

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2194
(Senators Klein, Krebsbach)
(Representatives Keiser, Wald)

AN ACT to amend and reenact section 26.1-02-21 and 26.1-06.1-31 of the North Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or dissolution and reinsurer's liability in delinquency proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution. ~~No credit~~

1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance; unless the reinsurance is contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer or to its domiciliary liquidator or receiver except when. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
 1. a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; and or
 2. b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.
3. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, in the proceeding in which the claim is to be adjudicated any defenses the assuming insurer determines available to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed as a claim against the insolvent ceding insurer as a class 7 claim under section 26.1-06.1-41 to the extent of a proportionate share of the

benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. If two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

SECTION 2. AMENDMENT. Section 26.1-06.1-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-06.1-31. Reinsurer's liability.

1. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
 - a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
 - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to such payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2194.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State