INSURANCE

CHAPTER 274

HOUSE BILL NO. 1026

(Legislative Management)
(Government Finance Committee)

AN ACT to amend and reenact sections 23-24-07, 26.1-01-03, 26.1-21-01, 26.1-21-02, 26.1-21-04, 26.1-21-07, 26.1-21-09.1, 26.1-21-10, 26.1-21-11, 26.1-21-12, 26.1-21-14, 26.1-21-16, 26.1-21-18, 26.1-21-19, 26.1-21-21, 26.1-21-23, 61-06-08, and 61-16.1-05 of the North Dakota Century Code, relating to changing the administration of the state bonding fund from the insurance commissioner to the office of management and budget; to repeal sections 26.1-21-03, 26.1-21-08, 26.1-21-09, 26.1-21-13, 26.1-21-15, 26.1-21-17, 26.1-21-20, 26.1-21-22, and 26.1-21-24 of the North Dakota Century Code, relating to the administration of the state bonding fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-24-07 of the North Dakota Century Code is amended and reenacted as follows:

23-24-07. Bonds of officers and employees.

The treasurer of the district must be bonded in ~~such~~an amount ~~as is~~ required by the board of commissioners but ~~such~~the bond may not be less than one thousand dollars. Other district employees must be bonded in ~~such~~an amount ~~as~~determined by the board ~~may prescribe~~. Every officer or employee of whom a bond is required must be deemed bonded with the state bonding fund upon notice of the ~~person's~~ appointment of the individual given to the ~~state insurance commissioner~~administrator of the fund by the secretary of the district. Upon notification of the state bonding fund of the premium required, the treasurer shall remit the ~~same~~payment.

[100] **SECTION 2. AMENDMENT.** Section 26.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-03. Duties of commissioner.

The commissioner shall:

1. See that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully.

[100] Section 26.1-01-03 was also amended by section 1 of House Bill No. 1027, chapter 275.

2. Report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents.

3. File the articles of incorporation of all insurance companies organized or doing business in this state, and on application furnish a certified copy thereof.

4. Furnish the insurance companies required to make reports to the commissioner and the benevolent societies the necessary blank forms for required statements and reports. The commissioner is not required to send blank forms to those insurance companies which submit their reports on printed forms conforming to those furnished by the commissioner.

5. Preserve in permanent form a full record of the commissioner's proceedings and a concise statement of each company or agency visited or examined.

6. Furnish at the request of any person, upon the payment of the required fee, certified copies of any record or paper in the commissioner's office, if the commissioner deems it not prejudicial to the public interests to do so, and give such other certificates as may be provided by law.

7. Submit a biennial report as prescribed by section 54-06-04 to the governor and the secretary of state. In addition to the requirements of section 54-06-04, the report must contain an abstract only of the reports of the various insurance companies doing business in this state showing the condition of the companies.

8. Upon request, send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

9. Communicate, on request, to the insurance commissioner of any other state any facts that by law it is the commissioner's duty to ascertain respecting companies of this state doing business within that state.

10. ~~Manage, control, and supervise the state bonding fund.~~

~~11.~~ Manage, control, and supervise the state fire and tornado fund and the insurance of public buildings in that fund.

~~12.~~11. Manage, control, and supervise the state fire marshal.

SECTION 3. AMENDMENT. Section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-01. Definitions.

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

1. "Blanket bond" means a bond that covers collectively all public employees and public officials ~~without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund~~.

2. "Fund" means the state bonding fund.

3. "International peace garden" means an entity located upon the international boundary line between the United States and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States and Canada and to further international peace among the nations of the world.

4. "Office" means the office of management and budget.

5. "Political subdivision" means a county, township, park district, school district, city, ~~and~~or any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.

~~5.~~6. "Public employee" means an individual employed by a state agency or any political subdivision, an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, ~~and~~or an officer or employee of an international peace garden. ~~"Public employee"~~The term does not include an individual employed by an occupational and professional board or commission under title 43 or by the state bar association.

~~6.~~7. "Public official" means an elected or appointed officer or deputy of a state agency or a political subdivision~~, except for~~. The term does not include an officer of an occupational and professional board or commission under title 43 or of the state bar association.

~~7.~~8. "State agency" means a state board, bureau, commission, department, agency, industry, ~~and~~or institution and the international peace garden.

SECTION 4. AMENDMENT. Section 26.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-02. State bonding fund - ~~Management by commissioner~~Office of management and budget - Administrative services - Continuing appropriation - Report.

~~A fund must be maintained as a fund~~

1. There is created in the state treasury the state bonding fund for the bonding of public employees and public officials. ~~All~~The fund consists of all assessments, interest, ~~profits on investments, and all~~investment earnings, and other income collected under this chapter ~~must be paid into the fund~~.

2. The ~~commissioner~~office shall manage the fund. The office may contract for administrative services from the North Dakota insurance reserve fund or another entity to assist with the management of the fund. A contract for administrative services must have a two-year term ending on June thirtieth of each odd-numbered year, and the contract may not be terminated except at the end of the two-year term. If either party does not anticipate renewing the contract for another two-year term, the party shall give notice of the intent to not renew by September thirtieth of the even-numbered year during the two-year term.

3. Moneys in the fund are appropriated to the office on a continuing basis for paying claims against the fund, contracting for administrative services as provided under subsection 2, paying costs incurred by the state auditor for investigations under section 26.1-21-12, and paying reinsurance costs under section 26.1-21-21.

4. If the balance of the fund is less than three million dollars, the office shall collect assessments from state agencies and political subdivisions. If the balance of the fund exceeds three million dollars, the office shall waive assessments until the balance of the fund is less than two million dollars at which time the office shall resume collecting assessments.

5. If the office determines the interests of the fund are jeopardized by the misconduct or inefficiency of any public official, the office shall notify the state auditor to conduct an investigation.

6. The office shall include a summary of the fund in the biennial report submitted in accordance with section 54-06-04. The summary must include the revenues, expenditures, and balance of the fund.

SECTION 5. AMENDMENT. Section 26.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-04. Attorney general is attorney for fund.

The attorney general shall act as ~~attorney~~legal counsel for the ~~commissioner~~office in any proceeding to which the ~~commissioner~~office is a party on behalf of the fund.

SECTION 6. AMENDMENT. Section 26.1-21-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-07. Coverage - Assessments - Minimum.

1. The amount of coverage afforded to each state agency or political subdivision must be determined by the ~~commissioner~~office based upon the amount of money or property handled and the opportunity for defalcation ~~but the amount must at least~~. Except as otherwise required by law, the minimum amount of coverage must equal the amount of money or property actually handled or ten thousand dollars, whichever is less. ~~The coverage may be greater than but not less than the amount required by law or determined under law for a position.~~

2. The coverage for a state legislative or judicial branch agency~~, however,~~ may be determined by the legislative council or supreme court, respectively.

3. Notwithstanding any other provision of law, the ~~commissioner~~office may issue bonds ~~in such amounts as the commissioner determines necessary~~ to carry out the purposes of the fund ~~and, in~~. In determining the amount of coverage to be offered, the ~~commissioner~~office may consider the reserves necessary to pay the bonds and for all other necessary costs or expenses to carry out the purposes of the fund.

4. The office shall determine the amount of the bond assessment. The minimum assessment is two dollars and fifty cents per public employee per year. Each state agency and political subdivision shall pay the assessment in advance, and the assessments collected must be deposited in the fund unless the assessment is waived in accordance with section 26.1-21-02.

SECTION 7. AMENDMENT. Section 26.1-21-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or stamps - ~~Premiums~~Assessment - Determination of eligibility.

The annual ~~premium~~assessment for a bond of an agent appointed by the director of the game and fish department to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars. ~~The premium must be paid to the fund pursuant to rules adopted by the commissioner. The commissioner shall deposit the premiums with the state treasurer to the credit of the fund.~~ The ~~commissioner~~office may reduce or waive the ~~premium~~assessment if ~~it is determined~~the office determines that funds received ~~pursuant to~~under this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The ~~commissioner~~office shall determine the conditions and qualifications of agents bonded under this section. The minimum amount of coverage ~~afforded~~ under this section is fifteen thousand dollars per agent per year.

SECTION 8. AMENDMENT. Section 26.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-10. Automatic insurance of state and political subdivisions.

1. Each state agency and ~~each~~ political subdivision shall apply to be bonded in the fund ~~no less often than on a biennial basis~~at least once per biennium or when a change in coverage is requested, whichever occurs first. Unless an application is denied within sixty days from the date it is received by the ~~commissioner~~office, the application will be ~~deemed~~ approved and bond coverage in force. If a bond is in the discretion of the state agency or political subdivision and a bond is not requested, the state agency or political subdivision is exempt from this section.

2. The application must include ~~a~~:

   a. The requested amount of bond coverage based on the amount of money and property handled ~~and~~, the opportunity for defalcation, and any other condition imposed by law ~~and list~~;

   b. An amount equal to twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on the total monthly balances~~. In addition, the application must include any~~; and

   c. Any other information requested by the ~~commissioner~~office to determine the amount of money and property handled and the opportunity for defalcation, including the procedure used to determine the amount of bond requested, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures.

3. A blanket bond automatically includes coverage for new employees and new public officials.

SECTION 9. AMENDMENT. Section 26.1-21-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-11. ~~Default of public employees or public officials~~Claims - Limitation on filing of claims against fund - Register of claims - Review and payment of claims.

1. Within sixty days after the discovery of any default or wrongful act on the part of any public employee or public official for which the fund is or may become liable, the state auditor, county auditor, city auditor, township clerk, or business manager of the school district; the treasurer of the state or state agency or political subdivision if the defaulting officer is the auditor or clerk of the state or state agency or political subdivision; and any other officer having supervision of a defaulting public employee or public official shall file a claim with the ~~commissioner~~office against the fund.

2. ~~Any person injured by a default or wrongful act may present the claim to the commissioner within sixty days after the discovery of such default or wrongful act. If a claim is not filed within the time limited by this section, the claim is waived. A claim filed under this section must contain an abstract of the facts upon which the claim is based and must be verified by the claimant or by someone in the claimant's behalf. The claim and all papers relating to the claim must remain on file with the commissioner~~The office may prescribe the forms for claims.

3. The office may administer oaths and examine witnesses in connection with a claim presented to the office.

4. The office shall maintain a register of all claims filed against the fund, including a brief description of each claim, the name of the public entity, the amount and character of the claim, the action taken upon the claim, and the date action was taken.

5. The office shall retain claims and documents relating to claims as provided by law.

6. The office shall review all claims presented to the office. The office shall notify the state auditor if any public employee or public official defaults or creates a liability against the fund, and the state auditor may conduct an investigation under section 26.1-21-12.

7. The office shall determine the allowable amount of the claim. The office may delay a determination of the allowable amount of the claim until receipt of the auditor's report under section 26.1-21-12. The office shall present all records relating to the claim, including the allowable amount determined by the office, to the attorney general for review.

8. The attorney general shall review the validity of the claim and the allowable amount determined by the office. Upon approval by the attorney general, the office shall pay the allowable amount to the claimant from the fund.

SECTION 10. AMENDMENT. Section 26.1-21-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-12. ~~Commissioner to notify state auditor of default of public employee or public official -~~ Duty of state auditor ~~-~~ Investigations - Review of coverage.

~~If any public employee or public official defaults or creates a liability against the fund, the commissioner shall notify the state auditor. The state auditor shall investigate, or cause to be investigated, the accounts of the public employee or public official and file a report with the commissioner stating any amount due from the fund because of the default or wrongful act. For these services, the auditor or investigating firm must be paid out of the fund all reasonable costs incurred.~~

1. Upon notification from the office of jeopardized fund interests under section 26.1-21-02, the state auditor may investigate the relevant state agency or political subdivision and may provide a report to the office regarding any findings.

2. The state auditor may evaluate the blanket bond coverage when conducting an audit of a state agency or political subdivision. The state auditor may recommend changes in the amount of coverage in the audit report.

3. Costs incurred by the state auditor under subsection 1 must be paid from the fund.

4. The state auditor may contract for an investigation under subsection 1.

SECTION 11. AMENDMENT. Section 26.1-21-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-14. ~~Filing claim is condition precedent to bringing action~~Action against the fund - Failure to act is disallowance - Limitation - Interest.

1. An action may not be ~~maintained~~brought against the fund ~~upon a claim~~ until ~~the~~a claim has been presented ~~for allowance as provided in~~to the office under this chapter and the ~~commissioner~~office has refused to allow the claim. ~~A claim that has not been allowed within sixty days after presentation for allowance is disallowed. The filing and disallowance of the claim must be alleged in the complaint in any action brought against the fund.~~

2. An action brought against the fund for a claim must be commenced within one year after presenting the claim to the office. The liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of presenting the claim to the office.

SECTION 12. AMENDMENT. Section 26.1-21-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-16. Suit by party injured by default of public employee or public official - Subrogation - Right of appeal.

~~A person injured by the default or wrongful act of any public employee or public official may sue the public employee or public official. To effect recovery from the fund, that person must join the fund as codefendant. A judgment must be obtained against the public employee or public official to create liability upon the bond. If the judgment is obtained against the public employee or public official, the judgment must specify that to the extent to which the fund is liable upon the bond of the public employee or public official, the judgment must be paid out of any money in the fund or~~

~~that which may accrue to the fund.~~ If the ~~judgment~~payment is paid out of the fund, the fund has a right to recover and is subrogated to the right of the judgment creditor to recover against the public employee or public official. The ~~commissioner~~office may act for the fund in all proceedings to enforce the right of subrogation ~~and may appeal from an order or judgment against the fund~~in the same manner as other parties to civil actions.

SECTION 13. AMENDMENT. Section 26.1-21-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-18. ~~Commissioner may make examinations - Request for accounting~~Action against a public official - Reporting defaulting official to governor.

If the ~~commissioner~~office determines ~~that~~ the interests of the fund are jeopardized by the misconduct or inefficiency of any public official, the ~~commissioner shall request the state auditor to make an examination, and, if necessary, shall cause an~~office may bring an action ~~for an accounting to be instituted~~ against the public official ~~for the purpose of requiring a~~to require complete disclosure of the business of the ~~office~~state agency or political subdivision of which the public official is an incumbent. The action must be brought in the name of the ~~commissioner~~office as plaintiff, and the court in the action may interplead all concerned parties. ~~The commissioner may make a complaint to the governor requesting the governor to institute an investigation with the purpose of removing from the office any defaulting public official or any public official who so conducts the affairs of the public official's office as to endanger the fund.~~

SECTION 14. AMENDMENT. Section 26.1-21-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-19. Cancellation of liability of fund - ~~When permitted - Effect~~Cancellation of coverage - Appeal proceeding.

1. After ~~due~~an investigation, the ~~commissioner~~office may cancel the ~~liability of the fund~~bond for the acts of any public employee or public official. The cancellation takes effect thirty days after written notice. ~~If a public official's or public employee's bond is canceled, the public official or public employee may secure at personal expense a bond executed by a duly authorized surety company in an amount determined by the commissioner. Evidence of a surety bond purchased under this section must be filed with the commissioner.~~

2. The office shall notify the public entity employing the public employee or public official immediately by certified mail when the bond or coverage under a blanket bond is canceled.

SECTION 15. AMENDMENT. Section 26.1-21-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-21. ~~Fund may reinsure risks - Premium on reinsurance~~Reinsurance.

The ~~commissioner~~office may reinsure ~~any part of~~ any liability in excess of twenty-five thousand dollars ~~upon~~for any one public official, or group of public officials and public employees under a blanket bond, at a cost not exceeding the ~~rate of premium provided for in~~assessment under this chapter~~, and the expense of such~~. The cost of reinsurance must be paid ~~out of~~from the fund.

SECTION 16. AMENDMENT. Section 26.1-21-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-23. ~~Public official may furnish private bond - Premiums payable from public moneys only to fund~~Additional bond coverage.

1. If a bond or bond coverage for a public employee or public official is canceled under section 26.1-21-19, the public official or public employee may purchase a bond from an authorized surety company for a coverage amount determined by the office. The public official or public employee may not use public funds to pay for the bond.

2. In lieu of the bond provided for in this chapter, a public officer or public employee may ~~furnish~~secure a bond ~~issued by a duly~~from an authorized surety company ~~in an~~for a coverage amount determined by the ~~commissioner, but an officer or board of the state or of any political subdivision may not pay for the surety bond out of any public funds~~office. The public official or public employee may not use public funds to pay for the bond.

3. A state agency or political subdivision may purchase a bond from an authorized surety company to provide coverage in addition to the bond provided by the fund.

4. Evidence of a bond purchased under this section must be filed with the ~~commissioner~~office.

SECTION 17. AMENDMENT. Section 61-06-08 of the North Dakota Century Code is amended and reenacted as follows:

61-06-08. Officers or employees bonded in state bonding fund - ~~Premium paid by whom~~Assessment payment.

Every elective or appointive officer or employee of whom a bond is required under the provisions of this chapter shall be deemed to be bonded in the state bonding fund upon the giving of notice of such election or appointment by the secretary of the district to the ~~insurance commissioner~~administrator of the fund. Upon notification ~~by the insurance commissioner~~ of the amount of the ~~premium of such bond or bonds~~assessment, the secretary of the district ~~forthwith~~ shall remit the ~~same~~payment.

SECTION 18. AMENDMENT. Section 61-16.1-05 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-05. Bonds of treasurer and appointive officers.

The treasurer of a district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the ~~state insurance commissioner~~administrator of the fund by the secretary of the district. Upon notification ~~by the state bonding fund of the premium required~~of the assessment, the district treasurer shall remit the ~~same~~payment.

SECTION 19. REPEAL. Sections 26.1-21-03, 26.1-21-08, 26.1-21-09, 26.1-21-13, 26.1-21-15, 26.1-21-17, 26.1-21-20, 26.1-21-22, and 26.1-21-24 of the North Dakota Century Code are repealed.

Approved April 16, 2025

Filed April 16, 2025

CHAPTER 275

HOUSE BILL NO. 1027

(Legislative Management)
(Government Finance Committee)

AN ACT to amend and reenact sections 26.1-01-03, 26.1-22-01, 26.1-22-02, 26.1-22-02.1, 26.1-22-03.1, 26.1-22-09, 26.1-22-10, 26.1-22-11, 26.1-22-14, 26.1-22-16, 26.1-22-17, 26.1-22-21, and 26.1-22-22, subdivisions a and c of subsection 1 of section 26.1-23.1-01, and section 37-03-13 of the North Dakota Century Code, relating to changing the administration of the state fire and tornado fund from the insurance commissioner to the office of management and budget; to repeal sections 26.1-22-03, 26.1-22-05, 26.1-22-06, 26.1-22-06.1, 26.1-22-08, 26.1-22-10.1, 26.1-22-13, 26.1-22-15, 26.1-22-18, 26.1-22-19, and 26.1-22-21.1 of the North Dakota Century Code, relating to the administration of the state fire and tornado fund; to provide for a legislative management study; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[101] **SECTION 1. AMENDMENT.** Section 26.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-03. Duties of commissioner.

The commissioner shall:

1. See that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully.

2. Report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents.

3. File the articles of incorporation of all insurance companies organized or doing business in this state, and on application furnish a certified copy thereof.

4. Furnish the insurance companies required to make reports to the commissioner and the benevolent societies the necessary blank forms for required statements and reports. The commissioner is not required to send blank forms to those insurance companies which submit their reports on printed forms conforming to those furnished by the commissioner.

5. Preserve in permanent form a full record of the commissioner's proceedings and a concise statement of each company or agency visited or examined.

6. Furnish at the request of any person, upon the payment of the required fee, certified copies of any record or paper in the commissioner's office, if the commissioner deems it not prejudicial to the public interests to do so, and give such other certificates as may be provided by law.

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[101] Section 26.1-01-03 was also amended by section 2 of House Bill No. 1026, chapter 274.

7. Submit a biennial report as prescribed by section 54-06-04 to the governor and the secretary of state. In addition to the requirements of section 54-06-04, the report must contain an abstract only of the reports of the various insurance companies doing business in this state showing the condition of the companies.

8. Upon request, send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

9. Communicate, on request, to the insurance commissioner of any other state any facts that by law it is the commissioner's duty to ascertain respecting companies of this state doing business within that state.

10. Manage, control, and supervise the state bonding fund.

11. ~~Manage, control, and supervise the state fire and tornado fund and the insurance of public buildings in that fund.~~

~~12.~~ Manage, control, and supervise the state fire marshal.

SECTION 2. AMENDMENT. Section 26.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-01. Definitions.

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

1. "Fund" means the state fire and tornado fund.

2. "Indirect loss" means a loss in income or the additional expenses incurred because of a property loss.

3. "International peace garden" means an entity located upon the international boundary line between the United States and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States and Canada and to further international peace among the nations of the world.

4. "North Dakota insurance reserve fund" means the public risk pool established under section 26.1-23.1-01 regardless of any name change or dissolution and reincorporation if the risk pool continues to provide coverage to a majority of eligible political subdivisions in the state.

5. "Office" means the office of management and budget.

6. "Permanent contents" refers only to such public property, either owned or leased, usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. The term includes similar property owned by an international peace garden or a winter show. The term does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside such buildings.

~~5.~~7. "Political subdivision" means ~~all counties, townships, park districts, school districts, cities, and any other units~~a county, township, park district, school district, city, or any other unit of local government which ~~are~~is created either by statute or by the Constitution of North Dakota for local government or other public purposes.

~~6.~~8. "Replacement cost" is the cost to replace a building or its permanent contents with a similar structure of like materials or a similar product at current prices.

~~7.~~9. "State agency" means a state board, bureau, commission, department, agency, industry, or institution and the international peace garden.

10. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 3. AMENDMENT. Section 26.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-02. State fire and tornado fund ~~under management of commissioner - Purpose of fund~~Office of management and budget - Continuing appropriation.

1. There is created in the state treasury the state fire and tornado fund to insure state agencies, political subdivisions, and winter shows against direct and indirect losses under this chapter. The fund consists of all assessments, interest, investment earnings, and other income collected under this chapter.

2. The ~~commissioner~~office shall manage the fund. ~~The fund must be maintained as a fund to insure the various state industries, the various political subdivisions, any international peace garden, and any winter show against loss to the public buildings, or buildings owned by an international peace garden or a winter show, and fixtures and permanent contents therein, and against indirect loss, through fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, and vehicles. At the option of the insured, the fund may insure against other risks of direct physical loss and indirect loss from those risks. All moneys collected under this chapter must be paid into the fund for use only for the purposes provided for in this chapter.~~The office may use any information on file in the state fire marshal program and may delegate responsibilities according to a contract for administrative services from the North Dakota insurance reserve fund or another entity to assist with the management of the fund. A contract for administrative services must have a two-year term ending on June thirtieth of odd-numbered years, and the contract may not be terminated except at the end of the two-year term. If either party does not anticipate renewing the contract for another two-year term, notice must be given by September thirtieth of the even-numbered year during the two-year term.

3. Moneys in the fund are appropriated to the office on a continuing basis for paying claims against the fund for losses, including loss adjustment expenses; contracting for services under subsection 2; paying loss prevention inspection and rating inspection expenses to determine the proper assessment rates for property insured by the fund; and paying reinsurance expenses under section 26.1-22-21.

SECTION 4. AMENDMENT. Section 26.1-22-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-02.1. Insurance against indirect losses.

The ~~commissioner~~office shall provide, upon request of an entity insured ~~with~~under the fund, coverage ~~by the fund~~ for an indirect loss ~~incurred because of a loss~~ arising out of a peril insured against by the fund. The coverage provided by the fund ~~shall~~must be an amount that is subject to the underwriting guidelines ~~adopted~~developed by the ~~commissioner~~office.

SECTION 5. AMENDMENT. Section 26.1-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-03.1. North Dakota insurance reserve fund - Producers - Commission.

The North Dakota insurance reserve fund may use the services of producers licensed under this title to assist policyholders. Any commission paid to a producer under this section must be paid out of the ~~premium~~assessment income of the fund and must be assessed against the policyholders that benefit from the producer.

SECTION 6. AMENDMENT. Section 26.1-22-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-09. Buildings ~~to be~~ reported to ~~commissioner~~office - Replacement cost appraisal.

1. In each odd-numbered year, or upon application for insurance, ~~the state board of higher education, and each officer, department, or agent of the state and of any industry thereof having in charge any public building belonging to the state, each county auditor, city auditor, township clerk, and school district business manager, as the case may be, the agent for an international peace garden, and the agent for a winter show, if applicable,~~every state agency, political subdivision, and winter show insured under the fund shall report to the ~~commissioner~~office the insurable value of each ~~public building, or of each building owned by an international peace garden or a winter show with the exception of~~building, excluding buildings insured by private insurance companies, and the value of the fixtures and permanent contents ~~therein~~insured under the fund, ~~with the exception of~~excluding fixtures and permanent contents insured by private insurance companies~~, belonging to the state, political subdivision, an international peace garden, or a winter show, and shall supply such other information as may be required by the commissioner on forms provided by the commissioner~~. State agencies, political subdivisions, and winter shows shall report any additional information required by the office to administer this chapter. The office shall provide forms for reporting.

2. Once every six years, each state agency insured under the fund shall obtain a replacement cost appraisal on all buildings, fixtures, and permanent contents under the agency's custody which are insured under this chapter. The office shall determine the manner of conducting the appraisal. Annually, except for any year an appraisal is conducted, each state agency insured under the fund shall adjust the appraised value as required by the office and the amount must be considered the replacement value. If an appraisal results in a substantial premium increase the office determines may not be paid through existing agency appropriations, the amount must be considered an earned receivable of the fund, and the agency shall seek a deficiency or general appropriation sufficient for payment during the next legislative session.

SECTION 7. AMENDMENT. Section 26.1-22-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-10. ~~Commissioner to provide insurance on~~Insurance for buildings and personal property ~~-~~ Additional coverage ~~-~~ Township and school district property.

1. Upon application, the ~~commissioner~~office shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or may insure any other risks of direct physical loss, subject to the restrictions and exclusions ~~deemed necessary~~determined by the ~~commissioner, on~~office.

   a. Insurance under this section applies to all buildings owned by ~~the state, state industries~~state agencies, political subdivisions, ~~international peace gardens,~~ and winter shows, and the fixtures and permanent contents in ~~such~~the buildings~~, to the extent of not to~~.

   b. Insurance coverage under this section may not exceed the insurable value of ~~such~~the property~~, as the value is agreed to between the commissioner and the officer or board having control of such property, or, in case of disagreement, by approval through arbitration~~.

   c. State-owned buildings constructed after 1939 and fixtures and permanent contents insured under this chapter must be insured at replacement cost unless the office approves an alternate value.

   d. The ~~commissioner~~office may allow property to be insured on a blanket basis.

2. ~~All buildings and the contents of the buildings owned by the state mill and elevator association, in lieu of coverage under this chapter, may, at the option of the industrial commission, be insured by private insurance companies licensed to do business in this state, against at least all the types of hazards insured against by the fund. If the industrial commission exercises the option provided in this section, the commission shall seek competitive sealed bids, shall invite the fund to submit a bid, and may reject any or all bids received.~~An insurance policy under this chapter must include the name of the insured, the location and description of the insured property, the amount of insurance coverage, and the amount of the assessment.

3. ~~All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which must be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.~~In lieu of or in addition to the coverage under this section, a state agency, political subdivision, or winter show may purchase insurance from an authorized insurance company for all:

   a. Buildings and the contents of the buildings owned by the state mill and elevator association.

   b. Public buildings owned by a political subdivision.

c. Public libraries owned by the state or a political subdivision for damage through vandalism.

4. ~~All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.~~The office shall develop guidelines to be used by state agencies, political subdivisions, and winter shows to determine insurable values of property for insurance coverage and indirect loss coverage under this chapter.

5. This chapter does not apply to the property of any township or school district located outside of the incorporated limits of a city unless the township or school district requests and applies for insurance coverage under this chapter. The application must be approved in writing by the office to be effective.

6. A state agency, political subdivision, or winter show may not make payments, enter contracts, or incur debt for insurance on buildings, fixtures, or permanent contents except as provided under this chapter.

7. If the insurance is canceled under section 26.1-22-16, the state agency, political subdivision, or winter show may procure insurance from any authorized insurance company.

8. If a disagreement or dispute arises under this section, the office and the state agency, political subdivision, or winter show shall settle the disagreement or dispute under section 26.1-22-11.

SECTION 8. AMENDMENT. Section 26.1-22-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-11. Arbitration of value or loss.

~~In case the commissioner and the board or officer having charge~~

1. If the office and the state agency, political subdivision, or winter show having custody of any property ~~are unable to agree upon~~disagree about the insurable value of the property or the amount of loss insured, ~~the value must be determined~~the office and the state agency, political subdivision, or winter show may agree to have the value or loss determined by a ~~recognized~~competent, disinterested contractor, architect, experienced appraiser, appraisal company, or a member of those respective professional boards at the expense of the state ~~industry~~agency, political subdivision, ~~an international peace garden, or a~~or winter show owning the property~~, if the appraisal company arbitrator meets with the approval of both the commissioner and the board or officer concerned. If they are unable to agree on an arbitrator, then the matter must be submitted to arbitration by a board of arbitration selected as provided by this section. The commissioner and the board or officer in charge~~.

2. If the office and the state agency, political subdivision, or winter show are unable to resolve a disagreement under subsection 1, the determination must be arbitrated as provided in this subsection.

a. The office and the state agency, political subdivision, or winter show having custody of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or ~~one of the members of such board, and the two so chosen~~a member of those respective professional boards. The two selected arbitrators shall select a third ~~person of~~arbitrator with similar ~~qualification~~qualifications.

b. The three arbitrators shall ~~proceed to~~ determine the insurable value of the property~~, and the decision of the arbitrators, or a majority of them, must be given in writing to the commissioner and the board or officials concerned and~~ or the amount of loss insured within thirty days after the selection of the first two arbitrators. Upon determination by a majority of the arbitrators, the arbitrators shall notify the parties of the determination in writing. The determination is binding ~~upon~~on both parties.

c. Each party to the dispute shall pay the ~~expense and charges~~expenses of the arbitrator chosen by the party~~, and the expense and the charges~~. The expenses of the third arbitrator must be ~~borne~~paid equally by both parties to the dispute. ~~The decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it. Until the commissioner and board or officer in charge have agreed, or in case of dispute, until the decision of the appraisal company or arbitrators, the property~~

d. While the value is being determined under this section, property must continue to be valued in the same amount as previously determined, or in case of new buildings or property, in the amount ~~fixed~~determined by the ~~commissioner. The same procedure must be followed in case of new construction or in any increase or decrease in values~~office.

3. This section applies to existing property, new construction, and property with a change in value.

SECTION 9. AMENDMENT. Section 26.1-22-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-14. Assessments ~~and reporting of premiums and losses~~ - Collections - Minimum fund balance - Bond and borrowing authorization.

1. Upon providing insurance coverage under this chapter, the office shall certify to the insured the amount of the assessment. The state agency, political subdivision, or winter show shall submit to the office the payment of the assessment within sixty days after the date of the certification. The office shall deposit the assessments in the fund.

2. If the assessment is not paid within sixty days after the date of the certification, the attorney general and the state's attorney of the relevant county shall bring appropriate actions to enforce the collection of the assessment upon request of the office. A judgment obtained under this section must include an interest rate of six percent per year.

3. If the ~~reserve~~fund balance is less than twelve million dollars, the ~~commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars. The commissioner then~~office shall levy an assessment ~~against~~on every policy in force with the fund~~.~~

~~2.~~ ~~The assessment must be computed~~ to increase the fund balance of the fund to twelve million dollars calculated as follows:

a. The eighty ~~percent~~ or ninety percent coinsurance rate ~~established~~ for each eligible insured property ~~for which that rate may be applicable, and,~~ the full rate ~~established~~ for policies providing coverage against indirect losses, and the full rate for properties ~~to which the~~that are not eligible for the eighty ~~percent~~ or ninety percent coinsurance rate ~~is not applicable~~, must be applied to the amount of insurance provided in each policy ~~and the result of the application of the rate to the amount of insurance sets~~to determine the tentative assessment ~~to be made~~ against ~~the~~each policy.

b. The total of all tentative assessments ~~must then be ascertained~~is the sum of the amounts calculated under subdivision a.

c. The percentage of the assessment ~~necessary to restore~~needed to increase the ~~reserve~~fund balance to ~~the sum of~~ twelve million dollars must ~~then~~ be ~~computed~~calculated and collected on each policy~~; provided, that until the reserve balance reaches twelve million dollars, the assessment must be in an amount determined by the commissioner but~~. The assessments may not exceed sixty percent of the rates set by the insurance services office for insured property unless the ~~reserve~~fund balance is ~~depleted below~~less than three million dollars.

d. ~~In case of a fractional percentage the next higher whole percent must be used in such computation~~A fractional percent must be rounded up to the next whole percent.

4. If the fund balance is less than two million dollars due to a catastrophe, disaster, or a succession of catastrophes or disasters, the office may issue anticipation bonds or borrow from the Bank of North Dakota to provide the amount needed to increase the fund balance to two million dollars upon approval from the industrial commission.

a. The term of the anticipation bonds or loan may not exceed twenty years.

b. The office shall levy an assessment on all policies in force under the fund to repay the anticipation bonds or loan.

SECTION 10. AMENDMENT. Section 26.1-22-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-16. ~~Rejection of certain~~Unreasonably hazardous risks ~~-~~ Mitigation ~~-~~ Insurance cancellation.

If the ~~commissioner~~office finds ~~that~~ any risk is unreasonably hazardous, the ~~commissioner~~office may require the ~~board or officers~~state agency, political subdivision, or winter show having control of the risk to ~~make any improvements or changes necessary to~~mitigate or remove the extra hazard. If the ~~board or agency~~state agency, political subdivision, or winter show fails to ~~make the improvements or changes~~mitigate or remove the extra hazard within six months after ~~the demand by the commissioner~~notification from the office, the ~~commissioner~~office may cancel the insurance on the renewal upon thirty days' notice. ~~No~~A cancellation may not be made by the ~~commissioner~~office for property under the industrial commission's custody without the approval of the industrial commission. ~~If a dispute arises between the commissioner and the board or official having control of the risk, either as to the~~

~~insurability thereof or as to the compliance by the board or officer with the requirements of the commissioner, the dispute must be submitted to a board of arbitration as provided in section 26.1-22-11 and the decision of the board of arbitration is binding on both parties. If the insurance on any risk is canceled as provided in this section, the board or officer in charge of the risk may procure insurance from any authorized insurance company, and the premium is a proper charge against the state, state industry, or political subdivision owning the property~~If a disagreement or dispute arises under this section, the office and the state agency, political subdivision, or winter show shall settle the disagreement or dispute under section 26.1-22-11.

SECTION 11. AMENDMENT. Section 26.1-22-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-17. ~~Loss - How paid~~Losses - Limitation.

1. All losses ~~occasioned~~ by the perils insured against under this chapter must be paid out of the fund in an amount not exceeding the amount of the insurance upon any particular risk. The loss upon any building or property insured in the fund, whether totally destroyed or partially damaged by ~~reason of~~ the perils, must be adjusted by the ~~commissioner or a duly~~office, authorized adjuster, or adjusting company. All ~~necessary~~ loss adjustment expenses must be included as ~~a component~~part of the loss and must be paid ~~out of~~from the fund. ~~Immediately upon the happening or occasion of any such loss or damage, the insured shall notify the commissioner. The notification must be in the manner required by the commissioner and must provide~~

2. Immediately after an event causing loss or damage, the insured shall notify the office in a manner prescribed by the office. The notification must include a description of the property, the amount of insurance carried, the probable amount of loss or damage, and the probable cause of loss or damage. The insured may not disturb the property except as provided in the policy until the ~~commissioner~~office or the ~~commissioner's~~office's agent has adjusted the loss or has given notice that the information on which the adjustment is to be made has been secured.

3. Allowances for loss ~~and~~or damage must be paid ~~out of~~from the fund ~~upon warrants drawn by the office of management and budget upon the state treasurer against the fund after the submission of a voucher prepared by the commissioner to the office of management and budget specifying the amount to be paid and the payee to whom the warrants must be drawn. However, if at any time due to a catastrophe or disaster, or a succession of catastrophes or disasters, the reserve balance has been depleted below two million dollars, the commissioner may, with the approval of the industrial commission, issue premium anticipation certificates in an amount sufficient to bring the reserve balance up to two million dollars. The premium anticipation certificates must be issued for a period of from ten to twenty years, as determined by the commissioner with the approval of the industrial commission, and the interest and principal must be paid and retired by assessments levied on all policies in force with the fund. To retire these premium anticipation certificates, the commissioner shall levy a special assessment on every policy in force with the fund; however, the total of all assessments and premiums provided for in section 26.1-22-14 may not exceed the full rate as developed by an advisory organization at the direction of the commissioner. Any state department may invest its funds in the purchase of the premium anticipation certificates~~.

SECTION 12. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. ~~Insurance required –~~ Excess loss reinsurance ~~-~~ Insurance broker of record.

1. The ~~commissioner~~office shall procure and shall keep in force excess loss reinsurance naming the fund as the reinsured. The excess loss reinsurance must be in an amount and for a period determined by the ~~commissioner~~office to be sufficient for the fund. The reinsurance contract must reimburse the fund for losses incurred by the fund under policies issued by the fund and arising out of each occurrence of a covered cause of loss and include at least a sixty-day cancellation notice.

2. The cost of the excess loss reinsurance must be paid out of the ~~premium~~assessment income of the fund and must be assessed against the policyholders that benefit from the reinsurance. Excess loss reinsurance must be written only by a company or companies authorized to do business within this state. The contract must be countersigned by a licensed North Dakota resident insurance producer. ~~On the last Monday in June prior to the expiration of the contract, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance with the company or group of companies submitting the lowest and best bid for the period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.~~

3. The office may contract for insurance broker of record services to assist in procuring excess loss reinsurance. The insurance broker must be licensed and authorized to do business in the state.

SECTION 13. AMENDMENT. Section 26.1-22-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-22. ~~Commissioner may waive~~Waiver of subrogation rights during construction.

The ~~commissioner may, in the commissioner's discretion,~~office may waive any right of the fund to recover for damage sustained by any structure as a result of fire or explosion caused by a contractor, its employees or agents, in the performance of a contract for the alteration of, or the construction of an addition to, a building insured ~~in~~under the fund.

[102] **SECTION 14. AMENDMENT.** Subdivision a of subsection 1 of section 26.1-23.1-01 of the North Dakota Century Code is amended and reenacted as follows:

a. Casualty insurance, including general, public officials, and professional liability coverages. However, if a court determines by clear and convincing evidence a governing body of a political subdivision took intentional action through an ordinance, administrative rule, or any other official action in violation of any state law, the political subdivision is liable to the self-insurance pool for all attorney fees, expenses, and costs incurred defending the action.

[102] Section 26.1-23.1-01 was also amended by section 15 of House Bill No. 1027, chapter 275.

[103] **SECTION 15. AMENDMENT.** Subdivision c of subsection 1 of section 26.1-23.1-01 of the North Dakota Century Code is amended and reenacted as follows:

c. Property insurance, including inland marine coverage, money and securities coverage, and extra expense coverage. However, this subdivision does not authorize government self-insurance pools to write those types of insurance coverages offered by the state fire and tornado fund under the provisions of chapter 26.1-22 as they existed on December 31, 1988, unless a government self-insurance pool enters a contract with the ~~commissioner~~office of management and budget to provide services for the state fire and tornado fund under section ~~26.1-22-03~~26.1-22-02.

SECTION 16. AMENDMENT. Section 37-03-13 of the North Dakota Century Code is amended and reenacted as follows:

37-03-13. Adjutant general to control military installations - Maintenance fund - Insurance.

1. The adjutant general of the state of North Dakota has full control of Camp Gilbert C. Grafton, Ramsey County, Fraine Barracks, Burleigh County, national guard air base facilities constituting a portion of Hector Airfield in Cass County, all in North Dakota and such other real property, installations, and facilities that may be acquired or leased by this state or the office of the adjutant general for military purposes. All moneys received from the sale of timber, stone, agricultural products, or other material taken from the properties and the proceeds of any leases or subleases thereof and other proceeds from the sale of military property must be paid into the state treasury, and kept as a separate fund and are hereby appropriated for the improvement of the properties for military uses and must be paid out upon proper vouchers approved by the adjutant general in accordance with the act of Congress granting the lands, installations, or facilities to the state of North Dakota or as otherwise authorized by law.

2. The adjutant general, after consultation with the ~~insurance commissioner~~office of management and budget, shall insure in full or in part with the state fire and tornado fund in accordance with chapter 26.1-22 ~~such~~the buildings, installations, and facilities or their contents ~~or portions thereof~~ as the adjutant general determines to be in the best interests of the state. The adjutant general may not insure buildings or property that are subject to replacement by the United States.

SECTION 17. REPEAL. Sections 26.1-22-03, 26.1-22-05, 26.1-22-06, 26.1-22-06.1, 26.1-22-08, 26.1-22-10.1, 26.1-22-13, 26.1-22-15, 26.1-22-18, 26.1-22-19, and 26.1-22-21.1 of the North Dakota Century Code are repealed.

SECTION 18. LEGISLATIVE MANAGEMENT STUDY - POLITICAL SUBDIVISIONS - REMOVAL FROM STATE FIRE AND TORNADO FUND. During the 2025-26 interim, the legislative management shall consider studying, in collaboration with the director of the office of management and budget and the North Dakota insurance reserve fund, the feasibility and desirability of removing political subdivisions from the state fire and tornado fund. The study must include an analysis

[103] Section 26.1-23.1-01 was also amended by section 14 of House Bill No. 1027, chapter 275.

of the statutory changes necessary to accomplish the change and the impact removing political subdivisions may have on premiums. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

Approved April 21, 2025

Filed April 22, 2025

CHAPTER 276

HOUSE BILL NO. 1088

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-01-03.3 of the North Dakota Century Code, relating to penalties for violation of the insurance title; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-03.3 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-03.3. Penalty for violation of title.

1. Unless otherwise provided by law, a person who violates this title is subject, after hearing by the commissioner, to payment of an administrative monetary ~~penalty~~fine of up to ten thousand dollars for each violation.

2. In addition to or in lieu of a monetary fine, the commissioner, after a hearing, may require restitution in the amount of direct financial loss be made to any person directly harmed by a violation of this title. The commissioner may not determine or adjudicate whether an obligation is owed under a policy or contract of insurance, or require a person to pay a claim or an amount claimed owed under a policy or contract of insurance.

Approved April 10, 2025

Filed April 11, 2025

CHAPTER 277

HOUSE BILL NO. 1123

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-01-07 and 26.1-26-13.4, subsection 4 of section 26.1-26.8-04, subdivision b of subsection 1 of section 26.1-26.8-05, subdivision a of subsection 1 of section 26.1-26.8-06, subdivision b of subsection 1 of section 26.1-26.8-09, subdivision b of subsection 2 of section 26.1-26.8-09, and subsections 2 and 4 of section 26.1-27-03 of the North Dakota Century Code, relating to fees charged by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[104] **SECTION 1. AMENDMENT.** Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07. Fees chargeable by commissioner.

1. The commissioner shall charge and collect the following fees:

   a. For filing articles of incorporation, or copies, or amendments thereof, ~~twenty-five~~fifty dollars.

   b. For each original certificate of authority issued upon admittance and for each annual renewal thereof, ~~one hundred~~one hundred fifty dollars and for amendment to certificate of authority, or certified copy thereof, ~~fifty~~one hundred dollars. For each annual renewal for county mutuals, one hundred fifty dollars.

   c. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.

   d. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, one hundred dollars.

   e. For filing of articles of merger, or copies thereof, ~~thirty~~fifty dollars.

   f. For filing an annual statement for a county mutual, fifty dollars. For filing an annual statement for a life settlement provider, one hundred dollars. For filing an annual statement, ~~twenty-five~~one hundred dollars.

   g. For filing the abstract of the annual statement of ~~an~~any insurance company for publication, ~~thirty~~fifty dollars.

   h. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the

[104] Section 26.1-01-07 was also amended by section 1 of House Bill No. 1584, chapter 278.

direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

i. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits and for any renewal of the certificate, twenty-five dollars.

j. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.

k. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.

l. For issuing an insurance producer's license, one hundred dollars.

m. For issuing a duplicate of any license or registration issued under this title, ten dollars.

n. For each insurance company appointment and renewal of an appointment of an insurance producer, ~~ten~~twenty-five dollars.

o. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.

p. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.

q. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.

r. For issuing and each annual renewal of a license to an advisory organization, fifty dollars.

s. For filing an individual insurance producer licensing continuation, twenty-five dollars.

t. For services provided by the state fire marshal.

u. For an initial application for multiple employer welfare arrangements, five hundred dollars. For each annual renewal, one hundred dollars.

v. For an initial application for a life settlement provider, one hundred dollars. For each annual renewal, twenty-five dollars.

w. For a life settlement broker application, an initial broker license fee of one hundred dollars. For each annual renewal, twenty-five dollars.

x. For issuing an individual resident or nonresident public adjuster license, one hundred dollars. For each biennial renewal, twenty-five dollars.

y. For issuing a business entity public adjuster license, one hundred dollars. For each biennial renewal, twenty-five dollars.

z. For issuing a license or certificate for a life or health insurance administrator, two hundred fifty dollars. For each annual renewal, one hundred dollars.

2. Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subdivisions b, f, g, ~~and~~ h, and n of subsection 1.

3. ~~However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department~~If an amount of a fee, penalty, or interest has been paid which was not due under this section, a refund may be issued to the individual who made the erroneous payment. The refund is allowed as a cash refund, at the discretion of the commissioner. The individual who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the fee for the period for which the erroneous payment was made.

SECTION 2. AMENDMENT. Section 26.1-26-13.4 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-13.4. Biennial license continuation.

A licensed individual insurance producer shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee ~~of twenty-five dollars~~as prescribed in section 26.1-01-07. The commissioner shall give a licensee not less than sixty days' notice of the biennial license continuation filing deadline.

SECTION 3. AMENDMENT. Subsection 4 of section 26.1-26.8-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Has paid the resident licensing fee~~, not to exceed one hundred dollars, prescribed by the commissioner~~ prescribed in section 26.1-01-07;

SECTION 4. AMENDMENT. Subdivision b of subsection 1 of section 26.1-26.8-05 of the North Dakota Century Code is amended and reenacted as follows:

b. Has paid the nonresident licensing fee~~, not to exceed one hundred dollars, prescribed by the commissioner~~ prescribed in section 26.1-01-07.

SECTION 5. AMENDMENT. Subdivision a of subsection 1 of section 26.1-26.8-06 of the North Dakota Century Code is amended and reenacted as follows:

a. Has paid the business entity licensing fee~~, not to exceed fifty dollars, prescribed by the commissioner~~ prescribed in section 26.1-01-07; and

[105] **SECTION 6. AMENDMENT.** Subdivision b of subsection 1 of section 26.1-26.8-09 of the North Dakota Century Code is amended and reenacted as follows:

b. To renew a license, a licensed resident public adjuster and a licensed nonresident public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee ~~of twenty-five dollars~~as prescribed in section 26.1-01-07. The commissioner shall give a licensee at least sixty days' notice of the biennial license continuation filing deadline. A resident public adjuster or a nonresident public adjuster who allows the license to lapse may, within the twelve-month period immediately following the expiration date, reinstate the same license without the necessity of passing a written examination, upon payment of a reinstatement fee~~, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee~~.

[106] **SECTION 7. AMENDMENT.** Subdivision b of subsection 2 of section 26.1-26.8-09 of the North Dakota Century Code is amended and reenacted as follows:

b. To renew a license, a licensed business entity public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee as prescribed in section 26.1-01-07.

[107] **SECTION 8. AMENDMENT.** Subsections 2 and 4 of section 26.1-27-03 of the North Dakota Century Code are amended and reenacted as follows:

2. All applications must be accompanied by a filing fee ~~of one hundred dollars~~as prescribed in section 26.1-01-07.

4. The administrator shall pay an annual renewal fee ~~of fifty dollars~~as prescribed in section 26.1-01-07 to maintain the certificate.

Approved March 17, 2025

Filed March 18, 2025

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[105] Section 26.1-26.8-09 was also amended by section 7 of House Bill No. 1123, chapter 277, and section 5 of Senate Bill No. 2125, chapter 285.

[106] Section 26.1-26.8-09 was also amended by section 6 of House Bill No. 1123, chapter 277, and section 5 of Senate Bill No. 2125, chapter 285.

[107] Section 26.1-27-03 was also amended by section 1 of House Bill No. 1087, chapter 286.

CHAPTER 278

HOUSE BILL NO. 1584

(Representatives Kasper, Koppelman, Lefor, Steiner, Vigesaa, Warrey)
(Senators Barta, Boehm, Boschee, Hogue, Klein)

AN ACT to create and enact four new sections to chapter 26.1-27.1 of the North Dakota Century Code, relating to pharmacy benefits managers and a pharmacy benefit manager enforcement fund; to amend and reenact subsection 1 of section 26.1-01-07, sections 26.1-27.1-01, 26.1-27.1-02, 26.1-27.1-04, 26.1-27.1-06 and 26.1-27.1-07 of the North Dakota Century Code, relating to pharmacy benefits managers; to repeal section 26.1-27-01.1 and chapter 26.1-36.10 of the North Dakota Century Code, relating to pharmacy benefits managers and prescription drug costs; to provide a penalty; to provide an appropriation; to provide for a transfer; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[108] **SECTION 1. AMENDMENT.** Subsection 1 of section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner shall charge and collect the following fees:

   a. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.

   b. For each original certificate of authority issued upon admittance and for each annual renewal thereof, one hundred dollars and for amendment to certificate of authority, or certified copy thereof, fifty dollars.

   c. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.

   d. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, one hundred dollars.

   e. For filing of articles of merger, or copies thereof, thirty dollars.

   f. For filing an annual statement, twenty-five dollars.

   g. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.

   h. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the

[108] Section 26.1-01-07 was also amended by section 1 of House Bill No. 1123, chapter 277.

examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

i. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits and for any renewal of the certificate, twenty-five dollars.

j. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.

k. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.

l. For issuing an insurance producer's license, one hundred dollars.

m. For issuing a duplicate of any license or registration issued under this title, ten dollars.

n. For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.

o. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.

p. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.

q. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.

r. For issuing and each annual renewal of a license to an advisory organization, fifty dollars.

s. For filing an individual insurance producer licensing continuation, twenty-five dollars.

t. For services provided by the state fire marshal.

u. For the initial application fee for a pharmacy benefit manager, an amount determined by the commissioner, which may not exceed ten thousand dollars. For each annual renewal, an amount to be determined by the commissioner, which may not exceed ten thousand dollars.

SECTION 2. AMENDMENT. Section 26.1-27.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or ~~an employer,~~ a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include ~~a self-funded plan that is exempt from state regulation pursuant to the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.];~~ a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care, or other limited-benefit health insurance ~~policy~~policies or ~~contract~~contracts that do not include prescription drug coverage.

2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a policyholder, or a beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual.

3. "De-identified information" means information from which the name, address, telephone number, and other variables have been removed in accordance with requirements of title 45, Code of Federal Regulations, part 164, section 512, subsections (a) or (b).

4. ~~"Generic drug" means a drug that is chemically equivalent to a brand name drug for which the patent has expired.~~

~~5.~~ "Labeler" means a person that has been assigned a labeler code by the federal food and drug administration under title 21, Code of Federal Regulations, part 207, section 20, and that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.

~~6.~~5. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:

   a. A rebate collected by the pharmacy benefits manager or a rebate aggregator which is allocated to a covered entity, or retained by the pharmacy benefits manager;

   b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;

   c. A pharmacy network fee~~;~~, pharmacy price concessions, and any other financial payment made by a pharmacy to a pharmacy benefits manager; and

d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

~~7.~~6. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:

a. Claims processing, ~~retail~~pharmacy network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;

b. Clinical formulary development and management services; or

c. Rebate contracting and administration.

~~8.~~7. "Pharmacy benefits manager" means a person ~~that~~who performs pharmacy benefits management, as a third party, under a contract or other financial arrangement with a covered entity. The term ~~includes~~does not include a ~~person acting for a~~ health benefit plan that manages or directs its own pharmacy benefits ~~manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity~~. ~~The term does not include a public self-funded pool or a private single employer self-funded plan that provides benefits or services directly to its beneficiaries. The term does not include a health carrier licensed under title 26.1 if the health carrier is providing pharmacy benefits management to its insureds.~~

~~9.~~8. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.

~~10.~~9. "Utilization information" means de-identified information regarding the quantity of drug prescriptions dispensed to members of a health plan during a specified time period.

[109] **SECTION 3. AMENDMENT.** Section 26.1-27.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-02. Licensing - Terms and fee - Application.

1. A person may not ~~perform~~establish or ~~act~~operate as a pharmacy benefits manager in this state ~~unless that person holds~~without first obtaining a ~~certificate of registration~~license ~~as an administrator under chapter 26.1-27~~from the commissioner under this section. A person violating this subsection is guilty of a class C felony.

2. A person applying for a pharmacy benefits manager license shall submit an application to the commissioner. The commissioner shall make an application form available on its website which includes a request for the following information:

[109] Section 26.1-27.1-02 was also amended by section 2 of House Bill No. 1087, chapter 286.

a. The identity, address, electronic mail address, and telephone number of the applicant;

b. The name, business address, electronic mail address, and telephone number of the contact person for the applicant;

c. If applicable, the federal employer identification number for the applicant; and

d. Any other information the commissioner considers necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefits manager to complete the licensure process.

3. The term of licensure is one year from April thirtieth through March thirty-first.

4. The pharmacy benefits manager shall pay an annual renewal fee no later than April thirtieth.

5. The applicant shall submit the fee with the initial application or renewal application for licensure. The initial application fee and renewal fee are nonrefundable.

6. Each application for a license, and subsequent renewal for a license, must be accompanied by evidence of financial responsibility in an amount of one million dollars.

7. Upon receipt of a completed application, evidence of financial responsibility, and fee, the commissioner shall review each application and issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the commissioner under this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

8. The license may be in paper or electronic form. The license is nontransferable, and must prominently list the expiration date.

SECTION 4. AMENDMENT. Section 26.1-27.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-04. Prohibited practices.

1. A pharmacy benefits manager shall comply with sections 19-02.1-01, 19-02.1-02, 19-02.1-14.2, 19-02.1-16, 19-02.1-16.1, 19-02.1-16.2, 19-02.1-16.3, 19-02.1-16.4, 19-02.1-16.5, and 19-02.1-16.6 in chapter 19-02.1 ~~regarding the substitution of one prescription drug for another~~.

2. A pharmacy benefits manager may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract. The pharmacy benefits manager may not exclude an otherwise qualified pharmacist or pharmacy from participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract.

3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts with at least thirty days to respond and signatures must be obtained from the pharmacy or an entity contracting on behalf of the pharmacy.

4. A pharmacy may opt-out of a pharmacy benefits managers contract by providing at least a ninety-day notice.

SECTION 5. AMENDMENT. Section 26.1-27.1-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-06. Examination of insurer-covered entity.

1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the payment received by the pharmacy benefits manager which the covered entity received ~~from the pharmacy benefits manager~~ has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.

2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the payment received by the pharmacy benefits manager received under any contract ~~with a pharmacy benefits manager~~ and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.

3. Any information disclosed to the commissioner under this section is considered a trade secret under chapter 47-25.1. This section does not prevent the disclosure of a final order issued against a pharmacy benefits manager. Such order is an open record.

SECTION 6. AMENDMENT. Section 26.1-27.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-07. Rulemaking authority.

The commissioner shall adopt rules as necessary ~~before implementation of~~to implement this chapter.

SECTION 7. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Enforcement.

1. All powers granted to the commissioner under title 26.1 and chapter 28-32 are available in enforcing chapter 26.1-27.1, including subpoena power.

2. This section does not limit the attorney general from investigating and prosecuting violations of the law.

3. This section does not prohibit the commissioner, state board of pharmacy, or department of health and human services from collaborating through joint exercise of common powers agreements.

SECTION 8. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Administrative penalties.

1. A pharmacy benefits manager found to be in violation of this chapter or any rules adopted under this chapter is subject to:

   a. A monetary penalty of up to ten thousand dollars per violation;

   b. Suspension or revocation of license; and

   c. A civil penalty of up to fifty thousand dollars for a second or subsequent violation.

2. The commissioner may require a pharmacy benefits manager to provide restitution to affected covered entities, pharmacies, or individuals for losses incurred as a result of the violation.

3. A pharmacy benefits manager subject to penalties under this section is entitled to a hearing conducted in accordance with chapter 28-32.

SECTION 9. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Proceedings by commissioner - Service of process - Procedure.

The commissioner shall serve process upon any licensee in any action or proceeding instituted by the commissioner under this chapter by electronic mail to the electronic mail address maintained in section 26.1-27.1-02 or by United States mail to the licensee at the licensee's last-known address of record or principal place of business. Service of process under this section is complete upon electronic mailing or United States mailing.

SECTION 10. A new section to chapter 26.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Pharmacy benefit manager enforcement fund - State board of pharmacy wholesaler and virtual wholesaler license fees - Revenue deposits or transfers.

The pharmacy benefit manager enforcement fund is a special fund in the state treasury. The fund consists of moneys transferred to or deposited in the fund by legislative action and moneys transferred to or deposited in the fund by the state board of pharmacy. The state board of pharmacy may deposit or transfer up to six hundred dollars of every eligible wholesaler license fee and every virtual wholesaler license fee collected by the board under section 43-15.3-12 to the pharmacy benefit manager enforcement fund. Moneys in the fund are available to the insurance commissioner, subject to legislative appropriations, for enforcing the provisions of this chapter.

SECTION 11. REPEAL. Section 26.1-27-01.1 and chapter 26.1-36.10 of the North Dakota Century Code are repealed.

SECTION 12. TRANSFER - DRUG PRICING FUND TO PHARMACY BENEFIT MANAGER ENFORCEMENT FUND. On the effective date of this Act, the office of management and budget shall transfer the balance in the drug pricing fund to the pharmacy benefit manager enforcement fund for the purpose of enforcing the provisions of chapter 26.1-27.1.

SECTION 13. APPROPRIATION - INSURANCE COMMISSIONER - PHARMACY BENEFIT MANAGER ENFORCEMENT FUND. There is appropriated out of any moneys in the pharmacy benefit manager enforcement fund in the state treasury, not otherwise appropriated, the sum of $1,200,000, or so much of the sum as may be

necessary, to the insurance commissioner for the purpose of enforcing the provisions of chapter 26.1-27.1 and conducting an actuarial analysis of the effect of the policies contained in this Act on health insurance premiums and consumer drug prices, for the period beginning with the effective date of this Act and ending June 30, 2027. The insurance commissioner is authorized three full-time equivalent positions, including an attorney, a pharmacist, and an investigator, for this purpose.

SECTION 14. EFFECTIVE DATE. Section 3 of this Act becomes effective on January 1, 2026.

SECTION 15. EXPIRATION DATE. Section 10 of this Act is effective through June 30, 2029, and after that date is ineffective.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 2025

Filed April 28, 2025

CHAPTER 279

SENATE BILL NO. 2374

(Senators Barta, Hogue, Klein)
(Representatives Lefor, Warrey, J. Johnson)

AN ACT to create and enact two new sections to chapter 26.1-30, two new sections to chapter 26.1-39, a new section to chapter 26.1-44, and a new subsection to section 26.1-46-03 of the North Dakota Century Code, relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; to amend and reenact sections 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 26.1-46-08.1 of the North Dakota Century Code, relating to exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; to repeal section 26.1-44-03.3 of the North Dakota Century Code, relating to an exemption from search requirements for licensed surplus line producers; to provide for a legislative management report; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

1. The lawful transaction of surplus lines insurance.

2. The lawful transaction of reinsurance by insurers.

3. Transactions involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Transactions involving life insurance, health insurance, or annuities provided to educational or religious or charitable institutions organized and operated without profit to any private shareholder or individual, for the benefit of the institutions and individuals engaged in the service of the institutions.

5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

6. Transactions involving group life, accident, and health, or blanket accident and health insurance, or group annuities if the master policy of the group was

lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

7. Transactions involving any insurance policy or annuity contract issued before July 1, 1973.

8. Transactions relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

9. Transactions involving insurance contracts issued to one or more industrial insureds; provided, that this does not relieve an industrial insured from taxation imposed upon independently procured insurance. An industrial insured is an insured:

   a. Which procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;

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

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

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

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

26.1-25-02.1. Definitions.

1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities as enumerated in this chapter. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

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

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

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

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

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

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

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

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

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

   d. The term does not include farming or ranching.

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

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

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

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

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

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

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

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

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

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

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

~~10.~~11. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.

~~11.~~12. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses other than loss adjustment expenses, or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

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

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

~~14.~~15. "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

~~15.~~16. "Supporting information" means:

a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;

b. The interpretation of any other data relied upon by the filer; and

c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

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

26.1-25-16. Rebates prohibited - Exception.

1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no insurance producer, broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an

insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond and federal crop insurance.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. 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;

(g) Provide post-loss services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   e. The insurance producer may not pay or return, or offer to pay or return, all or part of a fee charged as an inducement to purchase a specific policy, or coverage within a policy, or coverage from a particular insurer.

   f. Any fee charged under this section must bear a reasonable relationship to the services provided and may not be discriminatory.

2. An insurance producer charging a fee for services rendered for risk management services under this section owes the person to be charged a higher standard of care than the ordinary standard of care otherwise owed by an insurance producer to fully advise the party to be charged as to the party's insurance needs, including the duty to inform the person to be charged as to a potential source of risk and to recommend, if available, insurance coverage for that risk.

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

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

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

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

Mandatory arbitration endorsements for property insurance - Written acceptance - Penalty.

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

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

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

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

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

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

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

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

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

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

      I am giving up my right to a jury trial.

      I am accepting these terms in exchange for a premium discount of [dollar amount or percentage of premium amount].

      This agreement is binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless I request removal of the mandatory binding arbitration endorsement in writing".

3. All arbitration proceedings under this section must:

a. Be conducted in this state if involving a resident of this state;

b. Be governed by state law; and

c. Not require arbitration in another state.

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

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

6. This section does not apply to a:

a. Voluntary arbitration agreement entered after a dispute has arisen;

b. Large commercial risk as defined in section 26.1-25-02.1; or

c. Commercial surplus line insurance policy placed in accordance with section 26.1-44-03.

7. The commissioner shall enforce this section.

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

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

Managed repair programs - Penalty.

1. A property insurance policy may be issued or delivered in this state with a managed repair program provision offering premium incentives for managed repair program participation. As used in this section, "managed repair program" means an insurance policy providing a program with a specified reduction in premium or other specified incentive for participation in a program restricting an insured's choice of repair vendors or contractors for covered repairs.

2. An insurer offering a managed repair program shall:

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

b. Specify any premium benefits for program participation;

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

(1) The process for repairs under the program;

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

(3) Any warranty or guarantee provided for repairs.

3. This section does not apply to contractor referral or managed or direct repair programs that do not provide a specified reduction in premium or other incentive.

4. This section applies to insurance policies issued or renewed after the effective date of this Act.

5. The commissioner shall enforce this section.

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

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

Civil remedy actions against property insurers.

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

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

Notice of property insurance claim.

1. As used in this section:

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

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

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

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

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

26.1-44-03. Surplus lines insurance.

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

1. Each insurer is an eligible surplus lines insurer;

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

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

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

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

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

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

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

          (b) Fifteen million dollars.

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

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

5. All other requirements of this chapter are met.

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

Surplus lines insurance policies.

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

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

26.1-46-01. Definitions.

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

1. "Commissioner" means the North Dakota insurance commissioner or the commissioner, director, or superintendent of insurance in any other state.

2. "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by any person who performs that work or any person who hires an independent contractor to perform that work, but includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

3. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

   a. For a corporation or limited liability company, the state in which the purchasing group is incorporated or organized.

   b. For an entity which is not a corporation or limited liability company, the state of its principal place of business.

4. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to do either of the following:

   a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

   b. To pay other obligations in the normal course of business.

5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

6. a. "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss, including contractual claims and expenses, to such other persons resulting from or arising out of either of the following:

      ~~a.~~ (1) Any business whether profit or nonprofit, trade, product, services including professional services, premises, or operations.

      ~~b.~~ (2) Any activity of any state or local government, or any agency or political subdivision thereof.

b. The term does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employer's Liability Act [45 U.S.C. 51 et seq.].

7. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection ~~5~~6.

8. "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum, all of the following:

a. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

b. Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available.

c. Pro forma financial statements and projections.

d. Appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

e. Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies.

f. Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

g. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

h. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state.

9. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

10. "Purchasing group" means any group which meets all of the following:

a. The group has as one of its purposes the purchase of liability insurance on a group basis.

b. The group purchases ~~such~~ insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.

c. The group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

d. The group is domiciled in any state.

11. "Risk retention group" means any corporation or other limited liability association:

a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. Which is organized for the primary purpose of conducting the activity described under subdivision a.

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

d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

g. Whose activities do not include the provision of insurance other than:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. INSURANCE COMMISSIONER STUDY - TOWING AND RECOVERY COVERAGE FOR VEHICLES WITH LIABILITY-ONLY INSURANCE - REPORT TO LEGISLATIVE MANAGEMENT.

1. During the 2025-26 interim, the insurance commissioner may study the feasibility, benefits, and challenges of providing towing and recovery costs associated with vehicle liability-only insurance for towing operations. The study must be conducted with stakeholders from both the insurance industry and the towing industry. The study must include:

a. An evaluation of the frequency and financial impact of the towing and recovery costs of vehicles without applicable insurance coverage.

b. A review of the cost structures, fee practices, and reimbursement models associated with standard towing and recovery operations across this state.

c. Consideration of the financial and operational implications of expanding coverage to include towing and recovery cost coverage for the at-fault vehicle with only liability coverage.

d. An analysis of the regulatory, administrative, and consumer impacts resulting from the coverage expansion, including anticipated efficiencies or burdens.

e. A review of approaches taken by other states regarding similar coverage options, including statutory or regulatory frameworks, and how those states balance the needs of insurers, towing providers, and consumers.

f. An analysis of insurance protocols and preferred procedures regarding towing operations. For the purpose of establishing agreements and contracts between insurance companies and towing companies, preventing misunderstandings, and ensuring a seamless claims process.

2. Before September 1, 2026, the insurance commissioner shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the legislative management.

Approved April 30, 2025

Filed May 1, 2025

CHAPTER 280

SENATE BILL NO. 2088

(Industry and Business Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact subsection 4 of section 26.1-02.2-01, sections 26.1-02.2-05 and 26.1-02.2-07, and subsection 1 of section 26.1-02.2-08 of the North Dakota Century Code, relating to data security requirements for insurance producers; and to repeal section 26.1-02.2-11 of the North Dakota Century Code, relating to implementation dates for certain data security requirements for insurance producers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-02.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Cybersecurity event" means an event resulting in unauthorized access to, disruption, or misuse of, an information system or nonpublic information stored on the information system. The term does not include~~:~~

   ~~a.~~ ~~The~~the unauthorized acquisition of encrypted nonpublic information if the encryption, process, or key is not also acquired, released, or used without authorization~~; or~~

   ~~b. An event the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed~~.

SECTION 2. AMENDMENT. Section 26.1-02.2-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.2-05. Notification of a cybersecurity event.

1. A licensee shall notify the commissioner as promptly as possible, but no later than three business days from a determination that a cybersecurity event ~~involving nonpublic information that is in the possession of a licensee~~ has occurred if:

   a. This state is the licensee's state of domicile, in the case of an insurer, or this state is the licensee's home state, in the case of a producer as defined in chapter 26.1-26, and the cybersecurity event ~~has a reasonable likelihood of materially harming a consumer residing in this state~~triggers notification to a consumer residing in the state in accordance with chapter 51-30 or has a reasonable likelihood of ~~materially~~ harming any material part of the normal operations of the licensee; or

   b. The licensee reasonably believes the nonpublic information involved is of two hundred fifty or more consumers residing in this state and is:

(1) A cybersecurity event impacting the licensee for which notice is required to be provided to any government body, self-regulatory agency, or any other supervisory body pursuant to any state or federal law; or

(2) A cybersecurity event that has a reasonable likelihood of materially harming any consumer residing in this state or materially harming any part of the normal operations of the licensee.

2. The licensee shall provide the notice required under this section in electronic form as directed by the commissioner. The licensee shall update and supplement the initial and any subsequent notifications to the commissioner regarding material changes to previously provided information relating to the cybersecurity event. The licensee's notice required under this section must include:

a. The date of the cybersecurity event;

b. Description of how the information was exposed, lost, stolen, or breached, including the specific roles and responsibilities of third-party service providers, if any;

c. How the cybersecurity event was discovered;

d. Whether any lost, stolen, or breached information has been recovered and if so, how;

e. The identity of the source of the cybersecurity event;

f. Whether the licensee has filed a police report or has notified any regulatory, government, or law enforcement agencies and, if so, when the notification was provided;

g. Description of the specific types of information acquired without authorization. Specific types of information means particular data elements, including medical information, financial information, or any other information allowing identification of the consumer;

h. The period during which the information system was compromised by the cybersecurity event;

i. The total number of consumers in this state affected by the cybersecurity event. The licensee shall provide the best estimate in the initial report to the commissioner and update the estimate with a subsequent report to the commissioner pursuant to this section;

j. The results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed;

k. Description of efforts being undertaken to remediate the situation that permitted the cybersecurity event to occur;

l. A copy of the licensee's privacy policy and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; and

m. Name of a contact person that is both familiar with the cybersecurity event and authorized to act for the licensee.

3. The licensee shall comply with chapter 51-30, as applicable, and provide a copy of the notice sent to consumers to the commissioner, when a licensee is required to notify the commissioner under subsection 1.

4. In the case of a cybersecurity event in a system maintained by a third-party service provider, of which the licensee has become aware, the licensee shall treat the event in accordance with subsection 1 unless the third-party service provider provides the notice required under chapter 26.1-02.2 to the commissioner.

   a. The computation of licensee's deadlines under this subsection begin on the day after the third-party service provider notifies the licensee of the cybersecurity event or the licensee otherwise has actual knowledge of the cybersecurity event, whichever is sooner.

   b. Nothing in this chapter prevents or abrogates an agreement between a licensee and another licensee, a third-party service provider, or any other party to fulfill any of the investigation requirements imposed under section 26.1-02.2-04 or notice requirements imposed under subsection 1.

5. If a cybersecurity event involving nonpublic information that is used by a licensee that is acting as an assuming insurer or in the possession, custody, or control of a licensee that is acting as an assuming insurer and that does not have a direct contractual relationship with the affected consumers, the assuming insurer shall notify the insurer's affected ceding insurers and the commissioner of the insurer's state of domicile within three business days of making the determination that a cybersecurity event has occurred. The ceding insurer that has a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under chapter 51-30 and any other notification requirements relating to a cybersecurity event imposed under subsection 1.

6. If a cybersecurity event involving nonpublic information that is in the possession, custody, or control of a third-party service provider of a licensee that is an assuming insurer, the assuming insurer shall notify the insurer's affected ceding insurers and the commissioner of the insurer's state of domicile within three business days of receiving notice from its third-party service provider that a cybersecurity event has occurred. The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under chapter 51-30 and any other notification requirements relating to a cybersecurity event imposed under subsection 1.

7. Any licensee acting as assuming insurer does not have any other notice obligations relating to a cybersecurity event or other data breach under this section or any other law of this state.

8. If a cybersecurity event involving nonpublic information that is in the possession, custody, or control of a licensee that is an insurer or the insurer's third-party service provider for which a consumer accessed the insurer's services through an independent insurance producer, and for which consumer notice is required by chapter 51-30, the insurer shall notify the producers of record of all affected consumers of the cybersecurity event no later than the time at which notice is provided to the affected consumers. The insurer is excused from the obligation imposed under this subsection for any producers that are not authorized by law or contract to sell, solicit, or negotiate on behalf of the insurer, and those instances in which the insurer does not have the current producer of record information for an individual consumer.

SECTION 3. AMENDMENT. Section 26.1-02.2-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.2-07. Confidentiality.

1. Any documents, materials, or other information in the control or possession of the department which are furnished by a licensee, or an employee or agent thereof acting on behalf of a licensee pursuant to this chapter, or that are obtained by the commissioner in an investigation or examination pursuant to section 26.1-02.2-06 are confidential, not subject to chapter 44-04, not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties. ~~The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the licensee.~~

2. The commissioner or any person that received documents, materials, or other information while acting under the authority of the commissioner may not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.

3. In order to assist in the performance of the commissioner's duties <u>under this chapter,</u> the commissioner:

   a. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information;

   b. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

c. May share documents, materials, or other information subject to this section, with a third-party consultant or vendor provided the consultant agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information; and

d. May enter agreements governing sharing and use of information consistent with this subsection.

4. A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

5. Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant or vendor pursuant to this chapter are confidential, not subject to chapter 44-04, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action.

SECTION 4. AMENDMENT. Subsection 1 of section 26.1-02.2-08 of the North Dakota Century Code is amended and reenacted as follows:

1. The following exceptions apply to this chapter:

a. A licensee with less than five million dollars in gross revenue or less than ten million dollars in year-end assets is exempt from subsections 2 through 10 of section 26.1-02.2-03.

~~b. During the period beginning on August 1, 2021, and ending on July 31, 2023, a licensee with fewer than fifty employees, including independent contractors and employees of affiliated companies having access to nonpublic information used by the licensee or in the licensee's possession, custody, or control, is exempt from section 26.1-02.2-03.~~

~~c. After July 31, 2023, a licensee with fewer than twenty-five employees, including independent contractors and employees of affiliated companies having access to nonpublic information used by the licensee or in the licensee's possession, custody, or control is exempt from section 26.1-02.2-03.~~

~~d.~~b. A licensee that is subject to ~~and~~, governed by, and compliant with the privacy, security, and breach notification rules issued by the United States department of health and human services, title 45, Code of Federal Regulations, parts 160 and 164, established pursuant to the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191], and the federal Health Information Technology for Economic and Clinical Health Act [Pub. L. 111-5], and which maintains nonpublic information concerning a consumer in the same manner as protected health information is deemed to comply with the requirements of ~~this chapter except for the commissioner notification requirements under subsections 1 and 2 of section 26.1-02.2-05~~section 26.1-02.2-03.

~~e.~~c. An employee, agent, representative, or designee of a licensee, that also is a licensee, is exempt from section 26.1-02.2-03 and is not required to develop an information security program to the extent the employee, agent, representative, or designee is covered by the information security program of the other licensee.

SECTION 5. REPEAL. Section 26.1-02.2-11 of the North Dakota Century Code is repealed.

Approved March 25, 2025

Filed March 26, 2025

CHAPTER 281

HOUSE BILL NO. 1398

(Representatives Grueneich, D. Anderson, Dockter, Fisher, Heinert, Jonas, Brandenburg, Swiontek)
(Senators Erbele, Conley, Walen)

AN ACT to amend and reenact section 26.1-03-10 of the North Dakota Century Code, relating to the publication of an abstract of annual statement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-10. Publication of abstract of annual statement and certificate of authority.

An insurance company, at the time it submits its annual statement for filing, shall submit an abstract of the annual statement for publication ~~upon~~on the form prescribed by the commissioner. The abstract of the annual statement of each company, other than a state or county mutual insurance company, must be published at least three times in ~~one~~a newspaper of general circulation~~, designated by the commissioner, printed and published in each judicial district in this state in which the company has an agency~~ and evenly distributed for publication across all newspapers operating in the judicial district. The abstract of the annual statement of each state or county mutual insurance company must be published once in a newspaper published in the county in which the company has its principal place of business, the newspaper to be designated by the members of the company at their annual meeting. The certificate of authority issued by the commissioner to authorize the company to do business within this state must be published in connection with the publication of the abstract of its annual statement. The fees for publication are those provided under section 46-05-03. Proof of publication must be filed with the commissioner within four months after the filing of the annual statement. The commissioner shall provide abstracts, in a convenient form, on the commissioner's website.

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 282

SENATE BILL NO. 2124

(Industry and Business Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-03-19.8 and a new section to chapter 26.1-03 of the North Dakota Century Code, relating to insurance company inquiries and insurance company statements; and to amend and reenact section 26.1-03-19.1 and subsection 6 of section 26.1-03-19.4 of the North Dakota Century Code, relating to insurance company definitions and examination records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-19.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-19.1. Examination of companies - Definitions.

In sections 26.1-03-19.1 through ~~26.1-03-19.7~~26.1-03-19.8, unless the context otherwise requires:

1. "Company" means any foreign or domestic insurance company as defined in section 26.1-02-01.

2. "Data call" means an inquiry addressed to a company issued before, or in lieu of an examination under this chapter.

3. "Examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under this chapter.

~~3.~~4. "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any affiliate thereof.

SECTION 2. AMENDMENT. Subsection 6 of section 26.1-03-19.4 of the North Dakota Century Code is amended and reenacted as follows:

6. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis by the commissioner of the financial condition or market conduct of the company, must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except as provided in this subsection and to the extent provided in subsection 5. Access also may be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained. This subsection may not be construed as prohibiting the commissioner from making public aggregate or anonymized information from the materials contemplated in this subsection.

SECTION 3. Section 26.1-03-19.8 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.8. Data calls.

1. The commissioner or the commissioner's designated representative may issue a data call under this chapter whenever the commissioner deems it appropriate. The insurance company shall reply in writing to the data call within twenty days of receipt of the inquiry unless within that twenty days the company requests and the commissioner grants an extension of time.

2. For purposes of completing a data call under this section, the commissioner may inquire into any person, or the business of any person, to the extent the inquiry or investigation is, in the sole discretion of the commissioner, necessary or material to the operations of the company.

3. The commissioner may designate the national association of insurance commissioners or another representative as the repository for data call responses.

4. All materials, working papers, information, documents, and copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of a data call made under this chapter, or in the course of analysis by the commissioner of the market conduct of the company:

   a. Must be given confidential treatment;

   b. Are not subject to subpoena; and

   c. May not be made public by the commissioner or any other person, except to the extent provided in this chapter.

5. The commissioner may use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

6. The commissioner may make the results of the data call available for public inspection in an aggregate and anonymized format that does not disclose information or data attributed to any specific company or person, including the name of any company or person who responded to the data call.

7. The commissioner may adopt rules to administer this section.

SECTION 4. A new section to chapter 26.1-03 of the North Dakota Century Code is created and enacted as follows:

Market conduct annual statement.

1. The commissioner may require a foreign or domestic insurance company to annually file a market conduct annual statement. The statement must:

   a. Be filed with the commissioner, or with the commissioner's designee, on a date specified by the commissioner;

   b. Include the scope of information prescribed by the commissioner; and

c. Be in the proper form and transmitted, as prescribed by the commissioner.

2. The commissioner may, in the commissioner's discretion and for good cause, exclude an insurance company from filing a statement under this section.

3. The commissioner may adopt rules to implement and administer this section.

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 283

SENATE BILL NO. 2032

(Legislative Management)
(Health Services Committee)

AN ACT to create and enact chapter 26.1-08.1 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota; to repeal chapters 26.1-08 and 26.1-08.1 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[110] **SECTION 1.** Chapter 26.1-08.1 of the North Dakota Century Code is created and enacted as follows:

26.1-08.1-01. Definitions.

As used in this chapter:

1. "Association" means the comprehensive health association of North Dakota.
2. "Board" means the comprehensive health association of North Dakota board of directors.
3. "Creditable coverage" means, with respect to an individual, coverage under chapter 26.1-08.
4. "Guaranteed issue" means an issuer may not:
   a. Deny or condition the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the issuer;
   b. Discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; or
   c. Impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.
5. "Lead carrier" means the insurance company selected by the board to administer the association benefit plans.

26.1-08.1-02. Cessation of operations.

1. The association shall cease enrollment under the plan effective May 1, 2025.
2. After taking all reasonable steps, including those specified in this section, to timely and efficiently assist in the transition of individuals receiving benefits

[110] Chapter 26.1-08.1 was repealed by section 2 of Senate Bill No. 2032, chapter 283.

under chapter 26.1-08, and paying health insurance claims for plan coverage and meeting all other obligations of the board under this section, the association shall cease operating the pool.

3. The association may take any action it deems necessary to:

   a. Cease enrollment for plan coverage effective May 1, 2025.

   b. Terminate all existing benefit plans effective December 31, 2025.

   c. Provide at least a ninety-day notice to current policyholders of the termination.

4. This section does not require the board to revise plan benefits to comply with this chapter.

26.1-08.1-03. Board of directors.

1. Notwithstanding any other provision of this chapter, to facilitate an efficient cessation of operations, the board:

   a. May continue to use the lead carrier to fulfill administrative tasks and operations.

   b. Shall continue to follow the requirements of participating members under section 26.1-08-09.

   c. May implement a process to assess members based on actual program costs rather than projected program costs.

2. If the board has excess funds after cessation of operations of the association, the funds must be returned by the lead carrier to the insurer assessed under section 26.1-08-09.

26.1-08.1-04. Enrollment of individuals losing creditable coverage.

An individual losing creditable coverage must be provided enrollment into a comparable:

1. Health benefit plan; or

2. Plan under a Medicare supplement policy that has a benefit package classified as plan A, B, C, F (including F with a high deductible), G, K, or L under guaranteed issue.

26.1-08.1-05. Statute of limitations.

A cause of action against the association or the board must be commenced within the earlier of one year after the cause of action occurs or December 31, 2027.

[111] **SECTION 2. REPEAL.** Chapters 26.1-08 and 26.1-08.1 of the North Dakota Century Code are repealed.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective December 31, 2027.

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[111] Chapter 26.1-08.1 was created by section 1 of Senate Bill No. 2032, chapter 283.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 18, 2025

Filed March 18, 2025

CHAPTER 284

HOUSE BILL NO. 1124

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-10-01, 26.1-10-04, 26.1-10-05, and 26.1-10-07 of the North Dakota Century Code, relating to the standards and management of an insurer with an insurance holding company system and the confidential treatment of investigation and examination records of insurance holding companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

26.1-10-01. Definitions.

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

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.

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

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

4. <u>"Group capital calculation instructions" means the group capital calculation instructions adopted by the national association of insurance commissioners and as amended in accordance with the procedures adopted by the national association of insurance commissioners.</u>

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

~~5.~~6. "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

~~6.~~7. "Insurer" has the same definition as provided in section 26.1-29-02, except the term does not include an agency, authority, or instrumentality of the United States or its possessions or a state or political subdivision of a state.

~~7.~~8. "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:

a. Premiums written in at least three countries;

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

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

~~8.~~9. "Liquidity stress test framework" means the national association of insurance commissioners liquidity stress test framework that includes a history of the association's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, the liquidity stress test instructions, and reporting templates for a specific data year, as adopted and amended in accordance with the procedures adopted by the association.

10. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, or an unincorporated organization or any similar entity or any combination of the foregoing acting in concert. The term does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

11. "Scope criteria" means the designated exposure bases along with minimum magnitudes of those bases for the specified data year, used to establish a preliminary list of insurers considered scoped into the national association of insurance commissioners liquidity stress test framework for that data year.

~~9.~~12. "Securityholder" of a specified person means the owner of any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~10.~~13. "Subsidiary" of a specified person means an affiliate under the control of the person directly, or indirectly through one or more intermediaries.

~~11.~~14. "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 2. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-04. Registration of insurers.

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

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

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

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

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

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

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

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

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

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

      (6) Reinsurance agreements.

      (7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. A financial statement may include an annual audited financial statement filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial statement pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United Sates securities and exchange commission.

f. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

g. Statements that the insurer's board of directors is responsible for and supervises, relating to corporate governance and internal controls that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor.

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

3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December thirty-first next preceding are not material for purposes of this section. <u>The definition of materiality provided in this subsection does not apply for purposes of the group capital calculation or the liquidity stress test framework.</u>

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

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

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

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

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

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

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

11. Any person within an insurance holding company system subject to registration must provide complete and accurate information to an insurer, when the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

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

13. Except as provided in subsection 14, the ultimate controlling person of each insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report must be completed in accordance with the national association of insurance commissioners group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the financial analysis handbook procedures adopted by the national association of insurance commissioners.

14. An insurance holding company system is exempt from filing the group capital calculation if the insurance holding company system meets any of the criteria described below.

a. An insurance holding company system that has only one insurer within its holding company structure, only writes business, is only licensed in its domestic state, and assumes no business from any other insurer.

b. If a system is required to perform a group capital calculation specified by the United States federal reserve board, the lead state commissioner shall request the calculation from the federal reserve board under the terms of information sharing agreements in effect. If the federal reserve board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.

c. An insurance holding company system that has a non-United States groupwide supervisor located within a reciprocal jurisdiction as set forth in subsection 7 of section 26.1-31.2-01 which recognizes the United States state regulatory approach to group supervision and group capital.

d. An insurance holding company system that:

(1) Provides information to the lead state that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program, either directly or indirectly through the groupwide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the national association of insurance commissioners group supervision approach, as detailed in the national association of insurance commissioners financial analysis handbook; and

(2) Has a non-United States groupwide supervisor that is not in a reciprocal jurisdiction which recognizes and accepts, as specified by the commissioner by rule, the group capital calculation as the worldwide group capital assessment for United States insurance groups that operate in that jurisdiction.

e. Notwithstanding subdivisions c and d, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

f. Notwithstanding subdivisions a through d, the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation or accept a limited group capital filing or report in accordance with criteria as specified by the commissioner by rule.

g. If the lead state commissioner determines an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date, unless an extension is provided by the lead state commissioner based on reasonable grounds shown.

15. The ultimate controlling person of every insurer subject to registration and scoped into the national association of insurance commissioners liquidity stress test framework shall file the results of a specific year's liquidity stress test. The results must be filed with the lead state insurance commissioner of the insurance holding company system as determined by the financial analysis handbook procedures adopted by the national association of insurance commissioners.

    a. The national association of insurance commissioners liquidity stress test framework includes scope criteria applicable to a specific data year. The scope criteria are reviewed at least annually by the financial stability task force or its successor. A change to the national association of insurance commissioners liquidity stress test framework or to the data year for which the scope criteria are to be measured is effective on January first of the year following the calendar year when the change is adopted. An insurer that meets at least one threshold of the scope criteria is considered scoped into the national association of insurance commissioners liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should not be scoped into the framework for that data year. An insurer that does not trigger at least one threshold of the scope criteria is considered scoped out of the liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.

    b. To avoid having insurers scoped in and out of the national association of insurance commissioners liquidity stress test framework on a frequent basis, the lead state insurance commissioner, in consultation with the financial stability task force or its successor, shall assess this concern as part of the determination for an insurer.

    c. The performance of, and filing of the results from, a specific year's liquidity stress test must comply with the national association of insurance commissioners liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the financial stability task force or its successor, provided within the framework.

~~13.~~16. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

SECTION 3. AMENDMENT. Section 26.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-05. Standards and management of an insurer with an insurance holding company system.

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

    a. The terms must be fair and reasonable.

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

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

d. The insurer's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

e. Charges or fees for services performed must be reasonable.

f. Expenses incurred and payment received must be allocated to the insurer in conformity with statutory accounting practices consistently applied.

g. If an insurer subject to this chapter is deemed by the commissioner to be in a hazardous financial condition as defined by North Dakota Administrative Code chapter 45-03-13 or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the commissioner may require the insurer to secure and maintain a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contracts or agreements, or the existence of the condition for which the commissioner is required to secure and maintain the deposit or the bond. In determining whether a deposit or a bond is required, the commissioner must consider whether concerns exist with respect to the affiliated person's ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation or a delinquency proceeding, and a deposit or bond is necessary, the commissioner may determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with specific persons.

h. All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to the control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody or control of the affiliate. At the request of the insurer, the affiliate shall permit the receiver to obtain a complete set of all records of any type that pertain to the insurer's business, obtain access to the operating systems on which the data is maintained, obtain the software that runs those systems either through assumption of licensing agreements or otherwise, and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

i. Premiums or other funds belonging to the insurer which are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to chapter 26.1-06.1.

2. The following transactions involving a domestic insurer and any person in its insurance holding company system, including an amendment or modification of an affiliate agreement previously filed pursuant to this section, which is subject to any materiality standards contained in subdivisions a through g, may not be entered unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for an amendment or modification must include the reason for the change and the financial impact on the domestic insurer. Within thirty days after a termination of a previously filed agreement, informal notice must be reported to the commissioner for determination of the type of filing required, if any.

   a. Sales, purchases, exchanges, loans, or extensions of credit, or investments provided the transactions are equal to or exceed:

      (1) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

      (2) With respect to life insurers, three percent of the insurer's admitted assets as of December thirty-first next preceding.

   b. Loans or extensions of credit to any person that is not an affiliate, if the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

      (1) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

      (2) With respect to life insurers, three percent of the insurer's admitted assets as of December thirty-first next preceding.

   c. Reinsurance agreements or modifications thereto, including:

      (1) All reinsurance pooling agreements.

      (2) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December thirty-first next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

d. All management agreements, service contracts, tax allocation agreements, guarantees, and cost-sharing arrangements.

e. Any guarantee made by a domestic insurer; however, a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of December thirty-first next preceding. Additionally, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection.

f. Any direct or indirect acquisition or investment in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. A direct or indirect acquisition or investment in a subsidiary acquired pursuant to section 26.1-10-02, or authorized under any other section of this chapter, or in a nonsubsidiary insurance affiliate that is subject to this chapter, is exempt from this requirement.

g. Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

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

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

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

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

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

a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

b. The extent to which the insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the insurer's insured risks.

e. The nature and extent of the insurer's reinsurance program.

f. The quality, diversification, and liquidity of the insurer's investment portfolio.

g. The recent past and projected future trend in the size of the insurer's investment portfolio.

h. The surplus as regards policyholders maintained by other comparable insurers.

i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

7. A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, when the fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of:

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

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

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

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

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

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

11. An affiliate that is a party to an agreement or contract with a domestic insurer that is subject to subdivision d of subsection 2 shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed under chapters 26.1-06.1 and 26.1-06.2 for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are:

a. An integral part of the insurer's operations, such as management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

b. Essential to the insurer's ability to fulfill its obligations under insurance policies.

12. The commissioner may require that an agreement or contract under subdivision d of subsection 2 for the provision of services in subdivision a and b specify the affiliate consents to the jurisdiction as set forth in subsection 11.

SECTION 4. AMENDMENT. Section 26.1-10-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-07. Confidential treatment.

1. Any document, material, or other information in the possession or control of the North Dakota insurance department which is obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 26.1-10-06 and all information reported pursuant to subdivisions l and m of subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates that would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in any manner the commissioner deems appropriate.

a. For purposes of the information reported and provided under subsections 13 and 14 of section 26.1-10-04, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the federal reserve board or any United States groupwide supervisor.

b. For purposes of the information reported and provided under subsection 15 of section 26.1-10-04, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States groupwide supervisors.

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

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

   a. If the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality, the commissioner may share any document, material, or other information, including the confidential and privileged document, material, or information subject to subsection 1, including proprietary and trade secret documents and materials, with any other state, federal, and international regulatory agency, the national association of insurance commissioners ~~and its affiliates and subsidiaries~~, any third-party consultant designated by the commissioner, and any state, federal, or international law enforcement authority, including members of any supervisory college described in section 26.1-10-06.1;

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

   c. The commissioner may receive any document, material, or information, including any otherwise confidential and privileged document, material, or information, including propriety and trade secret information, from the national association of insurance commissioners and its affiliates and subsidiaries and from any regulatory and law enforcement official of other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

   d. The commissioner shall enter a written agreement with the national association of insurance commissioners and any third-party consultant designated by the commissioner governing sharing and use of information provided under this chapter consistent with this subsection and which must:

      (1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or any third-

party consultant designated by the commissioner under this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with any other state, federal, or international regulator~~;~~. The written agreement must provide the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(2) Specify ownership of information shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant under this chapter remains with the commissioner, and the national association of insurance commissioner's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;

(3) Excluding documents, materials, or information reported under subsections 13 and 14 of section 26.1-10-04, prohibit the national association of insurance commissioners or a third-party consultant designated by the commissioner from storing the information shared under this chapter in a permanent database after the underlying analysis is complete;

~~(3)~~(4)Require prompt notice to be given to an insurer if the insurer's confidential information in the possession of the national association of insurance commissioners or a third-party consultant designated by the commissioner under this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant designated by the commissioner for disclosure or production; ~~and~~

~~(4)~~(5)Require the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or third-party consultants designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant designated by the commissioner under this chapter~~.~~; and

(6) Documents, materials, or information reported under subsection 13 and 14 of section 26.1-10-04, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

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

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

6. Any document, material, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant designated by the commissioner under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action.

7. The group capital calculation and resulting group capital ratio required under subsections 13 and 14 of section 26.1-10-04 and the liquidity stress test along with its results and supporting disclosures required under subsection 15 of section 26.1-10-04, are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally.

8. Except as otherwise required under this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement that would be misleading is prohibited when made regarding:

   a. A group capital calculation;

   b. A group capital ratio;

   c. Liquidity stress test results;

   d. Supporting disclosures for the liquidity stress test of any insurer or any insurer group; or

   e. Any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business.

9. Notwithstanding subsection 8, if any written publication contains a materially false statement and the insurer demonstrates to the commissioner with substantial proof the falsity or inappropriateness of the statement, the insurer may publish announcements in a written publication, provided the sole purpose of the announcement is to rebut the materially false statement. For this subsection to apply, the existence of any materially false statement in a written publication must relate to at least one of the following subject areas:

   a. A group capital calculation;

   b. A resulting group capital ratio;

   c. An inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio;

   d. A liquidity stress test result;

   e. Supporting disclosures for the liquidity stress test; or

f. An inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures.

Approved March 17, 2025

Filed March 18, 2025

CHAPTER 285

SENATE BILL NO. 2125

(Industry and Business Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-26-33.1 of the North Dakota Century Code, relating to obligations of insurance producers to maintain an electronic mailing address for regulatory use; to amend and reenact sections 26.1-26-11, 26.1-26-22, 26.1-26-42.1, 26.1-26.8-09, 26.1-26.8-11, and 26.1-26.8-12 of the North Dakota Century Code, relating to producer's lines of insurance, service of process for producer proceedings, revocation of nonresident producer licenses, requirements for renewal of business entity public adjuster licenses, public adjuster proof of insurance requirements, and public adjuster continuing education requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of insurance producer - Lines of insurance.

An insurance producer or surplus lines insurance producer may receive a license to market products under one or more of the following lines:

1. Life ~~and annuity~~ means insurance coverage on human lives, including benefits of endowment, fixed and indexed annuities, and credit life.

2. Accident and health or sickness means insurance coverage for sickness, disease, injury, accidental death, and disability.

3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.

4. Casualty means insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.

5. Variable life and variable annuity means insurance coverage provided under variable life insurance contracts and variable annuities.

~~The product types found under each of the above lines of insurance are those adopted pursuant to section 26.1-05-02.1.~~

SECTION 2. AMENDMENT. Section 26.1-26-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-22. ~~Nonresident proceeding~~Proceedings by commissioner - Service of process - Procedure.

The commissioner shall serve process upon any ~~nonresident~~ licensee in any action or proceeding instituted by the commissioner under this chapter by ~~mailing the process by registered mail return receipt requested~~electronic mail to the electronic

mail address maintained as required under section 26.1-26-33.1 or United States mail to the licensee at the licensee's last-known address of record or principal place of business. Service of process under this section is complete upon electronic mailing or United States mailing.

SECTION 3. Section 26.1-26-33.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-33.1. Notification of electronic mailing address used by regulator.

An insurance producer shall maintain an electronic mailing address for regulatory use. It is an insurance producer's sole responsibility to continually monitor the electronic mailing address for regulatory communications from the commissioner.

SECTION 4. AMENDMENT. Section 26.1-26-42.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42.1. Revocation of nonresident license.

Notwithstanding the provisions of subsection 13 of section 26.1-26-42, any nonresident license issued pursuant to this chapter may be suspended or revoked without notice and hearing to the licensee and without proceeding in conformity with chapter 28-32, upon evidence ~~that~~ the resident license of the North Dakota nonresident licensee has been revoked or suspended or sixty days after the commissioner receives notification that the producer's license is past the renewal deadline in the producer's resident home state. This evidence may be in the form of a certified copy or by electronic mail, or through the insurance producer database maintained by the national association of insurance producers, its affiliates, or subsidiaries.

[112] **SECTION 5. AMENDMENT.** Section 26.1-26.8-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.8-09. License - Renewal - Reinstatement.

1. The commissioner shall issue a resident public adjuster license or nonresident public adjuster license to an individual who meets the necessary requirements of this chapter.

   a. A resident public adjuster license and a nonresident public adjuster license expire on the last day of the month of the licensed public adjuster's birthday following the two-year anniversary of issuance of a license by the commissioner.

   b. To renew a license, a licensed resident public adjuster and a licensed nonresident public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee of twenty-five dollars. The commissioner shall give a licensee at least ~~sixty~~ninety days' notice of the biennial license continuation filing deadline. A resident public adjuster or a nonresident public adjuster who allows the license to lapse may, within the twelve-month period immediately following the expiration date, reinstate the same license without the necessity of passing a written examination, upon payment of a reinstatement fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.

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[112] Section 26.1-26.8-09 was also amended by section 6 of House Bill No. 1123, chapter 277, and section 7 of House Bill No. 1123, chapter 277.

c. The commissioner may grant an individual licensee who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including a long-term medical disability, a waiver of an examination requirement or a fine, fee, or sanction imposed for failure to comply with renewal procedures.

2. The commissioner shall issue a business entity public adjuster license to a business entity that meets the necessary requirements of this chapter.

   a. A business entity public adjuster license expires on the last day of the month following the two-year anniversary of issuance of a license by the commissioner.

   b. To renew a license, a licensed business entity public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner.

   c. A business entity public adjuster license may be renewed within the ninety-day period immediately preceding the expiration date upon payment of the renewal fee~~, not to exceed one hundred fifty dollars, prescribed by the commissioner. A business entity public adjuster that allows the license to lapse may, within the thirty-day period immediately following the expiration date, renew the same license upon payment of a late renewal fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.~~

   ~~d. A business entity public adjuster license renewed within the thirty-day period immediately following the expiration date pursuant to this section is deemed to have been renewed before the expiration date~~.

3. A license issued pursuant to this chapter must contain the licensee's name, mailing address, and license number; the date of issuance; the lines of authority; the expiration date; and any information the commissioner deems necessary.

4. Within thirty days after the change, a licensee shall inform the commissioner, by any means acceptable to the commissioner, of a change of legal name, mailing address, or other information submitted on the application.

   a. A licensee who fails to provide this notification of change is subject to a fine by the commissioner of not more than five hundred dollars per violation, suspension of the license until the change is reported to the commissioner, or both.

   b. A licensee doing business under a name other than the licensee's legal name shall notify the commissioner before using the assumed name.

5. A licensee is subject to the provisions of chapter 26.1-04.

6. A licensee shall report to the commissioner any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report must include a copy of the order, consent to order, or other relevant legal documents.

7. Within thirty days after a criminal conviction, a licensee shall report to the commissioner any criminal conviction of the licensee taken in any jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.

8. The commissioner may contract with nongovernmental entities, including the national association of insurance commissioners, or affiliates or subsidiaries the national association oversees, to perform ministerial functions, including the collection of fees, related to the administration of this chapter.

9. The commissioner may adopt rules establishing license renewal procedures.

SECTION 6. AMENDMENT. Section 26.1-26.8-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.8-11. Proof of bond ~~or insurance~~.

1. At the time of issuance of a resident public adjuster license or a nonresident public adjuster license and for the duration of the license, an applicant shall maintain a surety bond ~~or proof of insurance~~ satisfactory to the commissioner for the use and benefit of the commissioner for insureds that have remitted fees, retainers, compensation, deposits, or other things of value to the public adjuster in the course of the public adjuster's business. The bond:

   a. Must be a minimum of twenty thousand dollars; and

   b. May not be terminated by the surety company or public adjuster unless written notice has been filed with the commissioner and submitted to the public adjuster at least ~~sixty~~thirty days before the termination.

2. The commissioner may request the evidence of financial responsibility at any time the commissioner deems relevant.

3. A public adjuster immediately shall notify the commissioner if evidence of financial responsibility terminates or becomes impaired. The authority to act as a public adjuster automatically terminates if the evidence of financial responsibility terminates or becomes impaired.

SECTION 7. AMENDMENT. Section 26.1-26.8-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.8-12. Continuing education.

1. Except as otherwise provided in this section, an individual who holds a resident public adjuster license or a nonresident public adjuster license shall satisfactorily complete a minimum of twenty-four credits of continuing education, including three credits of ethics, reported on a biennial basis in conjunction with the license renewal cycle. Credits for continuing education courses attended in any one year over the minimum number of hours of education required, not to exceed twelve hours, may be credited to the year next preceding the year in which the credits were earned or to the year next following the year in which the credits were earned. Report of continuing education must be made at the end of a two-year period. The commissioner may provide a one-time extension of the two-year reporting requirement, not to exceed thirty-six months, if additional time is necessary to implement the transition to reporting continuing education by the last day of the birth month.

2. The requirements of subsection 1 do not apply to a nonresident public adjuster who has met the continuing education requirements of the adjuster's home state and whose home state gives credit to residents of this state on the same basis.

3. The commissioner shall provide by rule for reporting by the last day of the birth month of compliance with the continuing education requirements of this section.

~~4. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing education. Applications for accreditation of a continuing education course offered in this state must be submitted to the commissioner within the time provided by rule and on forms established by rule and with a fee of fifty dollars. The commissioner shall make a final determination as to accreditation and assignment of credit hours for continuing education courses.~~

Approved March 17, 2025

Filed March 18, 2025

CHAPTER 286

HOUSE BILL NO. 1087

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-27-03 and 26.1-27.1-02 of the North Dakota Century Code, relating to licensing for administrators of life and health insurance and pharmacy benefit managers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[113] **SECTION 1. AMENDMENT.** Section 26.1-27-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27-03. ~~Certificate of authority~~License required - Penalty.

1. A person, including a person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health coverage provided by a self-funded plan, may not act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a ~~certificate of authority~~license issued by the commissioner. Any person violating this subsection is guilty of a class C felony.

2. All applications must be accompanied by a filing fee of one hundred dollars.

3. The commissioner shall issue a ~~certificate~~license unless the commissioner after due notice and hearing determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within five years.

4. The administrator shall pay an annual renewal fee of fifty dollars to maintain the ~~certificate~~license.

5. After notice and hearing, the commissioner may revoke a ~~certificate~~license or fine the administrator not more than ten thousand dollars, or both, or the commissioner may suspend a ~~certificate~~license, or fine the administrator not more than five thousand dollars, or both, upon finding that either the administrator violated section 26.1-27-05 and subsection 4 of section 26.1-27-06 and also violated subsection 1, 2, or 3 of section 26.1-27-06 or section 26.1-27-07, 26.1-27-08, 26.1-27-10, 26.1-27-11, or 26.1-27-12, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

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[113] Section 26.1-27-03 was also amended by section 8 of House Bill No. 1123, chapter 277.

[114] **SECTION 2. AMENDMENT.** Section 26.1-27.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-27.1-02. Licensing.

A person may not perform or act as a pharmacy benefits manager in this state unless that person holds a ~~certificate of registration~~license as an administrator under chapter 26.1-27.

Approved March 14, 2025

Filed March 14, 2025

[114] Section 26.1-27.1-02 was also amended by section 3 of House Bill No. 1584, chapter 278.

CHAPTER 287

SENATE BILL NO. 2092

(Industry and Business Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact subsections 7 and 8 of section 26.1-33.4-02 of the North Dakota Century Code, relating to life settlement producer licenses and reporting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7 and 8 of section 26.1-33.4-02 of the North Dakota Century Code are amended and reenacted as follows:

7. Licenses may be renewed annually on or before April thirtieth upon payment of the periodic renewal fee. As specified in subsection 2, the renewal fee for a provider may not exceed a reasonable fee. Failure to pay the fee within the terms prescribed results in the automatic revocation of the license requiring periodic renewal. A license issued after January first is not required to renew until April thirtieth of the following calendar year. ~~A license issued between May 1, 2023, and July 31, 2023, is not required to be renewed until April 30, 2025.~~

8. The term of provider license must be equal to that of a domestic stock life insurance company and the term of a broker license must be equal to that of an insurance producer license. Licenses requiring periodic renewal may be renewed on or before April thirtieth upon payment of the periodic renewal fee as specified in subsection 2. Failure to pay the fees before the expiration of the renewal date results in expiration of the license. A license issued after January first is not required to be renewed until April thirtieth of the following calendar year. ~~A license issued between May 1, 2023, and July 31, 2023, is not required to be renewed until April 30, 2025.~~

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 288

HOUSE BILL NO. 1114

(Government and Veterans Affairs Committee)
(North Dakota Public Employees Retirement System)

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to individual and group health insurance coverage of insulin drugs and supplies; and to amend and reenact section 54-52.1-04.18 of the North Dakota Century Code, relating to health insurance benefits coverage of insulin drugs and supplies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance benefits coverage - Insulin drug and supply out-of-pocket limitations.

1. As used in this section:

   a. "Health benefit plan" has the same meaning as in section 26.1-36.3-01.

   b. "Insulin drug" means a prescription drug that contains insulin and is used to treat a form of diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes insulin in the following categories:

      (1) Rapid-acting insulin;

      (2) Short-acting insulin;

      (3) Intermediate-acting insulin;

      (4) Long-acting insulin;

      (5) Premixed insulin product;

      (6) Premixed insulin/GLP-1 RA product; and

      (7) Concentrated human regular insulin.

   c. "Medical supplies for insulin dosing and administration" means supplies needed for proper insulin dosing, as well as supplies needed to detect or address medical emergencies in an individual using insulin to manage diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes:

(1) Blood glucose meters;

(2) Blood glucose test strips;

(3) Lancing devices and lancets;

(4) Ketone testing supplies, such as urine strips, blood ketone meters, and blood ketone strips;

(5) Glucagon, in injectable and nasal forms;

(6) Insulin pen needles; and

(7) Insulin syringes.

d. "Pharmacy or distributor" means a pharmacy or medical supply company, or other medication or medical supply distributor filling a prescription.

2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health benefit plan unless the health benefit plan provides benefits for insulin drug and medical supplies for insulin dosing and administration which complies with this section.

3. The health benefit plan must limit out-of-pocket costs for a thirty-day supply of:

a. Covered insulin drugs, which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or type of insulin drug used to fill the covered individual's prescription needs.

b. Covered medical supplies for insulin dosing and administration, the total of which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or manufacturer of supplies used to fill the covered individual's prescription needs.

4. The health benefit plan may not allow a pharmacy benefits manager or the pharmacy or distributor to charge a covered individual, require the pharmacy or distributor to collect from a covered individual, or require a covered individual to make a payment for a covered insulin drug or medical supplies for insulin dosing and administration in an amount exceeding the out-of-pocket limits under subsection 3.

5. The health benefit plan may not impose a deductible, copayment, coinsurance, or other cost-sharing requirement that causes out-of-pocket costs for prescribed insulin or medical supplies for insulin dosing and administration to exceed the amount under subsection 3.

6. Subsection 3 does not require the health benefit plan to implement a particular cost-sharing structure and does not prevent the limitation of out-of-pocket costs to less than the amount specified under subsection 3. This section does not limit whether the health benefit plan classifies an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor as a drug or as a medical device or supply.

7. If application of subsection 3 would result in the ineligibility of a health benefit plan that is a qualified high-deductible health plan to qualify as a health savings account under section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of subsection 3 do not apply with respect to the deductible of the health benefit plan until after the enrollee has met the minimum deductible under section 26 U.S.C. 223.

8. This section does not apply to the Medicare part D prescription drug coverage plan.

SECTION 2. AMENDMENT. Section 54-52.1-04.18 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.18. Health insurance benefits coverage - Insulin drug and supply out-of-pocket limitations. ~~(Expired effective July 31, 2025)~~

~~1. As used in this section:~~

~~a. "Insulin drug" means a prescription drug that contains insulin and is used to treat a form of diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes insulin in the following categories:~~

~~(1) Rapid-acting insulin;~~

~~(2) Short-acting insulin;~~

~~(3) Intermediate-acting insulin;~~

~~(4) Long-acting insulin;~~

~~(5) Premixed insulin product;~~

~~(6) Premixed insulin/GLP-1 RA product; and~~

~~(7) Concentrated human regular insulin.~~

~~b. "Medical supplies for insulin dosing and administration" means supplies needed for proper insulin dosing, as well as supplies needed to detect or address medical emergencies in an individual using insulin to manage diabetes mellitus. The term does not include an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor, or supplies needed specifically for the use of such electronic devices. The term includes:~~

~~(1) Blood glucose meters;~~

~~(2) Blood glucose test strips;~~

~~(3) Lancing devices and lancets;~~

~~(4) Ketone testing supplies, such as urine strips, blood ketone meters, and blood ketone strips;~~

~~(5) Glucagon, in injectable and nasal forms;~~

~~(6) Insulin pen needles; and~~

~~(7) Insulin syringes.~~

~~c. "Pharmacy or distributor" means a pharmacy or medical supply company, or other medication or medical supply distributor filling a covered individual's prescriptions.~~

~~2.~~ The board shall provide health insurance benefits coverage that provides for insulin drug and medical supplies for insulin dosing and administration ~~which complies with this section~~as provided under section 1 of this Act.

~~3. The coverage must limit out-of-pocket costs for a thirty-day supply of:~~

~~a. Covered insulin drugs which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or type of insulin drug used to fill the covered individual's prescription needs.~~

~~b. Covered medical supplies for insulin dosing and administration, the total of which may not exceed twenty-five dollars per pharmacy or distributor, regardless of the quantity or manufacturer of supplies used to fill the covered individual's prescription needs.~~

~~4. The coverage may not allow a pharmacy benefits manager or the pharmacy or distributor to charge, require the pharmacy or distributor to collect, or require a covered individual to make a payment for a covered insulin drug or medical supplies for insulin dosing and administration in an amount that exceeds the out-of-pocket limits set forth under subsection 3.~~

~~5. The coverage may not impose a deductible, copayment, coinsurance, or other cost-sharing requirement that causes out-of-pocket costs for prescribed insulin or medical supplies for insulin dosing and administration to exceed the amount set forth under subsection 3.~~

~~6. Subsection 3 does not require the coverage to implement a particular cost-sharing structure and does not prevent the limitation of out-of-pocket costs to less than the amount specified under subsection 3. Subsection 3 does not limit out-of-pocket costs on an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor. This section does not limit whether coverage classifies an insulin pump, an electronic insulin-administering smart pen, or a continuous glucose monitor as a drug or as a medical device or supply.~~

~~7. If application of subsection 3 would result in the ineligibility of a health benefit plan that is a qualified high-deductible health plan to qualify as a health savings account under section 223 of the Internal Revenue Code [26 U.S.C. 223], the requirements of subsection 3 do not apply with respect to the deductible of the health benefit plan until after the enrollee has satisfied the minimum deductible under section 26 U.S.C. 223.~~

~~8. This section does not apply to the Medicare part D prescription drug coverage plan.~~

Approved April 2, 2025

Filed April 3, 2025

CHAPTER 289

HOUSE BILL NO. 1216

(Representatives Karls, Hagert, Kiefert, Wagner)
(Senators Boschee, Dever, Sorvaag)

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to out-of-pocket expenses for prescription drugs; to amend and reenact section 26.1-36.6-03 of the North Dakota Century Code, relating to self-insurance health care plans; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Out-of-pocket expenses - Prescription drugs.

1. As used in this section:

   a. "Cost-sharing" means any coinsurance, copayment, or deductible under a health benefit plan.

   b. "Enrollee" means an individual entitled to prescription drug coverage under a health benefit plan.

   c. "Health benefit plan" has the same meaning as provided under section 26.1-36.3-01.

   d. "Prescription drug" means a drug for which a prescription is required:

      (1) Without a generic equivalent; or

      (2) With a generic equivalent, if the enrollee has obtained access to the drug through prior authorization, a step therapy protocol, or the heath care insurer's expectations and appeals process.

2. To the extent permitted by federal law and regulation, an insurer may not deliver, issue, execute, or renew a health benefit plan providing prescription drug coverage unless when calculating an enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing requirement for a prescription drug under the health benefit plan, the health benefit plan provides for the inclusion of any amount paid by the enrollee or paid on behalf of the enrollee by another person. The health benefit plan may not vary the out-of-pocket maximum or cost-sharing requirement, or otherwise design benefits accounting for the availability of a cost-sharing assistance program for a prescription drug.

3. If application of this section would result in ineligibility of a health benefit plan that is a qualified high-deductible health plan to qualify as a health savings account under section 223 of the Internal Revenue Code [26 U.S.C. 223], the

requirements of this section do not apply with respect to the deductible of the health benefit plan until after the enrollee has satisfied the minimum deductible under section 26 U.S.C. 223.

SECTION 2. AMENDMENT. Section 26.1-36.6-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.6-03. Self-insurance health plans - Requirements. (Effective through July 31, 2025)

1. The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.

2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43. Section 54-52.1-04.18 applies to a self-insurance health plan and is subject to the jurisdiction of the commissioner.

Self-insurance health plans - Requirements. (Effective after July 31, 2025)

1. The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: sections 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46.

2. The following health benefit provisions applicable to a group accident and health insurance policy under chapter 26.1-36 apply to a self-insurance health plan and are subject to the jurisdiction of the commissioner: sections 26.1-36-06, 26.1-36-06.1, 26.1-36-07, 26.1-36-08, 26.1-36-08.1, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.2, 26.1-36-09.3, 26.1-36-09.5, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.8, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-09.11, 26.1-36-09.12, 26.1-36-09.13, 26.1-36-09.14, 26.1-36-09.15, 26.1-36-11, 26.1-36-12.2, 26.1-36-20, 26.1-36-21, 26.1-36-22, 26.1-36-23.1, and 26.1-36-43. Section 1 of this Act applies to a self-insurance health plan and is subject to the jurisdiction of the commissioner.

SECTION 3. APPLICATION. This Act applies effective January 1, 2026, to the public employees retirement system uniform group insurance program health insurance benefits coverage, regardless of the health insurance benefits coverage contract issuance or renewal date. This Act applies effective January 1, 2026, or upon the next renewal after January 1, 2026, to health benefit plans.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 2026.

Approved April 29, 2025

Filed April 29, 2025

CHAPTER 290

SENATE BILL NO. 2091

(Industry and Business Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-36.7-08 of the North Dakota Century Code, relating to requirements for reinsurance association of North Dakota claims; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36.7-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.7-08. Reinsurance.

For claims of an insured which total at least one hundred thousand dollars ~~to~~and not more than one million dollars incurred per plan year, a member insurer must be reinsured by the association at an amount not exceeding seventy-five percent of the member insurer's responsibility for claims incurred by the insured pursuant to the terms of an ~~individual's nongrandfathered~~ individual health benefit plan. The board shall annually determine the attachment points and coinsurance percentage for association claims for each plan year on or before April first of the preceding year.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 18, 2025

Filed March 18, 2025

CHAPTER 291

HOUSE BILL NO. 1481

(Representatives Kasper, Dockter, Koppelman, Louser, Ostlie, D. Ruby)
(Senators Bekkedahl, Cleary, Clemens, Hogan, Lee, Paulson)

AN ACT to create and enact two new sections to chapter 26.1-36.9 of the North Dakota Century Code, relating to dental insurer rate requirements and reporting; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36.9 of the North Dakota Century Code is created and enacted as follows:

Dental insurer rates - Approval.

1. The commissioner may deem a proposed plan rate of a dental insurer to be excessive and disapprove the proposed plan rate if the dental insurer files a rate change and the:

   a. Administrative expense component, not including taxes and assessments, increases from the previous year's rate filing by more than four percent;

   b. Reported contribution to surplus exceeds two percent of total revenue; or

   c. Dental loss ratio for the plan is less than seventy-five percent.

2. a. If the annual dental loss ratio for a dental benefit plan is less than seventy-five percent, the dental insurer offering the plan shall refund the excess premium to covered individuals and groups. As used in this section, "dental loss ratio" means the ratio used to determine the minimum percentage of all premium funds collected by a dental insurer each year which must be spent on actual patient care rather than overhead costs. This minimum required percentage that dental benefit plans must meet for the portion of patient premiums must be dedicated to patient care rather than administrative and overhead costs or the difference must be refunded as provided in this section.

   b. A dental insurer shall provide notice to all individuals and groups that were covered under the plan during the applicable twelve-month period that such individuals and groups are entitled to a refund on the premium, or if the individual or group remains covered by the dental insurer, that the individual or group is eligible for a credit on the premium for the following twelve-month period.

   c. The total of all refunds issued under this subsection must equal the amount of the dental insurer's earned premium which exceeds the amount necessary to achieve a dental loss ratio of seventy-five percent, calculated using data reported by the dental insurer.

d. The dental loss ratio is calculated by dividing the numerator by the denominator as follows:

(1) The numerator is the amount spent on care, which must include:

(a) The amount expended for clinical dental services that are services within the code on dental procedures and nomenclature, provided to enrollees which includes payments under capitation contracts with dental providers, whose services are covered by the contract for dental clinical services or supplies covered by the contract;

(b) Unpaid claim reserves; and

(c) Any claim payment recovered by insurers from providers or enrollees using utilization management efforts, which are deducted from incurred claims amounts.

(2) Any overpayment received from a provider may not be reported as a paid claim. Overpayment recoveries received from a provider must be deducted from incurred claims amounts.

(3) The calculation of the numerator does not include:

(a) All administrative costs, including infrastructure, personnel costs, or broker payments;

(b) Amounts paid to third-party vendors for secondary network savings;

(c) Amounts paid to third-party vendors for network development, administrative fees, claims processing, and utilization management; or

(d) Amounts paid to providers for professional or administrative services that do not represent compensation or reimbursement for covered services provided to an enrollee, including dental record copying costs, attorney fees, subrogation vendor fees, and compensation to paraprofessionals, janitors, quality assurance analysts, administrative supervisors, secretaries to dental personnel, and dental record clerks.

(4) (a) The denominator is calculated using insurer revenue.

(b) The earned premium is all monies paid by a policyholder or subscriber as a condition of receiving coverage from the issuer, including any fees or other contributions associated with the dental benefit plan.

(c) The denominator is the total amount of the earned premium revenues, excluding federal and state taxes and licensing and regulatory fees paid after accounting for any payments pursuant to federal law.

3. The commissioner may:

a. Authorize a waiver or adjustment of the refund requirements in this section only if it is determined by the commissioner that issuing refunds would result in financial impairment for the dental insurer.

b. Adopt rules to implement and administer this section.

4. This section does not apply to a dental insurer with one thousand enrollees or less cumulative of all plans based on a three-year average.

SECTION 2. A new section to chapter 26.1-36.9 of the North Dakota Century Code is created and enacted as follows:

Dental loss ratio transparency - Annual report to the commissioner.

1. A dental insurer that issues, sells, renews, or offers a specialized dental health care service plan contract shall file a dental loss ratio report with the commissioner by April thirtieth of each year, in a manner prescribed by the commissioner.

2. The dental loss ratio report must include dental loss ratio information for the last calendar year for a dental benefit plan provided by a dental insurer and be organized by market and product type.

3. The commissioner may request the dental insurer provide data verification of any information provided by the dental insurer in the dental loss ratio report. The dental insurer shall provide data verification to the commissioner within thirty days of the request.

4. The commissioner shall make the information provided in the dental loss ratio annual reports filed under this section available on the department's website, including the aggregate dental loss ratio, in a manner that allows the public to compare dental loss ratios among dental insurers by market type.

5. For purposes of this section, "dental loss ratio" has the same meaning as in section 1 of this Act.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2027.

Approved April 16, 2025

Filed April 16, 2025

CHAPTER 292

SENATE BILL NO. 2280

(Senators Meyer, Barta, Bekkedahl, Cleary)
(Representatives Nelson, Warrey)

AN ACT to create and enact chapter 26.1-36.12 of the North Dakota Century Code, relating to prior authorization for health insurance; to provide for a legislative management study; to provide for a legislative management report; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-36.12 of the North Dakota Century Code is created and enacted as follows:

26.1-36.12-01. Definitions.

As used in this chapter:

1. "Adverse determination" means a decision by a prior authorization review organization relating to an admission, extension of stay, or health care service that is partially or wholly adverse to the enrollee, including a decision to deny an admission, extension of stay, or health care service on the basis it is not medically necessary.

2. "Appeal" means a formal request, either orally or in writing, to reconsider an adverse determination regarding an admission, extension of stay, or health care service.

3. "Authorization" means a determination by a prior authorization review organization that a health care service has been reviewed and, based on the information provided, satisfies the prior authorization review organization's requirements for medical necessity and appropriateness, and payment will be made for that health care service.

4. "Clinical criteria" means the written policies, written screening procedures, drug formularies or lists of covered drugs, determination rules, determination abstracts, clinical protocols, practice guidelines, medical protocols, and any other criteria or rationale used by the prior authorization review organization to determine the necessity and appropriateness of health care services.

5. "Emergency health care services" means health care services, supplies, or treatments furnished or required to screen, evaluate, and treat an emergency medical condition.

6. "Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity which may include pain and that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the individual's health in jeopardy, impairment of a bodily function, or dysfunction of any body part.

7. "Enrollee" means an individual who has contracted for or who participates in coverage under a policy for that individual or that individual's eligible dependents.

8. "Health care services" means health care procedures, treatments, or services provided by a licensed facility or provided by a licensed physician or within the scope of practice for which a health care professional is licensed. The term includes the provision of pharmaceutical products or services or durable medical equipment.

9. "Medically necessary" as the term applies to health care services means health care services a prudent physician would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or its symptoms in a manner that is:

   a. In accordance with generally accepted standards of medical practice;

   b. Clinically appropriate in terms of type, frequency, extent, site, and duration; and

   c. Not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, treating physician, or other health care provider.

10. "Medication-assisted treatment" means the use of medications, commonly in combination with counseling and behavioral therapies, to provide a comprehensive approach to the treatment of substance use disorders. United States food and drug administration-approved medications used to treat opioid addiction include methadone and buprenorphine, alone or in combination with naloxone and extended-release injectable naltrexone. Types of behavioral therapies include individual therapy, group counseling, family behavior therapy, motivational incentives, and other modalities.

11. "Policy" means a health benefit plan as defined in section 26.1-36.3-01. The term does not include medical assistance or the public employees retirement system uniform group insurance program plans under chapter 54-52.1.

12. "Prior authorization" means the review conducted before the delivery of a health care service, including an outpatient health care service, to evaluate the necessity, appropriateness, and efficacy of the use of health care services, procedures, and facilities, by a person other than the attending health care professional, for the purpose of determining the medical necessity of the health care services or admission. The term includes a review conducted after the admission of the enrollee and in situations in which the enrollee is unconscious or otherwise unable to provide advance notification. The term does not include a referral or participation in a referral process by a participating provider unless the provider is acting as a prior authorization review organization.

13. "Prior authorization review organization" means a person that performs prior authorization for:

   a. An employer with employees in the state who are covered under a policy;

   b. An insurer that writes policies;

c. A preferred provider organization or health maintenance organization; or

d. Any other person that provides, offers to provide, or administers hospital, outpatient, medical, prescription drug, or other health benefits to an individual treated by a health care professional in the state under a policy.

14. "Urgent health care service" means a health care service for which, in the opinion of a health care professional with knowledge of the enrollee's medical condition, the application of the time periods for making a nonexpedited prior authorization might:

a. Jeopardize the life or health of the enrollee or the ability of the enrollee to regain maximum function; or

b. Subject the enrollee to pain that cannot be managed adequately without the care or treatment that is the subject of the prior authorization review.

26.1-36.12-02. Disclosure and review of prior authorization requirements.

1. A prior authorization review organization shall make any prior authorization requirements and restrictions readily accessible on the organization's website to enrollees, health care professionals, and the general public. Requirements include the written clinical criteria and be described in detail using plain and ordinary language comprehensible by a layperson.

2. If a prior authorization review organization intends to implement a new prior authorization requirement or restriction, or amend an existing requirement or restriction, the prior authorization review organization shall:

a. Ensure the new or amended requirement is not implemented unless the prior authorization review organization's website has been updated to reflect the new or amended requirement or restriction; and

b. Provide contracted health care providers of enrollees written notice of the new or amended requirement or amendment no fewer than sixty days before the requirement or restriction is implemented.

26.1-36.12-03. Personnel qualified to make adverse determinations.

A prior authorization review organization shall ensure all adverse determinations are made by a licensed physician or licensed pharmacist. The reviewing individual:

1. Must have experience treating patients with the condition or illness for which the health care service is being requested; and

2. Shall make the adverse determination under the clinical direction of one of the prior authorization review organization's medical directors who is responsible for the health care services provided to enrollees.

26.1-36.12-04. Personnel qualified to review appeals.

1. A prior authorization review organization shall ensure all appeals are reviewed by a physician. The reviewing individual:

a. Shall possess a valid nonrestricted license to practice medicine.

b. Must be in active practice in the same or similar specialty as the physician who typically manages the medical condition or disease for at least five consecutive years.

c. Must be knowledgeable of, and have experience providing, the health care services under appeal.

d. May not receive any financial incentive based on the number of adverse determinations made. This subdivision does not apply to financial incentives established between health plan companies and health care providers.

e. May not have been directly involved in making the adverse determination.

f. Shall consider all known clinical aspects of the health care service under review, including a review of all pertinent medical records provided to the prior authorization review organization by the enrollee's health care provider, any relevant records provided to the prior authorization review organization by a health care facility, and any medical literature provided to the prior authorization review organization by the health care provider.

2. A review of an adverse determination involving a prescription drug must be conducted by a licensed pharmacist or physician who is competent to evaluate the specific clinical issues presented in the review.

3. This section does not apply to reviews conducted under sections 26.1-36-44 and 26.1-36-46.

26.1-36.12-05. Prior authorization - Nonurgent circumstances.

1. If a prior authorization review organization requires prior authorization of a health care service, the prior authorization review organization shall make a prior authorization or adverse determination and notify the enrollee and the enrollee's health care provider of the decision within seven calendar days of obtaining all necessary information to make the decision. For purposes of this section, "necessary information" includes the results of any face-to-face clinical evaluation or second opinion that may be required.

2. A prior authorization review organization shall have written procedures to address the failure of a health care provider or enrollee to provide the necessary information to make a determination on the request. If the health care provider or enrollee fails to provide the necessary information to the prior authorization review organization within fourteen calendar days of a written request for all necessary information, the prior authorization review organization may make an adverse determination.

3. A prior authorization review organization shall allow an enrollee and the enrollee's health care provider at least fourteen business days to request an updated prior authorization following an unforeseen change in the circumstances or care needs for the enrollee following a nonurgent circumstance or provision of health care services for the enrollee.

26.1-36.12-06. Prior authorization - Urgent health care services.

A prior authorization review organization shall render a prior authorization or adverse determination concerning urgent health care services and notify the enrollee

and the enrollee's health care provider of that prior authorization or adverse determination within seventy-two hours after receiving all information needed to complete the review of the requested health care services.

26.1-36.12-07. Prior authorization - Emergency medical condition.

1. A prior authorization review organization may not require prior authorization for prehospital transportation or for the provision of emergency health care services for an emergency medical condition.

2. A prior authorization review organization shall allow an enrollee and the enrollee's health care provider a minimum of two business days following an emergency admission or provision of emergency health care services for an emergency medical condition for the enrollee or health care provider to notify the prior authorization review organization of the admission or provision of health care services.

3. The medical necessity or appropriateness of emergency health care services for an emergency medical condition may not be based on whether those services were provided by participating or nonparticipating providers.

4. If an enrollee receives an emergency health care service that requires immediate postevaluation or poststabilization services, a prior authorization review organization shall make an authorization determination within two business days of receiving a request. If the authorization determination is not made within two business days, the services must be deemed approved.

26.1-36.12-08. No prior authorization for medication-assisted treatment.

A prior authorization review organization may not require prior authorization for the provision of medication-assisted treatment for the treatment of opioid use disorder.

26.1-36.12-09. Retrospective denial.

A prior authorization review organization may not revoke, limit, condition, or restrict a prior authorization if care is provided within forty-five business days from the date the health care provider received the prior authorization unless there is evidence the prior authorization was based on fraud.

26.1-36.12-10. Length of prior authorization.

A prior authorization is valid for at least six months after the date the health care provider receives the prior authorization.

26.1-36.12-11. Chronic or long-term care conditions.

If a prior authorization review organization requires a prior authorization for a health care service for the treatment of a chronic or long-term care condition, the prior authorization remains valid for twelve months.

26.1-36.12-12. Continuity of care for enrollees.

1. On receipt of information documenting a prior authorization from the enrollee or from the enrollee's health care provider, a prior authorization review organization shall honor a prior authorization granted to an enrollee from a previous prior authorization review organization for at least the initial sixty

days of an enrollee's coverage under a new policy, provided the health care service for which the enrollee has received prior authorization is covered under the new policy. To obtain coverage, the enrollee or health care provider shall submit documentation of the previous prior authorization in accordance with the procedures in the enrollee's new policy.

2. During the time period described in subsection 1, a prior authorization review organization may perform its review to grant a prior authorization.

3. If there is a change in coverage of, or approval criteria for, a previously authorized health care service, the change in coverage or approval criteria does not affect an enrollee who received prior authorization before the effective date of the change for the remainder of the enrollee's plan year. This subsection does not apply if a prior authorization review organization changes coverage terms for a drug or device that has been:

   a. Deemed unsafe by the United States food and drug administration; or

   b. Withdrawn by the United States food and drug administration or product manufacturer.

4. A prior authorization review organization shall continue to honor a prior authorization the organization has granted to an enrollee if the enrollee changes products under the same health insurance company provided the health care service for which the enrollee has received prior authorization is covered under the new policy.

26.1-36.12-13. Failure to comply - Services deemed authorized.

If a prior authorization review organization fails to comply with the deadlines and other requirements in this chapter, any health care services subject to review automatically are deemed authorized by the prior authorization review organization.

26.1-36.12-14. Procedures for appeals of adverse determinations.

1. A prior authorization review organization shall have written procedures for appeals of adverse determinations. The right to appeal must be available to the enrollee and the attending health care professional.

2. The enrollee may review the information relied on in the course of the appeal, present evidence and testimony as part of the appeals process, and receive continued coverage pending the outcome of the appeals process.

26.1-36.12-15. Effect of change in prior authorization clinical criteria.

1. If, during a plan year, a prior authorization review organization changes coverage terms for a health care service or the clinical criteria used to conduct prior authorizations for a health care service, the change in coverage terms or in clinical criteria does not apply until the next plan year for any enrollee who received prior authorization for a health care service using the coverage terms or clinical criteria in effect before the effective date of the change.

2. This section does not apply if a prior authorization review organization changes coverage terms for a drug or device that has been:

   a. Deemed unsafe by the United States food and drug administration; or

b. Withdrawn by the United States food and drug administration or product manufacturer.

26.1-36.12-16. Notification to claims administrator.

If the prior authorization review organization and the claims administrator are separate entities, the prior authorization review organization shall notify, either electronically or in writing, the appropriate claims administrator for the health benefit plan of any adverse determination that is reversed on appeal.

26.1-36.12-17. Annual report to insurance commissioner.

1. A prior authorization review organization shall report to the insurance commissioner by September first of each year information regarding prior authorization requests for the previous calendar year.

2. The report must be available online and in a form specified by the commissioner.

3. The report must include the:

   a. Total number of prior authorization requests received;

   b. Number of prior authorization requests for which an authorization was issued;

   c. Number of prior authorization requests for which an adverse determination was issued;

   d. Number of adverse determinations reversed on appeal;

   e. Reasons an adverse determination was issued, expressed as a percentage of all adverse determinations, which must include:

      (1) The patient did not meet prior authorization criteria;

      (2) Incomplete information was submitted by the provider to the prior authorization review organization;

      (3) The treatment program changed; or

      (4) The patient is no longer covered by the health benefit plan;

   f. Number of prior authorization requests submitted but not necessary;

   g. Number of prior authorization requests submitted by electronic means; and

   h. Number of prior authorization requests submitted by nonelectronic means, including mail and facsimile.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - PRIOR AUTHORIZATION REQUIREMENTS IMPOSED BY THE PUBLIC EMPLOYEES RETIREMENT SYSTEM UNIFORM GROUP INSURANCE PROGRAM PLANS - INSURANCE COMMISSIONER DATA COLLECTION AND REPORT TO LEGISLATIVE MANAGEMENT.

1. During the 2025-26 interim, the legislative management shall consider studying prior authorization requirements imposed by the public employees retirement system uniform group insurance plans under chapter 54-52.1 and the impact on patient care and health care costs.

2. The study must include input from stakeholders, including patients, providers, and commercial insurance plans.

3. The study must require insurance plans to submit to the insurance commissioner by July 1, 2025, for the immediately preceding calendar year for each commercial product:

   a. The number of prior authorization requests for which an authorization was issued;

   b. The number of prior authorization requests for which an adverse determination was issued, sorted by health care service, whether the adverse determination was appealed, or whether the adverse determination was upheld or reversed on appeal;

   c. The reasons for prior authorization denial, including the patient did not meet prior authorization criteria, incomplete information was submitted by the provider to the utilization review organization, a change in treatment program, or the patient is no longer covered by the plan; and

   d. The number of denials reversed by internal appeals or external reviews.

4. The insurance commissioner shall aggregate this data into a report and submit it to the legislative management by November 1, 2025.

5. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PRIOR AUTHORIZATION ELECTRONIC HEALTH RECORDS FOR NONURGENT AND EMERGENCY HEALTH CARE SERVICES. During the 2025-26 interim, the legislative management shall consider studying the ability for health care systems and providers to submit prior authorization reviews for nonurgent and emergency health care services by secure electronic means. The study must analyze alternatives to facsimile or mail for transmitting prior authorization requests and the supporting medical records. The study must include input from stakeholders, including patients, providers, and commercial insurance plans. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 2026.

Approved April 21, 2025

Filed April 22, 2025

CHAPTER 293

SENATE BILL NO. 2172

(Senators Patten, Cleary, Hogan, Roers)
(Representatives Dobervich, Frelich)

AN ACT to create and enact a new section to chapter 26.1-45 of the North Dakota Century Code, relating to long-term care insurance policy terms and claim payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-45 of the North Dakota Century Code is created and enacted as follows:

Defined term requirements - Claim payments.

1. A long-term care insurance policy delivered or issued for delivery in this state may not include the following terms, unless the terms are defined in the policy and consistent with the following requirements:

   a. "Activities of daily living" means bathing, continence, dressing, eating, toileting, and transferring.

   b. "Bathing" includes washing oneself by sponge bath, or in a tub or shower, and the process of getting into and out of the tub or shower.

   c. "Cognitive impairment" includes a deficiency in an individual's:

      (1) Short-term or long-term memory;

      (2) Orientation as to an individual, place, or time;

      (3) Deductive or abstract reasoning; or

      (4) Judgment as it relates to safety awareness.

   d. "Continence" includes the ability to maintain control of bowel and bladder function, or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for a catheter or colostomy bag.

   e. "Dressing" includes putting on and taking off any item of clothing and any necessary brace, fastener, or artificial limb.

   f. "Eating" includes feeding oneself from a receptacle, including a plate, cup, or table, or being fed through a feeding tube or intravenously.

   g. "Toileting" includes getting to and from the toilet and on and off the toilet, and performing associated personal hygiene.

   h. "Transferring" includes moving into or out of a bed, chair, or wheelchair.

2. A policy defined under this chapter may not prohibit or delay payment of policy benefits to a basic care facility as defined under section 23-09.3-01 if the insured:

   a. Meets the criteria for eligibility for benefits under the policy for care or services that are medically necessary;

   b. Is unable to perform two or more activities of daily living without supervision or direct assistance; or

   c. Has cognitive impairment requiring continual supervision.

3. An insurer shall provide a copy of the long-term care insurance policy to the insured or a representative of the insured within thirty days of a request for a copy of the policy.

Approved April 7, 2025

Filed April 8, 2025

CHAPTER 294

SENATE BILL NO. 2377

(Senators Boschee, Bekkedahl, Dwyer)
(Representatives Dockter, Koppelman, Louser)

AN ACT to amend and reenact section 26.1-47-02.1 of the North Dakota Century Code, relating to preferred provider arrangements and restrictions on dental care services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-47-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-02.1. Fees for dental services - Prohibition.

1. As used in this section, "covered services" means dental care services for which a reimbursement is available under an enrollee's plan or for which a reimbursement would be available but for the application of a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, or frequency limitation.

2. Except for fees for covered services, a preferred provider arrangement for a dental plan may not directly or indirectly set or otherwise regulate the fees charged by the preferred provider for dental care services.

3. A preferred provider arrangement may not restrict a covered person from receiving or paying for additional dental care services that were denied by the covered person's dental plan.

4. Unless disclosed to the covered person before receiving dental care, a covered person receiving or paying for additional dental care services described in subsection 3 may not be charged a rate in excess of the preferred provider arrangement's contracted rate for covered services.

Approved March 28, 2025

Filed March 31, 2025

CHAPTER 295

HOUSE BILL NO. 1471

(Representatives Christianson, Dockter, Kasper, Koppelman, Ostlie, Finley-DeVille, Louser)
(Senators Bekkedahl, Paulson, Cleary, Meyer, Lee)

AN ACT to create and enact a new section to chapter 26.1-47 of the North Dakota Century Code, relating to method of dental payment options in preferred provider arrangements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Method of dental payment option.

1. A preferred provider arrangement may not include restrictions on methods of payment from the dental insurer or third-party payor vendor to the dental provider in which the only acceptable payment method is a credit card payment.

2. If initiating or changing payments to a dental provider using electronic funds transfer payments, including virtual credit card payments, a dental insurer or the contracted vendor shall:

   a. Notify the dental provider if any fees are associated with a particular payment method;

   b. Advise the dental provider of the available methods of payment and provide clear instructions to the dental provider as to how to select an alternative payment method that does not impose fees or similar charges on the provider; and

   c. Notify the dental provider if the dental insurer is sharing a part of the profit of the fee charged by the credit card company to pay the claim.

3. A dental provider or a contracted vendor, which initiates or changes payments to a dental provider through the automated clearinghouse network, under title 45, Code of Federal Regulations, sections 162.1601 and 162.1602, may not charge a fee solely to transmit the payment to a dental provider unless the dental provider has consented to the fee. A dental provider's agent may charge reasonable fees if transmitting an automated clearinghouse network payment related to transaction management, data management, portal services, and other value-added services in addition to the bank transmittal.

4. As used in this section, "dental insurer" and "dental provider" have the same meaning as in section 26.1-36.9-01.

Approved March 17, 2025

Filed March 18, 2025