

HOUSE BILL NO. 1176

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact sections 26.1-05-18, 26.1-05-19, 26.1-05-31,
2 26.1-10-02, subsections 1 and 6 of section 26.1-10-05, sections 26.1-24-10, 26.1-31.2-01, and
3 26.1-31.2-02 of the North Dakota Century Code, relating to authorized investment of funds of
4 insurance companies and reinsurance credit for a domestic insurer.

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

6 **SECTION 1. AMENDMENT.** Section 26.1-05-18 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-05-18. Investment of funds must be authorized by directors - Prohibited**
9 **investment practices.** An investment or loan, except a policy loan, may not be made by any
10 domestic insurance company unless the investment or loan first has been authorized by the
11 board of directors of the company or by an investment committee appointed by the board of
12 directors of the company charged with the duty of supervising the making of loans or
13 investments by the company. A domestic insurance company may not:

- 14 1. Subscribe to or participate in any underwriting of the purchase or sale of securities
15 or property.
- 16 2. Enter into any transaction for the purchase or sale of any securities or property on
17 account of the company jointly with any other person, firm, or corporation, except
18 for authorized real estate joint ventures ~~and~~, partnerships, and limited liability
19 companies.
- 20 3. Enter into any agreement to withhold any of its property from sale, but the
21 disposition of its property at all times is within the control of its board of directors,
22 except for authorized real estate joint ventures ~~and~~, partnerships, and limited
23 liability companies.

- 1 4. Invest any of its funds in, or loan the funds upon, the shares of stock of any
- 2 corporation except as otherwise provided in this chapter.
- 3 5. Invest any of its funds in, or loan the funds upon, any bonds or obligations, except
- 4 government, state, or municipal securities, which are not secured by adequate
- 5 collateral security ~~to the full extent of the investment~~, except as otherwise provided
- 6 in this chapter.
- 7 6. Invest its capital, surplus funds, or other assets in, or loan the same upon, any
- 8 property owned by any officer or director of the company, or by any of the
- 9 immediate members of the family of any such officer or director, nor in any manner
- 10 which will permit any such officer or director to gain through the investment of
- 11 funds of the company.

12 **SECTION 2. AMENDMENT.** Section 26.1-05-19 of the 1999 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **26.1-05-19. Authorized investment of funds of insurance companies.** A domestic
15 insurance company may invest any of its funds and accumulations in:

- 16 1. Securities or obligations made specifically eligible for such investment by law.
- 17 2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the
- 18 United States of America, the District of Columbia, or by any state, territory, or
- 19 insular possession of the United States or by any county, city, township, school
- 20 district, or other civil division of a state, including loan-backed securities, those
- 21 payable from special revenues or earnings specifically pledged for the payment
- 22 thereof, and those payable from special assessments, including rights to purchase
- 23 or sell these securities or obligations if these rights are traded upon a contract
- 24 market designated and regulated by a federal agency and purchased for legitimate
- 25 hedging, nonspeculative purposes.
- 26 3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any
- 27 instrumentality or agency of the United States of America, including rights to
- 28 purchase or sell these securities or obligations if these rights are traded upon a
- 29 contract market designated and regulated by a federal agency and purchased for
- 30 legitimate hedging, nonspeculative purposes.

4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Mortgage Obligations, including bonds and debentures of or evidences of indebtedness, or participation in those bonds or evidences of indebtedness, or loan-backed securities, which are issued, assumed, guaranteed, or insured by any solvent industrial public utility or financial corporation legal entity duly incorporated

and authorized under the laws of the United States of America or of any state or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:

- a. ~~The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase. Investments in preferred, guaranteed, and common stocks issued or guaranteed by a single person may not exceed three percent of the insurance company's admitted assets.~~
- b. ~~The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate~~

- 1 the greater of twenty-five percent of admitted assets or one hundred percent
2 of the capital and surplus of a nonlife insurance company.
- 3 c. ~~The company issuing or guaranteeing the stock has not been in arrears in the~~
4 ~~payment of dividends thereunder for a period of ninety days within the~~
5 ~~five year period immediately preceding purchase of the stock.~~
- 6 d. Investments in preferred, guaranteed, and common stocks may not exceed in
7 the aggregate twenty percent of the life insurance company's admitted assets.
8 For purposes of this section, preferred stock includes mandatory sinking fund
9 preferred stock. Common stock includes shares of mutual funds, master
10 limited partnerships trading as common stock, and American deposit receipts
11 that are traded on a nationally recognized securities exchange or on the
12 national association of securities dealers automated quotations system.
- 13 22. Savings accounts, under certificates of deposit or in any other form, in solvent
14 banks and trust companies which have qualified for federal deposit insurance
15 corporation protection, shares and savings accounts, under certificates of deposit,
16 investment certificates, or in any other form, in solvent savings and loan
17 associations organized under federal law or state law of any state which have
18 qualified for federal savings and loan insurance corporation protection, and shares
19 and deposit accounts, under certificates of deposit or in any other form, in solvent
20 state or federally chartered credit unions which are insured by the national credit
21 union administration. Investments in the shares and accounts are not limited to, or
22 by, the amount of any such insurance protection. Short-term or liquidity
23 investments such as certificates of deposit, repurchase agreements, bankers'
24 acceptances, commercial paper, money market mutual funds, or current interest
25 accounts in solvent banks and trust companies, savings and loan associations,
26 state or federally chartered credit unions, investment brokerage houses which are
27 regulated by a federal agency, and such other types of investments as may be
28 deemed appropriate and authorized by rule by the commissioner.
- 29 23. Loans made upon the security of its own policies, if a life insurance company, but
30 no loan on any policy may exceed the reserve value thereof.

1 24. Notes secured by mortgages on ~~improved~~ unencumbered real estate, including
2 construction loans and leaseholds substantially having and furnishing the rights
3 and protection of a first real estate mortgage, within the United States of America
4 or any province of the Dominion of Canada. An investment in a construction loan
5 covering any single parcel of real estate may not exceed one quarter of one
6 percent of the admitted assets of the company. Investments in construction loans
7 in the aggregate may not exceed two percent of the admitted assets of the
8 company. No loan may be made under this subsection unless at the date of
9 acquisition the total indebtedness secured by such lien does not exceed
10 ~~seventy-five~~ eighty percent of the value of the property upon which it is a lien,
11 provided that the loan requires immediate scheduled payment in periodic
12 installments of principal and interest and periodic payments are made no less
13 frequently than annually. A loan that does not meet these requirements may not
14 exceed seventy-five percent of the value of the property. ~~The~~ A loan may be made
15 in an amount exceeding ~~seventy-five percent so long as any amount over~~
16 ~~seventy-five percent of these percentage limitations~~ if the value of the property
17 mortgaged in excess of the limitation is guaranteed or insured by the federal
18 housing administration or guaranteed by the administrator of veterans' affairs or is
19 insured by private mortgage insurance through an insurance company authorized
20 to do business in this state. Loans may be amortized on the basis of a final
21 maturity not exceeding thirty years from the date of the loan with an actual maturity
22 date of the loan at any time less than thirty years. A loan on a single-family
23 dwelling where the loan is amortized on the basis of a final maturity twenty-five
24 years or less from the date of the loan may be made in an amount not exceeding
25 eighty percent of the value of the property mortgaged. The loan on a single-family
26 dwelling may be made in an amount exceeding eighty percent so long as any
27 amount over eighty percent of the value of the property mortgaged is insured by
28 private mortgage insurance through an insurance company authorized to do
29 business in this state. Buildings may not be included in the valuation of such
30 property unless they are insured and the policies are made payable to the
31 company as its interest may appear. A loan may not be made in excess of the

amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture, limited liability company, or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.

26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:

- a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.

- 1 b. Investments made by any company under this subsection may not at any time
2 exceed ten percent of the admitted assets of the company.
- 3 c. An investment in any single parcel of real estate acquired under this
4 subsection may not exceed two percent of the admitted assets of the
5 company.
- 6 d. The real estate, including the cost of improvements, must be valued at cost
7 and the improvements may be depreciated annually at an average rate of not
8 less than two percent of the original cost.
- 9 e. An insurance company may acquire such real estate or an interest in such
10 real estate directly or as a joint venture, limited liability company, or through a
11 limited or general partnership in which the insurance company is a partner.
- 12 27. Land and buildings used as home or regional offices, subject to the following
13 provisions and limitations:
- 14 a. Land and buildings thereon ~~in which it has its principal office and any other~~
15 ~~real estate including regional offices requisite for its convenient~~
16 ~~accommodation in the transaction of its business~~ owned by the company in
17 which the square footage of the property is more than fifty percent occupied
18 by the company and its affiliates.
- 19 b. Investments or total commitment in the land and buildings may not aggregate
20 more than ten percent of the company's admitted assets without the consent
21 of the commissioner.
- 22 c. The real estate, including the cost of improvements, must be valued at cost
23 and the improvements must be depreciated annually at an average rate of not
24 less than two percent of the original cost.
- 25 28. Investments by loans or otherwise, in the purchase of electric or mechanical
26 machines, including software, constituting a data processing system. The
27 company may hold the system as an admitted asset for use in connection with the
28 business of the company if its aggregate cost does not exceed ~~five~~ three percent
29 of the ~~admitted assets of the company~~ company's capital and surplus and the cost
30 of the components constituting the system is fully amortized over a period of not to
31 exceed ~~seven~~ five years. If a data processing system consists of separate

components acquired at different times, then the cost of each component must be amortized over a period not to exceed ~~seven~~ five years commencing with the date of acquisition of each component.

29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.

30. Ownership of, or loans secured by first liens upon:

a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.

b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five

percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

31. Obligations secured by a pledge of personal property, as follows:

- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

33. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

34. Loans, securities, or investments in a North Dakota low-risk incentive fund organized under chapter 26.1-50. The aggregate admitted value of the company's

investment under this subsection may not at anytime exceed the lesser of five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law. A company making an investment under this subsection may value at par any investment purchased at par.

35. Foreign investments of substantially the same types as those permitted under subsections 20 and 21, subject to the following restrictions and limitations:

- a. Foreign investments issued, assumed, guaranteed, or insured by a single person may not exceed three percent of the insurance company's admitted assets.
- b. Foreign investments in a single foreign jurisdiction may not exceed in the aggregate ten percent of the insurance company's admitted assets as to a foreign jurisdiction that has a sovereign debt rating of one as determined by the securities valuation office of the national association of insurance commissioners or three percent of the insurance company's admitted assets as to any other foreign jurisdiction.
- c. Foreign investments may not exceed in the aggregate twenty percent of the insurance company's admitted assets.

Investments acquired under this subsection shall be aggregated with investments of the same type made under subsection 21 for purposes of determining compliance with the limitations contained in that subsection. For purposes of this subsection, a foreign investment means an investment in a foreign jurisdiction or an investment in a legal entity domiciled in a foreign jurisdiction. A foreign jurisdiction is any jurisdiction other than the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in

adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

SECTION 3. AMENDMENT. Section 26.1-05-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-31. Salaries and expenses of officers and agents of domestic life insurance company - Restrictions. A domestic life insurance company may not:

1. Pay any salary, compensation, or emolument to any senior officer, trustee, or director thereof, amounting in any one year to more than ~~five~~ one hundred thousand dollars, unless the payment thereof first is authorized by the board of directors of the company.
2. Grant any pension to any officer, director, or trustee thereof, or to any member of the officer's, director's, or trustee's family after death, except that it may provide a pension in pursuance of the terms of a retirement plan adopted by the board of directors and approved by the commissioner for any person who is or has been a salaried officer or employee of the corporation and who may retire by reason of age or disability.

SECTION 4. AMENDMENT. Section 26.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-02. Subsidiaries - Additional investment authority - Exception from investment restrictions.

1. Any domestic insurance company, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries ~~engaged in the following kinds.~~ A subsidiary may conduct any kind of business:
 - ~~a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.~~
 - ~~b. Acting as an insurance broker or as insurance agent for its parent or for any of its parent's insurance company subsidiaries.~~

- ~~e. Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.~~
 - ~~f. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.~~
 - ~~e. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.~~
 - ~~f. Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.~~
 - ~~g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.~~
 - ~~h. Ownership and management of assets which the parent corporation could itself own or manage.~~
 - ~~i. Acting as administrative agent for a governmental instrumentality performing an insurance function.~~
 - ~~j. Financing of insurance premiums, agents, and other forms of consumer financing.~~
 - ~~k. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business.~~
 - ~~l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section and its authority to do so is not limited because it is a subsidiary of a domestic insurer.~~
2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections, a domestic insurance company may also:
 - a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ~~five~~ ten percent of the insurance company's admitted assets or fifty percent of the company's surplus as regards policyholders; provided, that

after the investments the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there must be included:

- (1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.
- (2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

- b. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in subdivision a of subsection 2.

"The total investment of the insurance company" includes:

- (1) Any direct investment by the company in an asset.
- (2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.

- c. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after such investment the insurance company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.

3. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of insurance companies.
4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined ~~immediately after~~ before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.
5. If an insurance company ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner prescribes, unless at any time after the investment has been made, the investment has met the requirements for investment under any other section, and the company has so notified the commissioner.

SECTION 5. AMENDMENT. Subsections 1 and 6 of section 26.1-10-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Transactions within a holding company system to which an insurance company subject to registration is a party are subject to the following standards:
 - a. The terms must be fair and reasonable.
 - b. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions including that accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.
 - c. The insurance company's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs.
 - d. Charges or fees for services performed must be reasonable.

e. Expenses incurred and payment received must be allocated to the insurance company in conformity with ~~customary insurance~~ statutory accounting practices consistently applied.

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

- a. The size of the insurance company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- b. The extent to which the insurance company's business is diversified among the several lines of insurance.
- c. The number and size of risks insured in each line of business.
- d. The extent of the geographical dispersion of the insurance company's insured risks.
- e. The nature and extent of the insurance company's reinsurance program.
- f. The quality, diversification, and liquidity of the insurance company's investment portfolio.
- g. The recent past and projected future trend in the size of the insurance company's investment portfolio.
- h. The surplus as regards policyholders maintained by other comparable insurance companies.
- i. The adequacy of the insurance company's reserves.
- j. The quality and liquidity of investments in ~~subsidiaries made pursuant to section 26.1-10-02~~ affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.
- k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

1 **SECTION 6. AMENDMENT.** Section 26.1-24-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **26.1-24-10. Insurer's audit to determine premium - Time limitation.** An insurer
4 providing commercial insurance may conduct an audit to determine the premium due or to be
5 refunded only within one hundred eighty days after the expiration date of the policy unless the
6 insured agrees in writing to extend that period of time. ~~During the period allowed to conduct the~~
7 ~~audit, the insurer may not estimate the amount of premium to be refunded to or paid by the~~
8 ~~insured.~~

9 **SECTION 7. AMENDMENT.** Section 26.1-31.2-01 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **26.1-31.2-01. Credit allowed a domestic ceding insurer.** Credit for reinsurance must
12 be allowed a domestic ceding insurer as either an asset or a deduction from liability on account
13 of reinsurance ceded only when the reinsurer meets the requirements of either subsection 1, 2,
14 3, 4, or 5. Credit will be allowed under subsection 1, 2, or 3 only with respect to cessions of a
15 kind or class of business that the assuming insurer is licensed or otherwise allowed to write or
16 assume in its state of domicile or, in the case of a United States branch of an alien assuming
17 insurer, in the state through which it is entered and licensed to transact insurance or
18 reinsurance. If meeting the requirements of subsection 3 or 4, the requirements of subsection 6
19 must also be met.

- 20 1. Credit must be allowed when the reinsurance is ceded to an assuming insurer or
21 nonprofit health service corporation which is licensed to transact insurance or
22 reinsurance in this state.
- 23 2. Credit must be allowed when the reinsurance is ceded to an assuming insurer
24 which is accredited as a reinsurer in this state. An accredited reinsurer is one
25 which:
 - 26 a. Files with the commissioner evidence of its submission to this state's
27 jurisdiction;
 - 28 b. Submits to this state's authority to examine its books and records;
 - 29 c. Is licensed to transact insurance or reinsurance in at least one state, or, in the
30 case of a United States branch of an alien assuming insurer, is entered

through and licensed to transact insurance or reinsurance in at least one state; and

d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either

(1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or

(2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit may be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

3. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

a. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

b. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of subdivision a of subsection 3 does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be

1 reported on the national association of insurance commissioners annual
2 statement form by licensed insurers to enable the commissioner to determine
3 the sufficiency of the trust fund. In the case of a single assuming insurer, the
4 trust must consist of a trustee account representing the assuming insurer's
5 liabilities attributable to ~~business written in the~~ reinsurance ceded by United
6 States ceding insurers and, in addition, the assuming insurer shall maintain a
7 trustee surplus of not less than twenty million dollars. In the case of a group,
8 including incorporated and individual unincorporated underwriters, the trust
9 must consist of a trustee account representing the group's liabilities
10 attributable to business written in the United States and, in addition, the group
11 shall maintain a trustee surplus of which one hundred million dollars must be
12 held jointly for the benefit of United States ceding insurers of any member of
13 the group for all years of account; the incorporated members of the group
14 may not be engaged in any business other than underwriting as a member of
15 the group and are subject to the same level of solvency regulation and control
16 by the group's domiciliary regulator as are the unincorporated members; ~~and,~~
17 Within ninety days after its financial statements are due to be filed with the
18 group's domiciliary regulator, the group shall make available provide to the
19 commissioner an annual certification of the solvency of each underwriter by
20 the group's domiciliary regulator ~~and its~~ or if a certification is unavailable,
21 financial statements prepared by each underwriter's independent public
22 accountants.

- 23 b. In the case of a group of incorporated insurers under common administration
24 which complies with the filing requirements contained in subdivision a, and
25 which has continuously transacted an insurance business outside the United
26 States for at least three years immediately prior to making application for
27 accreditation and submits to this state's authority to examine its books and
28 records and bears the expense of the examination, and which has aggregate
29 policyholders' surplus of ten billion dollars; the trust must be in an amount
30 equal to the group's several liabilities attributable to business ceded by United
31 States ceding insurers to any member of the group pursuant to reinsurance

1 contracts issued in the name of such group plus the group shall maintain a
2 joint trusteed surplus of which one hundred million dollars must be held jointly
3 and exclusively for the benefit of United States ceding insurers of any member
4 of the group as additional security for any such liabilities, ~~and~~. Within ninety
5 days after its financial statements are due to be filed with the group's
6 domiciliary regulator, each member of the group shall make available to the
7 commissioner an annual certification of the member's solvency by the
8 member's domiciliary regulator and financial statements of each underwriter
9 member prepared by its independent public accountant.

10 c. The trust and any amendments to the trust must be established in a form
11 approved by the commissioner of ~~insurance~~ the state where the trust is
12 domiciled or the commissioner of another state who, pursuant to the terms of
13 the trust instrument, has accepted principal regulatory oversight of the trust.
14 The form of the trust and any trust amendments also must be filed with the
15 commissioner of every state in which the ceding insurer beneficiaries of the
16 trust are domiciled. The trust instrument must provide that contested claims
17 must be valid and enforceable upon the final order of any court of competent
18 jurisdiction in the United States. The trust must vest legal title to its assets in
19 the trustees of the trust for its United States policyholders and ceding
20 insurers, their assigns, and successors in interest. The trust and the
21 assuming insurer are subject to examination as determined by the
22 commissioner. The trust described herein must remain in effect for as long as
23 the assuming insurer, or any member or former member of a group of
24 insurers, has outstanding obligations due under the reinsurance agreements
25 subject to the trust.

26 d. No later than February twenty-eighth of each year the trustees of the trust
27 shall report to the commissioner in writing setting forth the balance of the trust
28 and listing the trust's investments at the preceding yearend and shall certify
29 the date of termination of the trust, if so planned, or certify that the trust will
30 not expire prior to the next following December thirty-first.

1 5. Credit must be allowed when the reinsurance is ceded to an assuming insurer not
2 meeting the requirements of subsection 1, 2, 3, or 4 but only with respect to the
3 insurance of risks located in jurisdictions where the reinsurance is required by
4 applicable law or regulation of that jurisdiction.

5 6. If the assuming insurer is not licensed or accredited to transact insurance or
6 reinsurance in this state, the credit permitted by subsections 3 and 4 may not be
7 allowed unless the assuming insurer agrees in the reinsurance agreements:

8 a. In the event of the failure of the assuming insurer to perform its obligations
9 under the terms of the reinsurance agreement, the assuming insurer, at the
10 request of the ceding insurer, shall submit to the jurisdiction of any court of
11 competent jurisdiction in any state of the United States, will comply with all
12 requirements necessary to give such court jurisdiction, and will abide by the
13 final decision of such court or of any appellate court in the event of an appeal;
14 and

15 b. To designate the commissioner or a designated attorney as its true and lawful
16 attorney upon whom may be served any lawful process in any action, suit, or
17 proceeding instituted by or on behalf of the ceding company.

18 This provision is not intended to conflict with or override the obligation of the
19 parties to a reinsurance agreement to arbitrate their disputes, if such an obligation
20 is created in the agreement.

21 **SECTION 8. AMENDMENT.** Section 26.1-31.2-02 of the North Dakota Century Code
22 is amended and reenacted as follows:

23 **26.1-31.2-02. Reduction from liability for reinsurance ceded by a domestic insurer**
24 **to an assuming insurer.** A reduction from liability for the reinsurance ceded by a domestic
25 insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 must be
26 allowed in an amount not exceeding the liabilities carried by the ceding insurer and such
27 reduction must be in the amount of funds held by or on behalf of the ceding insurer, including
28 funds held in trust for the ceding insurer, under a reinsurance contract with the assuming
29 insurer as security for the payment of obligations thereunder, if the security is held in the United
30 States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or,

- 1 in the case of a trust, held in a qualified United States financial institution, as defined in
2 subsection 2 of section 26.1-31.2-03. This security may be in the form of:
- 3 1. Cash.
 - 4 2. Securities listed by the securities valuation office of the national association of
5 insurance commissioners and qualifying as admitted assets.
 - 6 3. Clean, irrevocable, ~~and~~ unconditional, and evergreen letters of credit issued or
7 confirmed by a qualified United States institution, as defined in subsection 1 of
8 section 26.1-31.2-03, effective no later than December thirty-first in respect of the
9 year for which filing is being made, and in the possession of, or in trust for, the
10 ceding company on or before the filing date of its annual statement. Letters of
11 credit meeting applicable standards of issuer acceptability as of the dates of their
12 issuance or confirmation must, notwithstanding the issuing or confirming
13 institution's subsequent failure to meet applicable standards of issuer acceptability,
14 continue to be acceptable as security until their expiration, extension, renewal,
15 modification, or amendment, whichever first occurs.
 - 16 4. ~~Any other form of security acceptable to the commissioner.~~