

INSURANCE

CHAPTER 242

HOUSE BILL NO. 1045
(Legislative Council)

(Interim Committee on Industry, Business & Labor "C")

REPORTS OF MEDICAL MALPRACTICE CLAIMS

AN ACT to provide for reporting and review of medical malpractice claims, settlements, and final judgements.

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

SECTION 1. REPORTING AND REVIEW OF MEDICAL MALPRACTICE
CLAIMS, SETTLEMENTS, AND JUDGEMENTS.)

1. All claims, settlements of claims, or final judgements against a health care provider shall be reported to the commissioner of insurance by the health care provider or the insurer of the health care provider, if any. Such report shall be made in the manner prescribed by the commissioner and shall provide those facts the commissioner shall deem necessary to gather adequate information regarding claims, settlements of claims, and final judgements against health care providers. For the purposes of this Act, a "health care provider" shall include any person, corporation, facility, or institution licensed by this state to provide health care or professional services as a physician, hospital, dentist, professional or practical nurse, physician's aide, optometrist, podiatrist, chiropractor, physical therapist, or psychologist, or an officer, employee, or agent thereof acting in the course and scope of his employment.
2. The commissioner shall forward copies of all reports required by this Act to the appropriate board of professional registration, examination, or licensure. That board shall review all reports which it receives and may take any necessary disciplinary action against a health care provider where such action is appropriate, including censure, imposition of probation, or suspension or revocation of the health care provider's license. The review shall be conducted as an administrative hearing in the manner provided in chapter 28-32, including the giving of appropriate notice.

CHAPTER 243

HOUSE BILL NO. 1598
(Conmy)

REPORTS OF LEGAL MALPRACTICE CLAIMS

AN ACT to provide for reporting statistical data regarding legal malpractice claims, settlements, and final judgments.

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

REPORTING OF STATISTICAL DATA REGARDING CLAIMS, SETTLEMENTS, AND JUDGMENTS.) Statistical data regarding all claims, settlements of claims, or final judgments shall be reported to the commissioner of insurance by the insurer of the attorney. Such report shall be made in the manner prescribed by the commissioner and shall provide those facts the commissioner shall deem necessary to gather adequate information regarding claims, settlements of claims, and final judgments against attorneys except that the commissioner shall not require the insurer to provide the name of the parties involved in these claims.

Approved April 20, 1977

CHAPTER 244

SENATE BILL NO. 2038
(Legislative Council)
(Interim Committee on Industry, Business and Labor "C")

INSURANCE LAW UPDATE

AN ACT to create and enact section 26-07-14.1 of the North Dakota Century Code, relating to a procedure for the revocation or suspension of the authority of a foreign insurance company to do business in the state; to amend and reenact sections 26-01-07, 26-03-42, 26-03-43, 26-07-14, 26-08-04, 26-08-07, 26-08-18, subsection 6 of section 26-09-01, sections 26-11-02, 26-11-11, 26-14-03, 26-14-05, subsection 4 of section 26-14-08, sections 26-14-12, 26-20-01, and subsection 7 of section 26-21-02 of the North Dakota Century Code, relating to procedure for filing policies and articles of incorporation and amendments thereto with the commissioner of insurance, capital asset and surplus requirements for certain domestic and foreign insurance companies, procedure for revocation of authority of a foreign insurance company to do business in the state, liability of insurance company officers to stockholders and policyholders, collection of premiums by mutual insurance companies, and consolidation and dissolution of domestic insurance companies; and to repeal sections 26-07-12, 26-08-14, 26-08-15, and 26-10-06, and chapters 26-13 and 26-19, all of the North Dakota Century Code, relating to procedures on revocation of authority of insurance company for discrimination, notice of impairment of capital, assessment of stock, selection of application of surplus, assessment plan accident and sickness insurance companies, and crop hail insurance.

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

SECTION 1. AMENDMENT.) Section 26-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-01-07. EXAMINATION OF DOMESTIC AND FOREIGN INSURANCE COMPANIES - TIMES - EXPENSE.) At least triennially the commissioner of insurance shall cause the affairs of each domestic insurance company to be thoroughly inspected and examined. He shall make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders, creditors, policyholders, or persons pecuniarily interested therein

who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition. Whenever he deems it prudent for the protection of policyholders in this state, he in like manner shall cause any foreign insurance company applying for admission, or already admitted, to do business in this state to be examined, and such company shall pay the same charge for such examination as is provided in section 26-01-04 for an official examination.

SECTION 2. AMENDMENT.) Section 26-03-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03-42. POLICY FORMS TO BE FILED WITH COMMISSIONER OF INSURANCE.) No policy of insurance shall be issued or delivered in this state until the form of that policy has been filed with the commissioner of insurance. If the policy of insurance is a casualty or fire and property insurance policy, the form shall be filed with the commissioner of insurance to the extent rates are filed and approved pursuant to chapters 26-28 and 26-29. If the policy of insurance is a policy against loss or damage by the sickness, bodily injury, or death by accident of the insured, a table of rates and classification of risks shall also be filed with the commissioner of insurance. The commissioner of insurance shall review such policy forms and shall approve or disapprove the policy forms as soon as reasonably practicable or within a period of forty-five days.

SECTION 3. AMENDMENT.) Section 26-03-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-03-43. DISAPPROVAL OF FORM OF INSURANCE POLICY - NOTICE - HEARING - REVIEW BY APPEAL.)

1. If the commissioner of insurance disapproves any policy form, he shall notify the company or organization which filed the form, and shall provide written notice of disapproval of the form, specifying his reasons therefor. It shall be unlawful for any company or organization to issue any policy in the form so disapproved.
2. Any company or organization aggrieved by any order or decision of the commissioner of insurance disapproving a policy form made without a hearing, may, within thirty days after receiving notice of the order, make written request to the commissioner of insurance for a hearing thereon. The commissioner of insurance shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after such hearing the commissioner of insurance shall affirm, reverse, or modify his previous action, specifying his reasons therefor. Pending such hearing and decision the commissioner of insurance may suspend or postpone the effective date of his previous action.

3. Any order or decision of the commissioner of insurance shall be subject to review by appeal pursuant to chapter 28-32.

SECTION 4. AMENDMENT.) Section 26-07-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-07-14. ADDITIONAL GROUNDS FOR REVOCATION OF AUTHORITY OF FOREIGN COMPANY - PROCEDURE - EFFECT OF REVOCATION.) The commissioner of insurance shall revoke or suspend all certificates of authority granted to a foreign insurance company or to its agents if, upon examination or other evidence, he is of the opinion that:

1. Such company is in an unsound condition.
2. Such company has failed to comply with any provision of the applicable laws of this state.
3. Such company, or any officer or agent thereof, has refused to submit to examination or to perform any other legal obligation.

If the commissioner of insurance revokes the certificates of authority granted to a foreign insurance company, he shall cause notification thereof to be published once each week for three successive weeks in some newspaper published at the seat of government. Thereafter, no new business shall be done by the company, or by its agents, in this state until its certificate of authority is restored by the commissioner. The commissioner, after a hearing and for good and sufficient cause, may cancel or revoke the suspension and restore the certificate.

SECTION 5.) Section 26-07-14.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-07-14.1. REVOCATION OR SUSPENSION OF FOREIGN COMPANY'S AUTHORITY - PROCEDURE.) Whenever it shall appear to the commissioner of insurance, either upon complaint or otherwise, that any foreign insurance company is in violation of section 26-07-11 or section 26-07-14, the commissioner may, in his discretion, issue a temporary order suspending the certificate of authority granted to a foreign insurance company if he deems it necessary or appropriate to the public interest to do so. Any company aggrieved by a temporary order issued pursuant to this section may request a hearing before the commissioner within ten days after such company receives the order. Any proceeding which could lead to a hearing on, or appeal of, any final order issued by the commissioner shall be pursuant to chapter 28-32.

SECTION 6. AMENDMENT.) Section 26-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-08-04. CAPITAL STOCK AND SURPLUS REQUIREMENTS UPON ORGANIZATION OF DOMESTIC STOCK INSURANCE COMPANY - EXCEPTIONS.) No

stock insurance company shall be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. No domestic stock insurance company may issue any policy of insurance until at least fifty percent of the minimum capital stock required by this section, and all surplus required, shall have been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation, but the commissioner of insurance, for good cause shown, may extend the time of payment of such residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter are less than the minimum requirements provided by this section, such stock insurance company shall maintain authorized capital stock and surplus which shall satisfy the capital stock and surplus requirements in effect at the time of such incorporation.

SECTION 7. AMENDMENT.) Section 26-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-08-07. EXAMINATION OF ARTICLES BY ATTORNEY GENERAL AND BY COMMISSIONER OF INSURANCE - CERTIFICATE - FILING.) The articles of incorporation and amendments thereto shall be examined by the attorney general and if found conformable to this chapter and not inconsistent with the constitution and laws of this state, shall be certified by him to the commissioner of insurance, who shall make an examination to ascertain whether the company in all respects has complied with the requirements of law according to the nature of the business proposed to be transacted by it. If he is satisfied by the examination that the corporation has complied with the law, he shall deliver to it a certified copy of the articles of incorporation or amendments to the articles of incorporation and a certificate stating the corporation has complied with all requirements of law. When the certificate is filed in the office of the register of deeds of the county where the principal office of the corporation is located, it shall be the corporation's authority to commence business and issue policies. Such certified copy of the articles of incorporation or amendments to the articles of incorporation and of the certificate may be used for or against such company with the same effect as the originals and shall be conclusive evidence of the fact of organization of the corporation described therein.

SECTION 8. AMENDMENT.) Section 26-08-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-08-18. LIABILITIES OF OFFICERS AND DIRECTORS OF DOMESTIC INSURANCE COMPANY.) Any director or officer of a domestic insurance company who shall make or authorize an investment or loan in violation of the provisions of section 26-08-11 or section 26-08-12 shall be liable personally to the stockholders of a stock insurance company, or to the policyholders of a mutual insurance company, for any loss occasioned thereby. If a company is under liability for losses equal to its net assets and the president or directors, knowing of such liability, make or assent to further insurance, they shall be liable personally for any loss under such insurance. If the directors allow to be insured on a single risk a larger sum than that permitted under section 26-07-03, they shall be liable

for any loss thereon above the amount the company might insure lawfully, unless the excess is reinsured as required by the provisions of that section.

SECTION 9. AMENDMENT.) Subsection 6 of section 26-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Satisfied the commissioner that its assets are well invested and immediately available for the payment of losses in this state and in making such determination the commissioner may rely upon the provisions pertaining to authorized investments of domestic insurance companies;

SECTION 10. AMENDMENT.) Section 26-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-11-02. MUTUAL LIFE INSURANCE COMPANY - AMOUNT OF SUBSCRIBED INSURANCE REQUIRED - SURPLUS REQUIRED.) No policy shall be issued by a purely mutual life insurance company until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner of insurance shall not grant a certificate of authority for the transaction of business to such a company unless it has a surplus of assets over all liabilities of at least five hundred thousand dollars. Surplus of at least this amount shall be maintained by a domestic mutual life insurance company at all times. If such minimum asset and surplus requirements provided by this section are more than the minimum requirements required at the time a mutual insurance company was granted its original certificate of authority, such mutual insurance company shall maintain assets and surplus which shall satisfy the assets and surplus requirements in effect at the time the mutual insurance company was granted its original certificate of authority.

SECTION 11. AMENDMENT.) Section 26-11-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-11-11. IMPAIRMENT OF CAPITAL OR SURPLUS OF DOMESTIC STOCK OR MUTUAL LIFE INSURANCE COMPANY - DETERMINATION OF DEFICIENCY - NOTICE NOT TO ISSUE POLICIES.) If a domestic stock life insurance company's minimum basic paid-in capital required by section 26-08-04 or the minimum basic surplus of a domestic mutual insurance company required by section 26-11-02 becomes impaired, the commissioner shall prohibit such company and its agents from issuing new policies until the deficiency is cured. The commission shall determine the amount of the deficiency, shall serve notice upon such insurance company notifying the company of the deficiency and requiring the company to cure the deficiency, and shall require the company to file proof thereof with the commissioner within a period specified in the notice, which period shall not be less than thirty days nor more than ninety days from the date of issuance of the notice.

SECTION 12. AMENDMENT.) Section 26-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-14-03. ARTICLES OF INCORPORATION - FILING ORIGINAL - FILING COPY - CERTIFICATE ISSUES THEREON.) The articles of incorporation or amendments thereto of an insurance company organized under the provisions of this chapter shall be submitted to the commissioner of insurance and to the attorney general. If the commissioner and the attorney general determine the articles or amendments comply with this chapter, the commissioner shall approve the same. Thereupon, the articles of incorporation or amendments thereto shall be filed in the office of the secretary of state and a certified copy shall be filed with the commissioner. The commissioner shall deliver to the company his certificate that such company has complied with the provisions of this chapter. A certified copy of the articles of incorporation or amendments thereto and the certificate of compliance shall be filed in the office of the register of deeds of the county in which the principal office of the company is located.

SECTION 13. AMENDMENT.) Section 26-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-14-05. LEGAL EXISTENCE COMMENCES WITH FILING OF COPY OF ARTICLES - ADOPTION OF BYLAWS - TRANSACTION OF BUSINESS.) The company shall have legal existence from and after the date of the filing of a copy of its articles in the office of the register of deeds. The board of directors named in such articles thereafter may adopt bylaws which shall be filed with the commissioner of insurance, accept applications for insurance, and proceed to transact company business. No insurance shall be put into force, however, until the company has been licensed to transact an insurance business as provided by this chapter.

SECTION 14. AMENDMENT.) Subsection 4 of section 26-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. It at all times shall maintain a surplus of at least two hundred fifty thousand dollars, except if the minimum assets and surplus requirements for such a company are more than the minimum requirements provided by this section at the time the company was originally issued a license to do business, such company shall maintain assets and surplus which shall satisfy the requirements in effect at the time the company was issued its original license.

SECTION 15. AMENDMENT.) Section 26-14-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-14-12. PREMIUMS AND CONTINGENT LIABILITIES TO BE STATED IN BYLAWS AND ON POLICY - COLLECTION OF PREMIUMS.) A mutual insurance company, other than a mutual life company, shall charge and

collect the full mutual premium upon its policies in cash or in the form of a note. It may fix in its bylaws the contingent mutual liability of its members for the payment of losses and expenses not provided for by the cash funds of the company, but the contingent liability of a member, if any, shall not be less than a sum equal, and in addition to, the cash premium written in the policy. The total amount of the liability of a policyholder shall be stated clearly and legibly upon the face of each policy. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the surplus required of domestic stock insurance companies transacting the same kinds of insurance.

SECTION 16. AMENDMENT.) Section 26-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-20-01. DOMESTIC COMPANIES - CONSOLIDATION - REINSURANCE.) No domestic company organized to engage in the business of insurance, on the stock, mutual, stipulated premium, or assessment plan, shall consolidate with any other company, or reinsure its risks or any part thereof with any other company, or assume or reinsure the whole or any portion of the risks of any other company, except in the manner provided in this chapter. Nothing contained in this chapter, however, shall prevent a company, whether organized on the stock or mutual plan, from reinsuring a fractional part of any single risk. As used in this chapter, "consolidate" includes consolidation and merger.

SECTION 17. AMENDMENT.) Subsection 7 of section 26-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Has been found after examination that, in the case of a stock insurance company, its minimum basic paid-in capital required by section 26-08-04 is impaired, or that, in the case of a domestic mutual insurance company, its surplus required by sections 26-11-02 and 26-14-08 is impaired.

SECTION 18. REPEAL.) Sections 26-07-12, 26-08-14, 26-08-15, and 26-10-06, and chapters 26-13 and 26-19 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1977

CHAPTER 245

HOUSE BILL NO. 1594
(Rued)

COVERAGE TIMES OF INSURANCE POLICIES

AN ACT to provide for the inception and expiration times of insurance policies.

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

SECTION 1. INCEPTION AND EXPIRATION OF POLICIES.) Policies of insurance shall cover the insured at 12:01 a.m. on the day on which coverage begins and shall expire at 12:01 a.m. following the day of expiration of such policy.

Approved March 19, 1977

CHAPTER 246

HOUSE BILL NO. 1461
(McCaffrey, Black, Fleming)

CONTINUED COVERAGE FOR INCARCERATED JUVENILES

AN ACT to provide for continuous insurance coverage of an insured juvenile whose legal custody has been given by the court to any state institution or agency.

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

SECTION 1. JUVENILE'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Insurance companies licensed within this state shall continue coverage of a juvenile insured under a policy of accident and sickness insurance while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the policy premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her policy of accident and sickness insurance.

SECTION 2. JUVENILE'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Hospital service corporations licensed within this state shall continue coverage of a juvenile insured under a hospital service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her hospital service contract.

SECTION 3. JUVENILE'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit medical service corporations licensed within this state shall continue coverage of a juvenile insured under a medical service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her medical service contract.

SECTION 4. JUVENILE'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit dental service corporations licensed within this state shall continue coverage of a juvenile insured under a dental service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her dental service contract.

SECTION 5. JUVENILE'S INSURANCE COVERAGE TO CONTINUE - CONDITIONS.) Nonprofit vision service corporations licensed within this state shall continue coverage of a juvenile insured under a vision service contract while the legal custody of the juvenile has been given by a court, under chapter 27-20, to any state institution or agency, to the same extent as the general public is covered as long as the juvenile meets all the other usual qualifications for insurability and continues to pay the contract premiums. Under no circumstances shall a juvenile's incarceration be a basis for cancellation of his or her vision service contract.

Approved March 31, 1977

CHAPTER 247

SENATE BILL NO. 2540
(Lips)

LIFE INSURANCE NONFORFEITURE

AN ACT to require certain provisions to be included in every life insurance policy delivered or issued for delivery in this state relating to minimum benefits to be made available to the lapsing policyholder, to provide for certain exemptions from the Act, and to provide for an operative date with respect to the policies of a particular company issued on and after such date; and to repeal the subsection entitled "Options on Surrender or Lapse" in each of sections 26-03-26, 26-03-27, 26-03-28, and 26-03-29, to repeal the subsection entitled "Continuance of Insurance on Lapse" in each of sections 26-03-30 and 26-03-31, and to repeal subsections 8 and 9 of section 26-03-35 of the North Dakota Century Code, relating to required options on lapse of a life insurance policy.

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

SECTION 1. TITLE.) This Act shall be known as the standard nonforfeiture law for life insurance.

SECTION 2. REQUIRED PROVISIONS RELATING TO LAPSING POLICYHOLDER.) In the case of policies issued prior to the operative date of this Act, as defined in section 10, the options on surrender or lapse or the provisions for continuance of insurance in the event of lapse shall be as provided in sections 26-03-26, 26-03-27, 26-03-28, 26-03-29, 26-03-30, 26-03-31, and 26-03-35. In the case of policies issued on and after the operative date of this Act, as defined in section 10, no policy of life insurance, except as stated in section 9, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

1. In the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

2. Upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.
3. A specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.
4. If the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, then the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.
5. A statement of the mortality table and interest rate or rates used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.
6. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and

paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

SECTION 3. MINIMUM CASH SURRENDER VALUE.) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 2, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided by the policy, including any existing paid-up additions, if there had been no default, over the sum of (1) the then present value of the adjusted premiums as defined in sections 5, 6, and 7, corresponding to premiums which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 2, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

SECTION 4. MINIMUM PAID-UP NONFORFEITURE BENEFIT.) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided by the policy or, if none is provided, that cash surrender value which would have been required by this Act in the absence of the condition that premiums shall have been paid for at least a specified period.

SECTION 5. DEFINITION OF ADJUSTED PREMIUMS USED IN OBTAINING MINIMUM CASH SURRENDER VALUE.) Except as provided in the third paragraph of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (1) the then present value of the future guaranteed benefits provided by the policy; (2) two percent of the amount of

insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (3) forty percent of the adjusted premium for the first policy year; and (4) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) and (4) above, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or equivalent uniform amount. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue of the policy as do the benefits under the policy.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of the section except that, for the purposes of (2), (3), and (4) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

SECTION 6. MORTALITY AND INTEREST BASES FOR ADJUSTED PREMIUMS AND PRESENT VALUES - ORDINARY INSURANCE.) In the case of ordinary policies, all adjusted premiums and present values referred to in this Act shall be calculated on the basis of the commissioners' 1958 standard ordinary mortality table and the rate or rates of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that no such rate of interest shall exceed five and one-half percent per year, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six

years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not greater than those shown in the commissioners' 1958 extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

SECTION 7. MORTALITY AND INTEREST BASES FOR ADJUSTED PREMIUMS AND PRESENT VALUES - INDUSTRIAL INSURANCE.) In the case of industrial policies, all adjusted premiums and present values referred to in this Act shall be calculated on the basis of the commissioners' 1961 standard industrial mortality table and the rate or rates of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that no such rate of interest shall exceed five and one-half percent per year, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per year may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not greater than those shown in the commissioners' 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

SECTION 8. BENEFITS ON DEFAULT OFF THE ANNIVERSARY, BENEFITS EXEMPTED FROM ACT.) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 3, 4, 5, 6, and 7 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of section 3, additional benefits payable (1) in the event of death or dismemberment by accident or accidental means; (2) in the event of total and permanent disability; (3) as reversionary annuity or deferred reversionary annuity benefits; (4) as decreasing term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this Act would not apply; (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six years, is

uniform in amount after the child's age is one year, and has not become paid-up by reason of the death of a parent of the child; and (6) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this Act, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

SECTION 9. EXEMPTIONS FROM ACT.) This Act shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in sections 5, 6, and 7, is less than the adjusted premium so calculated on such fifteen-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state.

SECTION 10. COMPANY MAY ELECT OPERATIVE DATE OF ACT BEFORE JANUARY 1, 1979.) After the effective date of this Act, any company may file with the commissioner a written notice of its election to comply with the provisions of this Act on and after a specified date before January 1, 1979. After the filing of such notice, then upon such specified date, which shall be the operative date for such company, this Act shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this Act for such company shall be January 1, 1979.

SECTION 11. INCONSISTENT ACTS REPEALED.) The subsection entitled "Options on Surrender or Lapse" in each of sections 26-03-26, 26-03-27, 26-03-28, and 26-03-29, and the subsection entitled "Continuance of Insurance on Lapse" in each of sections 26-03-30 and 26-03-31, and subsections 8 and 9 of section 26-03-35 of the North Dakota Century Code are hereby repealed.

Approved April 6, 1977

CHAPTER 248

SENATE BILL NO. 2541
(Lips)

DEFERRED ANNUITY NONFORFEITURE

AN ACT to require certain provisions to be included in every individual deferred annuity contract delivered or issued for delivery in this state relating to minimum benefits to be made available to the contractholder on cessation of payment of consideration, to provide for certain exemptions from the Act, and to provide for an operative date with respect to the contracts of a particular company issued on and after such date.

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

SECTION 1. TITLE.) This Act shall be known as the standard nonforfeiture law for individual deferred annuities.

SECTION 2. EXEMPTIONS FROM ACT.) This Act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state.

SECTION 3. REQUIRED PROVISIONS RELATING TO CESSATION OF PAYMENT OF CONSIDERATIONS BY CONTRACTHOLDER.) In the case of contracts issued on and after the operative date of this Act as defined in section 12, no contract of annuity, except as stated in section 2, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder upon cessation of payment of considerations under the contract:

1. Upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 5, 6, 7, 8, and 10.

2. If a contract provides for a lump sum settlement at maturity, or at any other time, then upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 5, 6, 8, and 10. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.
3. A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.
4. A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

SECTION 4. MINIMUM NONFORFEITURE AMOUNT DEFINED.) The minimum values as specified in sections 5, 6, 7, 8, and 10 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section, as follows:

1. With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation

up to such time at a rate of interest of three percent per year of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

- a. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year; and
- b. The amount of any indebtedness to the company on the contract, including interest due and accrued;

and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

2. With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually, with two exceptions:

- a. The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

- b. The annual contract charge shall be the lesser of (a) thirty dollars and (b) ten percent of the gross annual considerations.
3. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

SECTION 5. VALUE OF PAID-UP ANNUITY BENEFIT TO BE AT LEAST EQUAL TO MINIMUM NONFORFEITURE AMOUNT.) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

SECTION 6. CASH SURRENDER BENEFIT TO BE AT LEAST EQUAL TO VALUE OF PAID-UP ANNUITY BENEFIT.) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

SECTION 7. MINIMUM VALUE OF PAID-UP ANNUITY ON CESSATION OF PAYMENT OF CONSIDERATIONS, WHERE CASH SURRENDER BENEFITS NOT PROVIDED.) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of the portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments,

such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

SECTION 8. DEFINITION OF MATURITY DATE.) For the purpose of determining the benefits calculated under sections 6 and 7, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

SECTION 9. CONTRACT NOT PROVIDING CASH SURRENDER OR DEATH BENEFITS TO SO DISCLOSE IN PROMINENT PLACE IN CONTRACT.) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amounts prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

SECTION 10. BENEFITS ON CESSATION OF PAYMENT OF CONSIDERATIONS OFF THE ANNIVERSARY.) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary, under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

SECTION 11. MINIMUM NONFORFEITURE BENEFITS FOR CONTRACT PROVIDING BOTH ANNUITY AND LIFE INSURANCE BENEFITS, BENEFITS EXEMPTED FROM ACT.) For any contract which provides within the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sections 5, 6, 7, 8, and 10, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this Act. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, or death benefits.

SECTION 12. COMPANY MAY ELECT OPERATIVE DATE OF ACT BEFORE SECOND ANNIVERSARY OF EFFECTIVE DATE OF ACT.) After the effective date of this Act, any company may file with the commissioner a written notice of its election to comply with the provisions of this Act on and after a specified date before the second anniversary of the effective date of this Act. After the filing of such notice, then upon such specified date, which shall be the operative date for such company, this Act shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this Act for such company shall be the second anniversary of the effective date of this Act.

SECTION 13. EFFECTIVE DATE.) This Act shall become effective on July 1, 1977.

Approved April 6, 1977

CHAPTER 249

SENATE BILL NO. 2543
(Lips)

LIFE AND ACCIDENT INSURANCE VALUATION

AN ACT to empower the commissioner of insurance to annually value or cause to be valued the reserve liabilities of every life insurance company doing business in this state and to establish minimum standards for the valuation of such liabilities; and to repeal sections 26-03-33, 26-03-34, and 26-10-01 of the North Dakota Century Code, relating to the valuation of life and accident insurance policies.

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

SECTION 1. TITLE.) This Act shall be known as the standard valuation law.

SECTION 2. COMMISSIONER TO ANNUALLY VALUE LIABILITIES.) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction where such valuation complies with the minimum standards herein provided and provided the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

SECTION 3. MINIMUM STANDARDS OF VALUATION FOR LIFE INSURANCE.) The minimum standards for the valuation of all life or accident insurance policies issued prior to the effective date

of this Act shall be those provided by sections 26-03-33, 26-03-34, and 26-10-01. Except as otherwise provided in section 4, the minimum standard for the valuation of all such policies and contracts issued on and after the effective date of this Act shall be the commissioners' reserve valuation methods defined in sections 5, 6, and 9; five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other policies and contracts, other than annuity and pure endowment contracts, and the following tables:

1. For all policies of ordinary life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioners' 1958 standard ordinary mortality table, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this Act may be calculated according to an age not more than six years younger than the actual age of the insured.
2. For all policies of industrial life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioners' 1961 standard industrial mortality table.
3. For total and permanent disability benefits in or supplementary to policies or contracts, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
4. For accidental death benefits in or supplementary to policies or contracts, the 1959 accidental death benefits table. Such table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.
5. For group life insurance, life insurance issued on the substandard basis and other special benefits - such tables as may be approved by the commissioner.

SECTION 4. MINIMUM STANDARDS OF VALUATION FOR ANNUITIES.)

The minimum standards for the valuation of all individual annuity and pure endowment contracts, and for all annuities and pure endowments purchased under group annuity and pure endowment contracts, shall be the commissioners' reserve valuation methods defined in sections 5 and 6 and the following tables and interest rates:

1. For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality

table, or any modification of this table approved by the commissioner, and seven and one-half percent interest.

2. For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.
3. For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and seven and one-half percent interest.

SECTION 5. RESERVES BY COMMISSIONERS' RESERVE VALUATION METHOD.) Except as otherwise provided in sections 6 and 9, reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided by the policy and the excess of 1 over 2 as follows:

1. A net level annual premium equal to the present value, at the date of issue, of such benefits provided after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.
2. A net one-year term premium for such benefits provided in the first policy year.

Reserves according to the commissioners' reserve valuation method for: (a) life insurance policies providing a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended; (c) disability and accidental death benefits in all policies and contracts; and (d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraph.

SECTION 6. RESERVES BY COMMISSIONERS' ANNUITY RESERVE METHOD.) This section shall apply to all annuity and pure endowment contracts except group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality tables, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

SECTION 7. MINIMUM AGGREGATE RESERVES.) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on and after the effective date of this Act, be less than the aggregate reserves calculated in accordance with the methods set forth in sections 5, 6, and 9 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

SECTION 8. MINIMUM AGGREGATE RESERVES.) Reserves for all policies and contracts issued prior to the effective date of this Act may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such

policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after the effective date of this Act may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standards herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein. Any such company which at any time shall have adopted any standards of valuation producing greater aggregate reserves than those calculated according to the minimum standards herein provided may, with the approval of the commissioner, adopt any lower standards of valuation, but not lower than the minimum herein provided.

SECTION 9. MINIMUM RESERVE WHERE NET PREMIUM EXCEEDS GROSS PREMIUM.) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

SECTION 10. INCONSISTENT ACTS REPEALED.) Sections 26-03-33, 26-03-34, and 26-10-01 of the North Dakota Century Code are hereby repealed.

Approved April 6, 1977

CHAPTER 250

HOUSE BILL NO. 1359
(Conmy)

INSOLVENT INSURANCE COMPANIES

AN ACT to create and enact a new section to chapter 26-21 of the North Dakota Century Code and to create and enact subsection 6 to section 26-21-09 of the North Dakota Century Code, relating to the handling of claims against and the assets of insolvent insurance companies.

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

SECTION 1.) A new section to chapter 26-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

PRIORITY OF DISTRIBUTION OF ASSETS.) The priority of distribution of assets in a liquidation proceeding against an insurance company under this chapter shall be in the following order:

1. Expenses of administration;
2. Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under this Act, but not exceeding one thousand dollars for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner, may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will, in his opinion, be sufficient to the expenses of administration. Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees;
3. Claims for taxes and debts due to federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;
4. Claims by policyholders, beneficiaries, and insured arising from and within the coverage of and not in excess of the applicable limits of insurance policies

and insurance contracts issued by the company and liability claims against insurers which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company;

5. Claims presented by the North Dakota insurance guaranty association and any similar organization in another state, which represent covered claims as defined in section 26-36-05; and
6. All other claims.

SECTION 2.) Subsection 6 of section 26-21-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

6. Within one hundred twenty days of a final determination of insolvency of a company by a court of competent jurisdiction of this state, make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to the North Dakota insurance guaranty association and to any similar organization in another state, hereafter referred to as the associations.
 - a. Such proposal shall at least include provision for:
 - (1) Reserving amounts for the payment of the expenses of administration and claims falling within the priorities established in section 26-21-12 (1-3);
 - (2) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;
 - (3) Equitable allocation of disbursements to each of the associations entitled thereto; and
 - (4) The securing by the receiver from each of the associations entitled to disbursements an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section 26-21-12 in accordance with such priorities. No bond shall be required of any such association.
 - b. The receiver's proposal shall provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which

such associations could assert claims against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the associations then disbursements shall be in the amount of available assets.

- c. Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the receiver's proposal complies with subsections 6 (a) (1) and 6 (a) (4).

Approved March 18, 1977

CHAPTER 251

HOUSE BILL NO. 1043
(Legislative Council)
(Interim Committee on Industry, Business & Labor "C")

MEDICAL NEGLIGENCE RECOVERY ACT

AN ACT to limit professional liability of qualifying health care providers to patients electing to be bound, to create a trust fund for the benefit of patients suffering damage caused by negligence of the health care provider, and to establish a commission on medical competency.

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

SECTION 1. GENERAL PURPOSES.) The general purposes of this Act are to assure the availability of competent medical and hospital services to the public in North Dakota at reasonable costs; to provide prompt and efficient methods for eliminating the expense involved in nonmeritorious malpractice claims; to provide adequate compensation to patients with meritorious claims; and to encourage physicians to enter the practice of medicine in North Dakota and remain in such practice as long as they are qualified to do so. The legislature finds that the exercise of the sovereign and police power of this state for the good of the majority of its citizens is necessary to improve the availability of medical care, to assure its competency, and to reduce the cost thereof.

SECTION 2. DEFINITIONS.) As used in this Act, unless the context or subject matter otherwise requires:

1. "Commission" means the commission on medical competency.
2. "Commissioner" means the commissioner of insurance.
3. "Fund" means the patient trust fund.
4. "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's care, treatment, or confinement.
5. "Health care provider" includes a person, corporation, facility, or institution authorized by law to provide professional medical services as licensed physicians.
6. "Informed consent" means consent to a procedure based on information which would ordinarily be provided to the

patient under like circumstances by health care providers.

7. "Insurer" means an insurance company engaged in writing medical professional negligence liability insurance in this state pursuant to law.
8. "Nonrefundable payments" means payments, benefits, or damages which are not required to be refunded in the event of a recovery of damages pursuant to this Act.
9. "Occurrence" means events, incidents, or happenings and acts or omissions incident thereto which proximately cause injury or damage for which reimbursement is or may be claimed by a patient or his representative.
10. "Patient" means a person who receives or should have received health care from a licensed physician.
11. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.
12. "Professional negligence" includes the failure of a health care provider in rendering professional services to use the ordinary and reasonable care, skill, and knowledge ordinarily possessed and used under the same or similar circumstances by members of his profession engaged in similar practice. The test for ordinary and reasonable care, skill, and knowledge shall be that which health care providers in similar communities engaged in the same or similar work would ordinarily exercise and devote to the benefit of their patients under like circumstances.
13. "Representative" means the spouse, parent, guardian, attorney, trustee, personal representative, or other legal agent of the patient.

SECTION 3. EXCLUSIVE REMEDY.) If a health care provider shall qualify under this Act, the patient's exclusive remedy against the health care provider for alleged professional negligence, failure to provide care, failure to obtain informed consent, or any other claim based upon alleged professional negligence by a health care provider shall be as provided by this Act if the patient has consented to be governed by the provisions of this Act.

SECTION 4. PATIENT'S ELECTION - HOW MADE.) A patient or his representative may elect to be bound by the terms of this Act by signing an acknowledgment of such consent on forms to be furnished by the commissioner. In the event the patient, by choice, chooses not to give consent, it shall be conclusively presumed that the patient has elected not to be bound by the provisions of this Act.

The consent may be made by the mother for her unborn or newborn child, by a guardian, or by a parent or representative of a minor or incompetent. In the event emergency treatment is required, such person is subject to the terms and provisions of this Act. All health care providers shall post in their waiting room or other suitable location a sign of a size and type prescribed by the commissioner stating that the named health care provider has qualified under the provisions of this Act and that the patients of the named provider will be subject to the terms and provisions of this Act. A patient's consent to a physician shall be valid until such consent is withdrawn in writing by patient. In the event a patient does not consent pursuant to this section, the physician shall decide whether he will or will not provide services to the patient. The provisions of this Act apply to all patients seeking medical care in this state.

SECTION 5. FAILURE TO OBTAIN INFORMED CONSENT.) Before any claimant may recover damage in any action based on failure to obtain informed consent, the claimant must establish that a reasonably prudent person in the claimant's position would not have undergone the treatment had he been properly informed and that the performance of the treatment was the proximate cause of the injury and damages claimed.

SECTION 6. CLAIMS - JOINDER - ASSIGNMENT.) No proceedings governed by the provisions of this Act shall be joined with any action for recovery of damages against any health care provider not qualified under this Act, nor shall any cause of action pursuant to the provisions of this Act be assignable.

SECTION 7. MEDICAL NEGLIGENCE - EVIDENCE - REBUTTABLE PRESUMPTION.) No liability for personal injury or death shall be imposed against any health care provider based on alleged negligence in the performance of such care unless expert medical testimony or an admission of fault by the health care provider is presented regarding the alleged deviation from the appropriate standard of care in the specific circumstances of the case and the causation of the alleged injury or death. Where evidence is presented that the injury or death occurred due to a foreign substance which was unintentionally left within the body of a patient following surgery or due to a surgical procedure which was performed upon the wrong patient or the wrong organ, limb, or part of the patient's body, medical expert testimony shall not be required, and such evidence shall constitute a rebuttable presumption that the personal injury or death was caused by negligence.

SECTION 8. NONREFUNDABLE PAYMENTS CREDITED TO JUDGMENT.) In any action for damages for bodily injury or wrongful death under this Act wherein a claimant alleges damages for the cost of medical care, custodial care, or rehabilitation service, evidence which tends to establish the claimant or other person so damaged has been or shall be reimbursed or paid for any such item of damage, cost, or expense, in whole or in part, by any nonrefundable medical reimbursement insurance shall not be admissible in evidence or

brought to the attention of the jury. A nonrefundable medical reimbursement insurance benefit, less premiums paid by or for the claimant over the immediate preceding five years may be taken as a credit against any judgment entered. The matter of any credit to be deducted from a judgment shall be determined by the court in a separate hearing on motion or upon the stipulation of the parties.

SECTION 9. PROOF OF FINANCIAL RESPONSIBILITY - FEES - NOTICE.) All health care providers engaged in furnishing health care services within the state shall file with the commissioner proof of financial responsibility in the amount of one hundred thousand dollars for each occurrence. Health care providers who are physicians or their employers, employees, or partners may file proof of financial responsibility in the amount of three hundred thousand dollars for all occurrences or claims made in any policy year for each named insured. A health care provider shall be qualified under this Act only as long as the health care provider's required insurance coverage remains effective. Health care providers shall pay the annual fee assessed by the commissioner on all health care providers and any surcharge assessed by the commissioner.

SECTION 10. FAILURE TO QUALIFY - EFFECT.) Any health care provider who provides health care services within the state and who fails to qualify under this Act shall be subject to immediate cancellation of his license to practice within the state.

SECTION 11. LIMITED LIABILITY OF QUALIFIED HEALTH CARE PROVIDER.) A health care provider qualified under this Act shall not be liable to any patient or his representative who is covered by this Act for an amount in excess of three hundred thousand dollars for all claims or causes of action for malpractice or professional negligence arising from any one occurrence.

SECTION 12. HEALTH CARE PROVIDER - FINANCIAL RESPONSIBILITY - ESTABLISHMENT.) The financial responsibility of a health care provider may be established by filing with the commissioner proof that the health care provider is insured by a policy of professional liability insurance with a company authorized to transact business in the state. Insurance shall be in the amount of one hundred thousand dollars per occurrence, and such insurance may provide an aggregate liability of three hundred thousand dollars for all occurrences or claims made in any policy year. The health care provider shall file the amount of the premium charged for the policy of insurance with the commissioner.

SECTION 13. QUALIFYING INSURANCE COVERAGE - CANCELLATION.) No policy of liability insurance supporting proof of financial responsibility with the commissioner can be effectively cancelled or terminated by the insurer unless at least sixty days before the effective date of cancellation a written notice giving the date upon which termination becomes effective is mailed to the insured at his last known address and to the commissioner at his office by certified or registered mail with the postage prepaid.

SECTION 14. ADVANCE PAYMENTS OR SERVICES BY HEALTH CARE PROVIDER OR INSURER.) Any payment made or service extended by a health care provider or his insurer to or for a patient or any other person on the patient's behalf in advance of a final determination of liability of all health care providers shall not be construed as an admission of liability for injuries or damages suffered in any action brought under this Act. When a patient or his representative shall obtain a final judgment against a health care provider in any action subject to the provisions of this Act, the court shall reduce the judgment by the amount of any advance payments or the value of any service advanced to or for the patient. Any judgment reduction shall inure to the exclusive benefit of the health care provider by whom or on whose behalf the payment was made or the service performed. In no case shall advance payments or services in excess of the amount found to be due from any health care provider be repayable by the patient or his representative.

SECTION 15. PATIENT TRUST FUND.)

1. There is hereby created a patient trust fund to be collected and administered by the commissioner for the purposes of this Act. The fund and any income derived therefrom shall be held in trust by the state, and the investment thereof shall be under supervision of the state investment board in accordance with chapter 21-10. To accumulate and maintain the fund, an annual assessment shall be levied upon all health care providers in the state qualifying under this Act. The assessment for each qualifying health care provider shall be a percentage of the insurance services office standard premium based upon its standard classification code, not to exceed one hundred fifty percent, by each health care provider for the liability insurance coverage required to qualify under this Act as determined by the commissioner. Assessments or surcharges levied by the commissioner shall not exceed the amount necessary to maintain an adequate fund as determined by the commissioner, subject to review pursuant to chapter 28-32.
2. The commissioner shall notify each health care provider of the annual assessment due within thirty days of the date that proof of financial responsibility is filed in his office. The annual assessment shall be due and payable to the commissioner within thirty days of notice to each health care provider.
3. The necessary expense of accumulating, maintaining, protecting, and administering the fund shall be paid by annual transfers from the fund to the general fund of the state upon warrants prepared by the department of accounts and purchases.
4. The commissioner may levy upon all health care providers qualified under this Act a surcharge in an amount

proportionate to the annual fee paid by each provider into the fund whenever analysis reveals that the balance of the fund is inadequate to meet existing and contingent liabilities. Such surcharge shall be due and payable within thirty days after the same is levied.

5. The commissioner may cause all or any part of the potential liability of the fund to be reinsured if reinsurance is available at a fair and reasonable price. The cost of any reinsurance shall be paid from the fund.
6. Upon receipt of a certified copy of an order of a district court of this state directing specific payments to be made from the fund, the commissioner shall issue vouchers for the periodic payments from the fund as directed by the court.

SECTION 16. PERIODIC PAYMENTS FROM PATIENT TRUST FUND AT DISCRETION OF COURT.) Subject to the provisions of section 18 of this Act, the court in its discretion may enter a judgment ordering payments from the patient trust fund to the judgment creditor at regular intervals rather than in a lump sum in satisfaction of a damage award in excess of one hundred thousand dollars. Such a judgment may specify the recipient of each payment, the size of each payment, the interval between payments, and the total number of payments. A judgment entered in the manner provided by this section may be subject to modification or termination on the basis of specified contingencies.

SECTION 17. FUND LIABILITY MAY BE ESTABLISHED WITHOUT JUDGMENT.) If the liability insurer of a health care provider shall agree to settle its liability on a claim against its insured by payment of the policy limits of one hundred thousand dollars and the claimant demands additional payments, proceedings to determine what amount, if any, should be paid to or on behalf of the claimant by the fund may be initiated in the district court without a jury by the claimant naming the fund as defendant. The fund is authorized to enter a stipulation with the claimant, in which event the court, when satisfied by the evidence that said stipulation is reasonable, shall approve the same. The court, however, shall have continuing jurisdiction over the payments and may order the payments changed as changes in circumstance may dictate.

SECTION 18. FUND PAYMENTS - WHEN ORDERED.) In no case shall any payment be ordered from the fund unless payment of one hundred thousand dollars by or on behalf of each liable health care provider shall have been made to the claimant.

SECTION 19. COMMISSION ON MEDICAL COMPETENCY.)

1. There is hereby created a commission on medical competency which shall consist of:
 - a. Two members of the state board of medical examiners appointed by the chairman of the board to two-year terms, except one of the initial appointees shall be appointed for a term of three years.

- b. Two physicians in active practice who have been actively engaged in the practice of medicine in this state for at least eight years, selected by the state medical association. Members so selected shall serve three-year terms, except one of the initial members so selected shall serve for only two years.
- c. The commissioner and the attorney general, or their designated representatives.

No appointed member of the commission shall serve more than two terms consecutively.

2. The commission shall select a chairman and a vice chairman from its own members, and a secretary who may or may not be a member of the commission and who shall keep minutes of all meetings thereof.
3. The commission may employ an executive secretary, engage investigators, medical experts, and such other experts as the commission in its discretion determines to be necessary to accomplish its purposes. The attorney general shall provide counsel to the commission, but the commission may employ special counsel in any proceeding wherein it decides it is advisable.

SECTION 20. COMPENSATION.) Physician members of the commission on medical competency shall be paid and reimbursed for necessary and reasonable expenses incurred in connection with their duties in the same manner and out of the same fund as members of the board of medical examiners are paid and reimbursed.

SECTION 21. COMMISSION MEETINGS.) Meetings of the commission shall be held at least once annually in Bismarck, North Dakota, and at such other place or places within the state and at such times as the commission may determine. A majority of the members of the commission shall constitute a quorum, and no action of the commission shall be effective without the concurrence therein of a majority of its members. Special meetings of the commission may be called at any time by the chairman or vice chairman of the commission or upon the written request of any three members of the commission.

SECTION 22. COMPLAINTS.)

1. All residents have the right to make or refer complaints to the commission on medical competency with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Upon receipt of any complaint or request, the commission shall conduct such investigation as it deems necessary to

resolve the matter as it deems appropriate.

2. If the commission determines that a formal hearing should be held concerning the competency of any licensed physician, it shall inform the respondent physician involved of the specific charges to be considered by serving upon him a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the commission shall not participate in any proceeding before the board relating to said complaint. The complaint shall be prosecuted before the board by the attorney general or one of his assistants.

SECTION 23. COMMISSION POWERS.) The commission may:

1. Subpoena witnesses.
2. Hold preliminary hearings.
3. Require any physician under investigation to submit to a physical or psychiatric examination.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators when necessary.
6. Hold confidential conferences with any complainant or any physician with respect to any complaint.
7. File a formal complaint against any licensed physician with the state board of medical examiners.

SECTION 24. EXPANDED JURISDICTION OF THE BOARD.) The board of medical examiners may revoke or suspend a physician's license to practice medicine in this state or may attach conditions or restrictions thereto on any one or more of the following grounds:

1. Willful disregard of, or failure to perform, his duties and obligations to a patient.
2. Habitual abuse of alcohol or drugs.
3. Grossly negligent acts in performing his duties as a physician.
4. A continued pattern of inappropriate care, including unnecessary surgery, in the performance of his duties as a physician.
5. Physical or mental disability materially affecting the ability of the physician to perform his duties in a competent manner.

Such grounds for revocation or suspension shall be in addition to other authority of the board to revoke or suspend a physician's license.

SECTION 25. COMMUNICATION TO COMMISSION PRIVILEGED.)

Communications to the commission and its agents are privileged, and no member of the commission nor any of its agents shall be compelled to testify with respect thereto in any proceedings except in those proceedings conducted before the board of medical examiners wherein the competency of a physician is at issue. All records of the commission, except its financial records, shall be confidential.

SECTION 26. COMMISSION IMMUNITY.) Members of the commission on medical competency, special masters appointed by it, and agents of the commission, shall be immune from any liability of any kind based upon any acts or omissions in the course of the performance of responsibilities in an official capacity except liability for bodily injury arising out of accidents caused, or contributed to, by the negligence of the member or agent.

Approved April 22, 1977

CHAPTER 252

SENATE BILL NO. 2139
(Lips)

NO-FAULT INSURANCE AMENDMENTS

AN ACT to create and enact subsections 23 and 24 of section 26-41-03, section 26-41-04.1, and subdivision c of subsection 2 of section 26-41-10 of the North Dakota Century Code, relating to no-fault insurance; to amend and reenact subsection 1 of section 26-02-32, subsection 1 of section 26-02-33, subsections 12 and 13 of section 26-41-03, subsection 1 of section 26-41-04, and subsection 1 of section 26-41-08 of the North Dakota Century Code, relating to cancellation and nonrenewal of automobile insurance policies and no-fault insurance.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 26-02-32 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Policy" means any automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, basic or optional excess no-fault benefits, 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.

SECTION 2. AMENDMENT.) Subsection 1 of section 26-02-33 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 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. When an operator whose driver's license is suspended or revoked is excluded from coverage under the policy covering a secured motor vehicle, the owner of such motor vehicle who gives his expressed or implied consent to such operator to use said motor vehicle is not relieved of his liability under subsection 5 of section 26-41-04.

SECTION 3. AMENDMENT.) Subsection 12 of section 26-41-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Owner" means the person in whose name the motor vehicle has been registered. If no registration is in effect at the time of an accident involving the motor vehicle, "owner" means the person who holds the legal title thereto, or in the event the motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession or lease with a term of six months or more with the lessee having the right to possession, "owner" means the debtor or lessee.

SECTION 4. AMENDMENT.) Subsection 13 of section 26-41-03 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. "Pedestrian" means any person not occupying any vehicle designed to be driven or drawn by power other than muscular power.

* SECTION 5.) Subsections 23 and 24 of section 26-41-03 of the North Dakota Century Code are hereby created and enacted to read as follows:

23. "Disability" means the inability to engage in substantially all of the injured person's usual and customary daily activities.
24. "Bus" means:
 - a. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school, or
 - b. Any motor vehicle owned by charitable, religious, educational, or governmental corporation or organization designed for carrying more than ten passengers and used for the transportation of persons not for compensation.

SECTION 6. AMENDMENT.) Subsection 1 of section 26-41-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The owner of a motor vehicle required to be registered in this state, or the owner of a motor vehicle operated in this state by him or with his permission, shall continuously provide with respect to such motor vehicle during the period in which operation is contemplated in this state security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance.

*NOTE: These subsections are codified as subsections 4.1 and 3.1 of North Dakota Century Code Section 26-41-03.

SECTION 7.) Section 26-41-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26-41-04.1. SUSPENSION OF COVERAGE - WRITTEN REQUEST BY OWNER.) Upon receipt from the owner of a motor vehicle, which is a secured motor vehicle, of a signed written request for suspension stating that such secured motor vehicle will not be operated on public roads or highways during a period of not less than thirty consecutive days, the basic no-fault insurer of such vehicle shall suspend on a pro rata basis or shall offer a similar credit, to the extent requested by the owner, insurance coverage afforded under the policy providing the security for payment of basic no-fault benefits and the liabilities covered under the motor vehicle liability insurance for such secured motor vehicle until notified in writing by the owner that the coverage should be reinstated. The owner shall not be required to surrender the motor vehicle license plates during the policy suspension period. During the period of suspension only, the provisions of subsections 1, 2, 4, 5, 6, and 7 of section 26-41-04 shall not apply with respect to such secured motor vehicle, provided, if such secured motor vehicle is operated by or with the permission of the owner during the period of suspension, the provisions of said subsections 1, 2, 4, 5, and 7 of section 26-41-04, but not the provisions of subsection 6 of section 26-41-04, shall thereupon become applicable. This section shall not apply to an owner of a secured motor vehicle for which proof of financial responsibility is required under the financial responsibility laws of North Dakota.

SECTION 8. AMENDMENT.) Subsection 1 of section 26-41-08 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle;

SECTION 9.) Subdivision c of subsection 2 of section 26-41-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

- c. As to any person injured while occupying a bus which is a secured motor vehicle, the benefits shall be payable by the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle; and, if there is no such basic no-fault insurer affording benefits to the injured person, then the benefits shall be payable to the injured person by the basic no-fault insurer of the bus.

Approved April 19, 1977

CHAPTER 253

HOUSE BILL NO. 1510
(A. Hausauer, Rued)

COORDINATION OF NO-FAULT BENEFITS

AN ACT to amend and reenact subsection 3 of section 26-41-10 of the North Dakota Century Code, relating to the coordination of insurance benefits between no-fault insurers and other insurers.

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

SECTION 1. AMENDMENT.) Subsection 3 of section 26-41-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any insurer or nonprofit service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. Any such insurer or nonprofit service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. Any such coordination of benefits plan shall be approved by the commissioner of insurance.