

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED 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 sections
6 26.1-02-05, 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
7 26.1-46-08.1 of the North Dakota Century Code, relating to exceptions to unauthorized
8 insurance transactions, exceptions for large commercial risks in fire, property, and casualty
9 insurance rates, surplus lines insurance, risk retention groups and purchasing groups,
10 restrictions on insurance purchased by purchasing groups, and purchasing group taxation and
11 fees; to repeal section 26.1-44-03.3 of the North Dakota Century Code, relating to an exemption
12 from search requirements for licensed surplus line producers; and to provide a penalty.

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

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

16 **26.1-02-05. Unauthorized insurance prohibited - Exceptions.**

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

20 1. The lawful transaction of surplus lines insurance.

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

1 b. Whose aggregate annual premiums for insurance on all risks total at least
2 twenty-five thousand dollars; and

3 c. Which has at least twenty-five full-time employees.

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

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

9 **26.1-25-02.1. Definitions.**

- 10 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
11 either has two or more member insurers or is controlled either directly or indirectly by
12 two or more insurers, and which assists insurers in ratemaking-related activities as
13 enumerated in this chapter. Two or more insurers having a common ownership or
14 operating in this state under common management or control constitute a single
15 insurer for purposes of this definition.
- 16 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 17 3. "Competitive market" means a commercial risk market that has not been found to be
18 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
19 except crop hail, farmowners, and medical malpractice insurance are presumed to be
20 competitive.
- 21 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
22 standard actuarial techniques, to eliminate the effect of differences between current
23 payment or reserve estimates and those needed to provide actual ultimate loss
24 including loss adjustment expense payments.
- 25 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
26 collection expenses, general expenses, taxes, licenses, and fees.
- 27 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
28 coverage for a commercial risk pursuant to which two or more insurers jointly contract
29 with the insured at a price and under policy terms agreed upon between the insurers.
- 30 7. "Large commercial risk" means an insured that has:
- 31 a. Total insured property values of twenty-five million dollars or more;

- 1 b. Total annual gross revenue of fifty million dollars or more; or
2 c. A total premium of one hundred thousand dollars or more for property insurance,
3 one hundred thousand dollars or more for general liability insurance, or
4 two hundred thousand dollars or more for multiperil insurance.
5 d. The term does not include farming or ranching.

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

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

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

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

28 9-10. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
29 mobile homes, and other property and casualty insurance for personal, family, or
30 household needs.

1 ~~40.11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
2 which two or more insurers participate in the sharing of risks on a predetermined
3 basis. The pool may operate through an association, syndicate, or other pooling
4 agreement.

5 ~~44.12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
6 for expenses other than loss adjustment expenses, or profit, and are based on
7 historical aggregate losses and loss adjustment expenses adjusted through
8 development to their ultimate value and projected through trending to a future point in
9 time.

10 ~~42.13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
11 member or as a prospective loss cost with an adjustment to account for the treatment
12 of expenses, profit, and individual insurer variation in loss experience, prior to any
13 application of individual risk variations based on loss or expense considerations, and
14 does not include minimum premium.

15 ~~43.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
16 by law, involving participation by insurers in the equitable apportionment among them
17 of insurance which may be afforded applicants who are unable to obtain insurance
18 through ordinary methods.

19 ~~44.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
20 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
21 plan, and any other similar information needed to determine the applicable rate in
22 effect or to be in effect.

23 ~~45.16.~~ "Supporting information" means:

- 24 a. The experience and judgment of the filer and the experience or date of other
25 insurers or advisory organizations relied upon by the filer;
26 b. The interpretation of any other data relied upon by the filer; and
27 c. Descriptions of methods used in making the rates and any other information
28 required by the commissioner to be filed.

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

1 **26.1-25-16. Rebates prohibited - Exception.**

- 2 1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or
3 receive a premium for any insurance policy except in accordance with this chapter. No
4 insurer or employee of an insurer, and no insurance producer, broker or agent may
5 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an
6 inducement to insurance, or after insurance has been effected, any rebate, discount,
7 abatement, credit, or reduction of the premium named in an insurance policy, or any
8 special favor or advantage in the dividends or other benefits to accrue on the policy, or
9 any valuable consideration or inducement whatever, not specified in the insurance
10 policy, except to the extent provided for in applicable filing. No insured named in an
11 insurance policy, nor any employee of the insured, may knowingly receive or accept,
12 directly or indirectly, any such rebate, discount, abatement, credit, or reduction of
13 premium, or any such special favor or advantage or valuable consideration or
14 inducement. This section does not prohibit the payment of commissions or other
15 compensation to licensed insurance producers, nor any insurer from allowing or
16 returning to its participating policyholders, members, or subscribers dividends,
17 savings, or unabsorbed premium deposits. As used in this section, "insurance"
18 includes suretyship and "policy" includes bond.
- 19 2. Notwithstanding any other provision in this section, if the cost does not exceed an
20 aggregate retail value of one hundred dollars per person per year, an insurance
21 producer may give a gift, prize, promotional article, logo merchandise, meal, or
22 entertainment activity directly or indirectly to a person in connection with marketing,
23 promoting, or advertising the business. As used in this subsection, "person" means the
24 named insured, policy owner, or prospective client or the spouse of any of these
25 individuals, but the term does not include a certificate holder, child, or employee of the
26 named insured, policy owner, or prospective client. Subject to the limits of this
27 subsection, an insurance producer may give a gift card for specific merchandise or
28 services such as a meal, gasoline, or car wash but may not give cash, a cash card,
29 any form of currency, or any refund or discount in premium. An insurance producer
30 may not condition the giving of a gift, prize, promotional article, logo merchandise,
31 meal, or entertainment activity on obtaining a quote or a contract of insurance. ~~A~~

~~person insured by a federal crop insurance policy is not eligible to receive the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give an item of value to a person insured by a federal crop insurance policy.~~ Notwithstanding the limitation in this subsection, an insurance

producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be contingent on the purchase, continued purchase, or renewal of a policy.

Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a contract of insurance.

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

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

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

(a) Provide loss mitigation or loss control;

(b) Reduce claims costs or claim settlement costs;

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

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

(e) Enhance health;

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

- 1 (g) Provide post-loss services;
- 2 (h) Incent behavioral changes to improve the health or reduce the risk of
- 3 death or disability of an individual defined as policyholder, potential
- 4 policyholder, certificate holder, potential certificate holder, insured,
- 5 potential insured, or applicant; or
- 6 (i) Assist in the administration of the employee or retiree benefit
- 7 insurance coverage.
- 8 (2) If offered by the insurer or producer, the insurer or producer, upon request,
- 9 shall ensure the person is provided with contact information to assist the
- 10 person with questions regarding the product or service.
- 11 (3) Is based on fair documented criteria and offered in a manner not unfairly
- 12 discriminatory. The documented criteria must be maintained by the insurer
- 13 or producer and produced at the request of the commissioner.
- 14 (4) Is reasonable in comparison to that person's premiums or insurance
- 15 coverage for the policy class.
- 16 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
- 17 belief the product or service meets the criteria in subdivision a, the provision by
- 18 the insurer or producer of a product or service in a manner that is not unfairly
- 19 discriminatory as part of a pilot or testing program no longer than one year. An
- 20 insurer or producer shall notify the department of the pilot or testing program
- 21 offered to consumers in this state before launching and may proceed with the
- 22 program unless the department objects within twenty-one days of notice.
- 23 4. An insurer, producer, or representative of an insurer or producer may not offer or
- 24 provide insurance as an inducement to the purchase of another policy or otherwise
- 25 use of the words "free" or "no cost" or words of similar import in an advertisement.
- 26 5. The commissioner may adopt regulations when implementing the permitted practices
- 27 set forth in this regulation to ensure consumer protection. Consistent with applicable
- 28 law, the topics addressed by the regulations may include consumer data protections
- 29 and privacy, consumer disclosure, and unfair discrimination.
- 30 6. Subsections 1 and 2 do not apply to a large commercial risk.

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

3 **26.1-26-04.1. Fees for services - Rules.**

4 1. Notwithstanding any other provision of this title, an insurance producer may charge a
5 fee for any services rendered in connection with the sale, solicitation, negotiation,
6 placement, or servicing of an insurance contract, if the following conditions are met:

7 a. The fees may not be charged on a personal lines account, such as personal
8 homeowners and automobile, personal life, and health insurance.

9 b. Before rendering the services and accepting any payment, a written disclosure
10 must be provided to the party to be charged on a form approved by the
11 commissioner disclosing:

12 (1) The nature of the services for which the fees will be charged along with a
13 separate itemization of the amount of the fees;

14 (2) That the fees are charged in addition to any premiums paid;

15 (3) That if the insurance producer is also an appointed agent of an insurer with
16 which coverage is being considered for placement, a statement that the
17 insurance producer also represents the insurer in the transaction and owes
18 a duty of loyalty to the insurer; and

19 (4) That if the insurance producer is to receive a commission from the sale of
20 an insurance policy related to the services rendered, a statement clearly
21 and completely disclosing that the:

22 (a) Insurance producer will receive a commission from the insurer which
23 is paid from the premiums owed for the insurance; and

24 (b) Amount of commission received by the insurance producer may differ
25 depending on the product sold and the insurer.

26 c. The disclosure required by this section must be signed and dated by both the
27 producer and the party to be charged.

28 d. The producer shall retain the signed disclosure required by this section for not
29 less than five years following the completion of the service. A copy of the signed
30 disclosure must be available to the commissioner for inspection upon request.

- 1 e. The insurance producer may not pay or return, or offer to pay or return, all or part
2 of a fee charged as an inducement to purchase a specific policy, or coverage
3 within a policy, or coverage from a particular insurer.
- 4 f. Any fee charged under this section must bear a reasonable relationship to the
5 services provided and may not be discriminatory.
- 6 2. An insurance producer charging a fee for services rendered for risk management
7 services under this section owes the person to be charged a higher standard of care
8 than the ordinary standard of care otherwise owed by an insurance producer to fully
9 advise the party to be charged as to the party's insurance needs, including the duty to
10 inform the person to be charged as to a potential source of risk and to recommend, if
11 available, insurance coverage for that risk.
- 12 3. An insurance producer may charge an individual, for personal or commercial lines, a
13 fee for paying agency-billed premiums and fees by credit card or other electronic
14 means, if the fee is disclosed to the client in writing and agreed to by the client in
15 writing.
- 16 4. Subdivisions b through d of subsection 1 do not apply to a large commercial risk as
17 defined in section 26.1-25-02.1.
- 18 5. The commissioner may adopt rules determined necessary by the commissioner for the
19 administration of this section.

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

22 **Mandatory arbitration endorsements for property insurance - Written acceptance -**
23 **Penalty.**

- 24 1. A property insurance policy may be issued or delivered in this state with mandatory
25 binding arbitration provisions if the:
- 26 a. Mandatory binding arbitration provisions are contained in a separate
27 endorsement;
- 28 b. Named insured accepts the mandatory binding arbitration endorsement in writing
29 in accordance with subsection 2; and
- 30 c. Property insurance policy does not require mandatory binding arbitration upon
31 request.

- 1 2. The written acceptance of the insured required under subsection 1 must:
- 2 a. Be on a form separate from the policy application and other policy forms;
- 3 b. Clearly state the rights being waived in exchange for the premium discount,
- 4 including the right to a trial by jury; and
- 5 c. Include the following statement in at least twelve-point bold font:
- 6 "By signing this form, I agree to resolve all covered property insurance claims
- 7 through mandatory binding arbitration. I understand that by agreeing to
- 8 mandatory binding arbitration:
- 9 I am giving up my right to have disputes resolved in court.
- 10 I am giving up my right to a jury trial.
- 11 I am accepting these terms in exchange for a premium discount of [dollar amount
- 12 or percentage of premium amount].
- 13 This agreement is binding on all insureds under the policy and remains effective
- 14 upon policy renewal, replacement, or reinstatement unless I request removal of
- 15 the mandatory binding arbitration endorsement in writing".
- 16 3. All arbitration proceedings under this section must:
- 17 a. Be conducted in this state if involving a resident of this state;
- 18 b. Be governed by state law; and
- 19 c. Not require arbitration in another state.
- 20 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
- 21 insureds under the policy and remains effective upon policy renewal, replacement, or
- 22 reinstatement unless the named insured requests a change in writing.
- 23 5. This section applies to all property and casualty insurance policies issued or renewed
- 24 after the effective date of this Act.
- 25 6. This section does not apply to a:
- 26 a. Voluntary arbitration agreement entered after a dispute has arisen;
- 27 b. Large commercial risk as defined in section 26.1-25-02.1; or
- 28 c. Commercial surplus line insurance policy, ~~unless this state is the home state as~~
- 29 ~~defined in chapter 26.1-44, and one hundred percent of the risk insured is located~~
- 30 ~~in this state~~ placed in accordance with section 26.1-44-03.
- 31 7. The commissioner shall enforce this section.

1 8. The commissioner may assess a penalty on an insurer in violation of this section, as
2 determined by the commissioner.

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

5 **Managed repair programs - Penalty.**

6 1. A property insurance policy may be issued or delivered in this state with a managed
7 repair program provision ~~and offer~~ offering premium incentives for managed repair
8 program participation. As used in this section, "managed repair program" means
9 ~~any~~an insurance policy providing a program with a specified reduction in premium or
10 other specified incentive for participation in a program ~~in which an insurer restricts~~
11 restricting an insured's choice of repair vendors or contractors for covered repairs.

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

- 13 a. Prominently disclose on the policy declarations page the policy restricts the
14 insured's right to choose repair vendors;
15 b. Specify any premium benefits for program participation;
16 c. Include a separate disclosure form, written in at least twelve-point font, which
17 explains the restrictions on vendor selection, including:
18 (1) The process for repairs under the program;
19 (2) The insured's rights and responsibilities; and
20 (3) Any warranty or guarantee provided for repairs.

21 3. ~~An insured retains the option to select the insured's own contractor, subject to~~
22 ~~standard policy terms, and request an alternate program contractor~~This section does
23 not apply to contractor referral or managed or direct repair programs that do not
24 provide a specified reduction in premium or other incentive.

25 4. This section ~~apples~~applies to ~~all property and casualty~~ insurance policies issued or
26 renewed after the effective date of this Act.

27 5. The commissioner shall enforce this section.

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

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

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

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

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

8 **Notice of property insurance claim.**

9 1. As used in this section:

10 a. "Reopened claim" means a claim an insurer closed and reopened upon an
11 insured's request for additional reimbursement of damage arising out of the
12 original occurrence, and not previously identified or disclosed to the insurer.

13 b. "Supplemental claim" means a claim for additional loss or costs from the same
14 occurrence the insurer previously compensated the insured.

15 2. A reopened claim under an insurance policy that provides property insurance,
16 including a policy issued by an eligible surplus lines insurer, for loss or damage is
17 barred unless notice of the claim was given to the insurer within one year after the
18 date of loss. A supplemental claim is barred unless notice of the supplemental claim
19 was given to the insurer of the policy within twelve months after the date of the last
20 payment issued by the insurer for that element of the loss.

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

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

27 **26.1-44-03. Surplus lines insurance.**

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

30 1. Each insurer is an eligible surplus lines insurer;

31 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;

1 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
2 ~~admitted to do business in this state. The full amount or type of insurance may be~~
3 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
4 among The surplus lines producer is aware that:

5 a. The full amount and type of insurance is not available from the insurers who are
6 admitted to transact and are actually writing the particular type of insurance in
7 this state if any are writing it; or

8 b. The risk was referred to the surplus lines producer by an insurance producer
9 licensed in this state.

10 4. At the time of placement the surplus lines producer has determined that the
11 nonadmitted insurer:

12 a. Has established satisfactory evidence of good repute and financial integrity and
13 has capital and surplus or its equivalent under the laws of its domiciliary
14 jurisdiction which equals the greater of:

15 (1) (a) The minimum capital and surplus requirements under the law of this
16 state; or

17 (b) Fifteen million dollars.

18 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
19 less than the minimum capital and surplus upon an affirmative finding of
20 acceptability by the commissioner. The finding must be based upon such
21 factors as quality of management, capital and surplus of any parent
22 company, company underwriting profit and investment income trends,
23 market availability, and company record and reputation within the industry.
24 The commissioner may not make an affirmative finding of acceptability
25 when the nonadmitted insurer's capital and surplus is less than four million
26 five hundred thousand dollars; or

27 b. For an insurer not domiciled in the United States or its territories, the insurer is
28 listed on the quarterly listing of alien insurers maintained by the national
29 association of insurance commissioners international insurers department; and

30 5.4. All other requirements of this chapter are met.

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

3 **Surplus lines insurance policies.**

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

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

8 **26.1-46-01. Definitions.**

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

- 10 1. "Commissioner" means the North Dakota insurance commissioner or the
11 commissioner, director, or superintendent of insurance in any other state.
- 12 2. "Completed operations liability" means liability arising out of the installation,
13 maintenance, or repair of any product at a site which is not owned or controlled by any
14 person who performs that work or any person who hires an independent contractor to
15 perform that work, but includes liability for activities which are completed or
16 abandoned before the date of the occurrence giving rise to the liability.
- 17 3. "Domicile", for purposes of determining the state in which a purchasing group is
18 domiciled, means:
 - 19 a. For a corporation or limited liability company, the state in which the purchasing
20 group is incorporated or organized.
 - 21 b. For an entity which is not a corporation or limited liability company, the state of its
22 principal place of business.
- 23 4. "Hazardous financial condition" means that, based on its present or reasonably
24 anticipated financial condition, a risk retention group, although not yet financially
25 impaired or insolvent, is unlikely to be able to do either of the following:
 - 26 a. To meet obligations to policyholders with respect to known claims and reasonably
27 anticipated claims.
 - 28 b. To pay other obligations in the normal course of business.
- 29 5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
30 insurance, and any other arrangement for shifting and distributing risk which is
31 determined to be insurance under the laws of this state.

- 1 6. a. "Liability" means legal liability for damages, including costs of defense, legal
2 costs and fees, and other claims expenses because of injuries to other persons,
3 damage to their property, or other damage or loss, including contractual claims
4 and expenses, to such other persons resulting from or arising out of either of the
5 following:
- 6 a. (1) Any business whether profit or nonprofit, trade, product, services including
7 professional services, premises, or operations.
- 8 b. (2) Any activity of any state or local government, or any agency or political
9 subdivision thereof.
- 10 b. The term does not include personal risk liability and an employer's liability with
11 respect to its employees other than legal liability under the federal Employer's
12 Liability Act [45 U.S.C. 51 et seq.].
- 13 7. "Personal risk liability" means liability for damages because of injury to any person,
14 damage to property, or other loss or damage resulting from any personal, familial, or
15 household responsibilities or activities, rather than from responsibilities or activities
16 referred to in subsection 56.
- 17 8. "Plan of operation or a feasibility study" means an analysis which presents the
18 expected activities and results of a risk retention group, including, at a minimum, all of
19 the following:
- 20 a. For each state in which it intends to operate, the coverages, deductibles,
21 coverage limits, rates, and rating classification systems for each line of insurance
22 the group intends to offer.
- 23 b. Historical and expected loss experience of the proposed members and national
24 experience of similar exposures to the extent that this experience is reasonably
25 available.
- 26 c. Pro forma financial statements and projections.
- 27 d. Appropriate opinions by a qualified independent casualty actuary, including a
28 determination of minimum premium or participation levels required to commence
29 operations and to prevent a hazardous financial condition.

- 1 e. Identification of management, underwriting and claims procedures, marketing
2 methods, managerial oversight methods, reinsurance agreements, and
3 investment policies.
- 4 f. Such other matters as may be prescribed by the commissioner for liability
5 insurance companies authorized by the insurance laws of the state in which the
6 risk retention group is chartered.
- 7 g. Information sufficient to verify that its members are engaged in businesses or
8 activities similar or related with respect to the liability to which such members are
9 exposed by virtue of any related, similar, or common business, trade, product,
10 services, premises, or operations.
- 11 h. Identification of each state in which the risk retention group has obtained, or
12 sought to obtain, a charter and license, and a description of its status in each
13 such state.
- 14 9. "Product liability" means liability for damages because of any personal injury, death,
15 emotional harm, consequential economic damage, or property damage, including
16 damages resulting from the loss of use of property, arising out of the manufacture,
17 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
18 does not include the liability of any person for those damages if the product involved
19 was in the possession of such a person when the incident giving rise to the claim
20 occurred.
- 21 10. "Purchasing group" means any group which meets all of the following:
- 22 a. The group has as one of its purposes the purchase of liability insurance on a
23 group basis.
- 24 b. The group purchases ~~such~~ insurance only for its group members and only to
25 cover their similar or related liability exposure, as described in subdivision c.
- 26 c. The group is composed of members whose business or activities are similar or
27 related with respect to the liability to which members are exposed by virtue of any
28 related, similar, or common business, trade, product, services, premises, or
29 operations.
- 30 d. The group is domiciled in any state.
- 31 11. "Risk retention group" means any corporation or other limited liability association:

- 1 a. Whose primary activity consists of assuming and spreading all, or any portion, of
2 the liability exposure of its group members.
- 3 b. Which is organized for the primary purpose of conducting the activity described
4 under subdivision a.
- 5 c. Which is chartered and licensed as a liability insurance company and authorized
6 to engage in the business of insurance under the laws of any state; or, before
7 January 1, 1985, was chartered or licensed and authorized to engage in the
8 business of insurance under the laws of Bermuda or the Cayman Islands and,
9 before such date, had certified to the insurance commissioner of at least one
10 state that it satisfied the capitalization requirements of such state, except that any
11 such group shall be considered to be a risk retention group only if it has been
12 engaged in business continuously since that date and only for the purpose of
13 continuing to provide insurance to cover product liability or completed operations
14 liability as such terms were defined in the Product Liability Risk Retention Act of
15 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.
- 16 d. Which does not exclude any person from membership in the group solely to
17 provide for members of such a group a competitive advantage over such a
18 person.
- 19 e. Which has as its owners only persons who comprise the membership of the risk
20 retention group and who are provided insurance by such group, or has as its sole
21 owner an organization which has as its members only persons who comprise the
22 membership of the risk retention group and its owners only persons who
23 comprise the membership of the risk retention group and who are provided
24 insurance by such group.
- 25 f. Whose members are engaged in businesses or activities similar or related with
26 respect to the liability of which such members are exposed by virtue of any
27 related, similar, or common business trade, product, services, premises, or
28 operations.
- 29 g. Whose activities do not include the provision of insurance other than:
30 (1) Liability insurance for assuming and spreading all or any portion of the
31 liability of its group members, ~~except a nonmaterial amount of commercial~~

~~property coverage incidental to the liability exposure of its group members-
also may be insured.~~

(2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.

h. The name of which includes the phrase "risk retention group".

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

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

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

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

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

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; ~~however, coverage may provide for a deductible or self-insured retention applicable to individual members unless the purchasing group uses a policyholder's disclosure statement approved by~~

1 the commissioner which clearly explains in simplified language the policy is subject to
2 a group deductible or self-insured retention and provides a detailed explanation of the
3 process of the satisfaction of the deductible or self-insured retention among members.

- 4 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
5 ~~regarding aggregate limits which are applicable to all purchases of group insurance. A~~
6 ~~purchasing group may not purchase insurance providing for a shared aggregate limit~~
7 ~~applicable to the group as a whole unless the purchasing group uses a policyholder's~~
8 ~~disclosure statement approved by the commissioner which clearly explains in~~
9 ~~simplified language the policy is subject to a group aggregate limit and coverage for~~
10 ~~each individual member could be exhausted by claims from other members. The~~
11 ~~insurance must allow for an individual member to purchase additional limits in the~~
12 ~~event of exhaustion and this option must be described in the disclosure statement.~~

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

15 **26.1-46-08.1. Purchasing group taxation - Fees.**

- 16 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
17 located in this state by a purchasing group or any members of the purchasing
18 group must be:
- 19 4. (1) Imposed at the same rate and subject to the same interest, fines, and
20 penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid
21 for similar coverage from a similar insurance source by other insureds; and
- 22 2. (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
23 insurance producer for the purchasing group, and if not by ~~such~~the
24 insurance producer, then by the purchasing group, ~~and if not by such~~
25 ~~purchasing group, then by each of its members.~~
- 26 b. To the extent any administrative fee is charged under subsection 2, the fee may
27 not be considered a premium and is not subject to premium tax.
- 28 2. A purchasing group's administrator, manager, or other related party may charge
29 reasonable fees provided the fees are:
- 30 a. For reimbursement of expenses incurred by the administrator, manager, or other
31 related party in performing its administrative duties for the purchasing group; and

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

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