

INSURANCE

CHAPTER 278

HOUSE BILL NO. 1070
(Jenkins, Metzger, Olienyk, Sandness)
(From Legislative Council Study)

AUTOMOBILE INSURANCE CANCELLATION

AN ACT to create and enact sections 26-02-37, 26-02-38, 26-02-39, 26-02-40, and 26-02-41 of the North Dakota Century Code, and to amend and reenact sections 26-02-32, 26-02-33, 26-02-34, 26-02-35, and 26-02-36 of the North Dakota Century Code, relating to the cancellation and nonrenewal of automobile liability insurance policies, and the furnishing of reasons for cancellation and nonrenewal, providing a penalty, and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-02-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-02-32. AUTOMOBILE LIABILITY INSURANCE POLICY DEFINED - LIMITATIONS.) As used in sections 26-02-33 through 26-02-41:

1. "Policy" means any automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured a natural person or persons residing in the state of North Dakota, and under which the insured vehicles therein designated are of the following types only:
 - a. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or
 - b. Any other four-wheel motor vehicle with a load capacity of one thousand five hundred pounds or less which is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

provided, however, that sections 26-02-33 through

26-02-41 shall not apply: to any policy which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy; or to any policy issued under the North Dakota assigned risk plan; or to any policy insuring more than six motor vehicles; or to any policy covering the operation of a garage, automobile sales agency, repair shop, service station, or public parking place; or to any policy providing insurance only on an excess basis; or to any other contract providing insurance to such named insured even though such contract may incidentally provide insurance with respect to such motor vehicles.

2. "Renewal" or "to renew" means:
- a. The issuance and delivery by an insurer of a policy replacing, at the end of the previous policy period, a policy previously issued and delivered by the same insurer;
 - b. The issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; or
 - c. The extension of the term of a policy beyond its policy period or term pursuant to a provision for extending the policy by payment of a continuation premium;

provided, however, that any policy with a policy period or term of less than six months shall be considered as if written for a policy period or term of six months except in case of termination under any of the circumstances specified in subsection 2 of section 26-02-36. Provided, further, that for purposes of this Act any policy written for a term longer than one year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one year and any termination by an insurer effective on an anniversary date of such policy shall be deemed a failure to renew.

3. "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premium on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

SECTION 2. AMENDMENT.) Section 26-02-33 of the North

Dakota Century Code is hereby amended and reenacted to read as follows:

26-02-33. CANCELLATION OF POLICY - EXCLUSIVE REASONS THEREFOR.)

1. No insurer shall cancel a policy except for the following reasons:
 - a. Nonpayment of premium.
 - b. Because the driver's license or motor vehicle registration of either the named insured or of any other operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been suspended, rescinded, canceled, or revoked during the policy period, or, if the policy is a renewal, during its policy period or for one hundred eighty days immediately preceding its effective date. This subdivision shall not apply and the insurer shall not cancel a policy where the operator whose driver's license is suspended or revoked is excluded from coverage under the policy. The insurer shall notify the named insured of the possibility of excluding an operator whose license has been suspended or revoked prior to cancellation of the policy.
2. During the policy period no modification of automobile physical damage coverage, except coverage for loss caused by collision, whereby provision is made for the application of a deductible amount not exceeding one hundred dollars shall be deemed a cancellation of the coverage or of the policy.
3. Renewal of a policy shall not constitute a waiver of estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.
4. This section shall not apply to the failure to renew a policy.

SECTION 3. AMENDMENT.) Section 26-02-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-02-34. NOTICE OF CANCELLATION - STATEMENT OF REASONS THEREFOR.) No insurer shall exercise its right to cancel a policy unless a written notice of cancellation is mailed by certified mail, return receipt requested, or delivered to the named insured, at the address shown in the policy, at least

twenty days prior to the effective date of cancellation, provided that if the mailing receipt has not been returned to the insurer within twenty days, and the insurer, through its local agent or otherwise, has made every reasonable effort during that period to notify the insured of the forthcoming cancellation, then the insurer may cancel the policy. When cancellation is for nonpayment of premium such notice shall be mailed by certified mail or delivered to the named insured at the address shown in the policy at least ten days prior to the effective date of cancellation and shall include or be accompanied by a statement of the reason therefor. This section shall not apply to the failure to renew a policy.

SECTION 4. AMENDMENT.) Section 26-02-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-02-35. STATEMENT OF REASONS TO ACCOMPANY NOTICE OF CANCELLATION OR TO BE MAILED UPON REQUEST OF INSURED.) The notice of cancellation shall state or be accompanied by either a statement of the reason or reasons therefor, or a statement that upon written request of the named insured, mailed or delivered to the insurer at least ten days prior to the effective date of cancellation, the insurer will specify in writing the reason or reasons for such cancellation. If the reason or reasons for cancellation do not accompany or are not included in the notice of cancellation, the insurer shall upon such written request of the named insured specify in writing the reason or reasons for cancellation. The insurer shall mail or deliver such reason or reasons to the named insured within ten days after receipt of such written request. Failure to comply with the notice of cancellation provisions of section 26-02-34, or failure to furnish reasons for cancellation upon written request of the insured shall be sufficient cause for the commissioner of insurance to cancel, revoke, or refuse to renew that company's certificate of authority to do business in North Dakota. This section shall not apply to failure to renew a policy.

SECTION 5. AMENDMENT.) Section 26-02-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-02-36. NONRENEWAL - NOTICE - STATEMENT OF REASONS - NONRENEWAL NOT TO BE BASED ON CERTAIN FACTS - RESPONSIBILITY OF COMMISSIONER.)

1. No insurer shall fail to renew a policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least twenty days prior to the expiration date of the policy or anniversary date of a policy written for a term longer than one year or with no fixed expiration date. The insurer shall include

a statement of the reasons for nonrenewal with the notice, or shall furnish it upon the written request of the insured mailed or delivered to the insurer at least ten days prior to the expiration date of the policy. The insurer shall comply with such a request within ten days after receipt thereof.

2. Subsection 1 shall not apply:
 - a. If the insurer has manifested in any way its willingness to renew;
 - b. In case of nonpayment of premium for the expiring policy; nor
 - c. If the insured fails to pay the premium as required by the insurer for renewal.
3. No insurer authorized to do business in this state shall refuse to renew an automobile liability insurance policy solely because of the age, residence, race, color, creed, sex, national origin, ancestry, or occupation of anyone who is an insured.
4. An insurer found guilty of willfully violating the provisions of subsection 3 of this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars. Failure on the part of an insurer to comply with the provisions of subsections 1 and 3 of this section shall be sufficient cause for the insurance commissioner to cancel, revoke, or refuse to renew that insurer's certificate of authority to do business in North Dakota.

SECTION 6.) Section 26-02-37 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-02-37. NOTIFICATION OF POSSIBLE ELIGIBILITY FOR ASSIGNED RISK POLICY.) When a policy of automobile liability insurance is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which subsection 1 of section 26-02-36 applies, the insurer shall notify the named insured of his possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. Such notification shall accompany or be included in the notice of cancellation or nonrenewal required by sections 26-02-34 and 26-02-36.

SECTION 7.) Section 26-02-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-02-38. PROOF OF NOTICE OF CANCELLATION OR NONRENEWAL.)

Proof of mailing of notice of cancellation for nonpayment of premium, or of nonrenewal or of reasons for cancellation, to the named insured at the address shown in the policy, shall be sufficient proof of notice. Proof of mailing of notice of cancellation for reasons other than nonpayment of premium shall be evidenced by the return receipt provided for in section 26-02-34, or by affidavit of mailing.

SECTION 8.) Section 26-02-39 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-02-39. TERMINATION OF COVERAGE WHEN ANOTHER POLICY IN FORCE.) Notwithstanding the failure of an insurer to comply with sections 26-02-32 through 26-02-41, termination of any coverage under the policy either by cancellation or nonrenewal shall be effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement thereof.

SECTION 9.) Section 26-02-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-02-40. NONLIABILITY OF PARTIES.) The specific reason for cancellation or nonrenewal which is furnished to the insured, shall not constitute grounds for any cause of action against the insurer or his authorized representative, or its agents or employees, or any firm, person or corporation who in good faith furnishes to the insurer the information upon which the reasons for cancellation or nonrenewal are based.

SECTION 10.) Section 26-02-41 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-02-41. EFFECTIVE DATE - APPLICATION.) Sections 26-02-32 through 26-02-40 shall take effect July 1, 1971, and shall apply only to policies written or renewed thereafter.

Approved March 29, 1971

CHAPTER 279

HOUSE BILL NO. 1201
(Boustead)

MANDATORY UNINSURED
MOTORIST COVERAGE

AN ACT to provide that all motor vehicle liability policies written in this state must contain uninsured motorist coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. UNINSURED MOTORIST COVERAGE - COMPULSORY.) No motor vehicle liability policy of insurance against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in amounts not less than that set forth in section 39-16.1-11 for bodily injury or death, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

SECTION 2. UNINSURED MOTOR VEHICLE - DEFINED - INSOLVENT INSURER.) For the purposes of this Act, the term "uninsured motor vehicle" shall be any motor vehicle which does not carry at least the bodily injury and death limits as set forth in section 39-16.1-11 and shall include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

SECTION 3. RIGHTS OF INSURER MAKING PAYMENTS UNDER UNINSURED MOTORIST COVERAGE.) In the event of payment by an insurer to any person under the uninsured motorist coverage, the insurer making such payments shall, to the extent thereof, be entitled to the proceeds of any settlement of judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible

for the damage for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer provided, however, this section shall not allow any insurer a cause of action against or recovery from the North Dakota state unsatisfied judgment fund.

Approved March 19, 1971

CHAPTER 280

SENATE BILL NO. 2155
(Lips, Wilhite)

TRANSFER OF LIFE
AND HEALTH POLICIES

AN ACT to amend and reenact section 26-03-12 of the North Dakota Century Code, relating to the transfer of policies of life and health insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-03-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03-12. POLICY OF LIFE OR HEALTH INSURANCE TRANSFER-
ABLE.) A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon such policy in accordance with the terms thereof. No provision of this Act or of any other law shall be construed as prohibiting an insured under a group insurance policy, pursuant to agreement among the insured, the group policyholder and the insurer, from making an assignment of all or any part of the incidents of ownership held by the insured under such policy, including specifically but not by way of limitation, any right to designate a beneficiary thereunder and any right to have an individual policy issued in case of termination of employment. All such assignments, whether made prior to or subsequent to the effective date hereof, shall be valid for the purpose of vesting in the assignee thereof all the incidents of ownership so assigned, and shall entitle the insurer to deal with the assignee as the owner thereof in accordance with the provisions of said policy, but without prejudice to the insurer on account of any payment made or individual policy issued prior to receipt by the insurer of such notice as may be required by the provisions of the policy.

Approved March 27, 1971

CHAPTER 281

SENATE BILL NO. 2157
(Lips, Wilhite)

PROHIBITED PROVISIONS IN
LIFE INSURANCE POLICY

AN ACT to amend and reenact subsection 3 of section 26-03-36 of the North Dakota Century Code relating to provisions prohibited in a life insurance policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 3 of section 26-03-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A provision by which the policy shall purport to be issued or take effect more than six months before the original application for the insurance was made. This section shall not be construed to prohibit the exchange, alteration or conversion of any policy of life insurance.

Approved March 27, 1971

CHAPTER 282

HOUSE BILL NO. 1515
(Gackle, Stone)

COORDINATED BENEFIT PROVISIONS

AN ACT to create and enact sections 26-03-48, 26-26-15, 26-27-15, and 26-27.1-20 of the North Dakota Century Code, permitting the use of coordinated benefit provisions in certain group health insurance policies and group non-profit service contracts, and authorizing the commissioner of insurance to promulgate rules and regulations for their form and content.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Section 26-03-48 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-03-48. COORDINATION OF BENEFIT PROVISIONS.) Group health insurance policies may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance.

SECTION 2.) Section 26-26-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-26-15. COORDINATION OF BENEFIT PROVISIONS.) Group nonprofit hospital service contracts may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance.

SECTION 3.) Section 26-27-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27-15. COORDINATION OF BENEFIT PROVISIONS.) Group nonprofit medical service contracts may contain coordination of benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance.

SECTION 4.) Section 26-27.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-27.1-20. COORDINATION OF BENEFIT PROVISIONS.) Group nonprofit dental service contracts may contain coordination of

benefit provisions for the control of overinsurance. Such provisions shall be in accordance with appropriate guidelines set forth in regulations issued by the commissioner of insurance.

Approved March 16, 1971

CHAPTER 283

HOUSE BILL NO. 1528
(Gackle)

OVERINSURANCE PROVISION

AN ACT to create and enact subdivisions l and m of subsection 2 of section 26-03A-03 of the North Dakota Century Code; to amend and reenact subdivision c of subsection 2 of section 26-03A-03 and subsection 7 of section 26-03A-03 of the North Dakota Century Code; and to repeal subdivisions d, e, and f of subsection 2 of section 26-03A-03 of the North Dakota Century Code, pertaining to overinsurance under individual accident and sickness insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subdivision c of subsection 2 of section 26-03A-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

c. A provision as follows:

OVERINSURANCE: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _____ (insert type of coverage or coverages) in excess of \$_____ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under this policy and a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

SECTION 2.) Subdivisions l and m of subsection 2 of section 26-03A-03 of the North Dakota Century Code are hereby created and enacted to read as follows:

1. A provision as follows:

OVERINSURANCE: If, with respect to a person covered under this policy, benefits for allowable expense incurred during a claim determination period under this policy together with benefits for allowable expense during such period under all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage), exceed the total of such person's allowable expense during such period, this insurer shall be liable only for such proportionate amount of the benefits for allowable expense under this policy during such period as (1) the total allowable expense during such period bears to (2) the total amount of benefits payable during such period for such expense under this policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage) less in both (1) and (2) any amount of benefits for allowable expense payable under other valid coverage which does not contain an "overinsurance provision". In no event shall this provision operate to increase the amount of benefits for allowable expense payable under this policy with respect to a person covered under this policy above the amount which would have been paid in the absence of this provision. This insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer. Any such payment shall discharge the liability of this insurer as fully as if the payment had been made directly to the insured, his assignee, or his beneficiary. In the event that this insurer pays benefits to the insured, his assignee, or his beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, this insurer shall have a right of action against the insured, his assignee, or his beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of the other valid coverage. The amount of other valid coverage which is on a provision of service basis shall be computed as the amount the services rendered would have cost in the absence of such coverage. For the purposes of this provision:

- (1) "Allowable expense" means one hundred ten percent of any necessary, reasonable, and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical, or major medical expense under this policy or under any other valid coverage.

- (2) "Claim determination period" with respect to any covered person means the initial period of _____ (insert period of not less than thirty days) and each successive period of a like number of days, during which allowable expense covered under this policy is incurred on account of such person. The first such period begins on the date when the first such expense is incurred, and successive periods shall begin when such expense is incurred after expiration of a prior period.

Or, in lieu thereof:

"Claim determination period" with respect to any covered person means each _____ (insert calendar or policy period of not less than a month) during which allowable expense covered under this policy is incurred on account of such person.

- (3) "Overinsurance provision" means this provision and any other provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

The foregoing policy provision may be inserted in all policies providing hospital, surgical, medical, or major medical benefits. The insurer may make this provision applicable to either or both: other valid coverage with other insurers; and, except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer shall include in this provision a definition of "other valid coverage" approved as to form by the commissioner. Such definition may include hospital, surgical, medical, or major medical benefits provided by group, blanket, or franchise coverage, individual and family-type coverage, blue cross-blue shield coverage, and other prepayment plans, group practice, and individual practice plans, uninsured benefits provided by labor-management trustee plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workmen's compensation insurance, or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage shall not include payments made under third party liability coverage as a result of a determination of negligence. The insurer may require, as part of the proof of claim, the information necessary to administer this provision.

m. A provision as follows:

OVERINSURANCE: After the loss-of-time benefit of this policy has been payable for ninety days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed _____ percent of the insured's earned income; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded _____ percent of the insured's earned income at the time of such application, such higher percentage will be used in place of _____ percent. Such adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as (1) the product of the insured's earned income and _____ percent (or, if higher, the alternative percentage described at the end of the first sentence of this provision) bears to (2) the total amount of loss-of-time benefits payable for such month under this policy and all other valid loss-of-time coverage on the insured (without giving effect to the "overinsurance provision" in this or any other coverage) less in both (1) and (2) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision". In making such computation, all benefits and earnings shall be converted to a consistent (insert "weekly" if the loss-of-time benefit of this policy is payable weekly, "monthly" if such benefit is payable monthly, etc.) basis. If the numerator of the foregoing ratio is zero or is negative, no benefit shall be payable under this policy. In no event shall this provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit. For purposes of this provision:

- (1) "Earned income", except where otherwise specified, means the greater of the monthly earnings of the

insured at the time disability commences and his average monthly earnings for a period of two years immediately preceding the commencement of such disability, and shall not include any investment income or any other income not derived from the insured's vocational activities.

- (2) "Overinsurance provision" shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

The foregoing provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a definition of "valid loss-of-time coverage", approved as to form by the commissioner, which definition may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance authorities of this or any other state of the United States or of any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workmen's compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the commissioner.

SECTION 3. AMENDMENT.) Subsection 7 of section 26-03A-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Filing procedure. The commissioner may make such

reasonable rules and regulations as are necessary, proper, or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law.

SECTION 4. REPEAL.) Subdivisions d, e, and f of subsection 2 of section 26-03A-03 of the North Dakota Century Code are hereby repealed.

Approved March 16, 1971

CHAPTER 284

SENATE BILL NO. 2151
(Lips, Wilhite)

AUTHORIZED INVESTMENTS
OF INSURANCE COMPANIES

AN ACT to amend and reenact subsection 13 of section 26-08-11 of the North Dakota Century Code, relating to authorized investment of funds of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 13 of section 26-08-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
 - a. Real estate used primarily for farming or agriculture may not be acquired under the provisions of this subsection;
 - b. Investments made by any company under the provisions of this subsection shall not at any time exceed ten percent of the admitted assets of the company;
 - c. An investment in any single parcel of real estate acquired under the provisions of this subsection shall not exceed two percent of the admitted assets of the company;
 - d. Such real estate, including the cost of improvements shall be valued at cost and the improvements shall be depreciated annually at an average rate of not less than two percent of the original cost.

Approved March 27, 1971

CHAPTER 285

HOUSE BILL NO. 1253
(Atkinson)

PAYING LIFE INSURANCE
PROCEEDS TO TRUSTEES

AN ACT relating to the payment of life insurance proceeds to trustees whether inter vivos or testamentary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. NOT AFFECTED BY WILLS LAW.) A designation in accordance with the terms of any insurance, annuity, or endowment contract where the designation in any agreement is or entered into by the insurance company in connection therewith, supplemental thereto, or in settlement thereof, or the designation under a thrift, pension, retirement, death benefit stock bonus or profit-sharing contract, plan, system, or trust created by an employer for the exclusive benefit of some or of his employees, or their beneficiary, a person to be a beneficiary, payee, or owner of any right, title, or interest thereunder upon the death of another, shall not be subject to or defeated or impaired by any statute or law relating to the signing and attestation of wills, even though such designation is revocable with the rights of such beneficiary, payee, or owner, or otherwise subject to defeasance.

SECTION 2. PRIOR EXISTENCE OF WILL NOT REQUIRED.) Under the provisions of section 1 of this Act, it shall be permissible to designate as beneficiary, payee, or owner a trustee named any inter vivos or testamentary trust whether or not such will (or codicil) is in existence at the date of such designation. It shall not be necessary to the validity of any such trust that there be in existence a trust corpus other than the right to receive the benefits or to exercise the rights resulting from such a designation.

SECTION 3. PAYMENT TO TRUSTEE.) Under the provision of section 1 of this Act, it shall also be permissible to designate as a beneficiary, payee, or owner, a trustee named to be named in, or ascertainable under, the will of the designator. Benefits or rights resulting from such a designation shall be payable or transferable to the trustee upon admission of the will (or codicil) to probate. Upon the payment thereof to the trustee (or trustees) such death benefits shall be administered, and disposed of in accordance with the terms of the testamentary trust or trusts created by the will (or codicil).

SECTION 4. PAYMENTS WHERE NO TRUSTEE MAKES CLAIM.) If a trustee is designated pursuant to section 2 or 3 of this Act, and no qualified trustee makes claim to the benefits or rights resulting from such a designation within one year of the death of the designator, or if it is satisfactory to the person obligated to make the payment or transfer as furnished within such one-year period that there is or will be no trustee to receive the proceeds, payment or transfer shall be made to the person or representative of the designator, unless otherwise provided by such designation or other controlling agreement made during the lifetime of the designator.

SECTION 5. DISCHARGE FOR PAYMENT BY OBLIGOR.) The payment of the benefits due or a transfer of the rights given under a designation pursuant to section 2, 3, or 4 of this Act and the receipt of such payment or transfer executed by the trustee or other authorized payee thereof shall constitute a full discharge and acquittance of the person or institution obligated to make payment or transfer.

SECTION 6. EXEMPTION FROM CREDITOR'S CLAIMS.) Payment of the benefits due where the transfer of the rights given in accordance with a designation of the provisions of section 3 of this Act shall not cause such benefits or rights to be included in the property administered as part of the designator's estate under this chapter as subject to the claims of creditors.

SECTION 7. COMMINGLING OF ASSETS.) Such death benefits so held in trust may be commingled with any other assets which may properly come into such trust. Enactment of this section shall not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will.

Approved March 12, 1971

CHAPTER 286

SENATE BILL NO. 2153
(Lips, Wilhite)

OWNING SPECIAL PURPOSE
CORPORATIONS

AN ACT to authorize domestic life insurance companies to invest in subsidiaries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. SPECIAL PURPOSE CORPORATIONS.) A domestic life insurance company may organize and hold, or acquire and hold, more than 50 percent of the capital stock of any corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof, or if approved by the commissioner, elsewhere, which is:

1. A corporation providing investment, advisory, management or sales services to an investment company or to an insurance company; or
2. A data processing or computer service corporation; or
3. A real property holding, developing, managing or leasing corporation; or
4. A mortgage loan corporation engaged in the business of making, originating, purchasing, or otherwise acquiring or investing in, and servicing or selling or otherwise disposing of loans secured by mortgages on real property; or
5. A corporation whose business is owning and managing or leasing personal property; or
6. A banking or insurance corporation whose business has been approved by the commissioner as complementary or supplementary to the business of a domestic life insurance company. This subsection is not intended to take away any powers which may reside now or in the future in any other state department.

Provided, however, that such percentage of stock may, with the approval of the commissioner, be fifty percent or less. The limits contained in section 26-08-11 of the North Dakota Century Code shall not apply to such holdings, pro-

vided that the aggregate of the investments under this subdivision shall not exceed ten percent of the domestic life insurance company's admitted assets.

SECTION 2. REGULATIONS.) The commissioner may issue such reasonable rules and regulations as may be appropriate to carry out the purposes of this Act.

Approved March 27, 1971

CHAPTER 287

HOUSE BILL NO. 1397
(Atkinson, Boustead)

VARIABLE CONTRACT INSURANCE

AN ACT creating a variable contract insurance law for North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA.

SECTION 1. SEPARATE ACCOUNTS - AUTHORIZED.) Any domestic life insurance company, including any domestic fraternal benefit society which operates on a legal reserve basis, may establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:

1. The income, gains, and losses, realized or unrealized from assets allocated to a separate account, shall be credited to or charged against the account, without regard to other income, gains, or losses of the company.
2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3 of this section:
 - a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by laws of this state governing the investments of life insurance companies.
 - b. Investments in a separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.
3. Except with the approval of the commissioner of insurance and under such conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or

stated rate of interest shall not be maintained in a separate account.

4. Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account. Unless otherwise approved by the commissioner, the portion of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 of this section shall be valued in accordance with the rules otherwise applicable to the company's assets.
5. Amounts allocated to a separate account in the exercise of the power granted by this Act shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.
6. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.
7. To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and

procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

SECTION 2. CONTENT OF CONTRACTS.) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

SECTION 3. LICENSE REQUIRED.) No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner of insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider, among other things, the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the laws and regulations under which the company is authorized in the state of domicile to issue variable contracts. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provisions of this section if it or the parent or the affiliated company meets these requirements.

SECTION 4. RULES AND REGULATIONS.) The commissioner of insurance shall have authority to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this Act.

SECTION 5. EXCEPTIONS.) Except for the provisions entitled "loans", "options on surrender or lapse", "continuance of insurance on lapse", "reinstatement", "options at maturity", and the "grace" paragraph of the provision entitled "payment of premiums" of sections 26-03-26 through 26-03-31, and except for subsections 2, 7, 8, 9, 10, and 12 of section 26-03-35, and except as otherwise provided in this Act, all pertinent provisions of title 26 shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state, shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Approved March 22, 1971

CHAPTER 288

SENATE BILL NO. 2156
(Lips, Wilhite)

REGULATING TAKEOVER BIDS

AN ACT to protect shareholders of North Dakota corporations by requiring public announcement and fair, full and effective disclosure to shareholders in regard to take-over bids and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.)

1. "Take-over bid" means the acquisition of, or offer to acquire, pursuant to a tender offer or request or invitation for tenders, any equity security of a North Dakota domestic insurance company, if after acquisition thereof the offeror would, directly or indirectly, be a record or beneficial owner of more than five percent of any class of the issued and outstanding equity securities of such corporation. "Take-over bid" does not include:
 - a. Bids made by a dealer for his own account in the ordinary course of his business of buying and selling such security;
 - b. Any other offer to acquire an equity security or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, from not more than twenty persons, in good faith and not for the purpose of avoiding this Act;
 - c. Any tender offer or request or invitation for tenders to which the target company consents, by action of its board of directors, if such board of directors has recommended acceptance thereof to shareholders and the terms thereof including any inducements to officers or directors which are not made available to all shareholders have been furnished to shareholders.
2. "Offeror" means a person who makes, or in any way participates or aids in making a take-over bid, and includes persons acting jointly or in concert, or who

- intend to exercise jointly or in concert any voting rights attached to the securities for which such take-over bid is made.
3. "Offeree" means the beneficial or record owner of securities which an offeror acquires or offers to acquire in connection with a take-over bid.
 4. "Target company" means a corporation whose securities are or are to be the subject of a take-over bid.
 5. "Equity security" means any shares or similar securities, or voting trust certificates, or any securities convertible into such securities.
 6. "Vertical combination" means a chain of ownership in which one corporation has a majority of its equity securities owned by another corporation and which chain of corporate ownership may or may not continue through other corporations in which a majority of the equity securities of one corporation are owned by another.
 7. "Horizontal combination" means two or more corporations each of which has a majority of its equity securities owned by the same other corporation.

SECTION 2. TAKE-OVER BID - RESTRICTIONS.)

1. No offeror shall make a take-over bid unless at least twenty days prior thereto he files with the insurance commissioner and the target company copies of all information required by subsection 2 herein and either within ten days following such filing no hearing is ordered by the commissioner or requested by the target company, or a hearing is requested by the target company within such time but the commissioner finds that no cause for hearing exists, or a hearing is ordered within such time and upon such hearing the commissioner adjudicates that the proposed take-over bid and the materials being or to be distributed are not a violation of the insurance laws of the state, including North Dakota Century Code 26-20 and 26-30, and that the offeror proposed to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer. No offeror shall make a take-over bid if he owns five percent or more of the issued and outstanding equity securities of any class of the target company, any of which were purchased within one year before the proposed take-over bid, and the offeror, before making any such purchase, or before the thirtieth day following the effective date of this section, whichever is later, failed to publicly announce his

intention to gain control of the target company, and failed to make fair, full, and effective disclosure of such intention to the persons from whom he acquired such securities.

2. The information to be filed with the commissioner and the target company pursuant to section 1 shall include:
 - a. Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;
 - b. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.
 - c. The names of all insurance companies doing business in North Dakota in which the offeror has ownership or debt interests (setting forth such ownership or debt interests) or management functions (setting forth the management functions).
 - d. The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the target company;
 - e. If the offeror has ownership or debt interests, or management functions in other insurance companies doing business in the state of North Dakota, what plans exist for consolidation of any functions whatsoever of the target company with the offeror's other companies, including but not limited to, rate making, investment policies, or consolidation of sales functions.
 - f. A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or formal consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment; or to assume any portion of the risks of the target company or to have the target company assume any portion of the risks, or to reinsure any of the risks of the offeror.
 - g. The number of shares of any equity security of the

target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this section as an offeror;

- h. Particulars as to any contracts, arrangements, or understandings to which an offeror is party with respect to any equity security of the target company, including without limitation transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts arrangements, or understandings have been entered into;
- i. Complete information on the organization and operations of offeror, including without limitation the year of organization, form of organization, the jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal assets of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions, to which the offeror or any of its subsidiaries was or is to be a party;
- j. If the offeror is a member of a horizontal combination or a vertical combination, as defined in these regulations, then the same information shall be furnished and filed for each member corporation of the horizontal combination or vertical combination

SECTION 3. HEARING.) Any hearing pursuant to this Act shall be held within forty days of the date a filing is made pursuant to section 2 of this Act. Adjudications made pursuant to this Act

shall be made within sixty days after such filing. Upon filing an application with the commissioner of insurance for a hearing under this section, the target company shall deposit with the commissioner such sum as the commissioner may require to defray the costs of such hearing and any investigation which the commissioner may make in connection therewith. If upon hearing the commissioner finds that the take-over bid is in violation of North Dakota Century Code 26-20 and North Dakota Century Code 26-30 or that effective provision is not made for fair and full disclosure to offerees of all information material to a decision to accept or reject the offer, he shall so adjudicate. If he finds that the take-over bid would comply with this section if amended in certain respects, he shall so adjudicate. If he finds that the take-over bid is not in violation of North Dakota Century Code 26-20 and North Dakota Century Code 26-30 and that effective provision is made for fair and full disclosure to offerees of all information material to a decision to accept or reject the offer, he shall so adjudicate.

SECTION 4. TAKE-OVER - TO WHOM OFFER MADE; TERMS OF.) No offeror shall make a take-over bid which is not made to all holders residing in this state of the equity security that is the subject of such take-over bid, or which is not made to such holders on the same terms as such take-over bid is made to holders of such equity security not residing in this state. If an offeror makes a tender offer or request or invitation for tenders for less than all the outstanding equity securities of a class, and if a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation for tenders are first published or sent or given to security holders than such offeror is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be prorata, disregarding fractions, according to the number of securities deposited by each offeree; the provisions of the foregoing sentence shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in the next sentence, is first published or sent or given to security holders. If the terms of a take-over bid are changed before its expiration by increasing the consideration offered to offerees, the offeror shall pay the increased consideration for all equity securities taken up, whether or not the same are deposited or taken up before or after the change in the terms of the take-over bid.

SECTION 5. DECEPTIVE PRACTICES.) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any take-over bid, or any solicitation of offerees in opposition to or in favor of any such take-over bid.

SECTION 6. CRIMES.) Any person who shall knowingly make or cause to be made any false statement with respect to any matter subject to the provisions of this Act or exhibit any false paper to the commissioner or who shall commit any act declared unlawful by this Act and any offeror who shall make a take-over bid which does not comply with the provisions of sections 2, 4, 5 and 6 shall be guilty of a misdemeanor, and on conviction, be punished by a fine of not less than one hundred nor more than five thousand dollars, or by confinement in a county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. Prosecutions under this section shall be instituted within two years from the date of the offense.

SECTION 7. OFFENSES PUNISHABLE BY THE COMMISSIONER.) The commissioner may, by judgment entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, if it be proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the commissioner to take any action or to refrain from taking action, or has violated any provision of this Act, or any order of the commissioner issued pursuant to this Act, impose a penalty not exceeding five thousand dollars.

SECTION 8. SEPARATE OFFENSES.) Each take-over bid made in violation of the provisions of this Act shall constitute a separate offense. The commissioner may request the offeror to rescind any such bid and to make restitution to the offeree, and if the offeror complies with the request no penalty shall be imposed on him on account of that illegal take-over bid.

SECTION 9. CIVIL LIABILITIES.) Any offeror who:

1. Makes a take-over bid which does not comply with the provisions of this Act, or
2. Makes a take-over bid by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading (the offeree not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to any offeree whose shares are taken up pursuant to the take-over bid who may sue either at law or in equity,
 - a. To recover such shares, together with all dividends received thereon, costs and reasonable attorneys' fees, upon the tender of the consideration received from the offeror, or
 - b. For the substantial equivalent in damages if the

offeror no longer owns such shares.

3. Every person who materially participates or aids in a take-over bid made by an offeror liable under subsections 1 and 2, or who directly or indirectly controls any offeror so liable, shall also be liable jointly and severally with and to the same extent as the offeror so liable, unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.
4. Any tender specified in this section may be made at any time before entry of judgment.
5. No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided, that if any person liable by reason of subsections 1, 2 and 3 makes a written offer, before suit is brought, to return the shares taken up pursuant to the take-over bid, together with all dividends received thereon, upon the tender of the consideration received from the offeror, or to pay damages if the offeror no longer owns such shares, no offeree shall maintain a suit under this section who shall have refused or failed to accept such offer within thirty days of its receipt.
6. Any condition, stipulation or provision binding any offeree to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void.
7. The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

SECTION 10. CONSENT TO SERVICE OF PROCESS.) Every non-resident offeror who makes a take-over bid shall be deemed to have appointed the state insurance commissioner as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand except one issued by the commissioner. Service may be made by any of his staff designated for such service at his office, he shall forthwith cause it to be sent by registered or certified mail addressed to such offeror at his latest address on file and keep a record thereof. Any process, notice, order or demand issued by the commissioner shall be served by being mailed by the commissioner or any of his staff by registered or certified mail addressed to such offeror at his latest address on file. A foreign corporation that has a duly

appointed agent for service of process need not comply with this section.

SECTION 11. REGULATIONS.) The commissioner of insurance may prescribe reasonable rules and regulations:

1. Defining fraudulent, evasive, deceptive, or grossly unfair practices in connection with take-over bids and the terms used in this Act.
2. Exempting from this Act take-over bids not made for the purpose of, and not having the effect of, changing or influencing the control of a target company.
3. Covering such other matters as are necessary to give effect to this Act.

SECTION 12. ENFORCEMENT - ENJOINING VIOLATIONS.) If upon any hearing before the commissioner, the commissioner determines that the offeror has violated any of the provisions of this Act, or of the commissioner's rules and regulations administering this Act, the commissioner shall make his findings of fact and may issue and cause to be served on such offeror an order requiring such person to cease and desist from such violation and may issue and cause to be served on such offeror an order preventing the offeror from making any further tender offers, and to take such affirmative action as will effectuate the policies of this Act.

The commissioner shall have power to petition any district court of this state for the enforcement of the commissioner's order and for appropriate temporary relief or restraining order and shall file in the court the record of the proceedings. Upon the filing of such petition, the court shall cause notice thereof to be served upon such offeror and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or for setting aside in whole or in part the order of the commissioner. The court shall enforce the order of the commissioner unless it shall find that such order was not in accordance with law, or that it was in violation of the constitutional rights of the offeror, or that the rules or procedure of the commissioner did not afford the offeror a fair hearing, or that the findings of fact made by the commissioner were not supported by the evidence or that the order of the commissioner was not supported by its findings of facts.

Any person aggrieved by a final order of the commissioner may obtain a review of such order pursuant to North Dakota Century Code, chapter 28-32.

SECTION 13. SECURITIES LAWS.) This Act shall not be

construed to limit or modify in any way any responsibility, authority, power or jurisdiction of the commissioner of securities or of the securities laws of North Dakota.

SECTION 14. SAVINGS CLAUSE.) If any section, subsection, subdivision, sentence, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act.

SECTION 15. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 27, 1971

CHAPTER 289

SENATE BILL NO. 2195
(Goldberg)

TYPE OF BONDS ISSUED BY
STATE BONDING FUND

AN ACT to amend and reenact section 26-23-09 of the North Dakota Century Code, relating to limiting the state bonding fund to only surety or fidelity bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-09. CONDITION OF BOND CREATED BY CHAPTER - LIMITATION.) The condition of the bond arising under the provisions of this chapter shall be limited to that of a surety or fidelity bond and shall provide that the public employee, as principal, faithfully and impartially shall discharge and perform the duties of his office or employment, including such duties as are or may be imposed upon him by law, and shall render a true account of all moneys and property of every kind that shall come into his hands as such public employee, and shall pay over and deliver the same according to law. The bond shall not include coverage for claims resulting from the death or injury of any person or for property damage.

Approved February 20, 1971

CHAPTER 290

HOUSE BILL NO. 1082
(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(Legislative Council Study)

BONDING FUND BOARD ELIMINATED

AN ACT to amend and reenact sections 26-23-12, 26-23-13, and 26-23-16 of the North Dakota Century Code, relating to the bonding fund board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-23-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-12. AUDIT OF CLAIMS AGAINST STATE BONDING FUND - REGISTER OF CLAIMS.) All liability claims against the fund shall be audited by the commissioner, and such audit shall be approved by the attorney general. The commissioner shall have the authority to prescribe the forms upon which claims shall be presented, and may administer oaths and examine witnesses in connection with claims presented to him. If the commissioner, with the approval of the attorney general, shall find a claim or any part thereof to be a valid, just, and proper charge against the fund, he shall make and file an order to that effect and state therein the amount allowed upon the claim. A brief description of every claim filed against the fund shall be entered by the commissioner in a register provided for that purpose showing the name of the claimant, the amount and character of the claim, the action taken upon the claim, and the date when such action was taken.

SECTION 2. AMENDMENT.) Section 26-23-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-13. FILING CLAIM IS CONDITION PRECEDENT TO BRINGING ACTION - FAILURE TO ACT IS REFUSAL.) No action shall be maintained against the fund upon any claim whatever until the claim first has been presented for allowance as provided in this chapter and the allowance of such claim has been refused. Any claim which has not been acted upon and allowed or disallowed within sixty days after its presentation for allowance shall be deemed to be refused. The filing and disallowance of the claim must be alleged in the complaint in any action brought thereon against the fund.

SECTION 3. AMENDMENT.) Section 26-23-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-23-16. ALLOWED LIABILITY CLAIMS PAYABLE FROM FUND - ADMINISTRATIVE EXPENSES - METHODS OF PAYMENT.) All liability claims which are allowed against the fund shall be paid upon warrants drawn upon the state treasurer against the fund. Such warrants shall be prepared by the department of accounts and purchases pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund shall be made within the limitations of legislative appropriations upon warrant-checks prepared by the department of accounts and purchases after the approval of vouchers by the commissioner.

Approved February 20, 1971

CHAPTER 291

SENATE BILL NO. 2196
(Goldberg)

INVESTIGATION AND ANNUAL
STATEMENT OF INSURANCE COMPANIES

AN ACT to amend and reenact sections 26-27-06, 26-27-07, 26-27.1-07, and 26-27.1-08 of the North Dakota Century Code, relating to the filing of annual statements by corporations and the costs of investigating the affairs of corporations, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-27-06. ANNUAL STATEMENT.) Every corporation organized under the provisions of this chapter shall annually on or before the first day of April, file in the office of the commissioner of insurance, a verified statement signed by two or more of its principal officers, showing the condition of its affairs on the thirty-first day of December last past, which statement shall be in such form and shall contain such information as the commissioner of insurance shall prescribe.

SECTION 2. AMENDMENT.) Section 26-27-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-27-07. INVESTIGATION AND EXAMINATION.) The commissioner of insurance, or any deputy or examiner designated by him, shall have the right, at all reasonable times, to free access to all books and records of such corporation, and may summon and examine, under oath, the officers and employees of such corporation in all matters pertaining to its financial condition. The expense of any such examination of its books and financial condition shall be borne by such corporation.

SECTION 3. AMENDMENT.) Section 26-27.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-27.1-07. ANNUAL STATEMENT.) Every corporation organized under the provisions of this chapter shall annually on or before the first day of April, file in the office of the commissioner of insurance, a verified statement signed by two or more

of its principal officers, showing the condition of its affairs on the thirty-first day of December last past, which statement shall be in such form and shall contain such information as the commissioner of insurance shall prescribe.

SECTION 4. AMENDMENT.) Section 26-27.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-27.1-08. INVESTIGATION AND EXAMINATION.) The commissioner of insurance, or any deputy or examiner designated by him, shall have the right, at all reasonable times, to free access to all books and records of such corporation, and may summon and examine, under oath, the officers and employees of such corporation in all matters pertaining to its financial condition. The expense of any such examination of its books and financial condition shall be borne by such corporation.

SECTION 5. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1971

CHAPTER 292

HOUSE BILL NO. 1056
(Backes, Dornacker, Gackle, L. Larson, Weber)
(Legislative Council Study)

NONPROFIT MEDICAL SERVICE
CORPORATIONS NOT TAX EXEMPT

AN ACT to amend and reenact section 26-27-13 of the North Dakota Century Code, to remove the tax exemption on property owned by nonprofit medical service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 26-27-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-27-13. FUNDS OF MEDICAL CARE CORPORATIONS TAX EXEMPT - LAW GOVERNING CHARITABLE ORGANIZATIONS APPLICABLE.) Every corporation subject to the provisions of this chapter is hereby declared to be a charitable and benevolent organization and its funds shall be exempt from taxation by the state or any political subdivision thereof. Except as otherwise provided in this chapter, the laws of this state relating to and affecting nonprofit charitable and benevolent corporations shall be applicable to all corporations created under the provisions of this chapter, with the exception that the real property of such corporations shall be subject to taxation.

Approved February 19, 1971

CHAPTER 293

HOUSE BILL NO. 1247
(Bunker)

NONPROFIT VISION SERVICE CORPORATIONS

AN ACT relating to the creation and authorization of nonprofit vision service corporations whereby visual services may be provided by licensed practitioners to members of the public who become subscribers to said corporations under contracts which entitle such subscribers to certain specified vision services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. PURPOSES.) It is the purpose and intent of the legislative assembly to make possible and facilitate a wider and more available vision care, and to provide for corporations to implement a plan for the payment of optometric services to its subscribers, and thereby advancing the public health and the art and science of optometry in this state.

SECTION 2. NONPROFIT VISION SERVICE CORPORATIONS AUTHORIZED.) Corporations may be organized under the laws of this state on a strictly nonprofit basis for the purpose of establishing and putting into effect nonprofit optometric service plans whereby optometric services may be provided by a group of participating licensed practitioners, with whom such corporation has contracted for such purpose, to such members of the public as become subscribers to certain specified optometric care. Such corporation shall be subject to, and governed by the provisions of this chapter and shall not be subject to the laws of the state relating to insurance and insurance companies, except as hereinafter specifically provided.

SECTION 3. OPTOMETRIC SERVICES OF PRACTITIONERS OTHER THAN THOSE PARTICIPATING UNDER OPTOMETRIC SERVICE PLAN AUTHORIZED.) The optometric service plan put into effect by any corporation organized under the provisions of this chapter shall also provide for optometric services to such subscribers by practitioners authorized under North Dakota law to perform such visual services other than those participating under the plan, subject to the approval of the governing body of such optometric service corporation. The word practitioner, as used in this chapter, shall include optometrist and physician duly licensed to practice their profession under North Dakota law.

SECTION 4. ARTICLES OF INCORPORATION TO BE FILED WITH SECRETARY OF STATE - COPY OF ARTICLES TO BE FILED WITH INSURANCE COMMISSIONER.) Articles of incorporation of all nonprofit optometric service corporations organized under the provisions of this chapter, and all amendments thereto, shall be filed with the secretary of state, and a certified copy thereof shall be filed with the commissioner of insurance. Any optometric service corporation that has heretofore incorporated under the laws of the state of North Dakota, and which is now operating such nonprofit optometric service plan in this state, may file a copy of its articles of incorporation, with amendments thereto, with the commissioner of insurance and thereupon be subject to the provisions of this chapter.

SECTION 5. BOARD OF DIRECTORS.) The board of directors of such optometric service corporation shall consist of not less than nine members, two of whom shall be licensed physicians, elected by the participating licensed optometrists; a majority of such board of directors shall be licensed optometrists who have contracted with such corporation to provide optometric services to its subscribers.

SECTION 6. AUTHORITY OF VISUAL SERVICE CORPORATIONS.) A visual service corporation organized under this chapter shall have the following authority to accomplish its purposes:

1. It may hire agents and employees for the purposes of conducting its corporate business.
2. It may enter into contracts with subscribers whereby the corporation promises that its participating practitioners will provide specified vision services at specified rates to the subscriber or subscriber members, officers or employees.
3. It may enter into contracts with like or similar corporations within or without of the state for the interchange of services to those included in subscription or other like contracts, and may provide subscription contracts for the substitution of such services in lieu of those therein recited.
4. It may enter into contracts with optical laboratories to provide material pursuant to contracts with subscribers or subscriber members, officers or employees.

SECTION 7. ANNUAL STATEMENT.) Every corporation organized under the provisions of this chapter shall annually on or before the first day of April file in the office of the commissioner of insurance a verified statement signed by two or more of its principal officers showing the condition of its

affairs on the thirty-first day of December last past, which statement shall be in such form and shall contain such information as the commissioner of insurance shall prescribe.

SECTION 8. INVESTIGATION AND EXAMINATION.) The commissioner of insurance or any deputy examiner, or other person designated by him for such purpose, shall have the authority to inspect and examine into the affairs of such corporation and shall have the authority and power to examine all books, papers, records, letters, and documents of any kind that relate to the business of such corporation, the expenses for such examination to be paid by such corporation, and may subpoena and qualify witnesses under oath to examine its officers, agents, employees or any other persons having knowledge of the affairs, transactions and conditions of such corporation. In the event that any person shall fail or refuse to appear at the time and place designated in such subpoena, the insurance commissioner shall have the authority to apply to a judge of the district court in and for the county in which such corporation has its principal place of business for an order citing said witness to appear before such court at such time and place as the court may direct, and said district court is hereby given the authority and jurisdiction to cause such witness to be examined as the said court now has in the examination of witnesses in any manner pending before the said court.

SECTION 9. CONTRACTS WITH PRACTITIONERS - CONTRACT LIMITATION - BENEFITS MAY BE LIMITED.) Every practitioner duly licensed and registered in the state of North Dakota shall have the right to contract with any corporation organized and doing business under the provisions of this chapter for furnishing general or special optometric care as the case may be. The private relationship of practitioner and patient shall be maintained at all times and the subscriber shall have the right of free choice in selecting any practitioner with whom the corporation has a contract.

No optometric service contract by or on behalf of any such nonprofit optometric service corporation shall provide the payment of any cash indemnification by the corporation to the subscriber or his estate on account of death, illness or other injury.

Such optometric service corporation may, in its discretion, by its articles of incorporation or its bylaws, and in its contract with its subscribers, limit the benefits that such corporation will furnish, and may provide for a division of such benefits as it shall agree to furnish into classes or kinds. In the absence of any such limitations or division of services, a nonprofit optometric service corporation shall be authorized to provide both general and special optometric care benefits, including such service as may necessarily be incident to such optometric care. An optometric service

corporation organized and doing business under the provisions of this chapter may, in its discretion, limit the issuance of contracts as specified in its bylaws.

SECTION 10. DISSOLUTION OR MERGER.) The dissolution, liquidation or merger of any optometric service corporation organized and doing business under the provisions of this chapter shall be conducted under the supervision of the commissioner of insurance, who shall have all the authority and power with respect thereto which is granted to him under the insurance laws of this state.

SECTION 11. EFFECTS OF CONTRACTS.) The issuance of a contract by any corporation organized and doing business under the provisions of this chapter to a subscriber shall not be deemed to create the relationship of practitioner and patient between the corporation and such subscriber. The subscriber shall at all times have the right to select any participating practitioner, subject to the terms and conditions of such contract. No employee, agent, officer or member of the board of directors of any such corporation shall influence or attempt to influence any subscriber in the choosing and selecting of the practitioner who is to treat him. No action at law or in equity arising out of the relationship of practitioner and patient shall be maintained against any nonprofit optometric service corporation governed by this chapter. A participating practitioner shall have the right to engage in other practice.

SECTION 12. LIMITATIONS ON CONTRACT.) Every subscriber under such nonprofit optometric service plan shall receive a copy of the contract, and such contract shall clearly state the optometric care, materials and supplies to be provided under such contract and the rate charged such subscriber. Every subscriber shall have, at all times, free choice of the practitioner who is to treat him, and such right shall be prominently printed in such contract. All contracts shall provide that a subscriber shall have the freedom of choice to have the materials and supplies furnished by any practitioner or optician, the cost for which shall be covered in accordance with the terms of the contract. No nonprofit optometric service corporation shall enter into any contract, agreement or understanding, directly or indirectly, with any practitioner whereby such practitioner shall render any services to any subscriber, but all such matters shall be a matter of agreement directly between the patient and the practitioner selected by the patient to treat him.

SECTION 13. FILING OF CONTRACTS - APPROVAL OF CONTRACTS BY INSURANCE COMMISSIONER.) No corporation subject to the provisions of this law shall issue contracts to subscribers until the insurance commissioner has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the insurance commissioner containing the

following information:

1. A copy of the certificate of incorporation of the corporation together with all amendments thereto.
2. A copy of the bylaws and all amendments thereto.
3. Three copies of each type of proposed contract between the corporation and the participating practitioner who agreed to furnish the subscribers visual services.
4. Three copies of proposed contracts to be issued to subscribers to the plan showing the benefits to which they are entitled, together with a table of the rate charged, to subscribers.
5. A financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation having working capital, the name or names of each contributor and the terms of each contribution.

SECTION 14. SERVICE IN ACCORDANCE WITH PREVAILING PRACTICE - EMERGENCY SERVICE.) All optometric care rendered to a subscriber under his contract shall be in accordance with the accepted standards of optometric practice prevailing in the community in which such service is rendered.

All such optometric service shall be rendered by practitioners duly licensed and registered in the state of North Dakota, except in the case of emergency, the benefits to which a subscriber is entitled under his contracts may be rendered in another state, provided such services are rendered by a duly licensed practitioner in such other state.

SECTION 15. CORPORATION NOT AUTHORIZED TO PRACTICE.) Nothing in this chapter shall allow or authorize a corporation to engage in the practice of optometry.

SECTION 16. INVESTMENT OF FUNDS.) The funds of any corporation subject to the provisions of this chapter shall be invested only in such securities as are provided by law for the investment of funds of domestic insurance companies of this state.

SECTION 17. OPTOMETRIC AID FOR NEEDY PERSONS - PAYMENTS.) Every nonprofit optometric service corporation organized and doing business under the provisions of this chapter may, in its discretion, receive and accept from various governmental agencies payments covering all or any part of the costs of subscriptions to provide optometric care for needy persons.

Every such corporation may, in its discretion, receive from private agencies, corporations, associations, groups or individuals payments covering all or any part of the cost of subscriptions to provide optometric care for needy and other persons.

SECTION 18. LICENSING OF SALES REPRESENTATIVES.)

The sales representatives of any corporation subject to the provisions of this chapter shall be subject to the laws pertaining to insurance agents as defined in chapter 26-17 of the North Dakota Century Code. The license or certificate for such sales representatives shall be issued on a form as prescribed by the commissioner of insurance, and the fee therefor shall be three dollars.

SECTION 19. APPLICABILITY.) Except as otherwise specifically provided in this chapter, the provisions of chapters 10-24, 10-25, 10-26 and 10-28 of the North Dakota Century Code shall apply to the incorporation, operation and control of any nonprofit optometric service corporation organized under the provisions of this chapter, including penalties for violations of this chapter or violations of said chapters 10-24, 10-25, 10-26, and 10-28 of the North Dakota Century Code.

Approved March 29, 1971

CHAPTER 294

HOUSE BILL NO. 1289
(Boustead, Bunker)

INSURANCE GUARANTY ASSOCIATION

AN ACT to create a North Dakota insurance guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. TITLE.) This Act shall be known and may be cited as the North Dakota Insurance Guaranty Association Act.

SECTION 2. PURPOSE.) The purpose of this Act is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

SECTION 3. SCOPE.) This Act shall apply to all kinds of direct insurance except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

SECTION 4. CONSTRUCTION.) This Act shall be liberally construed to effect the purpose under section 2 which shall constitute an aid and guide to interpretation.

SECTION 5. DEFINITIONS.) As used in this Act:

1. "Association" means the North Dakota insurance guaranty association created under section 6.
2. "Commissioner" means the commissioner of insurance of this state.
3. "Covered claim" means an unpaid claim, including one for unearned premiums, within the coverage of an insurance policy to which this Act applies issued by an insurer if such insurer becomes insolvent after the effective date of this Act. The claimant or insured must be a resident of this state at the time of the insured event or the insured property must be permanently located in this state. Covered claim shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association,

as subrogation recoveries or otherwise.

4. "Insolvent insurer" means an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred, and determined to be insolvent by a court of competent jurisdiction.
5. "Member insurer" means any person, except county mutuals, who writes any kind of insurance to which this Act applies under section 3, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact insurance in this state.
6. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums does not include premiums on contracts between insurers or reinsurers.
7. "Person" means any individual, corporation, partnership, association, or voluntary organization.

SECTION 6. CREATION OF THE ASSOCIATION.) There is hereby created a nonprofit unincorporated legal entity to be known as the North Dakota insurance guaranty association. All insurers defined as member insurers in subsection 5 of section 5 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 and shall exercise its powers through a board of directors established under section 7.

SECTION 7. BOARD OF DIRECTORS.)

1. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after the effective date of this Act, the commissioner may appoint the initial members of the board of directors.
2. In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.
3. Members of the board may be reimbursed from the assets

of the association for expenses incurred by them as board members.

SECTION 8. POWERS AND DUTIES OF THE ASSOCIATION.)

1. The association shall:

- a. Be obligated to the extent of the covered claims existing (1) prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or (2) before the policy expiration date if less than thirty days after the determination, or (3) before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination. The obligation shall include only that amount of each covered claim in excess of one hundred dollars and less than three hundred thousand dollars. The association shall not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer.
- b. Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.
- c. Assess insurer's amounts necessary to pay the obligations of the association under subdivision a subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 13, and other expenses authorized by this Act. Each member insurer assessment shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial

statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

- d. Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation. It shall deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested.
 - e. Notify such persons as the commissioner directs under subdivision a of subsection 2 of section 10.
 - f. Handle claims through its employees, through one or more insurers, or through other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner and may be declined by a member insurer.
 - g. Reimburse each servicing facility for association obligations it pays and for the expenses it incurs handling association claims. The association shall also pay the other expenses of the association authorized by this Act.
2. The association may:
- a. Employ or retain personnel to handle claims and perform its other duties.
 - b. Borrow funds necessary to effect the purposes of this Act in accord with the plan of operation.
 - c. Sue or be sued.
 - d. Negotiate and become a party to contracts necessary to carry out the purpose of this Act.
 - e. Perform other acts as are necessary or proper to effectuate the purposes of this Act.
 - f. Refund to the member insurers in proportion to their contribution to the association that amount

by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the association's assets exceed the board's estimate of its liabilities for the coming year.

SECTION 9. PLAN OF OPERATION.)

1. a. The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the commissioner.
- b. If the association fails to submit a suitable plan of operation within ninety days following the effective date of this Act or at any time thereafter fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
2. All member insurers shall comply with the plan of operation.
3. The plan of operation shall:
 - a. Establish the procedures whereby all the powers and duties of the association under section 8 will be performed.
 - b. Establish procedures for handling assets of the association.
 - c. Establish the amount and method of reimbursing members of the board of directors under section 7.
 - d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent. A list of these claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
 - e. Establish regular places and times for meetings

- of the board of directors.
- f. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.
 - g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
 - h. Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.
 - i. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
4. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision c of subsection 1 and subdivision b of subsection 2 of section 8, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other association functions. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Act.

SECTION 10. DUTIES AND POWERS OF THE COMMISSIONER.)

1. The commissioner shall:
- a. Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.
 - b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.
2. The commissioner may:
- a. Require the association to notify insureds of the insolvent insurer and other interested parties

of the determination of insolvency and of their rights under this Act. Such notification shall be by mail at their last known address, where available. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

- b. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.
 - c. Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.
3. Any final action or order of the commissioner under this Act shall be subject to judicial review in a court of competent jurisdiction.

SECTION 11. EFFECT OF PAID CLAIMS.)

1. Any person recovering under this Act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this Act shall cooperate with the association as if it were the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.
2. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. A court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled, in the absence of this Act, against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be

accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

SECTION 12. NONDUPLICATION OF RECOVERY.)

1. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under such insurance policy.
2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. Any recovery under this Act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SECTION 13. PREVENTION OF INSOLVENCIES.) To aid in the detection and prevention of insurer insolvencies:

1. The board of directors, upon majority vote, shall notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.
2. The board of directors may, upon majority vote, request the commissioner to order an examination of any member insurer the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or by persons the commissioner designates. The cost of the examination shall be paid by the association and the examination report shall be treated as other examination reports. The examination report shall not be released to the

board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 3 of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

3. The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.
4. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be public documents.
5. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
6. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit it to the commissioner.

SECTION 14. EXAMINATION OF THE ASSOCIATION.) The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than April thirtieth of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

SECTION 15. TAX EXEMPTION.) The association shall be exempt from payment of all fees and taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

SECTION 16. RECOGNITION OF ASSESSMENTS IN RATES.) The rates and premiums charged for insurance policies to which this Act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. These rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

SECTION 17. IMMUNITY.) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents and employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Act.

SECTION 18. STAY OF PROCEEDINGS - REOPENING OF DEFAULT JUDGMENTS.) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty days from the date insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of the insured, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding, and shall be permitted to defend against the claim on the merits.

Approved March 22, 1971