated with respect to ~~such~~the  
27                                       policies and contracts.
- 28                                (b)   With respect to nongroup policies, contracts, and annuities, not later  
29                                       than the earlier of the next renewal date, if any, under such policies or  
30                                       contracts or one year, but in no event less than thirty days, from the

1 date on which the association becomes obligated with respect to  
2 ~~sue~~the policies or contracts.

3 (2) Make diligent efforts to provide all known insureds, enrollees or annuitants  
4 for nongroup policies and contracts, or group policy or contract owners with  
5 respect to group policies and contracts, thirty days' notice of the termination  
6 pursuant to paragraph 1 of the benefits provided.

7 (3) With respect to nongroup ~~life and health insurance~~ policies and  
8 ~~annuities~~contracts covered by the association, make available to each  
9 known insured, enrollee, or annuitant, or owner if other than the insured or  
10 annuitant, and with respect to an individual formerly an insured, enrollee, or  
11 ~~formerly an~~ annuitant under a group policy or contract who is not eligible for  
12 replacement group coverage, make available substitute coverage on an  
13 individual basis in accordance with the provisions of paragraph 4, if the  
14 insureds, enrollees, or annuitants had a right under law or the terminated  
15 policy, contract, or annuity to convert coverage to individual coverage or to  
16 continue an individual policy, contract, or annuity in force until a specified  
17 age or for a specified time, during which the insurer or health maintenance  
18 organization had no right unilaterally to make changes in any provision of  
19 the policy, contract, or annuity or had a right only to make changes in  
20 premium by class.

21 (a) In providing the substitute coverage required under this paragraph,  
22 the association may offer either to reissue the terminated coverage or  
23 to issue an alternative policy or contract at actuarially justified rates,  
24 subject to the prior approval of the commissioner.

25 (b) Alternative or reissued policies or contracts shall be offered without  
26 requiring evidence of insurability, and shall not provide for any waiting  
27 period or exclusion that would not have applied under the terminated  
28 policy or contract.

29 (c) The association may reinsure any alternative or reissued policy or  
30 contract.

- 1           (4) Alternative policies or contracts adopted by the association shall be subject  
2           to the approval of the ~~domiciliary insurance commissioner and the~~  
3           ~~receivership court~~. The association may adopt alternative policies or  
4           contracts of various types for future issuance without regard to any  
5           particular impairment or insolvency.
- 6           (5) Alternative policies or contracts must contain at least the minimum statutory  
7           provisions required in this state and provide benefits that are not  
8           unreasonable in relation to the premium charged. The association shall set  
9           the premium in accordance with a table of rates which it shall adopt. The  
10          premium must reflect the amount of insurance to be provided and the age  
11          and class of risk of each insured, but may not reflect any changes in the  
12          health of the insured after the original policy or contract was last  
13          underwritten.
- 14          (6) Any alternative policy or contract issued by the association shall provide  
15          coverage of a type similar to that of the policy or contract issued by the  
16          impaired or insolvent insurer, as determined by the association.
- 17          (7) If the association elects to reissue terminated coverage at a premium rate  
18          different from that charged under the terminated policy or contract, the  
19          premium must be actuarially justified and set by the association in  
20          accordance with the amount of insurance or coverage provided and the age  
21          and class of risk, subject to prior approval of the ~~domiciliary insurance-~~  
22          ~~commissioner and the receivership court~~.
- 23          (8) The association's obligations with respect to coverage under any policy or  
24          contract of the impaired or insolvent insurer or under any reissued or  
25          alternative policy or contract shall cease on the date ~~such~~the coverage or  
26          policy or contract is replaced by another similar policy or contract by the  
27          policy or contract owner, the insured, the enrollee, or the association.
- 28      3. When proceeding under subsection 2 with respect to any policy or contract carrying  
29      guaranteed minimum interest rates, the association shall assure the payment or  
30      crediting of a rate of interest consistent with subdivision c of subsection 3 of section  
31      26.1-38.1-01.

- 1           4.    Nonpayment of premiums within thirty-one days after the date required under the  
2           terms of any guaranteed, assumed, alternative, or reissued policy or contract ~~or~~  
3           substitute coverage terminates the association's obligations under ~~such~~the policy,  
4           contract, or coverage under this chapter with respect to ~~such~~the policy, contract, or  
5           coverage, except with respect to any claims incurred or any net cash surrender value  
6           which may be due in accordance with the provisions of this chapter.
- 7           5.    Premiums due for coverage after entry of an order of liquidation of an insolvent insurer  
8           belong to and are payable at the direction of the association, ~~and~~. If the liquidator of  
9           an insolvent insurer requests, the association shall provide a report to the liquidator  
10          regarding the premium collected by the association. The association is liable for  
11          unearned premiums due to policy or contract owners arising after the entry of ~~such~~the  
12          order.
- 13          6.    The protection provided by this chapter does not apply when any guaranty protection  
14          is provided to residents of this state by the laws of the domiciliary state or jurisdiction  
15          of the impaired or insolvent insurer other than this state.
- 16          7.    In carrying out its duties under subsection 2, the association may:
- 17           a.    Subject to approval by a court in this state, impose permanent policy or contract  
18           liens in connection with any guarantee assumption or reinsurance agreement, if  
19           the association finds that the amounts which can be assessed under this chapter  
20           are less than the amounts needed to assure full and prompt performance of the  
21           association's duties under this chapter, or that the economic or financial  
22           conditions as they affect member insurers are sufficiently adverse to render the  
23           imposition of such permanent policy or contract liens, to be in the public interest.
- 24           b.    Subject to approval by a court in this state, impose temporary moratoriums or  
25           liens on payments of cash values and policy loans, or any other right to withdraw  
26           funds held in conjunction with policies or contracts, in addition to any contractual  
27           provisions for deferral or cash or policy loan value. In addition, in the event of a  
28           temporary moratorium or moratorium charge imposed by the receivership court  
29           on payment of cash values or policy loans, or on any other right to withdraw  
30           funds held in conjunction with policies or contracts, out of the assets of the  
31           impaired or insolvent insurer, the association may defer the payment of cash

1 values, policy loans, or other rights by the association for the period of the  
2 moratorium or moratorium charge imposed by the receivership court, except for  
3 claims covered by the association to be paid in accordance with a hardship  
4 procedure established by the liquidator or rehabilitator and approved by the  
5 receivership court.

6 8. A deposit in this state, held according to law or as required by the commissioner for  
7 the benefits of creditors, including policy or contract owners, not turned over to the  
8 domiciliary liquidator upon the entry of a final order of liquidation or order approving a  
9 rehabilitation plan of ~~an~~ member insurer domiciled in this state or in a reciprocal  
10 state, under section 26.1-06.1-50, must be paid promptly to the association. The  
11 association may retain a portion of any amount received equal to the percentage  
12 determined by dividing the aggregate amount of policy or contract owners' claims  
13 related to that insolvency for which the association has provided statutory benefits by  
14 the aggregate amount of all policy or contract owners' claims in this state related to  
15 that insolvency and shall remit to the domiciliary receiver the amount so paid to the  
16 association ~~and, less the amount~~ retained pursuant to this subsection. Any amount  
17 paid to the association ~~less the amount~~ and retained by it is treated as a distribution of  
18 estate assets pursuant to section 26.1-06.1-43 or similar provision of the state of  
19 domicile of the impaired or insolvent insurer.

20 9. If the association fails to act within a reasonable period of time with respect to an  
21 insolvent insurer, as provided in subsection 2, the commissioner shall have the powers  
22 and duties of the association under this chapter with respect to insolvent insurers.

23 10. The association may render assistance and advice to the commissioner, upon request,  
24 concerning rehabilitation, payment of claims, continuance of coverage, or the  
25 performance of other contractual obligations of any impaired or insolvent insurer.

26 11. The association shall have standing to appear or intervene before any court or agency  
27 in this state with jurisdiction over an impaired or insolvent insurer concerning which the  
28 association is or may become obligated under this chapter or with jurisdiction over any  
29 person or property against which the association may have rights through subrogation  
30 or otherwise. Such standing extends to all matters germane to the powers and duties  
31 of the association, including proposals for reinsuring, reissuing, modifying, or

1           guaranteeing the policies or contracts of the impaired or insolvent insurer and the  
2           determination of the policies or contracts and contractual obligations. The association  
3           shall also have the right to appear or intervene before a court or agency in another  
4           state with jurisdiction over an impaired or insolvent insurer for which the association is  
5           or may become obligated or with jurisdiction over any person or property against  
6           whom the association may have rights through subrogation or otherwise.

7        12. Any person receiving benefits under this chapter must be deemed to have assigned  
8        the rights under, and any causes of action against any person for losses arising under,  
9        resulting from, or otherwise relating to, the covered policy or contract to the  
10       association to the extent of the benefits received because of this chapter, whether the  
11       benefits are payments of or on account of contractual obligations, continuation of  
12       coverage, or provision of substitute or alternative policies, contracts, or coverages.  
13       The association may require an assignment to it of such rights and causes of action by  
14       any enrollee, payee, policy or contract owner, beneficiary, insured, or annuitant as a  
15       condition precedent to the receipt of any right or benefits conferred by this chapter  
16       upon such person.

17       13. The subrogation rights of the association under this section have the same priority  
18       against the assets of the impaired or insolvent insurer as that possessed by the  
19       person entitled to receive benefits under this chapter.

20       14. In addition to subsections 12 and 13, the association shall have all common-law rights  
21       of subrogation and other equitable or legal remedy that would have been available to  
22       the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or  
23       contract with respect to such policy or contract, including, in the case of a structured  
24       settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the  
25       extent of benefits received under this chapter, against a person originally or by  
26       succession responsible for the losses arising from ~~or payment for~~ the personal injury  
27       relating to the annuity or payment for the personal injury, except any such person  
28       responsible solely by reason of serving as an assignee in respect of a qualified  
29       assignment under section 130 of the Internal Revenue Code.

30       15. If subsections 12, 13, and 14 are invalid or ineffective with respect to any person or  
31       claim for any reason, the amount payable by the association with respect to the

1 related covered obligations must be reduced by the amount realized by any other  
2 person with respect to the person or claim that is attributable to the policies or  
3 contracts or portion of the policies or contracts covered by the association. If the  
4 association has provided benefits with respect to a covered obligation and a person  
5 recovers amounts as to which the association has rights as described in the preceding  
6 paragraphs of this subsection, the person shall pay to the association the portion of  
7 the recovery attributable to the policies or contracts or portion of the policies or  
8 contracts covered by the association.

9 16. In addition to any other rights and powers under this chapter, the association may:

- 10 a. Enter into such contracts as are necessary or proper to carry out the provisions  
11 and purposes of this chapter;
- 12 b. Sue or be sued, including taking any legal actions necessary or proper to recover  
13 any unpaid assessments under section 26.1-38.1-06 and to settle claims or  
14 potential claims against it;
- 15 c. Borrow money to effect the purposes of this chapter and any notes or other  
16 evidences of indebtedness of the association not in default shall be legal  
17 investments for domestic member insurers and may be carried as admitted  
18 assets;
- 19 d. Employ or retain such persons as are necessary or appropriate to handle the  
20 financial transactions of the association, and to perform such other functions as  
21 become necessary or proper under this chapter;
- 22 e. Take such legal action as may be necessary or appropriate to avoid or recover  
23 payment of improper claims;
- 24 f. Exercise, for the purposes of this chapter and to the extent approved by the  
25 commissioner, the ~~power~~powers of a domestic life ~~or~~insurer, health insurer, or  
26 health maintenance organization, but in no case may the association issue  
27 ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform its  
28 obligations under this chapter;
- 29 g. Organize itself as a corporation or in other legal form permitted by the laws of this  
30 state;

- 1           h. Request information from a person seeking coverage from the association in  
2           order to aid the association in determining its obligations under this chapter with  
3           respect to the person, and the person promptly shall comply with the request;  
4           and
- 5           i. Unless prohibited by law, in accordance with the terms and conditions of the  
6           policy or contract, file for actuarially justified rate or premium increases for any  
7           policy or contract for which the association provides coverage under this chapter;  
8           and
- 9           i.j. Take other necessary or appropriate action to discharge its duties and obligations  
10          under this chapter or to exercise its powers under this chapter.
- 11       17. The association may join an organization of one or more state associations of similar  
12       purposes, to further the purposes and administer the powers and duties of the  
13       association.
- 14       18. At any time within one year after the date on which the association becomes  
15       responsible for the obligations of a member insurer, the association may elect to  
16       succeed to the rights and obligations of the member insurer which accrue on or after  
17       this coverage date and which relate to contracts covered in whole or in part by the  
18       association under any indemnity reinsurance agreement entered by the member  
19       insurer as a ceding insurer and selected by the association. However, the association  
20       may not exercise an election with respect to a reinsurance agreement if the receiver,  
21       rehabilitator, or liquidator of the member insurer previously and expressly has  
22       disaffirmed the reinsurance agreement. The election is effected by a notice to the  
23       receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association  
24       makes an election, subdivisions a through d apply with respect to the agreements  
25       selected by the association.
- 26       a. The association is responsible for all unpaid premiums due under the  
27       agreements, for periods both before and after the coverage date, and is  
28       responsible for the performance of all other obligations to be performed after the  
29       coverage date, in each case which relate to contracts covered, in whole or in  
30       part, by the association. The association may charge contracts covered in part by

- 1           the association, through reasonable allocation methods, the costs for reinsurance  
2           in excess of the obligations of the association.
- 3           b.    The association is entitled to any amounts payable by the reinsurer under the  
4           agreements with respect to losses or events that occur in periods after the  
5           coverage date and that relate to contracts covered by the association, in whole or  
6           in part, provided that, upon receipt of any of these amounts, the association is  
7           obliged to pay to the beneficiary under the policy or contract on account of which  
8           the amounts were paid a portion of the amount equal to the excess of the amount  
9           received by the association, over the benefits paid by the association on account  
10          of the policy or contract less the retention of the impaired or insolvent member  
11          insurer applicable to the loss or event.
- 12          c.    Within thirty days following the association's election, the association and each  
13          indemnity reinsurer shall calculate the net balance due to or from the association  
14          under each reinsurance agreement as of the date of the association's election,  
15          giving full credit to every item paid by the member insurer or its receiver,  
16          rehabilitator, or liquidator, or the indemnity reinsurer during the period between  
17          the coverage date and the date of the association's election. The association or  
18          indemnity reinsurer shall pay the net balance due the other within five days of the  
19          completion of the aforementioned calculation. If the receiver, rehabilitator, or  
20          liquidator received any amounts due the association pursuant to subdivision b,  
21          the receiver, rehabilitator, or liquidator shall remit the amounts to the association  
22          as promptly as practicable.
- 23          d.    If the association, within sixty days of the election, pays the premiums due for  
24          periods both before and after the coverage date that relate to contracts covered  
25          by the association, in whole or in part, the reinsurer may not terminate the  
26          reinsurance agreements, to the extent the agreements relate to contracts  
27          covered by the association, in whole or in part, and may not set off any unpaid  
28          premium due for periods before the coverage date against amounts due the  
29          association.
- 30          19.   If the association transfers its obligations to another insurer, and if the association and  
31          the other insurer agree, the other insurer shall succeed to the rights and obligations of

- 1 the association under subsection 18 effective as of the date agreed by the association  
2 and the other insurer and regardless of whether the association made the election,  
3 provided that:
- 4 a. The indemnity reinsurance agreements automatically terminate for new  
5 reinsurance unless the indemnity reinsurer and the other insurer agree to the  
6 contrary;
  - 7 b. The obligations described in the proviso to subdivision b of subsection 18 no  
8 longer apply on and after the date the indemnity reinsurance agreement is  
9 transferred to the third-party insurer; and
  - 10 c. This subsection does not apply if the association previously expressly determined  
11 in writing that it will not exercise the election referred to in subsection 18.
- 12 20. Subsections 18 and 19 supersede the provisions of any law of this state or of any  
13 affected reinsurance ~~agreement~~contract that provides for or requires any payment of  
14 reinsurance proceeds, on account of losses or events that occur in periods after the  
15 coverage date, to the receiver, rehabilitator, or liquidator, of the insolvent member  
16 insurer. The receiver, rehabilitator, or liquidator remains entitled to any amounts  
17 payable by the reinsurer under the reinsurance agreement with respect to losses or  
18 events that occur in periods before the coverage date, subject to applicable setoff  
19 provisions.
- 20 21. Except as otherwise expressly provided in this section, this section does not alter or  
21 modify the terms and conditions of the indemnity reinsurance agreements of the  
22 insolvent member insurer. This section does not abrogate or limit any rights of any  
23 reinsurer to claim that it is entitled to rescind a reinsurance agreement. This section  
24 does not give a policy owner, contract owner, enrollee, certificate holder, or beneficiary  
25 an independent claim for relief against an indemnity reinsurer which is not otherwise  
26 set forth in the indemnity reinsurance agreement.
- 27 22. The board of directors of the association has discretion and may exercise reasonable  
28 business judgment to determine the means by which the association is to provide the  
29 benefits of this chapter in an economical and efficient manner.
- 30 23. If the association arranged or offered to provide the benefits of this chapter to a  
31 covered person under a plan or arrangement that fulfills the association's obligations

- 1 under this chapter, the person is not entitled to benefits from the association in  
2 addition to or other than those provided under the plan or arrangement.
- 3 24. Burleigh County is the venue in a course of action against the association arising  
4 under this chapter. The association is not required to give an appeal bond in an appeal  
5 that relates to a cause of action arising under this chapter.
- 6 25. ~~Subject to approval of the receivership court, the~~The association, in carrying out  
7 association duties in connection with guaranteeing, assuming, reissuing, or reinsuring  
8 policies or contracts under subsections 21 and 32, may issue substitute coverage for a  
9 policy or contract that provides a rate of interest, crediting of a rate of interest, or  
10 similar factor determined by using an index or other external reference stated in the  
11 policy or contract which is employed in calculating returns or changes in value by  
12 issuing an alternative policy or contract if:
- 13 a. Instead of the index or other external reference provided for in the  
14 ~~replaced~~original policy or contract, the alternative policy or contract provides for a  
15 fixed interest rate, payment of dividends with minimum guarantees, or different  
16 method for calculating interest or changes in value;
- 17 b. There is no requirement for evidence of insurability, a waiting period, or other  
18 exclusion that would not have applied under the replaced policy or contract; and
- 19 c. The alternative policy or contract is substantially similar to the replaced policy or  
20 contract in all other material terms.

21 **SECTION 6. AMENDMENT.** Section 26.1-38.1-06 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **26.1-38.1-06. Assessments.**

- 24 1. For the purpose of providing the funds necessary to carry out the powers and duties of  
25 the association, the board of directors shall assess the member insurers, separately  
26 for each account, at such time and for such amounts as the board finds necessary.  
27 Assessments must be due not less than thirty days after prior written notice to the  
28 member insurers and must accrue interest at eighteen percent per annum on and after  
29 the due date.
- 30 2. There must be two classes of assessment, as follows:

- 1           a.    Class A assessments must be authorized and called for the purpose of meeting  
2                    administrative and legal costs and other expenses. Class A assessments may be  
3                    authorized and called whether or not related to a particular impaired or insolvent  
4                    insurer.
- 5           b.    Class B assessments must be authorized and called to the extent necessary to  
6                    carry out the powers and duties of the association under section 26.1-38.1-05  
7                    with regard to an impaired or insolvent insurer.
- 8           3.    The amount of any class A assessment must be determined at the discretion of the  
9                    board of directors and must be authorized and called on a non-pro rata basis.
- 10          4.    The amount of any class B assessment, except for assessments related to long-term  
11                   care insurance, must be allocated for assessment purposes amongbetween the  
12                    accounts and among the subaccounts of the life insurance and annuity account,  
13                    pursuant to an allocation formula which may be based on the premiums or reserves of  
14                    the impaired or insolvent insurer or any other standard deemed by the board in its sole  
15                    discretion as being fair and reasonable under the circumstances.
- 16          5.    The amount of the class B assessment for long-term care insurance written by the  
17                   impaired or insolvent insurer must be allocated according to a methodology included in  
18                   the plan of operation and approved by the commissioner. The methodology must  
19                   provide for fifty percent of the assessment to be allocated to accident and health  
20                   member insurers and fifty percent to be allocated to life and annuity member insurers.
- 21          6.    Class B assessments against member insurers for each account and subaccount must  
22                    be in the proportion that the premiums received on business in this state by each  
23                    assessed member insurer on policies or contracts covered by each account for the  
24                    three most recent calendar years for which information is available preceding the year  
25                    in which the member insurer became insolvent or, in the case of an assessment with  
26                    respect to an impaired insurer, the three most recent calendar years for which  
27                    information is available preceding the year in which the member insurer became  
28                    impaired, bears to such premiums received on business in this state for such calendar  
29                    years by all assessed member insurers.
- 30          6-7.   Assessments for funds to meet the requirements of the association with respect to an  
31                    impaired or insolvent insurer may not be authorized or called until necessary to

1 implement the purposes of this chapter. Classification of assessments under  
2 subsection 2 and computation of assessments under this section must be made with a  
3 reasonable degree of accuracy, recognizing that exact determinations may not always  
4 be possible. The association shall notify each member insurer of its anticipated  
5 pro rata share of an authorized assessment not yet called within one hundred eighty  
6 days after the assessment is authorized.

7 ~~7.8.~~ The association may abate or defer, in whole or in part, the assessment of a member  
8 insurer if, in the opinion of the board, payment of the assessment would endanger the  
9 ability of the member insurer to fulfill its contractual obligations. In the event an  
10 assessment against a member insurer is abated, or deferred in whole or in part, the  
11 amount by which such assessment is abated or deferred may be assessed against the  
12 other member insurers in a manner consistent with the basis for assessments set forth  
13 in this section. Once the conditions that caused a deferral are removed or rectified, the  
14 member insurer shall pay all assessments that were deferred pursuant to a repayment  
15 plan approved by the association.

- 16 ~~8.9.~~ a. Subject to subdivision b, the total of all assessments authorized by the  
17 association with respect to a member insurer for each subaccount of the life  
18 insurance and annuity account and for the health account may not in any one  
19 calendar year exceed two percent of that member insurer's average annual  
20 premiums received in this state on the policies and contracts covered by the  
21 subaccount or account during the three calendar years preceding the year in  
22 which the member insurer became an impaired or insolvent insurer.
- 23 b. If two or more assessments are authorized in one calendar year with respect to  
24 member insurers that become impaired or insolvent in different calendar years,  
25 the average annual premiums for purposes of the aggregate assessment  
26 percentage limitation referenced in subdivision a must be equal and limited to the  
27 higher of the three-year average annual premiums for the applicable subaccount  
28 or account as calculated pursuant to this section.
- 29 c. If the maximum assessment, together with the other assets of the association in  
30 an account, does not provide in one year in either account an amount sufficient to

1                   carry out the responsibilities of the association, the necessary additional funds  
2                   must be assessed as soon after as permitted under this chapter.

3    ~~9-10.~~   The board may provide in the plan of operation a method of allocating funds among  
4                   claims, whether relating to one or more impaired or insolvent insurers, when the  
5                   maximum assessment will be insufficient to cover anticipated claims.

6    ~~10-11.~~ If the maximum assessment for any subaccount of the life and annuity account in any  
7                   one year does not provide an amount sufficient to carry out the responsibilities of the  
8                   association, then pursuant to subsection ~~74~~, the board shall assess the other  
9                   subaccounts of the life and annuity account for the necessary additional amount,  
10                  subject to the maximum stated in subsection ~~89~~.

11   ~~11-12.~~ The board may, by an equitable method as established in the plan of operation, refund  
12                  to member insurers, in proportion to the contribution of each member insurer to that  
13                  account, the amount by which the assets of the account exceed the amount the board  
14                  finds is necessary to carry out during the coming year the obligations of the  
15                  association with regard to that account, including assets accruing from assignment,  
16                  subrogation, net realized gains, and income from investments. A reasonable amount  
17                  may be retained in any account to provide funds for the continuing expenses of the  
18                  association and for future claims.

19   ~~12-13.~~ It is proper for any member insurer, in determining its premium rates and policy owner  
20                  dividends as to any kind of insurance or health maintenance organization business  
21                  within the scope of this chapter, to consider the amount reasonably necessary to meet  
22                  its assessment obligations under this chapter.

23   ~~13-14.~~ The association shall issue to each member insurer paying an assessment under this  
24                  chapter, other than a class A assessment, a certificate of contribution, in a form  
25                  prescribed by the commissioner, for the amount of the assessment so paid. All  
26                  outstanding certificates must be of equal dignity and priority without reference to  
27                  amounts or dates of issue. A certificate of contribution may be shown by the member  
28                  insurer in its financial statement as an asset in such form and for such amount, if any,  
29                  and period of time as the commissioner may approve.

30   ~~14-15.~~ a.   A member insurer that wishes to protest all or part of an assessment shall pay  
31                  when due the full amount of the assessment as set forth in the notice provided by

- 1 the association. The payment must be available to meet association obligations  
2 during the pendency of the protest or any subsequent appeal. Payment must be  
3 accompanied by a statement in writing that the payment is made under protest  
4 and must set forth a brief statement of the grounds for the protest.
- 5 b. Within sixty days following the payment of an assessment under protest by a  
6 member insurer, the association shall notify the member insurer in writing of its  
7 determination with respect to the protest unless the association notifies the  
8 member insurer that additional time is required to resolve the issues raised by the  
9 protest.
- 10 c. Within thirty days after a final decision was made, the association shall notify the  
11 protesting member insurer in writing of that final decision. Within sixty days of  
12 receipt of notice of the final decision, the protesting member insurer may appeal  
13 that final action to the commissioner.
- 14 d. In the alternative to rendering a final decision with respect to a protest based on a  
15 question regarding the assessment base, the association may refer protests to  
16 the commissioner for a final decision, with or without a recommendation from the  
17 association.
- 18 e. If the protest or appeal on the assessment is upheld, the amount paid in error or  
19 excess must be returned to the member insurer. Interest on a refund due a  
20 protesting member insurer shall be paid at the rate actually earned by the  
21 association.

22 ~~15-16.~~ The association may request information of member insurers in order to aid in the  
23 exercise of its power under this section and member insurers shall comply promptly  
24 with a request.

25 **SECTION 7. AMENDMENT.** Section 26.1-38.1-08 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **26.1-38.1-08. Duties and powers of the commissioner.**

28 In addition to the duties and powers enumerated elsewhere in this chapter:

- 29 1. The commissioner shall:
- 30 a. Upon request of the board of directors, provide the association with a statement  
31 of premiums in this and any other appropriate states for each member insurer;

- 1           b. When an impairment is declared and the amount of the impairment is  
2           determined, serve a demand upon the impaired insurer to make good the  
3           impairment within a reasonable time; notice to the impaired insurer constitutes  
4           notice to its shareholders, if any; and the failure of the impaired insurer to  
5           promptly comply with such demand does not excuse the association from the  
6           performance of its powers and duties under this chapter; and
- 7           c. In any liquidation or rehabilitation proceedings involving a domestic insurer, be  
8           appointed as the liquidator or rehabilitator.
- 9           2. The commissioner may suspend or revoke, after notice and hearing, the certificate of  
10          authority to transact insurancebusiness in this state of any member insurer which fails  
11          to pay an assessment when due or fails to comply with the plan of operation. As an  
12          alternative, the commissioner may levy a forfeiture on any member insurer which fails  
13          to pay an assessment when due. Such forfeiture may not exceed five percent of the  
14          unpaid assessment per month, but no forfeiture may be less than one hundred dollars  
15          per month.
- 16          3. Any final action of the board of directors or the association may be appealed to the  
17          commissioner by any member insurer if such appeal is taken within sixty days of the  
18          member's receipt of notice of the final action being appealed. Any final action or order  
19          of the commissioner is subject to judicial review in a court of competent jurisdiction in  
20          accordance with the laws of this state which apply to the action or orders of the  
21          commissioner.
- 22          4. The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may  
23          notify any interested persons of the effect of this chapter.

24          **SECTION 8. AMENDMENT.** Section 26.1-38.1-09 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **26.1-38.1-09. Prevention of insolvencies.**

- 27          1. To aid in the detection and prevention of member insurer insolvencies or impairments,  
28          it is the duty of the commissioner:
- 29               a. To notify the commissioners of all the other states, territories of the United States,  
30               and the District of Columbia when the commissioner takes any of the following  
31               actions against a member insurer:

- 1 (1) Revokes its license;
- 2 (2) Suspends its license; or
- 3 (3) Makes any formal order that ~~such company~~the member insurer restrict its
- 4 premium writing, obtain additional contributions to surplus, withdraw from
- 5 the state, reinsure all or any part of its business, or increase capital, surplus,
- 6 or any other account for the security of policy owners, contract owners,
- 7 certificate holders, or creditors.
- 8 (4) Such notice must be mailed to all commissioners within thirty days following
- 9 the action taken or the date on which such action occurs.
- 10 b. To report to the board of directors when the commissioner has taken any of the
- 11 actions set forth in subdivision a or has received a report from any other
- 12 commissioner indicating that any such action has been taken in another state.
- 13 Such report to the board of directors must contain all significant details of the
- 14 action taken or the report received from another commissioner.
- 15 c. To report to the board of directors when the commissioner has reasonable cause
- 16 to believe from any examination, whether completed or in process, of any
- 17 member insurer that such insurer may be an impaired or insolvent insurer.
- 18 d. To furnish to the board of directors the national association of insurance
- 19 commissioners insurance ~~regulation~~regulatory information system ratios and
- 20 listings of companies not included in the ratios developed by the national
- 21 association of insurance commissioners and the board may use the information
- 22 contained therein in carrying out its duties and responsibilities under this section.
- 23 Such report and the information contained therein must be kept confidential by
- 24 the board of directors until such time as made public by the commissioner or
- 25 other lawful authority.
- 26 2. The commissioner may seek the advice and recommendations of the board of
- 27 directors concerning any matter affecting the commissioner's duties and
- 28 responsibilities regarding the financial condition of member insurers ~~and companies of~~
- 29 insurers or health maintenance organizations seeking admission to transact insurance-
- 30 business in this state.

1           3. The board of directors, upon majority vote, may make reports and recommendations  
2           to the commissioner upon any matter germane to the solvency, liquidation,  
3           rehabilitation, or conservation of any member insurer or germane to the solvency of  
4           any ~~company~~insurer or health maintenance organization seeking to do an insurance-  
5           business in this state. Such reports and recommendations may not be considered  
6           public documents.

7           4. The board of directors, upon majority vote, may notify the commissioner of any  
8           information indicating any member insurer may be an impaired or insolvent insurer.

9           5. The board of directors, upon majority vote, may make recommendations to the  
10          commissioner for the detection and prevention of member insurer insolvencies.

11          **SECTION 9. AMENDMENT.** Section 26.1-38.1-10 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **26.1-38.1-10. Credits for assessments paid - Tax offsets.**

14          1. A member insurer may offset against its premium tax liability to this state an  
15          assessment described in section 26.1-38.1-06 to the extent of twenty percent of the  
16          amount of such assessment for each of the five calendar years following the year in  
17          which such assessment was paid. In the event a member insurer should cease doing  
18          business, all uncredited assessments may be credited against its ~~premiums~~premium  
19          tax liability for the year it ceases doing business.

20          2. A member insurer that is exempt from taxes referenced in subsection 1 may recoup  
21          that member insurer's assessments by a surcharge on that member insurer's  
22          premiums in a sum reasonably calculated to recoup the assessments over a  
23          reasonable period of time, as approved by the commissioner. Amounts recouped may  
24          not be considered premiums for any other purpose, including the computation of gross  
25          premium tax, the medical loss ratio, or agent commission. If a member insurer collects  
26          excess surcharges, the insurer shall remit the excess amount to the association, and  
27          the excess amount must be applied to reduce future assessments in the appropriate  
28          account.

29          3. Any sums ~~which~~that are acquired by refund, pursuant to section 26.1-38.1-06, from  
30          the association by member insurers, and which have ~~therefore~~ been offset against  
31          premium taxes as provided in subsection 1, must be paid by ~~such~~the member insurers

1 to this state in such manner as the tax authorities may require. The association shall  
2 notify the commissioner that such refunds have been made.

3 **SECTION 10. AMENDMENT.** Section 26.1-38.1-11 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **26.1-38.1-11. Miscellaneous provisions.**

- 6 1. This chapter does not reduce the liability for unpaid assessments of the insured of an  
7 impaired or insolvent insurer operating under a plan with assessment liability.
- 8 2. Records must be kept of all meetings of the board of directors to discuss the activities  
9 of the association in carrying out its powers and duties under section 26.1-38.1-05.  
10 The records of the association with respect to an impaired or insolvent insurer may not  
11 be disclosed before the termination of a liquidation, rehabilitation, or conservation  
12 proceeding involving the impaired or insolvent insurer, except upon the termination of  
13 the impairment or solvency of the member insurer, or upon the order of a court of  
14 competent jurisdiction. Nothing in this subsection limits the duty of the association to  
15 render a report of its activities under section 26.1-38.1-12.
- 16 3. For the purpose of carrying out its obligations under this chapter, the association must  
17 be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets  
18 attributable to covered policies reduced by any amounts to which the association is  
19 entitled as subrogee pursuant to subsections 12, 13, and 14 of section 26.1-38.1-05.  
20 Assets of the impaired or insolvent insurer attributable to covered policies must be  
21 used to continue as covered policies and pay all contractual obligations of the  
22 impaired or insolvent insurer as required by this chapter. Assets attributable to covered  
23 policies or contracts, as used in this subsection, are that proportion of the assets  
24 which the reserves that should have been established for such policies or contracts  
25 bear to the reserves that should have been established for all policies of insurance or  
26 health benefit plans written by the impaired or insolvent insurer.
- 27 4. As a creditor of the impaired or insolvent insurer as established in subsection 3 and  
28 consistent with chapter 26.1-06, the association and other similar associations are  
29 entitled to receive a disbursement of assets out of the marshaled assets, from time to  
30 time as the assets become available to reimburse it, as a credit against contractual  
31 obligations under this chapter. If the liquidator, within one hundred twenty days of a

1 final determination of insolvency of ~~an~~ member insurer by the receivership court,  
2 does not apply to the court for the approval of a proposal to disburse assets out of  
3 marshaled assets to guaranty associations having obligations because of the  
4 insolvency, the association is entitled to apply to the receivership court for approval of  
5 its own proposal to disburse these assets.

6 5. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding,  
7 the court may take into consideration the contributions of the respective parties,  
8 including the association, the shareholders, any contract owners, certificate holders,  
9 enrollees, and policy owners of the insolvent insurer, and any other party with a bona  
10 fide interest, in making an equitable distribution of the ownership rights of such  
11 insolvent insurer. In making such a determination, consideration must be given to the  
12 welfare of the policy owners, contract owners, certificate holders, and enrollees of the  
13 continuing or successor member insurer.

14 6. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made  
15 until and unless the total amount of valid claims of the association with interest thereon  
16 for funds expended in carrying out its powers and duties under section 26.1-38.1-05  
17 with respect to ~~such~~ the member insurer have been fully recovered by the association.

18 7. a. If an order for liquidation or rehabilitation of ~~an~~ member insurer domiciled in this  
19 state has been entered, the receiver appointed under the order has the right to  
20 recover on behalf of the member insurer, from any affiliate that controlled its  
21 capital stock, the amount of distributions, other than stock dividends paid by the  
22 member insurer on its capital stock, made at any time during the five years  
23 preceding the petition for liquidation or rehabilitation subject to the limitations of  
24 subdivisions b, c, and d.

25 b. No such distribution is recoverable if the member insurer shows that when paid  
26 the distribution was lawful and reasonable, and that the member insurer did not  
27 know and could not reasonably have known that the distribution might adversely  
28 affect the ability of the member insurer to fulfill its contractual obligations.

29 c. Any person who was an affiliate that controlled the member insurer at the time  
30 the distributions were paid is liable up to the amount of distributions the person  
31 received. Any person who was an affiliate that controlled the member insurer at

1           the time the distributions were declared is liable up to the amount of distributions  
2           the person would have received if payment had been made immediately. If two or  
3           more persons are liable with respect to the same distributions, they are jointly  
4           and severally liable.

5           d. The maximum amount recoverable under this subsection is the amount needed  
6           in excess of all other available assets of the insolvent insurer to pay the  
7           contractual obligations of the insolvent insurer.

8           e. If any person liable under subdivision c is insolvent, all its affiliates that controlled  
9           it at the time the distribution was paid, are jointly and severally liable for any  
10          resulting deficiency in the amount recovered from the insolvent affiliate.

11          **SECTION 11. AMENDMENT.** Section 26.1-38.1-13 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **26.1-38.1-13. Tax exemptions.**

14          The association is exempt from payment of all fees and all taxes levied by this state ~~on or~~  
15          any of its subdivisions, except taxes levied on real property.

16          **SECTION 12. AMENDMENT.** Section 26.1-38.1-14 of the North Dakota Century Code is  
17          amended and reenacted as follows:

18          **26.1-38.1-14. Immunity.**

19          There is no liability on the part of and no cause of action of any nature may arise against  
20          any member insurer or its agents or employees, the association or its agents or employees,  
21          members of the board of directors, or the commissioner or the commissioner's representatives,  
22          for any action or omission by them in the performance of their powers and duties under this  
23          chapter. ~~Such~~This immunity extends to the participation of any organization of one or more  
24          other state associations of similar purposes and to any such organization and its agents or  
25          employees.

26          **SECTION 13. AMENDMENT.** Section 26.1-38.1-16 of the North Dakota Century Code is  
27          amended and reenacted as follows:

28          **26.1-38.1-16. Prohibited advertisement of Insurance Guaranty Association Act in**  
29          **insurance sales - Notice to policy owners.**

30          1. No person, including ~~an a~~ member insurer, insurance producer, or affiliate of ~~an a~~  
31          member insurer, may make, publish, disseminate, circulate, or place before the public,

1 or cause directly or indirectly, to be made, published, disseminated, circulated, or  
2 placed before the public, in any newspaper, magazine, or other publication, or in the  
3 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or  
4 television station, or in any other way, any advertisement, announcement or  
5 statement, written or oral, which uses the existence of the insurance guaranty  
6 association of this state for the purpose of sales, solicitation, or inducement to  
7 purchase any form of insurance or other coverage covered by chapter 26.1-38.1.

8 ~~Provided, however, that~~However, this section does not apply to the North Dakota life  
9 and health insurance guaranty association or any other entity that does not sell or  
10 solicit insurance or coverage by a health maintenance organization.

- 11 2. Before January 1, 1990, the association shall prepare a summary document  
12 describing the general purposes and current limitations of the chapter and complying  
13 with subsection 3. This document should be submitted to the commissioner for  
14 approval. Sixty days after receiving approval, no member insurer may deliver a policy  
15 or contract to a policy ~~owner,~~ contract owner, certificate holder, or enrollee unless  
16 the summary document is delivered to the policy ~~owner,~~ contract owner ~~to or,~~  
17 certificate holder, or enrollee at the time of delivery of the policy or contract. The  
18 document should also be available upon request by a policy owner, contract owner,  
19 certificate holder, or enrollee. The distribution, delivery, or contents or interpretation of  
20 this document does not mean that either the policy or contract or the policy owner  
21 ~~thereof would be,~~ contract owner, certificate holder, or enrollee is covered in the event  
22 of the impairment or insolvency of a member insurer. The description document must  
23 be revised by the association as amendments to the chapter may require. Failure to  
24 receive this document does not give the policy owner, contract owner, certificate  
25 holder, enrollee, or insured any greater rights than those stated in this chapter.

- 26 3. The document prepared under subsection 2 must contain a clear and conspicuous  
27 disclaimer on its face. The commissioner shall establish the form and content of the  
28 disclaimer. The disclaimer must:
- 29 a. State the name and address of the life and health insurance guaranty association  
30 and insurance department;

- 1           b. Prominently warn the policy owner or, contract owner, certificate holder, or  
2           enrollee that the North Dakota life and health insurance guaranty association  
3           may not cover the policy or contract, or, if coverage is available, it will be subject  
4           to substantial limitations and exclusions and be conditioned on continued  
5           residence in this state;
- 6           c. State the types of policies or contracts for which guaranty funds will provide  
7           coverage;
- 8           d. State that the member insurer and its insurance producers are prohibited by law  
9           from using the existence of the North Dakota life and health insurance guaranty  
10          association for the purpose of sales, solicitation, or inducement to purchase any  
11          form of insurance or health maintenance organization coverage;
- 12          e. Emphasize that the policy owner or, contract owner, certificate holder, or enrollee  
13          should not rely on coverage under the North Dakota life and health insurance  
14          guaranty association when selecting an insurer or health maintenance  
15          organization coverage;
- 16          f. Explain rights available and procedures for filing a complaint to allege a violation  
17          of any provisions of this chapter; and
- 18          g. Provide other information as directed by the commissioner, including sources for  
19          information about the financial condition of insurers provided the information is  
20          not proprietary and is subject to disclosure under the state's public records law.
- 21          4. A member insurer shall retain evidence of compliance with subsection 2 for so long as  
22          the policy or contract for which the notice is given remains in effect.

23          **SECTION 14. REPEAL.** Section 26.1-38.1-17 of the North Dakota Century Code is  
24          repealed.

25          **SECTION 15. APPLICATION.** This Act applies to an insolvent insurer that is placed under  
26          an order of liquidation with a finding of insolvency after July 31, 2019.