

Sixty-ninth  
Legislative Assembly  
of North Dakota

**FIRST ENGROSSMENT  
with House Amendments**

**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.
- 21 2. The lawful transaction of reinsurance by insurers.

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

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

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

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

7 **26.1-25-02.1. Definitions.**

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

1           c. A total premium of one hundred thousand dollars or more for property insurance,  
2           one hundred thousand dollars or more for general liability insurance, or  
3           two hundred thousand dollars or more for multiperil insurance.

4           d. The term does not include farming or ranching.

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

7           8-9. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice  
8           insurance markets together with any other line of commercial risk insurance that has  
9           not been found by the commissioner to have a reasonable degree of competitiveness  
10          within the market considering:

11          a. Market concentration and changes in market concentration determined through  
12          the use of the Herfindahl-Hirschman index and the United States department of  
13          justice merger guidelines for an unconcentrated market;

14          b. The existence of financial and other barriers that prevent a company from  
15          entering the market;

16          c. The number of insurers or groups of affiliated insurers providing coverage in the  
17          market;

18          d. The extent to which any insurer or group of affiliated insurers controls the market;

19          e. Whether the total number of companies writing the line of insurance in this state  
20          is sufficient to provide multiple insurance options in the market;

21          f. The availability of insurance coverage to consumers in the markets by specific  
22          geographic area, by line of insurance, and by class of risk; and

23          g. The opportunities available in the market to acquire pricing and other consumer  
24          information.

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

27          9-10. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,  
28          mobile homes, and other property and casualty insurance for personal, family, or  
29          household needs.

30          10-11. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to  
31          which two or more insurers participate in the sharing of risks on a predetermined

1 basis. The pool may operate through an association, syndicate, or other pooling  
2 agreement.

3 ~~41.12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions  
4 for expenses other than loss adjustment expenses, or profit, and are based on  
5 historical aggregate losses and loss adjustment expenses adjusted through  
6 development to their ultimate value and projected through trending to a future point in  
7 time.

8 ~~42.13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single  
9 member or as a prospective loss cost with an adjustment to account for the treatment  
10 of expenses, profit, and individual insurer variation in loss experience, prior to any  
11 application of individual risk variations based on loss or expense considerations, and  
12 does not include minimum premium.

13 ~~43.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated  
14 by law, involving participation by insurers in the equitable apportionment among them  
15 of insurance which may be afforded applicants who are unable to obtain insurance  
16 through ordinary methods.

17 ~~44.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,  
18 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical  
19 plan, and any other similar information needed to determine the applicable rate in  
20 effect or to be in effect.

21 ~~45.16.~~ "Supporting information" means:

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

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

29 **26.1-25-16. Rebates prohibited - Exception.**

- 30 1. ~~No insurance producer~~ An insurance producer may not knowingly charge, demand, or  
31 receive a premium for any insurance policy except in accordance with this chapter. No

1 insurer or employee of an insurer, and no insurance producer, broker or agent may  
2 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an  
3 inducement to insurance, or after insurance has been effected, any rebate, discount,  
4 abatement, credit, or reduction of the premium named in an insurance policy, or any  
5 special favor or advantage in the dividends or other benefits to accrue on the policy, or  
6 any valuable consideration or inducement whatever, not specified in the insurance  
7 policy, except to the extent provided for in applicable filing. No insured named in an  
8 insurance policy, nor any employee of the insured, may knowingly receive or accept,  
9 directly or indirectly, any such rebate, discount, abatement, credit, or reduction of  
10 premium, or any such special favor or advantage or valuable consideration or  
11 inducement. This section does not prohibit the payment of commissions or other  
12 compensation to licensed insurance producers, nor any insurer from allowing or  
13 returning to its participating policyholders, members, or subscribers dividends,  
14 savings, or unabsorbed premium deposits. As used in this section, "insurance"  
15 includes suretyship and "policy" includes bond.

- 16 2. Notwithstanding any other provision in this section, if the cost does not exceed an  
17 aggregate retail value of one hundred dollars per person per year, an insurance  
18 producer may give a gift, prize, promotional article, logo merchandise, meal, or  
19 entertainment activity directly or indirectly to a person in connection with marketing,  
20 promoting, or advertising the business. As used in this subsection, "person" means the  
21 named insured, policy owner, or prospective client or the spouse of any of these  
22 individuals, but the term does not include a certificate holder, child, or employee of the  
23 named insured, policy owner, or prospective client. Subject to the limits of this  
24 subsection, an insurance producer may give a gift card for specific merchandise or  
25 services such as a meal, gasoline, or car wash but may not give cash, a cash card,  
26 any form of currency, or any refund or discount in premium. An insurance producer  
27 may not condition the giving of a gift, prize, promotional article, logo merchandise,  
28 meal, or entertainment activity on obtaining a quote or a contract of insurance.  
29 Notwithstanding the limitation in this subsection, an insurance producer may conduct  
30 raffles or drawings, if there is no financial cost to an entrant to participate, the drawing  
31 or raffle does not obligate a participant to purchase insurance, the prizes are not

1 valued in excess of a reasonable amount determined by the commissioner, and the  
2 drawing or raffle is open to the public. The raffle or drawing must be offered in a  
3 manner that is not unfairly discriminatory and may not be contingent on the purchase,  
4 continued purchase, or renewal of a policy. Notwithstanding the limitation in this  
5 subsection, an insurance producer may make a donation to a nonprofit organization  
6 that is exempt from federal taxation under Internal Revenue Code section 501(c)(3)  
7 [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an  
8 inducement to obtain a contract of insurance.

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

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

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

17 (a) Provide loss mitigation or loss control;

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

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

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

23 (e) Enhance health;

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

26 (g) Provide post-loss services;

27 (h) Incent behavioral changes to improve the health or reduce the risk of  
28 death or disability of an individual defined as policyholder, potential  
29 policyholder, certificate holder, potential certificate holder, insured,  
30 potential insured, or applicant; or

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

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

28 **26.1-26-04.1. Fees for services - Rules.**

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



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

1 than the ordinary standard of care otherwise owed by an insurance producer to fully  
2 advise the party to be charged as to the party's insurance needs, including the duty to  
3 inform the person to be charged as to a potential source of risk and to recommend, if  
4 available, insurance coverage for that risk.

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

9 4. Subdivisions b through e of subsection 1 do not apply to a large commercial risk as  
10 defined in section 26.1-25-02.1.

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

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

15 **Mandatory arbitration endorsements for property insurance - Written acceptance -**  
16 **Penalty.**

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

19 a. Mandatory binding arbitration provisions are contained in a separate  
20 endorsement;

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

23 c. Property insurance policy does not require mandatory binding arbitration upon  
24 request.

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

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

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

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

1           "By signing this form, I agree to resolve all covered property insurance claims  
2           through mandatory binding arbitration. I understand that by agreeing to  
3           mandatory binding arbitration:  
4           I am giving up my right to have disputes resolved in court.  
5           I am giving up my right to a jury trial.  
6           I am accepting these terms in exchange for a premium discount of [dollar amount  
7           or percentage of premium amount].  
8           This agreement is binding on all insureds under the policy and remains effective  
9           upon policy renewal, replacement, or reinstatement unless I request removal of  
10          the mandatory binding arbitration endorsement in writing".

11        3. All arbitration proceedings under this section must:

- 12           a. Be conducted in this state if involving a resident of this state;  
13           b. Be governed by state law; and  
14           c. Not require arbitration in another state.

15        4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all  
16        insureds under the policy and remains effective upon policy renewal, replacement, or  
17        reinstatement unless the named insured requests a change in writing.

18        5. This section applies to all property and casualty insurance policies issued or renewed  
19        after the effective date of this Act.

20        6. This section does not apply to a:

- 21           a. Voluntary arbitration agreement entered after a dispute has arisen;  
22           b. Large commercial risk as defined in section 26.1-25-02.1; or  
23           c. Commercial surplus line insurance policy placed in accordance with section  
24           26.1-44-03.

25        7. The commissioner shall enforce this section.

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

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

1       **Managed repair programs - Penalty.**

- 2       1. A property insurance policy may be issued or delivered in this state with a managed  
3       repair program provision offering premium incentives for managed repair program  
4       participation. As used in this section, "managed repair program" means an insurance  
5       policy providing a program with a specified reduction in premium or other specified  
6       incentive for participation in a program restricting an insured's choice of repair vendors  
7       or contractors for covered repairs.
- 8       2. An insurer offering a managed repair program shall:
- 9       a. Prominently disclose on the policy declarations page the policy restricts the  
10       insured's right to choose repair vendors;
- 11       b. Specify any premium benefits for program participation;
- 12       c. Include a separate disclosure form, written in at least twelve-point font, which  
13       explains the restrictions on vendor selection, including:
- 14             (1) The process for repairs under the program;
- 15             (2) The insured's rights and responsibilities; and
- 16             (3) Any warranty or guarantee provided for repairs.
- 17       3. This section does not apply to contractor referral or managed or direct repair programs  
18       that do not provide a specified reduction in premium or other incentive.
- 19       4. This section applies to insurance policies issued or renewed after the effective date of  
20       this Act.
- 21       5. The commissioner shall enforce this section.
- 22       6. The commissioner may assess a penalty on an insurer in violation of this section, as  
23       determined by the commissioner.

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

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

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

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

3       **Notice of property insurance claim.**

4       1. As used in this section:

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

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

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

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

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

22       **26.1-44-03. Surplus lines insurance.**

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

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

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

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

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

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

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

13              (b) Fifteen million dollars.

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

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

26          5.4. All other requirements of this chapter are met.

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

29          **Surplus lines insurance policies.**

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

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

3       **26.1-46-01. Definitions.**

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

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

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



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

1 January 1, 1985, was chartered or licensed and authorized to engage in the  
2 business of insurance under the laws of Bermuda or the Cayman Islands and,  
3 before such date, had certified to the insurance commissioner of at least one  
4 state that it satisfied the capitalization requirements of such state, except that any  
5 such group shall be considered to be a risk retention group only if it has been  
6 engaged in business continuously since that date and only for the purpose of  
7 continuing to provide insurance to cover product liability or completed operations  
8 liability as such terms were defined in the Product Liability Risk Retention Act of  
9 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

- 10 d. Which does not exclude any person from membership in the group solely to  
11 provide for members of such a group a competitive advantage over such a  
12 person.
- 13 e. Which has as its owners only persons who comprise the membership of the risk  
14 retention group and who are provided insurance by such group, or has as its sole  
15 owner an organization which has as its members only persons who comprise the  
16 membership of the risk retention group and its owners only persons who  
17 comprise the membership of the risk retention group and who are provided  
18 insurance by such group.
- 19 f. Whose members are engaged in businesses or activities similar or related with  
20 respect to the liability of which such members are exposed by virtue of any  
21 related, similar, or common business trade, product, services, premises, or  
22 operations.
- 23 g. Whose activities do not include the provision of insurance other than:  
24 (1) Liability insurance for assuming and spreading all or any portion of the  
25 liability of its group members.  
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.