

**SENATE BILL NO. 2296**

Introduced by

Senators Wanzek, Erbele, Grindberg

Representatives Dietrich, Ruby, Vigesaa

1 A BILL for an Act to amend and reenact sections 26.1-25-02.1 and 26.1-25-04 of the North  
2 Dakota Century Code, relating to the definitions of noncompetitive market, insurance company  
3 rate filings, and policy forms.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **26.1-25-02.1. Definitions.**

- 8 1. "Advisory organization" means any entity, including its affiliates or subsidiaries,  
9 which either has two or more member insurers or is controlled either directly or  
10 indirectly by two or more insurers, and which assists insurers in ratemaking-related  
11 activities as enumerated in this chapter. Two or more insurers having a common  
12 ownership or operating in this state under common management or control  
13 constitute a single insurer for purposes of this definition.
- 14 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 15 3. "Competitive market" means a commercial risk market that has not been found to  
16 be noncompetitive as provided for in section 26.1-25-04. All commercial risk  
17 markets except crop hail, farmowners, and medical malpractice insurance are  
18 presumed to be competitive.
- 19 4. "Developed losses" means losses including loss adjustment expenses, adjusted,  
20 using standard actuarial techniques, to eliminate the effect of differences between  
21 current payment or reserve estimates and those needed to provide actual ultimate  
22 loss including loss adjustment expense payments.
- 23 ~~4.~~ 5. "Expenses" means that portion of a rate attributable to acquisition, field  
24 supervision, collection expenses, general expenses, taxes, licenses, and fees.

- 1       ~~5-~~ 6. "Joint underwriting" means a voluntary arrangement established to provide  
2 insurance coverage for a commercial risk pursuant to which two or more insurers  
3 jointly contract with the insured at a price and under policy terms agreed upon  
4 between the insurers.
- 5       ~~6-~~ 7. "Loss trending" means any procedure for projecting developed losses to the  
6 average date of loss for the period during which the policies are to be effective.
- 7       8. "Noncompetitive market" means the crop hail, farmowners, and medical  
8 malpractice insurance markets together with any other line of commercial risk  
9 insurance that has not been found by the commissioner to have a reasonable  
10 degree of competitiveness within the market considering:
- 11       a. Market concentration and changes in market concentration determined  
12 through the use of the herfindahl-hirschman index and the United States  
13 department of justice merger guidelines for an unconcentrated market;
- 14       b. The existence of financial and other barriers that prevent a company from  
15 entering the market;
- 16       c. The number of insurers or groups of affiliated insurers providing coverage in  
17 the market;
- 18       d. The extent to which any insurer or group of affiliated insurers controls the  
19 market;
- 20       e. Whether the total number of companies writing the line of insurance in this  
21 state is sufficient to provide multiple insurance options in the market;
- 22       f. The availability of insurance coverage to consumers in the markets by specific  
23 geographic area, by line of insurance, and by class of risk; and
- 24       g. The opportunities available in the market to acquire pricing and other  
25 consumer information.
- 26       A determination that a market is noncompetitive may not be based solely on the  
27 consideration of any one factor.
- 28       ~~7-~~ 9. "Personal risk" means homeowners, tenants, private passenger nonfleet  
29 automobiles, mobile homes, and other property and casualty insurance for  
30 personal, family, or household needs.

1     ~~8.~~ 10. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant  
2                   to which two or more insurers participate in the sharing of risks on a predetermined  
3                   basis. The pool may operate through an association, syndicate, or other pooling  
4                   agreement.

5     ~~9.~~ 11. "Prospective loss costs" means that portion of a rate that does not include  
6                   provisions for expenses other than loss adjustment expenses, or profit, and are  
7                   based on historical aggregate losses and loss adjustment expenses adjusted  
8                   through development to their ultimate value and projected through trending to a  
9                   future point in time.

10   ~~10.~~ 12. "Rate" means that cost of insurance per exposure unit whether expressed as a  
11                   single member or as a prospective loss cost with an adjustment to account for the  
12                   treatment of expenses, profit, and individual insurer variation in loss experience,  
13                   prior to any application of individual risk variations based on loss or expense  
14                   considerations, and does not include minimum premium.

15   ~~11.~~ 13. "Residual market mechanism" means an arrangement, either voluntary or  
16                   mandated by law, involving participation by insurers in the equitable apportionment  
17                   among them of insurance which may be afforded applicants who are unable to  
18                   obtain insurance through ordinary methods.

19   ~~12.~~ 14. "Supplementary rating information" includes any manual or plan of rates,  
20                   classification, rating schedule, minimum premium, policy fee, rating rule,  
21                   underwriting rule, statistical plan, and any other similar information needed to  
22                   determine the applicable rate in effect or to be in effect.

23   ~~13.~~ 15. "Supporting information" means:  
24                   a.    The experience and judgment of the filer and the experience or date of other  
25                   insurers or advisory organizations relied upon by the filer;  
26                   b.    The interpretation of any other data relied upon by the filer; and  
27                   c.    Descriptions of methods used in making the rates and any other information  
28                   required by the commissioner to be filed.

29                   **SECTION 2. AMENDMENT.** Section 26.1-25-04 of the North Dakota Century Code is  
30   amended and reenacted as follows:

31                   **26.1-25-04. Rate filings.**

- 1           1. Every insurer shall file with the commissioner, except as to inland marine risks  
2           which by general custom of the business are not written according to manual rates  
3           or rating plans, every manual, minimum class rate, rating schedule or rating plan,  
4           and every other rating rule, and every modification of any of the foregoing which it  
5           proposes to use. Every filing must state the proposed effective date thereof and  
6           must indicate the character and extent of the coverage contemplated. When a  
7           filing is not accompanied by the information upon which the insurer supports the  
8           filing, and the commissioner does not have sufficient information to determine  
9           whether the filing meets the requirements of this chapter, the commissioner shall  
10          require the insurer to furnish the information upon which it supports the filing and  
11          the waiting period commences as of the date the information is furnished. Every  
12          insurer shall file or incorporate by reference to material which has been approved  
13          by the commissioner, at the same time as the filing of the rate, all supplementary  
14          rating and supporting information to be used in support of or in conjunction with a  
15          rate. The information furnished in support of a filing may include:
- 16          a. The experience or judgment of the insurer or advisory organization making
  - 17          the filing.
  - 18          b. Its interpretation of any statistical data upon which it relies.
  - 19          c. The experience of other insurers or advisory organizations.
  - 20          d. Any other relevant factors.
- 21          A filing and any supporting information is open to public inspection after the filing  
22          becomes effective. Specific inland marine rates on risks specially rated, made by  
23          an advisory organization, must be filed with the commissioner.
- 24          2. After reviewing an insurer's filing, the commissioner may require that the insurer's  
25          rates be based upon the insurer's own loss and expense information. If the  
26          insurer's loss or allocated loss adjustment expense information is not actuarially  
27          credible, as determined by the commissioner, the insurer may use or supplement  
28          its experience with information filed with the commissioner by an advisory  
29          organization. Insurers utilizing the services of an advisory organization must  
30          provide with their rate filing, at the request of the commissioner, a description of the  
31          rationale for such use, including its own information and method of utilization of the

- 1 advisory organization's information. This chapter does not require any insurer to  
2 become a member of or a subscriber to any advisory organization.
- 3 3. The commissioner shall review filings as soon as reasonably possible after they  
4 have been made in order to determine whether they meet the requirements of this  
5 chapter.
- 6 4. Subject to the exceptions specified in ~~subsection~~ subsections 5 and 6, each filing  
7 must be on file for a waiting period of sixty days before it becomes effective. The  
8 period may be extended by the commissioner for an additional period not to  
9 exceed fifteen days if the commissioner gives written notice within the waiting  
10 period to the insurer or advisory organization which made the filing that the  
11 commissioner needs the additional time for the consideration of the filing. Upon  
12 written application by the insurer or advisory organization, the commissioner may  
13 authorize a filing which the commissioner has reviewed to become effective before  
14 the expiration of the waiting period or any extension thereof. A filing is deemed to  
15 meet the requirements of this chapter unless disapproved by the commissioner  
16 within the waiting period or any extension thereof.
- 17 5. ~~Any special~~ A filing with respect to a surety or guaranty bond required by law or by  
18 ~~court or executive order or by order or rule of a public body, not covered by a~~  
19 ~~previous filing, becomes effective when filed and~~ competitive market commercial  
20 risk rate filing, a private passenger automobile rate filing in which the average rate  
21 change is less than five percent, or a homeowner rate filing in which the average  
22 rate change is less than five percent is deemed to meet the requirements of this  
23 chapter until such time as the commissioner reviews the filing and so long  
24 thereafter as the filing remains in effect. Specific inland marine rates on risks  
25 specially rated by an advisory organization become effective when filed and are  
26 deemed to meet the requirements of this chapter until such time as the  
27 commissioner reviews the filing and so long thereafter as the filing remains in  
28 effect.
- 29 6. An insurer must file notice of a rate change for either a competitive market  
30 commercial risk product, a private passenger automobile rate filing in which the  
31 average rate change is less than five percent, or a homeowner rate filing in which

1           the average rate change is less than five percent with the commissioner within  
2           thirty days after implementing the rate change. The exemption provided in  
3           subsection 5 for a private passenger automobile or homeowner rate change filing  
4           is limited to no more that one filing per calendar year.

5           7. The commissioner after notice and hearing may determine by order that a  
6           commercial risk market is noncompetitive. A rate filing for a product in a  
7           noncompetitive commercial risk market is subject to the provisions of chapter  
8           26.1-25. The commissioner's order finding that a commercial risk market is  
9           noncompetitive expires after two years.

10          8. Under any rules the commissioner may adopt, the commissioner may, by written  
11          order, suspend or modify the requirement of filing as to any kind of insurance,  
12          subdivision, or combination thereof, or as to classes of risks, the rates for which  
13          cannot practicably be filed before they are used. The orders and rules must be  
14          made known to insurers and advisory organizations affected thereby. The  
15          commissioner may make any examination the commissioner deems advisable to  
16          ascertain whether any rates affected by the order meet the standards set forth in  
17          subdivision e of subsection 1 of section 26.1-25-03.

18          ~~7.~~ 9. Upon the written application of the insured, stating the insured's reasons therefor,  
19          filed with and approved by the commissioner, a rate in excess of that provided by a  
20          filing otherwise applicable may be used on any specific risk.

21          ~~8.~~ 10. No insurer may make or issue a contract or policy except in accordance with the  
22          filings that have been approved and are in effect for the insurer as provided in this  
23          chapter or in accordance with subsection ~~6~~ 8 or ~~7~~ 9.

24          ~~9.~~ 11. Nothing in this chapter may be construed to require an advisory organization or its  
25          members or its subscribers to immediately refile final rates or premium charges  
26          previously approved by the commissioner. Members or subscribers of an advisory  
27          organization are authorized to continue to use insurance rates or premium charges  
28          approved before July 1, 1991, or decreases from those rates or premium charges  
29          filed by the advisory organization and subsequently approved after July 1, 1991.