

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2374

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

1 A BILL for an Act to create and enact two new sections to chapter 26.1-30, two new sections to
2 chapter 26.1-39, a new section to chapter 26.1-44, and a new subsection to section 26.1-46-03
3 of the North Dakota Century Code, relating to mandatory arbitration endorsements for property
4 insurance, managed repair programs, civil remedy actions against property insurers, notice of
5 property insurance claims, and surplus lines insurance policies; to amend and reenact
6 ~~section sections~~ 26.1-02-05, ~~subsection 2 of section 26.1-10-01, and sections 26.1-10-04,~~
7 26.1-25-02.1, 26.1-25-16, 26.1-26-04.1, 26.1-44-03, 26.1-46-01, 26.1-46-08, and 26.1-46-08.1
8 of the North Dakota Century Code, relating to ~~the presumption and delegation of control in~~
9 ~~insurance holding company systems~~, exceptions to unauthorized insurance transactions,
10 exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus
11 lines insurance, risk retention groups and purchasing groups, restrictions on insurance
12 purchased by purchasing groups, and purchasing group taxation and fees; to repeal section
13 26.1-44-03.3 of the North Dakota Century Code, relating to an exemption from search
14 requirements for licensed surplus line producers; and to provide a penalty.

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

16 **SECTION 1. AMENDMENT.** Section 26.1-02-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

1 | **26.1-02-05. Unauthorized insurance prohibited - Exceptions.**

2 An insurance company may not transact insurance business in this state, as set forth in
3 section 26.1-02-06, without a certificate of authority from the commissioner. This section does
4 not apply to:

- 5 1. The lawful transaction of surplus lines insurance.
- 6 2. The lawful transaction of reinsurance by insurers.
- 7 3. Transactions involving a policy lawfully solicited, written, and delivered outside of this
8 state covering only subjects of insurance not resident, located, or expressly to be
9 performed in this state at the time of issuance, and which transactions are subsequent
10 to the issuance of such policy.
- 11 4. Transactions involving life insurance, health insurance, or annuities provided to
12 educational or religious or charitable institutions organized and operated without profit
13 to any private shareholder or individual, for the benefit of the institutions and
14 individuals engaged in the service of the institutions.
- 15 5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of
16 claims or losses.
- 17 6. Transactions involving group life, accident, and health, or blanket accident and health
18 insurance, or group annuities if the master policy of the group was lawfully issued and
19 delivered in and pursuant to the laws of a state in which the insurance company was
20 authorized to do an insurance business, to a group organized for purposes other than
21 the procurement of insurance, and where the policyholder is domiciled or otherwise
22 has a bona fide situs.
- 23 7. Transactions involving any insurance policy or annuity contract issued before July 1,
24 1973.
- 25 8. Transactions relative to a policy issued or to be issued outside this state involving
26 insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection
27 and indemnity or other risk, including strikes and war risks commonly insured under
28 ocean or wet marine forms of policy.
- 29 9. Transactions involving insurance contracts issued to one or more industrial insureds;
30 provided, that this does not relieve an industrial insured from taxation imposed upon
31 independently procured insurance. An industrial insured is an insured:

- 1 a. Which procures the insurance of any risk or risks other than life and annuity
- 2 contracts by use of the services of a full-time employee acting as an insurance
- 3 manager or buyer or the services of a regularly and continuously retained
- 4 qualified insurance consultant;
- 5 b. Whose aggregate annual premiums for insurance on all risks total at least
- 6 twenty-five thousand dollars; and
- 7 c. Which has at least twenty-five full-time employees.

8 10. Transactions involving insurance contracts covering a large commercial risk as
9 defined in section 26.1-25-02.1, provided an industrial insured is not relieved from
10 taxation imposed upon independently procured insurance.

11 ~~SECTION 2. AMENDMENT. Subsection 2 of section 26.1-10-01 of the North Dakota~~
12 ~~Century Code is amended and reenacted as follows:—~~

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

26 ~~SECTION 3. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is~~
27 ~~amended and reenacted as follows:~~

28 ~~26.1-10-04. Registration of insurers.~~

29 ~~1. Every insurer that is authorized to do business in this state and which is a member of~~
30 ~~an insurance holding company system shall register with the commissioner, except a~~
31 ~~foreign insurer subject to registration requirements and standards adopted by statute~~

1 or rule in the jurisdiction of its domicile which are substantially similar to those
2 contained in this section and section 26.1-10-05. Any insurer subject to registration
3 under this section shall register within fifteen days after it becomes subject to
4 registration, and annually thereafter by March first of each year for the previous
5 calendar year unless the commissioner for good cause shown extends the time for
6 registration, and then within the extended time. The commissioner may require any
7 insurer authorized to do business in the state which is a member of an insurance-
8 holding company system not subject to registration under this section to furnish a copy
9 of the registration statement, the summary specified in subsection 10 of section
10 26.1-10-04, or other information filed by the insurer with the insurance regulatory
11 authority of the domiciliary jurisdiction.

12 ~~2.~~ Every insurer subject to registration shall file a registration statement with the
13 commissioner on a form approved by the commissioner, which must contain current
14 information about:

15 ~~a.~~ The capital structure, general financial condition, ownership, and management of
16 the insurer and any person in control of the insurer.

17 ~~b.~~ The identity and relationship of every member of the insurance holding company
18 system.

19 ~~c.~~ The following agreements in force and transactions currently outstanding or
20 which have occurred during the last calendar year between the insurer and its
21 affiliates:

22 ~~(1)~~ Loans, other investments, or purchases, sales, or exchanges of securities of
23 the affiliates by the insurer or of the insurer by its affiliates.

24 ~~(2)~~ Purchases, sales, or exchange of assets.

25 ~~(3)~~ Transactions not in the ordinary course of business.

26 ~~(4)~~ Guarantees or undertakings for the benefit of an affiliate which result in an
27 actual contingent exposure of the insurer's assets to liability, other than
28 insurance contracts entered into in the ordinary course of the insurer's
29 business.

30 ~~(5)~~ All management agreements, service contracts, and all cost-sharing
31 arrangements.

- 1 ~~————— (6) — Reinsurance agreements.~~
- 2 ~~————— (7) — Dividends and other distributions to shareholders.~~
- 3 ~~————— (8) — Consolidated tax allocation agreements.~~
- 4 ~~————— d. — Any pledge of the insurer's stock, including stock of any subsidiary or controlling~~
5 ~~affiliate, for a loan made to any member of the insurance holding company~~
6 ~~system.~~
- 7 ~~————— e. — If requested by the commissioner, the insurer shall include financial statements of~~
8 ~~or within an insurance holding company system, including all affiliates. A financial~~
9 ~~statement may include an annual audited financial statement filed with the United~~
10 ~~States securities and exchange commission pursuant to the federal Securities~~
11 ~~Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities~~
12 ~~Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial~~
13 ~~statement pursuant to this subdivision may satisfy the request by providing the~~
14 ~~commissioner with the most recently filed parent corporation financial statements~~
15 ~~that have been filed with the United States securities and exchange commission.~~
- 16 ~~————— f. — Other matters concerning transactions between registered insurers and any~~
17 ~~affiliates as may be included from time to time in any registration forms adopted~~
18 ~~or approved by the commissioner.~~
- 19 ~~————— g. — Statements that the insurer's board of directors is responsible for and supervises,~~
20 ~~relating to corporate governance and internal controls that the insurer's officers or~~
21 ~~senior management have approved, implemented, and continue to maintain and~~
22 ~~monitor.~~
- 23 ~~————— h. — Any other information required by the commissioner by rule.~~
- 24 ~~————— 3. — No information Information does not need to be disclosed on the registration statement~~
25 ~~filed pursuant to subsection 2 if the information is not material for the purposes of this~~
26 ~~section. Unless the commissioner by rule or order provides otherwise, sales,~~
27 ~~purchases, exchanges, loans or extensions of credit, or investments, or guarantees~~
28 ~~involving one-half of one percent or less of an insurer's admitted assets as of~~
29 ~~December thirty-first next preceding are not material for purposes of this section.~~
- 30 ~~————— 4. — In addition to the annual filing requirement under subsection 1, each registered insurer~~
31 ~~shall keep current the information required to be disclosed in its registration statement~~

1 by reporting all material changes or additions on amendment forms approved by the
2 commissioner within fifteen days after the end of the month in which it learns of each
3 change or addition; provided, however, that subject to subsections 7, 8, and 9 of
4 section 26.1-10-05, each registered insurer shall report all dividends and other
5 distributions to shareholders within five business days following the declaration and no
6 less than ten business days prior to payment thereof.

7 ~~5. The commissioner shall terminate the registration of any insurer that demonstrates it
8 no longer is a member of an insurance holding company system.~~

9 ~~6. The commissioner may require or allow two or more affiliated insurers subject to
10 registration to file a consolidated registration statement.~~

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

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

17 ~~9. Any person may file with the commissioner a disclaimer of affiliation with any
18 authorized insurer or a disclaimer may be filed by the insurer or any member of an
19 insurance holding company system. The disclaimer must fully disclose all material
20 relationships and bases for affiliation between the person and the insurer as well as
21 the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have
22 been granted unless the commissioner, within thirty days following receipt of a
23 complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of
24 disallowance, the disclaiming party may request an administrative hearing, which must
25 be granted. The disclaiming party is relieved of its duty to register under this section if
26 approval of the disclaimer has been granted by the commissioner or if the disclaimer is
27 deemed to have been approved.~~

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

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

1 reasonably necessary to enable the insurer to comply with the provisions of this
2 chapter.

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

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

13 ~~14. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds~~
14 ~~with the power to vote, or holds proxies representing ten percent or more of the voting~~
15 ~~securities of any other person. This presumption may be rebutted by a showing made~~
16 ~~in accordance with subsection 9 that control does not exist in fact. The commissioner~~
17 ~~may determine, after providing all interested persons notice and opportunity to be~~
18 ~~heard and making specific findings of fact to support the determination, that control~~
19 ~~exists in fact, notwithstanding the absence of a presumption to that effect.~~

20 ~~15. A person that would otherwise have control may delegate control to one or more other~~
21 ~~persons under a delegation agreement that must be substantially in the form~~
22 ~~designated by the commissioner so the person delegating the control will no longer be~~
23 ~~considered to have control.~~

24 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-25-02.1. Definitions.**

- 27 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
28 either has two or more member insurers or is controlled either directly or indirectly by
29 two or more insurers, and which assists insurers in ratemaking-related activities as
30 enumerated in this chapter. Two or more insurers having a common ownership or

1 operating in this state under common management or control constitute a single
2 insurer for purposes of this definition.

3 2. "Commercial risk" means any kind of risk which is not a personal risk.

4 3. "Competitive market" means a commercial risk market that has not been found to be
5 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
6 except crop hail, farmowners, and medical malpractice insurance are presumed to be
7 competitive.

8 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
9 standard actuarial techniques, to eliminate the effect of differences between current
10 payment or reserve estimates and those needed to provide actual ultimate loss
11 including loss adjustment expense payments.

12 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
13 collection expenses, general expenses, taxes, licenses, and fees.

14 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
15 coverage for a commercial risk pursuant to which two or more insurers jointly contract
16 with the insured at a price and under policy terms agreed upon between the insurers.

17 7. "Large commercial risk" means an insured that has:

18 a. Total insured property values of ~~five million dollars~~ ~~twenty-five million dollars~~ or
19 more;

20 b. Total annual gross revenue of ~~ten million dollars~~ ~~fifty million dollars~~ or more; or

21 c. A total premium of ~~twenty-five thousand dollars~~ ~~one hundred thousand dollars~~ or
22 more for property insurance, ~~twenty-five thousand dollars~~ ~~one hundred thousand~~
23 dollars or more for general liability insurance, or ~~fifty thousand dollar~~ ~~two hundred~~
24 thousand dollars or more for multiperil insurance.

25 d. ~~The term does not include farming or ranching.~~

26 8. "Loss trending" means any procedure for projecting developed losses to the average
27 date of loss for the period during which the policies are to be effective.

28 8-9. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
29 insurance markets together with any other line of commercial risk insurance that has
30 not been found by the commissioner to have a reasonable degree of competitiveness
31 within the market considering:

- 1 a. Market concentration and changes in market concentration determined through
2 the use of the Herfindahl-Hirschman index and the United States department of
3 justice merger guidelines for an unconcentrated market;
- 4 b. The existence of financial and other barriers that prevent a company from
5 entering the market;
- 6 c. The number of insurers or groups of affiliated insurers providing coverage in the
7 market;
- 8 d. The extent to which any insurer or group of affiliated insurers controls the market;
- 9 e. Whether the total number of companies writing the line of insurance in this state
10 is sufficient to provide multiple insurance options in the market;
- 11 f. The availability of insurance coverage to consumers in the markets by specific
12 geographic area, by line of insurance, and by class of risk; and
- 13 g. The opportunities available in the market to acquire pricing and other consumer
14 information.

15 A determination that a market is noncompetitive may not be based solely on the
16 consideration of any one factor.

17 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
18 mobile homes, and other property and casualty insurance for personal, family, or
19 household needs.

20 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
21 which two or more insurers participate in the sharing of risks on a predetermined
22 basis. The pool may operate through an association, syndicate, or other pooling
23 agreement.

24 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
25 for expenses other than loss adjustment expenses, or profit, and are based on
26 historical aggregate losses and loss adjustment expenses adjusted through
27 development to their ultimate value and projected through trending to a future point in
28 time.

29 ~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
30 member or as a prospective loss cost with an adjustment to account for the treatment
31 of expenses, profit, and individual insurer variation in loss experience, prior to any

1 application of individual risk variations based on loss or expense considerations, and
2 does not include minimum premium.

3 ~~13.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
4 by law, involving participation by insurers in the equitable apportionment among them
5 of insurance which may be afforded applicants who are unable to obtain insurance
6 through ordinary methods.

7 ~~14.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
8 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
9 plan, and any other similar information needed to determine the applicable rate in
10 effect or to be in effect.

11 ~~15.16.~~ "Supporting information" means:

- 12 a. The experience and judgment of the filer and the experience or date of other
13 insurers or advisory organizations relied upon by the filer;
14 b. The interpretation of any other data relied upon by the filer; and
15 c. Descriptions of methods used in making the rates and any other information
16 required by the commissioner to be filed.

17 **SECTION 3. AMENDMENT.** Section 26.1-25-16 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **26.1-25-16. Rebates prohibited - Exception.**

- 20 1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or
21 receive a premium for any insurance policy except in accordance with this chapter. No
22 insurer or employee of an insurer, and no insurance producer, broker or agent may
23 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an
24 inducement to insurance, or after insurance has been effected, any rebate, discount,
25 abatement, credit, or reduction of the premium named in an insurance policy, or any
26 special favor or advantage in the dividends or other benefits to accrue on the policy, or
27 any valuable consideration or inducement whatever, not specified in the insurance
28 policy, except to the extent provided for in applicable filing. No insured named in an
29 insurance policy, nor any employee of the insured, may knowingly receive or accept,
30 directly or indirectly, any such rebate, discount, abatement, credit, or reduction of
31 premium, or any such special favor or advantage or valuable consideration or

1 inducement. This section does not prohibit the payment of commissions or other
2 compensation to licensed insurance producers, nor any insurer from allowing or
3 returning to its participating policyholders, members, or subscribers dividends,
4 savings, or unabsorbed premium deposits. As used in this section, "insurance"
5 includes suretyship and "policy" includes bond.

- 6 2. Notwithstanding any other provision in this section, if the cost does not exceed an
7 aggregate retail value of one hundred dollars per person per year, an insurance
8 producer may give a gift, prize, promotional article, logo merchandise, meal, or
9 entertainment activity directly or indirectly to a person in connection with marketing,
10 promoting, or advertising the business. As used in this subsection, "person" means the
11 named insured, policy owner, or prospective client or the spouse of any of these
12 individuals, but the term does not include a certificate holder, child, or employee of the
13 named insured, policy owner, or prospective client. Subject to the limits of this
14 subsection, an insurance producer may give a gift card for specific merchandise or
15 services such as a meal, gasoline, or car wash but may not give cash, a cash card,
16 any form of currency, or any refund or discount in premium. An insurance producer
17 may not condition the giving of a gift, prize, promotional article, logo merchandise,
18 meal, or entertainment activity on obtaining a quote or a contract of insurance. A
19 person insured by a federal crop insurance policy is not eligible to receive the items of
20 value permitted under this section. It is a violation of subsection 1 for an insurance
21 producer to knowingly give an item of value to a person insured by a federal crop
22 insurance policy. Notwithstanding the limitation in this subsection, an insurance
23 producer may conduct raffles or drawings, if there is no financial cost to an entrant to
24 participate, the drawing or raffle does not obligate a participant to purchase insurance,
25 the prizes are not valued in excess of a reasonable amount determined by the
26 commissioner, and the drawing or raffle is open to the public. The raffle or drawing
27 must be offered in a manner that is not unfairly discriminatory and may not be
28 contingent on the purchase, continued purchase, or renewal of a policy.
29 Notwithstanding the limitation in this subsection, an insurance producer may make a
30 donation to a nonprofit organization that is exempt from federal taxation under Internal

1 Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the
2 donation is not given as an inducement to obtain a contract of insurance.

3 3. The provisions in this section may not be construed as including within the definition of
4 discrimination or rebates any of the following practices:

5 a. The offer or provision by an insurer or producer, by or through an employee, an
6 affiliate, or a third-party representative, of value-added products or services at no
7 or reduced cost if the products or services are not specified in the policy of
8 insurance if the product or service:

9 (1) Relates to the insurance coverage and is designed to satisfy one or more of
10 the following:

11 (a) Provide loss mitigation or loss control;

12 (b) Reduce claims costs or claim settlement costs;

13 (c) Provide education about liability risk or risk of loss to persons or
14 property;

15 (d) Monitor or assess risk, identify sources of risk, or develop strategies
16 for eliminating or reducing risk;

17 (e) Enhance health;

18 (f) Enhance financial wellness through items such as education of
19 financial planning services;

20 (g) Provide post-loss services;

21 (h) Incent behavioral changes to improve the health or reduce the risk of
22 death or disability of an individual defined as policyholder, potential
23 policyholder, certificate holder, potential certificate holder, insured,
24 potential insured, or applicant; or

25 (i) Assist in the administration of the employee or retiree benefit
26 insurance coverage.

27 (2) If offered by the insurer or producer, the insurer or producer, upon request,
28 shall ensure the person is provided with contact information to assist the
29 person with questions regarding the product or service.

1 (3) Is based on fair documented criteria and offered in a manner not unfairly
2 discriminatory. The documented criteria must be maintained by the insurer
3 or producer and produced at the request of the commissioner.

4 (4) Is reasonable in comparison to that person's premiums or insurance
5 coverage for the policy class.

6 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
7 belief the product or service meets the criteria in subdivision a, the provision by
8 the insurer or producer of a product or service in a manner that is not unfairly
9 discriminatory as part of a pilot or testing program no longer than one year. An
10 insurer or producer shall notify the department of the pilot or testing program
11 offered to consumers in this state before launching and may proceed with the
12 program unless the department objects within twenty-one days of notice.

13 4. An insurer, producer, or representative of an insurer or producer may not offer or
14 provide insurance as an inducement to the purchase of another policy or otherwise
15 use of the words "free" or "no cost" or words of similar import in an advertisement.

16 5. The commissioner may adopt regulations when implementing the permitted practices
17 set forth in this regulation to ensure consumer protection. Consistent with applicable
18 law, the topics addressed by the regulations may include consumer data protections
19 and privacy, consumer disclosure, and unfair discrimination.

20 ~~6. Subsections 1 and 2 do not apply to a large commercial risk as defined in section~~
21 ~~26.1-25-02.1.~~

22 **SECTION 4. AMENDMENT.** Section 26.1-26-04.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **26.1-26-04.1. Fees for services - Rules.**

25 1. Notwithstanding any other provision of this title, an insurance producer may charge a
26 fee for any services rendered in connection with the sale, solicitation, negotiation,
27 placement, or servicing of an insurance contract, if the following conditions are met:
28 a. The fees may not be charged on a personal lines account, such as personal
29 homeowners and automobile, personal life, and health insurance.

- 1 b. Before rendering the services and accepting any payment, a written disclosure
2 must be provided to the party to be charged on a form approved by the
3 commissioner disclosing:
- 4 (1) The nature of the services for which the fees will be charged along with a
5 separate itemization of the amount of the fees;
- 6 (2) That the fees are charged in addition to any premiums paid;
- 7 (3) That if the insurance producer is also an appointed agent of an insurer with
8 which coverage is being considered for placement, a statement that the
9 insurance producer also represents the insurer in the transaction and owes
10 a duty of loyalty to the insurer; and
- 11 (4) That if the insurance producer is to receive a commission from the sale of
12 an insurance policy related to the services rendered, a statement clearly
13 and completely disclosing that the:
- 14 (a) Insurance producer will receive a commission from the insurer which
15 is paid from the premiums owed for the insurance; and
- 16 (b) Amount of commission received by the insurance producer may differ
17 depending on the product sold and the insurer.
- 18 c. The disclosure required by this section must be signed and dated by both the
19 producer and the party to be charged.
- 20 d. The producer shall retain the signed disclosure required by this section for not
21 less than five years following the completion of the service. A copy of the signed
22 disclosure must be available to the commissioner for inspection upon request.
- 23 e. The insurance producer may not pay or return, or offer to pay or return, all or part
24 of a fee charged as an inducement to purchase a specific policy, or coverage
25 within a policy, or coverage from a particular insurer.
- 26 f. Any fee charged under this section must bear a reasonable relationship to the
27 services provided and may not be discriminatory.
- 28 2. An insurance producer charging a fee for services rendered for risk management
29 services under this section owes the person to be charged a higher standard of care
30 than the ordinary standard of care otherwise owed by an insurance producer to fully
31 advise the party to be charged as to the party's insurance needs, including the duty to

1 inform the person to be charged as to a potential source of risk and to recommend, if
2 available, insurance coverage for that risk.

3 3. An insurance producer may charge an individual, for personal or commercial lines, a
4 fee for paying agency-billed premiums and fees by credit card or other electronic
5 means, if the fee is disclosed to the client in writing and agreed to by the client in
6 writing.

7 4. Subdivisions ab through ed of subsection 1 do not apply to a large commercial risk as
8 defined in section 26.1-25-02.1.

9 5. The commissioner may adopt rules determined necessary by the commissioner for the
10 administration of this section.

11 **SECTION 5.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Mandatory arbitration endorsements for property insurance - Written acceptance -**
14 **Penalty.**

15 1. A property insurance policy may be issued or delivered in this state with mandatory
16 binding arbitration provisions if the:

17 a. Mandatory binding arbitration provisions are contained in a separate
18 endorsement;

19 b. Named insured accepts the mandatory binding arbitration endorsement in writing
20 in accordance with subsection 2; and

21 c. Property insurance policy does not require mandatory binding arbitration upon
22 request.

23 2. The written acceptance of the insured required under subsection 1 must:

24 a. Be on a form separate from the policy application and other policy forms;

25 b. Clearly state the rights being waived in exchange for the premium discount,
26 including the right to a trial by jury; and

27 c. Include the following statement in at least twelve-point bold font:

28 "By signing this form, I agree to resolve all covered property insurance claims
29 through mandatory binding arbitration. I understand that by agreeing to
30 mandatory binding arbitration:

31 I am giving up my right to have disputes resolved in court.

- 1 I am giving up my right to a jury trial.
- 2 I am accepting these terms in exchange for a premium discount of [dollar amount
3 or percentage of premium amount].
- 4 This agreement is binding on all insureds under the policy and remains effective
5 upon policy renewal, replacement, or reinstatement unless I request removal of
6 the mandatory binding arbitration endorsement in writing".
- 7 3. All arbitration proceedings under this section must:
- 8 a. Be conducted in this state if involving a resident of this state;
- 9 b. Be governed by state law; and
- 10 c. Not require arbitration in another state.
- 11 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
12 insureds under the policy and remains effective upon policy renewal, replacement, or
13 reinstatement unless the named insured requests a change in writing.
- 14 5. This section applies to all property and casualty insurance policies issued or renewed
15 after the effective date of this Act.
- 16 6. This section does not apply to a:
- 17 a. Voluntary arbitration agreement entered after a dispute has arisen; ~~or~~
- 18 b. Large commercial risk as defined in section 26.1-25-02.1; or
- 19 c. Commercial surplus line insurance policy, unless this state is the home state as
20 defined in chapter 26.1-44, and one hundred percent of the risk insured is located
21 in this state.
- 22 7. The commissioner shall enforce this section.
- 23 8. The commissioner may assess a penalty on an insurer in violation of this section, as
24 determined by the commissioner.

25 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Managed repair programs - Penalty.**

- 28 1. A property insurance policy may be issued or delivered in this state with a managed
29 repair program provision and offer premium incentives for managed repair program
30 participation. As used in this section, "managed repair program" means any program

1 in which an insurer restricts an insured's choice of repair vendors or contractors for
2 covered repairs.

3 2. An insurer offering a managed repair program shall:

4 a. Prominently disclose on the policy declarations page the policy restricts the
5 insured's right to choose repair vendors;

6 b. Specify any premium benefits for program participation;

7 c. Include a separate disclosure form, written in at least twelve-point font, which
8 explains the restrictions on vendor selection, including:

9 (1) The process for repairs under the program;

10 (2) The insured's rights and responsibilities; and

11 (3) Any warranty or guarantee provided for repairs.

12 3. An insured retains the option to select the insured's own contractor, subject to
13 standard policy terms, and request an alternate program contractor.

14 4. This section applies to all property and casualty insurance policies issued or renewed
15 after the effective date of this Act.

16 5. The commissioner shall enforce this section.

17 6. The commissioner may assess a penalty on an insurer in violation of this section, as
18 determined by the commissioner.

19 **SECTION 7.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Civil remedy actions against property insurers.**

22 Notwithstanding any provision under title 26.1, before a named insured may proceed with a
23 bad faith claim against a property insurer, the named insured shall establish through an adverse
24 adjudication by a court of law the property insurer breached the insurance contract and a final
25 judgment or decree must have been rendered against the insurer.

26 **SECTION 8.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Notice of property insurance claim.**

29 1. As used in this section:

30 a. "Reopened claim" means a claim an insurer closed and reopened upon an

31 insured's request for additional ~~costs for loss or~~reimbursement of damage arising

1 out of the original occurrence, and not previously identified or disclosed to the
2 insurer.

3 b. "Supplemental claim" means a claim for additional loss or ~~damage~~ costs from the
4 same ~~peril~~ occurrence the insurer previously ~~adjusted or for which costs have~~
5 ~~been incurred while completing repairs or replacement under an open claim for~~
6 ~~which timely notice was previously provided to the insurer~~ compensated the
7 insured.

8 2. A ~~claim or~~ reopened claim under an insurance policy that provides property insurance,
9 including a policy issued by an eligible surplus lines insurer, for loss or damage
10 ~~caused by any peril~~ is barred unless notice of the claim was given to the insurer ~~in~~
11 ~~accordance with the terms of the policy~~ within one year after the date of loss. A
12 supplemental claim is barred unless notice of the supplemental claim was given to the
13 insurer ~~in accordance with the terms~~ of the policy within ~~eighteen~~ twelve months after
14 the date of ~~the last payment issued by the insurer for that element of the~~ loss.

15 3. The time limitations under subsection 2 are tolled during any term of deployment for a
16 named insured service member to a combat zone or combat support posting that
17 materially affects the ability of the named insured to file a claim, supplemental claim,
18 or reopened claim.

19 **SECTION 9. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **26.1-44-03. Surplus lines insurance.**

22 The placement of nonadmitted insurance is subject to this section only if the insured's home
23 state is this state. Surplus lines insurance may be placed by a surplus lines producer if:

- 24 1. Each insurer is an eligible surplus lines insurer;
- 25 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
- 26 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
27 ~~admitted to do business in this state. The full amount or type of insurance may be~~
28 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
29 ~~among the insurers who are admitted to transact and are actually writing the particular~~
30 ~~type of insurance in this state if any are writing it;~~

- 1 4. At the time of placement the surplus lines producer has determined that the
2 nonadmitted insurer:
- 3 a. Has established satisfactory evidence of good repute and financial integrity and
4 has capital and surplus or its equivalent under the laws of its domiciliary
5 jurisdiction which equals the greater of:
- 6 (1) (a) The minimum capital and surplus requirements under the law of this
7 state; or
8 (b) Fifteen million dollars.
- 9 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
10 less than the minimum capital and surplus upon an affirmative finding of
11 acceptability by the commissioner. The finding must be based upon such
12 factors as quality of management, capital and surplus of any parent
13 company, company underwriting profit and investment income trends,
14 market availability, and company record and reputation within the industry.
15 The commissioner may not make an affirmative finding of acceptability
16 when the nonadmitted insurer's capital and surplus is less than four million
17 five hundred thousand dollars; or
- 18 b. For an insurer not domiciled in the United States or its territories, the insurer is
19 listed on the quarterly listing of alien insurers maintained by the national
20 association of insurance commissioners international insurers department; and
21 ~~5.4.~~ All other requirements of this chapter are met.

22 **SECTION 10.** A new section to chapter 26.1-44 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Surplus lines insurance policies.**

25 A surplus lines insurer may not issue a policy designed to satisfy any law mandating
26 insurance coverage by a licensed insurance company.

27 **SECTION 11. AMENDMENT.** Section 26.1-46-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **26.1-46-01. Definitions.**

30 As used in this chapter, ~~unless the context requires otherwise:~~

- 1 1. "Commissioner" means the North Dakota insurance commissioner or the
2 commissioner, director, or superintendent of insurance in any other state.
- 3 2. "Completed operations liability" means liability arising out of the installation,
4 maintenance, or repair of any product at a site which is not owned or controlled by any
5 person who performs that work or any person who hires an independent contractor to
6 perform that work, but includes liability for activities which are completed or
7 abandoned before the date of the occurrence giving rise to the liability.
- 8 3. "Domicile", for purposes of determining the state in which a purchasing group is
9 domiciled, means:
- 10 a. For a corporation or limited liability company, the state in which the purchasing
11 group is incorporated or organized.
- 12 b. For an entity which is not a corporation or limited liability company, the state of its
13 principal place of business.
- 14 4. "Hazardous financial condition" means that, based on its present or reasonably
15 anticipated financial condition, a risk retention group, although not yet financially
16 impaired or insolvent, is unlikely to be able to do either of the following:
- 17 a. To meet obligations to policyholders with respect to known claims and reasonably
18 anticipated claims.
- 19 b. To pay other obligations in the normal course of business.
- 20 5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
21 insurance, and any other arrangement for shifting and distributing risk which is
22 determined to be insurance under the laws of this state.
- 23 6. a. "Liability" means legal liability for damages, including costs of defense, legal
24 costs and fees, and other claims expenses because of injuries to other persons,
25 damage to their property, or other damage or loss, including contractual claims
26 and expenses, to such other persons resulting from or arising out of either of the
27 following:
- 28 a. (1) Any business whether profit or nonprofit, trade, product, services including
29 professional services, premises, or operations.
- 30 b. (2) Any activity of any state or local government, or any agency or political
31 subdivision thereof.

- 1 h. Identification of each state in which the risk retention group has obtained, or
2 sought to obtain, a charter and license, and a description of its status in each
3 such state.
- 4 9. "Product liability" means liability for damages because of any personal injury, death,
5 emotional harm, consequential economic damage, or property damage, including
6 damages resulting from the loss of use of property, arising out of the manufacture,
7 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
8 does not include the liability of any person for those damages if the product involved
9 was in the possession of such a person when the incident giving rise to the claim
10 occurred.
- 11 10. "Purchasing group" means any group which meets all of the following:
- 12 a. The group has as one of its purposes the purchase of liability insurance on a
13 group basis.
- 14 b. The group purchases such insurance only for its group members and only to
15 cover their similar or related liability exposure, as described in subdivision c. ~~except a nonmaterial amount of commercial property coverage incidental to the~~
16 ~~liability exposure of its group members also may be insured.~~
- 17 c. The group is composed of members whose business or activities are similar or
18 related with respect to the liability to which members are exposed by virtue of any
19 related, similar, or common business, trade, product, services, premises, or
20 operations.
- 21 d. The group is domiciled in any state.
- 22 11. "Risk retention group" means any corporation or other limited liability association:
- 23 a. Whose primary activity consists of assuming and spreading all, or any portion, of
24 the liability exposure of its group members.
- 25 b. Which is organized for the primary purpose of conducting the activity described
26 under subdivision a.
- 27 c. Which is chartered and licensed as a liability insurance company and authorized
28 to engage in the business of insurance under the laws of any state; or, before
29 January 1, 1985, was chartered or licensed and authorized to engage in the
30 business of insurance under the laws of Bermuda or the Cayman Islands and,
31

1 before such date, had certified to the insurance commissioner of at least one
2 state that it satisfied the capitalization requirements of such state, except that any
3 such group shall be considered to be a risk retention group only if it has been
4 engaged in business continuously since that date and only for the purpose of
5 continuing to provide insurance to cover product liability or completed operations
6 liability as such terms were defined in the Product Liability Risk Retention Act of
7 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

- 8 d. Which does not exclude any person from membership in the group solely to
9 provide for members of such a group a competitive advantage over such a
10 person.
- 11 e. Which has as its owners only persons who comprise the membership of the risk
12 retention group and who are provided insurance by such group, or has as its sole
13 owner an organization which has as its members only persons who comprise the
14 membership of the risk retention group and its owners only persons who
15 comprise the membership of the risk retention group and who are provided
16 insurance by such group.
- 17 f. Whose members are engaged in businesses or activities similar or related with
18 respect to the liability of which such members are exposed by virtue of any
19 related, similar, or common business trade, product, services, premises, or
20 operations.
- 21 g. Whose activities do not include the provision of insurance other than:
- 22 (1) Liability insurance for assuming and spreading all or any portion of the
23 liability of its group members, except a nonmaterial amount of commercial
24 property coverage incidental to the liability exposure of its group members
25 also may be insured.
- 26 (2) Reinsurance with respect to the liability of any other risk retention group or
27 any members of such other group which is engaged in business or activities
28 so that the group or member meets the requirement described in
29 subdivision f from membership in the risk retention group which provides
30 such reinsurance.
- 31 h. The name of which includes the phrase "risk retention group".

1 12. "State" means any state of the United States or the District of Columbia.

2 **SECTION 12.** A new subsection to section 26.1-46-03 of the North Dakota Century Code is
3 created and enacted as follows:

4 A risk retention group that is not chartered in this state but is in compliance with this
5 section is deemed an authorized insurer for the satisfaction of any requirement, under
6 the laws of this state, that insurance coverage be placed with an authorized insurer.

7 **SECTION 13. AMENDMENT.** Section 26.1-46-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-46-08. Restrictions on insurance purchased by purchasing groups.**

- 10 1. A purchasing group may not purchase insurance from a risk retention group that is not
11 chartered in a state or from an insurer not admitted in the state in which the
12 purchasing group is located, unless the purchase is effected through a licensed
13 insurance producer acting pursuant to the surplus lines laws and regulations of such
14 state.
- 15 2. A purchasing group which obtains liability insurance from an insurer not admitted in
16 this state or a risk retention group shall inform each of the members of the group
17 which have a risk resident or located in this state that the risk is not protected by an
18 insurance insolvency guaranty fund in this state, and that the risk retention group or
19 insurer may not be subject to all insurance laws and rules of this state.
- 20 3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or
21 self-insured retention applicable to the group as a whole; ~~however, coverage may~~
22 ~~provide for a deductible or self-insured retention applicable to individual members~~
23 unless the purchasing group uses a policyholder's disclosure statement approved by
24 the commissioner which clearly explains in simplified language the policy is subject to
25 a group deductible or self-insured retention and provides a detailed explanation of the
26 process of the satisfaction of the deductible or self-insured retention among members.
- 27 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
28 ~~regarding aggregate limits which are applicable to all purchases of group insurance.~~A
29 purchasing group may not purchase insurance providing for a shared aggregate limit
30 applicable to the group as a whole unless the purchasing group uses a policyholder's
31 disclosure statement approved by the commissioner which clearly explains in

1 simplified language the policy is subject to a group aggregate limit and coverage for
2 each individual member could be exhausted by claims from other members. The
3 insurance must allow for an individual member to purchase additional limits in the
4 event of exhaustion and this option must be described in the disclosure statement.

5 **SECTION 14. AMENDMENT.** Section 26.1-46-08.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-46-08.1. Purchasing group taxation - Fees.**

8 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
9 located in this state by a purchasing group or any members of the purchasing
10 group must be:

11 ~~4.~~ (1) Imposed at the same rate and subject to the same interest, fines, and
12 penalties as that applicable to premium taxes and taxes on premiums paid
13 for similar coverage from a similar insurance source by other insureds; and

14 ~~2.~~ (2) Paid first by such the insurance source, and if not by such the source, by the
15 insurance producer for the purchasing group, and if not by such the
16 insurance producer, then by the purchasing group, and if not by such
17 ~~purchasing group, then by each of its members.~~

18 b. To the extent any administrative fee is charged under subsection 2, the fee may
19 not be considered a premium and is not subject to premium tax.

20 2. A purchasing group's administrator, manager, or other related party may charge
21 reasonable fees provided the fees are:

22 a. For reimbursement of expenses incurred by the administrator, manager, or other
23 related party in performing its administrative duties for the purchasing group; and

24 b. Disclosed to all members of the risk purchasing group on a form approved by the
25 commissioner which states the nature of the administrative duties for which the
26 fees will be charged along with separate itemization of the amount of fees to be
27 paid by each member.

28 **SECTION 15. REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
29 repealed.