

# INSURANCE

## CHAPTER 205

### SENATE BILL NO. 2129

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact section 26.1-03.1-01, subsections 2 and 3 of section 26.1-03.1-02, section 26.1-03.1-03, subsection 2 of section 26.1-03.1-04, subdivision a of subsection 2 of section 26.1-03.1-06, and sections 26.1-03.1-07, 26.1-03.1-08, and 26.1-03.1-13 of the North Dakota Century Code, relating to risk-based capital reports of insurers.

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

**SECTION 1. AMENDMENT.** Section 26.1-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-03.1-01. Definitions.**

As used in this chapter:

1. "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the commissioner in accordance with subsection ~~35~~ of section 26.1-03.1-02.
2. "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.
3. "Domestic insurer" means any ~~insurance company~~insurer domiciled in this state, except a county mutual insurance company.
4. "Foreign insurer" means any ~~insurance company~~insurer that is licensed to do business in this state under chapter 26.1-11 but is not domiciled in this state.
5. "Fraternal benefit society" means any insurer licensed under chapter 26.1-15.1.
6. "Life or health insurer" means any licensed life or health ~~insurance company~~insurer or a licensed property and casualty insurer writing only accident and health insurance.
- 6-7. "Negative trend" means, with respect to a life or health insurer or a fraternal benefit society, negative trend over a period of time, as determined in accordance with the trend test calculation included in the life or fraternal risk-based capital instructions.

- 7-8. "Property and casualty insurer" means any insurer licensed under chapter 26.1-05 or 26.1-11 but does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.
9. "Risk-based capital instructions" means the risk-based capital report, including risk-based capital instructions adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.
- 8-10. "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital and where:
- a. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
  - b. "Company action level risk-based capital" means, with respect to any insurer, the product of two and its authorized control level risk-based capital.
  - c. "Mandatory control level risk-based capital" means the product of seventy hundredths and the authorized control level risk-based capital.
  - d. "Regulatory action level risk-based capital" means the product of one and one-half and its authorized control level risk-based capital.
- 9-11. "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in subsection 2 of section 26.1-03.1-03. If the commissioner rejects the risk-based capital plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called the "revised risk-based capital plan".
- 40-12. "Risk-based capital report" means the report required in section 26.1-03.1-02.
- 44-13. "Total adjusted capital" means the sum of:
- a. An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under section 26.1-03-07; and
  - b. Such other items, if any, as the risk-based capital instructions may provide.

**SECTION 2. AMENDMENT.** Subsections 2 and 3 of section 26.1-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

2. A life and health insurer's or fraternal benefit society's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between, the following factors determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:
  - a. The risk with respect to the insurer's assets;

- b. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- c. The interest rate risk with respect to the insurer's business; and
- d. All other business risks and any other relevant risks as are set forth in the risk-based capital instructions;

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

- 3. A property and casualty insurer's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between, the following factors determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- a. Asset risk;
- b. Credit risk;
- c. Underwriting risk; and
- d. All other business risks and any other relevant risks as are set forth in the risk-based instructions;

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

**SECTION 3. AMENDMENT.** Section 26.1-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03.1-03. Company action level event.**

- 1. "Company action level event" means any of the following events:
  - a. The filing of a risk-based capital report by an insurer which indicates that:
    - (1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;
    - (2) If a life or health insurer or a fraternal benefit society, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and ~~two and one-half~~three and has a negative trend; or
    - (3) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions;

- b. The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07; or
    - c. If, under section 26.1-03.1-07, an insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.
  2. In the event of a company action level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan that must:
    - a. Identify the conditions that contribute to the company action level event;
    - b. Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;
    - c. Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;
    - d. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and
    - e. Identify the quality of, and problems associated with, the insurer's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.
  3. The risk-based capital plan must be submitted:
    - a. Within forty-five days of the company action level event; or
    - b. If the insurer challenges an adjusted risk-based capital report under section 26.1-03.1-07, within forty-five days after notification to the insurer that, after a hearing, the commissioner has rejected the insurer's challenge.
  4. Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination, and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference

any revisions proposed by the commissioner, and shall submit the revised risk-based capital plan to the commissioner:

- a. Within forty-five days after the notification from the commissioner; or
  - b. If the insurer challenges the notification from the commissioner under section 26.1-03.1-07, within forty-five days after a notification to the insurer that, after a hearing, the commissioner has rejected the insurer's challenge.
5. In the event of a notification by the commissioner to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, ~~subject to the insurer's right to a hearing under section 26.1-03.1-07~~, the commissioner may, subject to the insurer's right to a hearing under section 26.1-03.1-07, specify in the notification that the notification constitutes a regulatory action level event.
6. Every domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in any state in which the insurer is authorized to do business if:
- a. The state has a risk-based capital provision substantially similar to subsection 1 of section 26.1-03.1-08; and
  - b. The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:
    - (1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or
    - (2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsections 3 and 4.

**SECTION 4. AMENDMENT.** Subsection 2 of section 26.1-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. In the event of a regulatory action level event the commissioner shall:
  - a. Require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;
  - b. Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan, ~~as the commissioner deems necessary~~; and
  - c. Subsequent to the examination or analysis, issue an order specifying the corrective actions as the commissioner determines are required in a corrective order.

**SECTION 5. AMENDMENT.** Subdivision a of subsection 2 of section 26.1-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- a. With respect to a life insurer or fraternal benefit society, the commissioner shall take actions as are necessary to place the insurer under regulatory control under chapter 26.1-06.1. In that event, the mandatory control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1, and the commissioner has the rights, powers, and duties in chapter 26.1-06.1 with respect to the insurer. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protection of chapter 26.1-06.1 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

**SECTION 6. AMENDMENT.** Section 26.1-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03.1-07. Hearings.**

Upon: any of the following, the insurer has the right to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of the request for a hearing within five days after the notification by the commissioner under subsection 1, 2, 3, or 4. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date may be no less than ten nor more than thirty days after the date of the insurer's request.

1. Notification to an insurer by the commissioner of an adjusted risk-based capital report;
2. Notification to an insurer by the commissioner that:
  - a. The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and
  - b. Such notification constitutes a regulatory action level event with respect to the insurer;
3. Notification to any insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or
4. Notification to an insurer by the commissioner of a corrective order with respect to the insurer;

~~the insurer is entitled to a confidential departmental hearing, on a record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subsection 1, 2, 3, or 4. Upon receipt of the insurer's request for a hearing, the commissioner must set a date for the hearing, which date must be no less than ten nor more than thirty days after the date of the insurer's request.~~

**SECTION 7. AMENDMENT.** Section 26.1-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03.1-08. Confidentiality - Prohibition on announcements - Prohibition on use in ratemaking.**

1. All risk-based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and risk-based capital plans, including the results or report of any examination or analysis of an insurer performed under this chapter and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer that are ~~filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore must be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under this chapter or any other provision of the insurance laws of this state~~ in the possession or control of the insurance department are confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery and are not admissible in evidence in any private civil action. However, the commissioner may use any document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
2. Neither the commissioner nor any person that received any document, material, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.
3. To assist in the performance of the commissioner's duties, the commissioner:
  - a. May share any document, material, or other information, including any confidential and privileged document, material, or information subject to subsection 1, with any other state, federal, or international regulatory agency; the national association of insurance commissioners and its affiliates and subsidiaries; and any state, federal, and international law enforcement authority, provided the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.
  - b. May receive any document, material, or information, including any otherwise confidential and privileged document, material, or information, from the national association of insurance commissioners and its affiliates and subsidiaries and from any regulatory and law enforcement official of any other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.
  - c. May enter any agreement governing sharing and use of information consistent with this subsection.

4. Waiver of any applicable privilege or claim of confidentiality in any document, material, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.
- ~~2-5.~~ It is the judgment of the legislative assembly that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, insurance producer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- ~~3-6.~~ It is the further judgment of the legislative assembly that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and may not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

**SECTION 8. AMENDMENT.** Section 26.1-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03.1-13. Phasein provision.**

1. For risk-based capital reports required to be filed by life insurers with respect to 1993, the following requirements apply in lieu of the provisions of sections 26.1-03.1-03, 26.1-03.1-04, 26.1-03.1-05, and 26.1-03.1-06:
  - a. In the event of a company action level event with respect to a domestic insurer, the commissioner may take no regulatory action hereunder.
  - b. In the event of a regulatory action level event under subdivision a, b, or c of subsection 1 of section 26.1-03.1-04, the commissioner shall take the actions required under section 26.1-03.1-03.

- c. In the event of a regulatory action level event under subdivision d, e, f, g, h, or i of subsection 1 of section 26.1-03.1-04 or an authorized control level event, the commissioner shall take the actions required under section 26.1-03.1-04 with respect to the insurer.
  - d. In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 26.1-03.1-05 with respect to the insurer.
2. For risk-based capital reports required to be filed by property and casualty insurers with respect to 1994, the following requirements apply in lieu of the provisions of sections 26.1-03.1-03, 26.1-03.1-04, 26.1-03.1-05, and 26.1-03.1-06:
- a. In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder.
  - b. In the event of a regulatory action level event under subdivision a, b, or c of subsection 1 of section 26.1-03.1-04, the commissioner shall take the actions required under section 26.1-03.1-03.
  - c. In the event of a regulatory action level event under subdivision d, e, f, g, h, or i of subsection 1 of section 26.1-03.1-04 or an authorized control level event, the commissioner shall take the action required under section ~~26.1-03.1-05~~26.1-03.1-04 with respect to the insurer.
  - d. In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 26.1-03.1-05 with respect to the insurer.

Approved March 27, 2015

Filed March 27, 2015

## CHAPTER 206

### SENATE BILL NO. 2231

(Senator J. Lee)  
(Representative Weisz)

AN ACT to amend and reenact section 26.1-08-06 of the North Dakota Century Code, relating to the comprehensive health association; to require comprehensive health association of North Dakota notification of policy holders; to provide a contingent effective date; and to provide an expiration date.

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

**SECTION 1. AMENDMENT.** Section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-08-06. Comprehensive benefit plan.**

1. The benefit plan must offer comprehensive health care coverage to every eligible individual. The coverage to be issued by the association, its schedule of benefits, exclusions, and other limitations must be established by the lead carrier and subject to the approval of the board.
2. In establishing the benefit plan coverage, the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate. Benefit levels, deductibles, coinsurance factors, copayments, exclusions, and limitations may be applied as determined to be generally reflective of health insurance coverage provided in the state, but may be maintained at a level that will allow the benefit plan to qualify as minimum essential coverage under the provisions and rules of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148].
3. The coverage may include deductibles of not less than five hundred dollars per individual per benefit period.
4. The coverage must include a limitation of not less than three thousand dollars per individual on the total annual out-of-pocket expenses for services covered under this section.
5. Any coverage or combination of coverages through the association may not exceed a lifetime maximum benefit of one million dollars for an individual.
6. The coverage may include cost-containment measures and requirements, including preadmission screening, second surgical opinion, concurrent utilization review, and individual case management for the purpose of making the benefit plan more cost-effective.
7. The coverage may include preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

8. Coverage must include oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.
9. Coverage must include substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.
10. Covered expenses must include, at the option of the eligible individual, professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
11. The coverage must include organ transplants as approved by the board.
12. The association must be payer of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under an association benefit plan must be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workforce safety and insurance coverage, automobile medical payment or liability insurance whether provided on the basis of fault or no fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program. The association must have a cause of action against an eligible individual for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the association may be reduced or refused as a setoff against any amount recoverable under this subsection.
13. The board may modify the benefit plan coverage for the purpose of enabling the plan coverage, design, and operation to qualify as minimum essential coverage under the provisions and rules of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148].

**SECTION 2. NOTIFICATION.** The board shall notify current policy holders of their options under the federal Patient Protection and Affordable Care Act [Pub. L. 111-148].

**SECTION 3. CONTINGENT EFFECTIVE DATE.** This Act becomes effective on the date the insurance commissioner certifies to the secretary of state and the legislative council that the United States department of health and human services does not provide a minimum essential coverage designation to state high-risk pools which qualifies the state high-risk pool as minimum essential coverage under the provisions and rules of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148].

**SECTION 4. EXPIRATION DATE.** This Act is effective through July 31, 2017, and after that date is ineffective.

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 207

### HOUSE BILL NO. 1132

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact sections 26.1-10-06.1, 26.1-10-06.2, and 26.1-10-13 of the North Dakota Century Code, relating to insurance holding company systems; to amend and reenact sections 26.1-10-01, 26.1-10-02, 26.1-10-03, 26.1-10-03.1, 26.1-10-04, 26.1-10-05, 26.1-10-05.1, 26.1-10-06, 26.1-10-07, 26.1-10-08, 26.1-10-09, 26.1-10-10, 26.1-10-10.1, and 26.1-10-11 of the North Dakota Century Code, relating to insurance holding company systems; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 26.1-10-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-10-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
2. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided for in subsection 9 of section 26.1-10-04, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
3. ~~"Insurance company" means an insurer as described in section 26.1-29-02, except that it does not include:~~
  - a. ~~Agencies, authorities, or instrumentalities of the United States and its possessions, Commonwealth of Puerto Rico, or a state or political subdivision of a state.~~
  - b. ~~Fraternal benefit societies.~~

- e. Nonprofit health service corporations"Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or the insurer's insurance holding company system as a whole including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 26.1-03.1-03 or would cause the insurer to be in hazardous financial condition as set forth in North Dakota Administrative Code section 45-03-13-01.
4. "Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.
5. "Insurance holding company system" means two or more affiliated persons, one or more of which is an ~~insurance company~~insurer.
6. "Insurer" has the same definition as provided in section 26.1-29-02, except the term does not include an agency, authority, or instrumentality of the United States or its possessions or a state or political subdivision of a state.
- 5-7. "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:
- a. Premiums written in at least three countries;
- b. The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums; and
- c. Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars.
8. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, or an unincorporated organization or any similar entity or any combination of the foregoing acting in concert. The term does not include any securities broker performing no more than the usual and customary broker's functionjoint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.
- 6-9. "Securityholder" of a specified person means the owner of any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.
- 7-10. "Subsidiary" of a specified person means an affiliate under the control of the person directly, or indirectly through one or more intermediaries.

- 8-11. "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

**SECTION 2. 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 of insurers.~~**

1. Any domestic ~~insurance company~~insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. A subsidiary may conduct any kind of business 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 of this chapter, a domestic ~~insurance company~~insurer 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 ten percent of the ~~insurance company's admitted~~insurer's assets or fifty percent of the ~~company's~~insurer's surplus as regards policyholders; provided, that after the investments the ~~company's~~insurer's surplus as regards policyholders will be reasonable in relation to the ~~company's~~insurer's outstanding liabilities and adequate to meet 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-; and
    - (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; engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer. 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~~insurer to exceed any of the investment limitations specified in subdivision a. "The total investment of the ~~insurance company~~insurer" includes:
    - (1) Any direct investment by the ~~company~~insurer in an asset-; and
    - (2) The ~~company's~~insurer's proportionate share of any investment in an asset by any subsidiary of the ~~company~~insurer which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ~~company's~~ ownership of suchthe subsidiary.

- c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after ~~such~~the investment the ~~insurance company's insurer's~~ surplus as regards policyholders will be reasonable in relation to the ~~company's insurer'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~~an insurer.
4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined before ~~such~~the 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~~insurer 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~~insurer has so notified the commissioner.

**SECTION 3. AMENDMENT.** Section 26.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-03. Acquisition of control of or merger with domestic company—  
Filing requirements—Hearings—Exceptions—Violations—Jurisdiction—Consent to service of processinsurer - Penalties.**

1. a. A person other than the issuer may not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic ~~insurance company~~insurer if, after consummation, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the ~~company~~insurer, and a person may not enter ~~into~~ an agreement to merge with or otherwise to acquire control of a domestic ~~insurance company~~insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the ~~company~~insurer, and the ~~company~~ has sent to its shareholders, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed in this chapter.
- b. For purposes of this section, any controlling person of a domestic insurer seeking to divest the person's controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of the person's proposed divestiture at least thirty days before the cessation of control. The commissioner shall determine those

- instances in which a party seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the commissioner determines confidential treatment will interfere with enforcement of this section. If the statement referred to in subdivision a is otherwise filed, this subdivision does not apply.
- c. With respect to a transaction subject to this section, the acquiring person shall file a preacquisition notification with the commissioner which must contain the information set forth in subdivision a of subsection 3 of section 26.1-10-03.1. Failure to file the notification may result in penalties specified in subdivision e of subsection 5 of section 26.1-10-03.1.
- d. For purposes of this section, a domestic insurance ~~company~~insurer includes any other person in control of a domestic insurance ~~company~~insurer unless the other person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, the term "person" does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurer or of any person that controls an insurer.
2. The statement to be filed with the commissioner must be made under oath or affirmation and must contain the following information:
- a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 is to be effected, hereinafter called the "acquiring party":
- (1) If the person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.
  - (2) If the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser period as the person and any predecessors thereof have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these positions. The list must include for each individual the information required by this subsection.
- b. The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction ~~wherein~~that funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; provided, however, that ~~when~~if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests.

- c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period as the acquiring party and any predecessors thereof have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.
- d. Any plans or proposals which each acquiring party may have to liquidate the ~~insurance company~~insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
- e. The number of shares of any security referred to in subsection 1 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1, and a statement as to the method used to arrive at the fairness of the proposal.
- f. The amount of each class of any security referred to in subsection 1 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.
- g. A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection 1 in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons who have entered into the contracts, arrangements, or understandings.
- h. A description of the purchase of any security referred to in subsection 1 during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
- i. A description of any recommendations to purchase any security referred to in subsection 1 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.
- j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1, and, if distributed, of additional soliciting material relating thereto.
- k. The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection 1 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.
- l. An agreement by the person required to file the statement referred to in subsection 1 to provide the annual report, specified in subsection 12 of section 26.1-10-04, for so long as control exists.

- m. An acknowledgment by the person required to file the statement referred to in subsection 1, that the person and all subsidiaries within the person's control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.
- n. Any additional information the commissioner by rule prescribes as necessary or appropriate for the protection of policyholders and securityholders of the ~~insurance company~~insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions a through ~~h~~ i must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection 1 is a corporation, the commissioner may require that the information called for by subdivisions a through ~~h~~ i must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If any material change occurs in the facts ~~combined set forth~~ in the statement filed with the commissioner and sent to the insurance companyinsurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the ~~insurance company~~insurer within two business days after the person learns of the change. ~~The insurance company shall send the amendment to its shareholders.~~

3. If any offer, request, invitation, agreement, or acquisition referred to in subsection 1 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection 1 may utilize those documents in furnishing the information called for by that statement.
4. a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:
- a. (1) After the change of control, the domestic ~~insurance company~~insurer referred to in subsection 1 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.
- b. (2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this subdivision:

- (a) The information requirements of subdivision a of subsection 3 of section 26.1-10-03.1 and the standards of subdivision b of subsection 4 of section 26.1-10-03.1;
- (b) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by subdivision c of subsection 4 of section 26.1-10-03.1 exist; and
- (c) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.
- e. (3) The financial condition of any acquiring party might jeopardize the financial stability of the ~~insurance company~~insurer or prejudice the interest of its policyholders.
- d. (4) The plans or proposals which the acquiring party has to liquidate the ~~insurance company~~insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the ~~company~~insurer and not in the public interest.
- e. (5) The competence, experience, and integrity of those persons who would control the operation of the ~~insurance company~~insurer are such that it would not be in the interest of policyholders of the ~~company~~insurer and of the public to permit the merger or other acquisition of control.
- f. (6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- b. ~~The commissioner shall hold the public hearing referred to in this subsection~~subdivision a must be held within thirty days after the statement required by subsection 1 is filed and ~~shall give at least twenty days' notice must be given by the commissioner to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the insurance company~~insurer and to other persons designated by the commissioner. ~~The commissioner shall make a determination within thirty days after the conclusion of the hearing~~the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the ~~insurance company~~insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing.
- c. If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in subdivision b may be held on a consolidated basis upon request of the person filing the statement referred to in subsection 1. Within five days of making the request for a public hearing, the person shall file the statement referred to

in subsection 1 with the national association of insurance commissioners. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within ten days of the receipt of the statement referred to in subsection 1. A hearing conducted on a consolidated basis is public and must be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend the hearing in person or by telecommunication.

- d. In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer must be required to maintain or restore the capital of the insurer to the level required by the laws and rules of this state must be made not later than sixty days after the date of notification of the change in control submitted pursuant to subdivision a of subsection 1.
- e. ~~The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.~~
5. This section does not apply to:
- a. Any transaction which is subject to the provisions of chapter 26.1-07, dealing with the merger or consolidation of two or more ~~insurance companies~~insurers.
  - b. Any offer, request, invitation, agreement, or acquisition which the commissioner by order ~~has excepted~~exempts as:
    - (1) ~~Not~~ not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic ~~insurance company~~insurer or
    - (2) ~~As~~ as otherwise not comprehended within the purposes of this section.
6. The following is a violation of this section:
- a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2.
  - b. The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic ~~insurance company~~insurer without the approval of the commissioner.
7. The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving the person arising out of violations of this section, and each person is deemed to have performed acts equivalent to and constituting appointment of the commissioner as the person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this

section. Copies of all lawful process must be served on the commissioner and transmitted by registered mail by the commissioner to the person at the person's last-known address.

**SECTION 4. AMENDMENT.** Section 26.1-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-03.1. Acquisitions involving insurance—~~companies~~insurers not otherwise covered —Penalty.**

1. For the purpose of this section:
  - a. "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.
  - b. An "~~involved insurance—company~~insurer" includes an ~~insurance—company~~insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
2. a. Except as exempted in subdivision b, this section applies to any acquisition in which there is a change in control of an ~~insurance—company~~insurer authorized to do business in this state.
  - b. This section does not apply to ~~the following~~:
    - (1) ~~An acquisition subject to approval or disapproval by the commissioner pursuant to section 26.1-10-03.~~
    - (2) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under subsection 2 of section 26.1-10-01, it is not solely for investment purposes unless the commissioner of the ~~insurance—company's~~insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and ~~such~~the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state.
    - (3)~~(2)~~The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subdivision a of subsection 3 thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subdivision.
    - (4)~~(3)~~The acquisition of already affiliated persons.
    - (5)~~(4)~~An acquisition if, as an immediate result of the acquisition:

- (a) In no market would the combined market share of the involved ~~insurance companies~~insurers exceed five percent of the total market;
- (b) There would be no increase in any market share; or
- (c) In no market would the combined market share of the involved ~~insurance companies~~insurers exceed twelve percent of the total market, and in no market would the market share increase by more than two percent of the total market.

For the purpose of this paragraph, a "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by ~~insurance companies~~insurers licensed to do business in this state.

~~(6)~~(5)An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business.

~~(7)~~(6)An acquisition of an ~~insurance company~~insurer whose domiciliary commissioner affirmatively finds that the ~~insurance company~~insurer is in failing condition, there is a lack of feasible alternative to improving the ~~insurance company's~~insurer's condition, the public benefits of improving the ~~insurance company's~~insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and ~~such~~the findings are communicated by the domiciliary commissioner to the commissioner of this state.

3. An acquisition covered by subsection 2 may be subject to an order pursuant to subsection 5 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 26.1-10-07.
  - a. The preacquisition notification must be in the form and contain the information prescribed by the national association of insurance commissioners relating to those markets which, under paragraph 54 of subdivision b of subsection 2, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection 4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating that person's ability to render an informed opinion.
  - b. The waiting period required begins on the date of receipt of the commissioner of a preacquisition notification and ends on the earlier of the thirtieth day after the date of its receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in

which the event the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

4. a. The commissioner may enter an order under subdivision a of subsection 5 with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the ~~insurance company~~insurer fails to file adequate information in compliance with subsection 3.
- b. In determining whether a proposed acquisition would violate the competitive standard of subdivision a, the commissioner shall consider the following:
  - (1) Any acquisition covered under subsection 2 involving two or more ~~insurance companies~~insurers competing in the same market is prima facie evidence of violation of the competitive standards:

- (a) If the market is highly concentrated and the involved ~~insurance companies~~insurers possess the following shares of the market:

| Insurer A | Insurer B  |
|-----------|------------|
| 4%        | 4% or more |
| 10%       | 2% or more |
| 15%       | 1% or more |

- (b) Or, if the market is not highly concentrated and the involved ~~insurance companies~~insurers possess the following shares of the market:

| Insurer A | Insurer B  |
|-----------|------------|
| 5%        | 5% or more |
| 10%       | 4% or more |
| 15%       | 3% or more |
| 19%       | 1% or more |

A highly concentrated market is one in which the share of the four largest ~~insurance companies~~insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two ~~insurance companies~~insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in subdivision a. For the purpose of this paragraph, the ~~insurance company~~insurer with the largest share of the market must be deemed to be insurer A.

- (2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest ~~insurance companies~~insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection 2 involving two or more ~~insurance~~

~~companies~~insurers competing in the same market is prima facie evidence of violation of the competitive standard in subdivision a if:

- (a) There is a significant trend toward increased concentration in the market;
  - (b) One of the ~~insurance companies~~insurers involved is one of the insurance companies in a grouping of large ~~insurance companies~~insurers showing the requisite increase in the market share; and
  - (c) Another involved ~~insurance company's~~insurer's market is two percent or more.
- (3) For the purposes of this subdivision:
- (a) The term "~~insurance company~~insurer" includes any company or group of companies under common management, ownership, or control.
  - (b) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by ~~insurance companies~~insurers doing business in this state, and the relevant geographical market is assumed to be this state.
  - (c) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.
- (4) Even though an acquisition is not prima facie violative of the competitive standard under paragraphs 1 and 2, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraphs 1 and 2, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.
- c. An order may not be entered under subdivision a of subsection 5 if:
- (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

- (2) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.
5. a. If an acquisition violates the standards of this section, the commissioner may enter an order:
- (1) Requiring an involved ~~insurance company~~insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
  - (2) Denying the application of an acquired or acquiring ~~insurance company~~insurer for a license to do business in this state.
- b. The order may not be entered unless there :
- (1) There is a hearing, ~~notice~~;
  - (2) Notice of ~~such~~the hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the hearing;~~;~~ and ~~the~~
  - (3) The hearing is concluded and the order is issued no later than sixty days after the ~~end~~date of the ~~waiting period~~filing of the preacquisition notification with the commissioner. Every order must be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- c. ~~An order entered under this subsection may not become final sooner than thirty days after it is issued, during which time the involved insurance company may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.~~
- d. An order pursuant to this subsection does not apply if the acquisition is not consummated.
- e.d. Any person who violates a cease and desist order of the commissioner under this subsection and while the order is in effect, after notice and hearing and upon order of the commissioner, may be subject at the discretion of the commissioner to any one or both of the following:
- (1) A monetary penalty of not more than ten thousand dollars for every day of violation.
  - (2) Suspension or revocation of ~~such~~the person's license.
- f.e. Any ~~insurance company~~insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good-faith effort to comply with any such filing requirement is subject to a fine of not more than fifty thousand dollars.

- g.f. Subsections 2 and 3 of section ~~26.1-10-08~~26.1-10-10 and section ~~26.1-10-10~~26.1-10-12 do not apply to acquisitions covered under subsection 2.

**SECTION 5. AMENDMENT.** Section 26.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-04. Registration — Amendments — Termination — Alternative registration — Exceptions — Disclaimer — Violation of insurers.**

1. Every ~~insurance company which~~insurer that is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign ~~insurance company~~insurer subject to ~~disclosure~~registration requirements and standards adopted by statute or rule in the jurisdiction of its domicile which are substantially similar to those contained in this section and section 26.1-10-05. Any ~~insurance company~~insurer subject to registration under this section shall register ~~before August 31, 1981, or~~within fifteen days after it becomes subject to registration, ~~whichever is later,~~ and annually thereafter by March first of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any ~~authorized insurance company which~~insurer authorized to do business in the state which is a member of ~~an insurance~~ holding company system not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection 10 of section 26.1-10-04, or other information filed by the ~~insurance company~~insurer with the insurance regulatory authority of the domiciliary jurisdiction.
2. Every ~~insurance company~~insurer subject to registration shall file a registration statement with the commissioner on a form approved by the commissioner, which must contain current information about:
  - a. The capital structure, general financial condition, ownership, and management of the ~~insurance company~~insurer and any person in control of the ~~insurance company~~insurer.
  - b. The identity and relationship of every member of the insurance holding company system.
  - c. The following agreements in force, ~~relationships subsisting,~~ and transactions currently outstanding or which have occurred during the last calendar year between the ~~insurance company~~insurer and its affiliates:
    - (1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the ~~insurance company~~insurer or of the ~~insurance company~~insurer by its affiliates.
    - (2) Purchases, sales, or exchange of assets.
    - (3) Transactions not in the ordinary course of business.
    - (4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the ~~insurance company's~~insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the ~~insurance company's~~insurer's business.

- (5) All management agreements, service contracts, and all cost-sharing arrangements.
  - (6) Reinsurance agreements.
  - (7) Dividends and other distributions to shareholders.
  - (8) Consolidated tax allocation agreements.
- d. Any pledge of the ~~insurance company's~~insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.
  - e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. A financial statement may include an annual audited financial statement filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial statement pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United States securities and exchange commission.
  - f. Other matters concerning transactions between registered ~~insurance companies~~insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.
  - g. Statements that the insurer's board of directors is responsible for and supervises, relating to corporate governance and internal controls that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor.
  - h. Any other information required by the commissioner by rule.
3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, or guarantees involving one-half of one percent or less of an ~~insurance company's~~insurer's admitted assets as of December thirty-first next preceding are not material for purposes of this section.
  4. In addition to the annual filing requirement under subsection 1, each registered ~~insurance company~~insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms approved by the commissioner within fifteen days after the end of the month in which it learns of each change or addition; provided, however, that subject to subsections 7, 8, and 9 of section 26.1-10-05, each registered ~~insurance company~~insurer shall report all dividends and other distributions to shareholders within five business days following the declaration and no less than ten business days prior to payment thereof.

5. The commissioner shall terminate the registration of any ~~insurance company~~ insurer that demonstrates that it no longer is a member of an insurance holding company system.
6. The commissioner may require or allow two or more affiliated ~~insurance companies~~ insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
7. The commissioner may allow an ~~insurance company~~ insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated ~~insurance company~~ insurer which is required to register under subsection 1 to file all information and material required to be filed under this section.
8. This section does not apply to any ~~insurance company~~ insurer, information, or transaction if and to the extent excepted by the commissioner by rule or order.
9. Any person may file with the commissioner a disclaimer of affiliation with any authorized ~~insurance company~~ insurer or a disclaimer may be filed by the ~~insurance company~~ insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the ~~insurance company~~ insurer as well as the basis for disclaiming the affiliation. ~~After a disclaimer has been filed, the insurance company is relieved of any duty to register or report under this section which arises out of the insurance company's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A disclaimer of affiliation is deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which must be granted. The disclaiming party is relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner or if the disclaimer is deemed to have been approved.
10. All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
11. Any person within an insurance holding company system subject to registration must provide complete and accurate information to an ~~insurance company~~ insurer, when the information is reasonably necessary to enable the ~~insurance company~~ insurer to comply with the provisions of this chapter.
12. The ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. To the best of the ultimate controlling person's knowledge and belief, the report must identify the material risks within the insurance holding company system which could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

13. The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

**SECTION 6. AMENDMENT.** Section 26.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-05. Standards -- Transactions with affiliates -- Adequacy of surplus -- Dividends and other distributions and management of an insurer with an insurance holding company system.**

1. Transactions within an insurance holding company system to which an insurance company/insurer subject to registration is a party are subject to the following standards:
  - a. The terms must be fair and reasonable.
  - b. Agreements for cost-sharing services and management must include provisions as required by rules adopted by the commissioner.
  - c. 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.
  - ~~e-d.~~ The insurance company's/insurer's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurance company's/insurer's outstanding liabilities and adequate to its financial needs.
  - ~~e-e.~~ Charges or fees for services performed must be reasonable.
  - ~~e-f.~~ Expenses incurred and payment received must be allocated to the insurance company/insurer in conformity with statutory accounting practices consistently applied.
2. The following transactions involving a domestic insurance company/insurer and any person in its insurance holding company system, including an amendment or modification of an affiliate agreement previously filed pursuant to this section, which is subject to any materiality standards contained in subdivisions a through g, may not be entered into unless the insurance company/insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for an amendment or modification must include the reason for the change and the financial impact on the domestic insurer. Within thirty days after a termination of a previously filed agreement, informal notice must be reported to the commissioner for determination of the type of filing required, if any.
  - a. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:
    - (1) With respect to nonlife insurance companies/insurers, the lesser of three percent of the insurance company's/insurer's admitted assets or

twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

- (2) With respect to life ~~insurance companies~~insurers, three percent of the ~~insurance company's~~insurer's admitted assets as of December thirty-first next preceding.
- b. Loans or extensions of credit to any person ~~who~~that is not an affiliate, ~~when~~if the ~~insurance company~~insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the ~~insurance company~~insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
- (1) With respect to nonlife ~~insurance companies~~insurers, the lesser of three percent of the ~~insurance company's~~insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.
  - (2) With respect to life ~~insurance companies~~insurers, three percent of the ~~insurance company's~~insurer's admitted assets as of December thirty-first next preceding.
- c. Reinsurance agreements or modifications thereto, including:
- (1) All reinsurance pooling agreements.
  - (2) Agreements in which the reinsurance premium or a change in the insurance company's insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurance company's insurer's surplus as regards policyholders, as of December thirty-first next preceding, including those agreements which may require as consideration the transfer of assets from an insurance company insurer to a nonaffiliate, if an agreement or understanding exists between the insurance company insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurance company insurer.
- d. All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements.
- e. Any guarantee made by a domestic insurer; however, a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of December thirty-first next preceding. Additionally, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection.
- f. Any direct or indirect acquisition or investment in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. A direct or indirect acquisition or

investment in a subsidiary acquired pursuant to section 26.1-10-02, or authorized under any other section of this chapter, or in a nonsubsidiary insurance affiliate that is subject to this chapter, is exempt from this requirement.

- g. Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the ~~insurance company's~~insurer's policyholders.

Nothing herein ~~contained in this subsection~~ may be deemed to authorize or permit any transactions which, in the case of an ~~insurance company~~insurer which is not a member of the same insurance holding company system, would be otherwise contrary to law.

3. A domestic ~~insurance company~~insurer may not enter into transactions ~~which that~~ are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under the penalty sections of this chapter.
4. The commissioner, in reviewing transactions pursuant to subsection 2, shall consider whether the transactions comply with the standards set forth in subsection 1 and whether they may adversely affect the interests of the policyholders.
5. The commissioner must be notified within thirty days of any investment of the domestic ~~insurance company~~insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.
6. For purposes of this chapter, in determining whether an ~~insurance company's~~insurer's surplus as regards policyholders is reasonable in relation to the ~~insurance company's~~insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, must be considered:
  - a. The size of the ~~insurance company~~insurer 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~~insurer'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~~insurer's insured risks.
  - e. The nature and extent of the ~~insurance company's~~insurer's reinsurance program.

- f. The quality, diversification, and liquidity of the ~~insurance company's~~insurer's investment portfolio.
- g. The recent past and projected future trend in the size of the ~~insurance company's~~insurer's investment portfolio.
- h. The surplus as regards policyholders maintained by other comparable ~~insurance companies~~insurers.
- i. The adequacy of the ~~insurance company's~~insurer's reserves.
- j. The quality and liquidity of investments in 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.~~
7. ~~An insurance company subject to registration under section 26.1-10-04 may not~~A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:
- ~~Thirty~~thirty days after the commissioner has received notice of the declaration thereof and has not within ~~such~~that period disapproved the payment; or
  - The until the commissioner has approved the payment within the thirty-day period.
8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, when the fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the ~~greater~~lesser of:
- Ten percent of the ~~insurance company's~~insurer's surplus as regards policyholders as of December thirty-first next preceding; or
  - The net gain from operations of the ~~insurance company~~insurer, if the ~~company~~insurer is a life ~~insurance company~~insurer, or the net income, if the company is not a life ~~insurance company~~insurer, not including realized capital gains, for the twelve-month period ending December thirty-first next preceding, but shall not include pro rata distributions of any class of the ~~insurance company's~~insurer's own securities.
9. In determining whether a dividend or distribution is extraordinary under subsection 8, an insurer other than a life insurer may carry forward net income from the previous two calendar years which has not already been paid out as dividends. This carry-forward must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.
10. Notwithstanding any other provision of law, an ~~insurance company~~insurer may declare an extraordinary dividend or distribution which is conditional upon the

commissioner's approval thereof, and the declaration confers no rights upon shareholders until:

- a. The commissioner has approved the payment of the dividend or distribution; or
- b. The commissioner has not disapproved the payment within the thirty-day period referred to in subsection 7.

**SECTION 7. AMENDMENT.** Section 26.1-10-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-05.1. Dividends and other distribution.**

1. The board of directors of any company subject to this chapter may declare and the company may pay dividends and other distributions on its outstanding shares and cash, property, or its own shares and on its treasury stock in its own shares, subject to the following provisions:
  - a. No dividend or other distribution may be declared or paid at any time except out of earned, as distinguished from contributed, surplus, nor when the surplus of the company is less than the surplus required by law for the kind or kinds of business authorized to be transacted by ~~such company~~the insurer, nor when the payment of a dividend or other distribution would reduce its surplus to less than such amount.
  - b. Except in the case of share dividends, surplus for determining whether dividends or other distributions may be declared may not include surplus arising from unrealized appreciation in value, or revaluation of assets, or from unrealized profits upon investments.
  - c. No dividend or other distribution may be declared or paid contrary to any restriction contained in the articles of incorporation.
  - d. No dividend or other distribution may be declared or paid contrary to section 26.1-10-05.
2. No payment may be made to policyholders by way of dividends unless the ~~company~~insurer possesses admitted assets in the amount of such payment in excess of its capital, minimum required surplus, and all liabilities.

**SECTION 8. AMENDMENT.** Section 26.1-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-06. Examination –~~Consultants~~–Expenses.**

1. Subject to the limitations contained in this section and in addition to the powers which the commissioner has relating to the examination of ~~insurance companies~~insurers, the commissioner may examine any insurer registered under section 26.1-10-04 and the insurer's affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

- ~~2. The commissioner may order any insurance company/insurer registered under section 26.1-10-04 to produce any record, book, or other information paper in the possession of the insurance company/insurer or its affiliates necessary to ascertain the financial condition or legality of conduct of the insurance company. If the insurance company fails to comply with the order, the commissioner may examine the affiliates to obtain the information/determine compliance with this chapter.~~
- ~~2-3. The commissioner may exercise the power under subsection 1 only if the examination of the insurance company, under other provisions of the law, is inadequate or the interests of the policyholders of the insurance company may be adversely affected. To determine compliance with this chapter, the commissioner may order any insurer registered under section 26.1-10-04 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to a contractual relationship, statutory obligation, or other method. If the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason the insurer cannot obtain the information and the identity of the holder of the information. If the commissioner determines the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of one thousand dollars for each day's delay, or may suspend or revoke the insurer's license.~~
- ~~3-4. The commissioner may retain at the registered insurance company's/insurer's expense any attorneys, actuaries, accountants, and other experts, not otherwise a part of the commissioner's staff, as are reasonably necessary to assist in the conduct of the examination under subsection 1. Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.~~
- ~~4-5. Each registered insurance company/insurer producing any record, book, or other information paper for examination pursuant to subsection 1 is liable for and shall pay the expense of the examination.~~
- ~~6. If the insurer fails to comply with an order, the commissioner may examine the affiliates to obtain the information. The commissioner may issue a subpoena, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. When subpoenaed, a person shall attend as a witness at the place specified in the subpoena, anywhere within the state. The witness is entitled to receive the same fees and mileage as a witness in an administrative hearing or in district court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, must be itemized and charged against, and be paid by, the insurer being examined.~~

**SECTION 9.** Section 26.1-10-06.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-10-06.1. Supervisory colleges.**

1. With respect to any insurer registered under section 26.1-10-04, and in accordance with subsection 3, the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to a supervisory college include:
  - a. Initiating the establishment of a supervisory college;
  - b. Clarifying the membership and participation of other supervisors in the supervisory college;
  - c. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor;
  - d. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and establishing processes for information sharing; and
  - e. Establishing a crisis management plan.
2. Each registered insurer subject to this section shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection 3, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or the insurer's affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of expenses.
3. To assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of an individual insurer in accordance with section 26.1-10-06, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or the insurer's affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter an agreement in accordance with subsection 3 of section 26.1-10-07 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. This section does not delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or the insurer's affiliates within the commissioner's jurisdiction.

**SECTION 10.** Section 26.1-10-06.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-10-06.2. Groupwide supervision of internationally active insurance groups.**

1. a. The commissioner may act as the groupwide supervisor for any internationally active insurance group in accordance with this section. However, the commissioner may otherwise acknowledge another regulatory official as the groupwide supervisor if the internationally active insurance group:

- (1) Does not have substantial insurance operations in the United States;
    - (2) Has substantial insurance operations in the United States but not in this state; or
    - (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined under the factors set forth in subsections 2 and 6 the other regulatory official is the appropriate groupwide supervisor.
  - b. An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request the commissioner make a determination or acknowledgment as to a groupwide supervisor under this section.
2. In cooperation with other state, federal, and international regulatory agencies, the commissioner shall identify a single groupwide supervisor for an internationally active insurance group and may determine the commissioner is the appropriate groupwide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge a regulatory official from another jurisdiction is the appropriate groupwide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:
- a. The place of domicile of the insurers within the internationally active insurance group which hold the largest share of the group's premiums, assets, or liabilities;
  - b. The place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;
  - c. The location of the executive offices or largest operational offices of the internationally active insurance group;
  - d. Whether another regulatory official is acting or is seeking to act as the groupwide supervisor under a regulatory system the commissioner determines to be:
    - (1) Substantially similar to the system of regulation provided under the laws of this state; or
    - (2) Otherwise sufficient in terms of providing for groupwide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
  - e. Whether another regulatory official acting or seeking to act as the groupwide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation. However, a commissioner identified under this section as the groupwide supervisor may determine it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. The acknowledgment of the groupwide supervisor must be made after the consideration of the factors listed in subdivisions a through e, and must be made in cooperation with and subject to the

- acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.
3. a. Notwithstanding any other provision of law, when another regulatory official is acting as the groupwide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the groupwide supervisor unless the commissioner determines there has been a significant material change in the internationally active insurance group that results in:

    - (1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or
    - (2) This state being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.
  - b. If such a material change has occurred, the commissioner shall make a determination or acknowledgment as to the appropriate groupwide supervisor under subsection 2.
  4. Under section 26.1-10-06, the commissioner may collect from any insurer registered under section 26.1-10-04 all information necessary to determine whether the commissioner may act as the groupwide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the groupwide supervisor. Before issuing a determination that an internationally active insurance group is subject to groupwide supervision by the commissioner, the commissioner shall notify the insurer registered under section 26.1-10-04 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group must be provided not less than thirty days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on the commissioner's internet website the identity of internationally active insurance groups the commissioner has determined are subject to groupwide supervision by the commissioner.
  5. If the commissioner is the groupwide supervisor for an internationally active insurance group, the commissioner may engage in any of the following groupwide supervision activities:

    - a. Assess the enterprise risks within the internationally active insurance group to ensure:

      - (1) The material financial condition and liquidity risks to the members of the internationally active insurance group which are engaged in the business of insurance are identified by management; and
      - (2) Reasonable and effective mitigation measures are in place.
    - b. Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and

- appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:
- (1) Governance, risk assessment, and management;
  - (2) Capital adequacy; and
  - (3) Material intercompany transactions.
- c. Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of that internationally active insurance groups which are engaged in the business of insurance.
- d. Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group, and share relevant information subject to the confidentiality provisions of section 26.1-10-07 through supervisory colleges as set forth in section 26.1-10-06.1 or otherwise.
- e. Enter agreements with or obtain documentation from any insurer registered under section 26.1-10-04; any member of the internationally active insurance group; and any other state, federal, and international regulatory agency for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as groupwide supervisor, including provisions for resolving disputes with other regulatory officials. The agreement or documentation may not serve as evidence in any proceeding any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state.
- f. Other groupwide supervision activities, consistent with the authorities and purposes enumerated in this section, as considered necessary by the commissioner.
6. If the commissioner acknowledges another regulatory official from a jurisdiction that is not accredited by the national association of insurance commissioners is the groupwide supervisor, the commissioner may cooperate reasonably, through supervisory colleges or otherwise, with groupwide supervision undertaken by the groupwide supervisor, provided:
- a. The commissioner's cooperation is in compliance with the laws of this state; and
  - b. The regulatory official acknowledged as the groupwide supervisor also recognizes and cooperates with the commissioner's activities as a groupwide supervisor for other internationally active insurance groups as applicable. If such recognition and cooperation is not reasonably reciprocal, the commissioner may refuse recognition and cooperation.

7. The commissioner may enter an agreement with or obtain documentation from any insurer registered under section 26.1-10-04; any affiliate of the insurer; and other state, federal, and international regulatory agency for members of the internationally active insurance group which provide the basis for or otherwise clarify a regulatory official's role as groupwide supervisor.
8. The commissioner may adopt rules necessary for the administration of this section.
9. A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of an attorney, actuary, and any other professional and all reasonable travel expenses.

**SECTION 11. AMENDMENT.** Section 26.1-10-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-07. Information confidential~~Confidential treatment.~~**

1. Any document, material, or other information in the possession or control of the North Dakota insurance department which is obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 26.1-10-06 and all information reported pursuant to subdivisions l and m of subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 must be givenis confidential treatment and isand privileged, not subject to section 44-04-18, not subject to subpoena and may not be made public by the commissioner or any other person, except to insurance departments of other states, and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurance companyinsurer to which it pertains unless the commissioner, after giving the insurance companyinsurer and its affiliates whethat would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in any manner the commissioner deems appropriate.
2. Neither the commissioner nor any person that received any document, material, or other information while acting under the authority of the commissioner or with whom such document, material, or other information is shared under this chapter is permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.
3. To assist in the performance of the commissioner's duties:
  - a. If the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality, the commissioner may share any document, material, or other information, including the confidential and privileged document, material, or information subject to subsection 1, with any other state, federal, and international regulatory agency, the national association of insurance commissioners

- and its affiliates and subsidiaries, and any state, federal, or international law enforcement authority, including members of any supervisory college described in section 26.1-10-06.1;
- b. Notwithstanding subdivision a, the commissioner may share a confidential and privileged document, material, or information reported under subsection 12 of section 26.1-10-04 only with a commissioner of a state having statutes or regulations substantially similar to subsection 1 and who has agreed in writing not to disclose the information;
  - c. The commissioner may receive any document, material, or information, including any otherwise confidential and privileged document, material, or information from the national association of insurance commissioners and its affiliates and subsidiaries and from any regulatory and law enforcement official of other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
  - d. The commissioner shall enter a written agreement with the national association of insurance commissioners governing sharing and use of information provided under this chapter consistent with this subsection and which must:
    - (1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with any other state, federal, or international regulator;
    - (2) Specify ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter remains with the commissioner, and the national association of insurance commissioner's use of the information is subject to the direction of the commissioner;
    - (3) Require prompt notice to be given to an insurer if the insurer's confidential information in the possession of the national association of insurance commissioners under this chapter is subject to a request or subpoena to the national association of insurance commissioners for disclosure or production; and
    - (4) Require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter.
4. The sharing of information by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the

commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

5. Waiver of any applicable privilege or claim of confidentiality in any document, material, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.
6. Any document, material, or other information in the possession or control of the national association of insurance commissioners under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action.

**SECTION 12. AMENDMENT.** Section 26.1-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-08. Injunctions - Prohibitions against voting securities - Sequestration of voting securities.**

1. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner under this chapter, the commissioner may apply to the district court for the county in which the principal office of the ~~insurance company~~insurer is located or if the ~~insurance company~~insurer has no principal office in this state then to the district court of Burleigh County for an order enjoining the ~~insurance company~~insurer or the director, officer, employee, or agent thereof from violating or continuing to violate this chapter or any rule or order, and for any other equitable relief as the nature of the case and the interests of the ~~insurance company's~~insurer's policyholders, creditors, and shareholders or the public may require.
2. A security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of this chapter or any rule or order issued by the commissioner hereunder may not be voted at any shareholders' meeting; or ~~may be~~ counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but any action taken at the meeting is not invalidated by the voting of those securities, unless the action would materially affect control of the ~~insurance company~~insurer or unless the courts of this state have so ordered. If an ~~insurance company~~insurer or the commissioner has reason to believe that any security of the ~~insurance company~~insurer has been or is about to be acquired in contravention of this chapter or any rule or order issued by the commissioner hereunder, the ~~insurance company~~insurer or the commissioner may apply to the district court of Burleigh County or to the district court of the county in which the ~~insurance company~~insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 26.1-10-03 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interests of the ~~insurance company's~~insurer's policyholders, creditors, and shareholders or the public may require.

3. When a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule or order issued by the commissioner hereunder, the district court of Burleigh County or the district court of the county in which the ~~insurance company~~insurer has its principal place of business may, on the notice the court deems appropriate and upon the application of the ~~insurance company~~insurer or the commissioner, seize or sequester any voting securities of the ~~insurance company~~insurer owned directly or indirectly by the person and issue any orders with respect thereto as may be appropriate to effectuate this chapter.
4. Notwithstanding any other provision of law, for the purpose of this chapter the site of the ownership of the securities of domestic ~~insurance companies~~insurers is deemed to be in this state.

**SECTION 13. AMENDMENT.** Section 26.1-10-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-09. Revocation, suspension, and nonrenewal of license.**

Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an ~~insurance company~~insurer contrary to the interests of policyholders or the public, the commissioner, after giving notice and an opportunity to be heard, may suspend, revoke, or refuse to renew the ~~insurance company's~~insurer's license or authority to do business in this state for any period the commissioner finds is required for the protection of policyholders or the public. Any determination must be accompanied by specific findings of fact and conclusions of law.

**SECTION 14. AMENDMENT.** Section 26.1-10-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-10. Receivership.**

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic ~~insurance company~~insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in chapter 26.1-06.1 to take possession of the property of the ~~insurance company~~insurer and to carry on its business.

**SECTION 15. AMENDMENT.** Section 26.1-10-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-10.1. Recovery.**

1. ~~Subject to other limitations of this section, if~~ an order for liquidation, ~~conservation,~~ or rehabilitation of a domestic ~~insurance company~~insurer has been entered, ~~and if distribution of payment identified in subdivision a or b is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation,~~ the receiver appointed under the order may recover on behalf of the ~~insurance company~~insurer:
  - a. From any parent corporation, ~~limited liability company,~~ or holding company or person or affiliate ~~whethat~~ otherwise controlled the ~~insurance company~~insurer, the amount of distributions other than distributions of

- shares of the same class of stock, paid by the ~~insurance company~~insurer on its capital stock; or
- b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the ~~insurance company~~insurer or its subsidiaries to a director, officer, or employee, if the distribution or payment under this subsection is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation subject to the limitations of subsections 2, 3, and 4.
  2. A distribution may not be recovered if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable, and that the ~~insurance company~~insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the ~~insurance company~~insurer to fulfill its contractual obligations.
  3. Any person ~~whothat~~ was a parent corporation, ~~limited liability company~~, or holding company or a person ~~whothat~~ otherwise controlled the ~~insurance company~~insurer or affiliate at the time the distributions were paid is liable up to the amount of distributions or payments under subsection 1 the person received. Any person ~~whothat~~ otherwise controlled the ~~insurance company~~insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.
  4. The maximum amount recoverable under this ~~subsection~~section is the amount needed in excess of all other available assets of the impaired or insolvent ~~insurance company~~insurer to pay the contractual obligations of the impaired or insolvent ~~insurance company~~insurer and to reimburse any guaranty funds.
  5. To the extent that any person liable under subsection 3 is insolvent or otherwise fails to pay claims due from it pursuant to ~~subsection 3~~, its parent corporation, ~~limited liability company~~, or holding company or person ~~whothat~~ otherwise controlled it at the time the distribution was paid must be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation, ~~limited liability company~~, or holding company or person ~~whothat~~ otherwise controlled it.

**SECTION 16. AMENDMENT.** Section 26.1-10-11 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-10-11. Criminal proceedings – Penalty.**

1. Any ~~insurance company~~insurer failing, without just cause, to file any registration statement as required in this chapter must be required, after notice and hearing, to pay a penalty of one hundred dollars for each day's delay. The commissioner may reduce the penalty if the ~~insurance company~~insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the ~~insurance company~~insurer.
2. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the ~~insurance company~~insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to sections 26.1-10-04 and 26.1-10-05, or which violate

this chapter, shall pay, in their individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. Whenever it appears to the commissioner that any ~~insurance company~~insurer subject to this chapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to section 26.1-10-05 and which would not have been approved had ~~such the~~approval been requested, the commissioner may order the ~~insurance company~~insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the ~~insurance company~~insurer to void ~~the any~~contracts and restore the status quo if it is in the best interest of the policyholders, creditors, or the public.
4. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any director, officer, employee, or agent thereof has committed a willful violation of this chapter, the commissioner may institute criminal proceedings in the district court of the county in which the principal office of the ~~insurance company~~insurer is located or if the ~~insurance company~~insurer has no principal office in the state, then in the district court of Burleigh County against the ~~insurance company~~insurer or the responsible director, officer, employee, or agent of the company. Any ~~insurance company~~insurer that willfully violates this chapter ~~is guilty of a class B misdemeanor~~may be fined not more than fifty thousand dollars. Any individual who willfully violates this chapter ~~is guilty of a class A misdemeanor~~may be fined in the individual's capacity not more than ten thousand dollars.
5. Any officer, director, or employee of an insurance holding company system, who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter, ~~may have criminal proceedings instituted against them~~Any individual who violates this chapter is guilty of a class A misdemeanor may be fined not more than fifty thousand dollars. Any fines imposed must be paid by the officer, director, or employee in the person's individual capacity.
6. If it appears to the commissioner any person has committed a violation of section 26.1-10-03 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with chapter 26.1-06.2.

**SECTION 17.** Section 26.1-10-13 of the North Dakota Century Code is created and enacted as follows:

**26.1-10-13. Judicial review - Mandamus.**

1. Any person aggrieved by any act, determination, rule, order, or any other action of the commissioner under this chapter may appeal to the district court for Burleigh County. The court shall conduct the review without a jury and by trial de novo, except if all parties, including the commissioner, so stipulate, the

review must be confined to the record. Portions of the record may be introduced into evidence by stipulation in a trial de novo as to those parties so stipulating.

2. The filing of an appeal under this section stays the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.
3. Any person aggrieved by any failure of the commissioner to act or make a determination required by this chapter may petition the district court for Burleigh County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Approved March 20, 2015

Filed March 20, 2015

## CHAPTER 208

### SENATE BILL NO. 2131

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-10.2 of the North Dakota Century Code, relating to own risk and solvency assessments of insurers; and to provide a penalty.

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

**SECTION 1.** Chapter 26.1-10.2 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-10.2-01. Definitions.**

1. "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in chapter 26.1-10.
2. "Insurer" has the same meaning as set forth in section 26.1-29-02, except the term does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.
3. "Own risk and solvency assessment" means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.
4. "Own risk and solvency assessment guidance manual" means the current version of the own risk and solvency assessment guidance manual developed and adopted by the national association of insurance commissioners and adopted by the commissioner and as amended from time to time. A change in the own risk and solvency assessment guidance manual is effective on the January first following the calendar year in which the changes have been adopted by the national association of insurance commissioners and the commissioner.
5. "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer or insurance group's own risk and solvency assessment.

##### **26.1-10.2-02. Risk management framework.**

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on the material and relevant risks of the insurer. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

**26.1-10.2-03. Own risk and solvency assessment requirement.**

Subject to section 26.1-10.2-05, an insurer, or the insurance group of which the insurer is a member, regularly shall conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment must be conducted no less than annually but also at any time there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

**26.1-10.2-04. Own risk and solvency assessment summary report.**

1. Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subsection if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.
2. The report must include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the individual's belief and knowledge that the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board.
3. An insurer may comply with subsection 1 by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any report in a language other than English must be accompanied by a translation of that report into the English language.

**26.1-10.2-05. Exemption.**

1. An insurer is exempt from the requirements of this chapter if:
  - a. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars; and
  - b. The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars.

2. If an insurer qualifies for exemption under subdivision a of subsection 1, but the insurance group of which the insurer is a member does not qualify for exemption under subdivision b of subsection 1, then the own risk and solvency assessment summary report that may be required under section 26.1-10.2-04 must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one own risk and solvency assessment summary report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.
3. If an insurer does not qualify for exemption under subdivision a of subsection 1, but the insurance group of which the insurer is a member qualifies for exemption under subdivision b of subsection 1, then the only own risk and solvency assessment summary report that may be required under section 26.1-10.2-04 must be the report applicable to that insurer.
4. An insurer that does not qualify for exemption under subsection 1 may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the request for waiver, the commissioner may consider the type and volume of business written, the ownership and organizational structure of the insurer, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.
5. Notwithstanding the exemptions stated in this section:
  - a. The commissioner may require an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including the type and volume of business written, the ownership and organizational structure of the insurer, a federal agency request, or an international supervisor request.
  - b. The commissioner may require an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for company action level event as set forth in section 26.1-03.1-03; meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in section 26.1-06.1-11; or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.
6. If an insurer that qualifies for an exemption under subsection 1 subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has one year following the year the threshold is exceeded to comply with the requirements of this chapter.

**26.1-10.2-06. Contents of an own risk and solvency assessment summary report.**

1. The own risk and solvency assessment summary report must be prepared consistent with the own risk and solvency assessment guidance manual subject to the requirements of subsection 2. Documentation and supporting information must be maintained and made available upon examination or upon request of the commissioner.
2. The review of the own risk and solvency assessment summary report and any additional request for information must be made using similar procedures used in the analysis and examination of multi-state or global insurers and insurance groups.

**26.1-10.2-07. Confidentiality.**

1. Any document, material, or other information, including the own risk and solvency assessment summary report, in the possession of or control of the insurance department which is obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. Any such document, material, or other information is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery and not admissible in evidence in any private civil action. However, the commissioner may use any document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer.
2. Neither the commissioner nor any person that received any document, material, or other own risk and solvency assessment-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom such document, material, or other information is shared under this chapter may be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.
3. To assist in the performance of the commissioner's regulatory duties, the commissioner:
  - a. Upon request, may share any document, material, or other own risk and solvency assessment-related information, including any confidential and privileged document, material, or information subject to subsection 1 and any proprietary and trade secret document and material with any other state, federal, or international financial regulatory agency, including a member of any supervisory college as defined in section 26.1-10-06.1, the national association of insurance commissioners, or any third-party consultant designated by the commissioner, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment-related document, material, or other information and has verified in writing the legal authority to maintain confidentiality.
  - b. May receive any document, material, or other own risk and solvency assessment-related information, including any otherwise confidential and

privileged document, material, or information, and any proprietary and trade-secret information or document, from regulatory officials of other foreign or domestic jurisdictions, including a member of any supervisory college as defined in section 26.1-10-06.1 or from the national association of insurance commissioners, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

- c. Shall enter a written agreement with the national association of insurance commissioners or a third-party consultant governing sharing and use of information provided under this chapter, consistent with this subsection which must:
- (1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant under this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement must provide the recipient agrees in writing to maintain the confidentiality and privileged status of any own risk and solvency assessment-related document, material, or other information and has verified in writing the legal authority to maintain confidentiality;
  - (2) Specify ownership of information shared with the national association of insurance commissioners or a third-party consultant under this chapter remains with the commissioner and the national association of insurance commissioner's or a third-party consultant's use of the information is subject to the direction of the commissioner;
  - (3) Prohibit the national association of insurance commissioners or third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed;
  - (4) Require prompt notice to be given to an insurer for which confidential information in the possession of the national association of insurance commissioners or a third-party consultant under this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant for disclosure or production;
  - (5) Require the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners or a third-party consultant under this chapter; and
  - (6) In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.
4. The sharing of any information or document by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking.

and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

5. A waiver of any applicable privilege or claim of confidentiality in any document, proprietary and trade-secret material, or other own risk and solvency assessment-related information does not occur as a result of disclosure of the own risk and solvency assessment-related information or document to the commissioner under this section or as a result of sharing as authorized in this chapter.
6. Any document, material, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery and not admissible in evidence in any private civil action.

#### **26.1-10.2-08. Sanctions - Penalty.**

Any insurer failing, without just cause, to timely file the own risk and solvency assessment summary report as required in this chapter, after notice and hearing, shall pay a penalty of one thousand dollars for each day's delay. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner the imposition of the penalty would constitute a financial hardship to the insurer.

Approved March 27, 2015

Filed March 27, 2015

## CHAPTER 209

### HOUSE BILL NO. 1313

(Representatives Keiser, Kasper, Klemin)

AN ACT to create and enact chapter 26.1-12.2 of the North Dakota Century Code, relating to conversion of a mutual property and casualty insurance company to a stock insurance company; to amend and reenact section 26.1-12.1-10 and subdivision b of subsection 12 of section 26.1-17-33.1 of the North Dakota Century Code, relating to references to demutualization of domestic mutual insurance companies; and to repeal section 26.1-12-32 of the North Dakota Century Code, relating to demutualization of domestic mutual insurance companies.

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

**SECTION 1. AMENDMENT.** Section 26.1-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-12.1-10. Applicability of certain provisions.**

A mutual insurance holding company is deemed to be an insurer subject to chapter 26.1-06.1 and is automatically a mandatory party to any proceeding under that chapter involving an insurance company that, as a result of a reorganization according to section 26.1-12.1-02 or 26.1-12.1-03, is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 26.1-06.1 involving the reorganized insurance company, the assets of the mutual insurance holding company are considered to be the assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company may not dissolve or liquidate without the approval of the commissioner or as ordered by the district court according to chapter 26.1-06.1. ~~Section 26.1-12-32~~ Chapter 26.1-12.2 is not applicable to a reorganization or merger accomplished under this chapter.

**SECTION 2.** Chapter 26.1-12.2 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-12.2-01. Definitions.**

As used in this chapter:

1. "Capital stock" means common or preferred stock or any hybrid security or other equity security issued by a converted stock company or other company or entity pursuant to the exercise of subscription rights granted pursuant to the provisions of subdivision c of subsection 1 of section 26.1-12.2-03.
2. "Converted stock company" means a mutual company or mutual holding company that has converted to a stock company under this chapter.
3. "Converting mutual company" means a mutual company or mutual holding company that has adopted a plan of conversion under this chapter.

4. "Eligible member" means a member of a converting mutual company whose policy is in force on the date the governing body of the converting mutual company adopts a plan of conversion or such earlier date as the converting mutual company may establish with the consent of the commissioner. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the governing body adopts the plan of conversion but before the effective date of the plan of conversion is not an eligible member but has those rights established under section 26.1-12.2-09.
5. "Issued minority shares" means the number of shares issued by a subsidiary insurance company or subsidiary holding company of a mutual holding company in all minority stock offerings.
6. "Minority stock offering" means an offering of capital stock by a subsidiary insurance company or subsidiary holding company controlled by a mutual holding company in which less than fifty percent of the voting stock of the subsidiary insurance company or subsidiary holding company is offered and sold under this chapter or chapter 26.1-12.1.
7. "Mutual company" means a mutual property and casualty insurance company domiciled in this state.
8. "Mutual holding company" means:
  - a. A corporation resulting from a reorganization of a mutual company under chapter 26.1-12.1; or
  - b. A domestic corporation surviving or resulting from a merger or consolidation with a corporation that resulted from a reorganization of a mutual insurer under the laws of any other jurisdiction as provided by section 26.1-12.1-03.
9. "Participating policy" means a policy that grants a holder the right to receive dividends if, as, and when declared by the mutual company.
10. "Plan of conversion" or "plan" means a plan adopted by the governing body of a mutual company or mutual holding company to convert into a stock company or stock insurance holding company in accordance with the requirements of this chapter.
11. "Policy" means an insurance policy.
12. "Standby investor" means any person that has agreed in writing to purchase all or a portion of the capital stock to be sold in a conversion which is not subscribed by eligible members.
13. "Subscription right" means the nontransferable right to purchase, for a period of not less than forty-five days, the stock of the converted stock company, its proposed subsidiary holding company, or an unaffiliated stock insurance company or other corporation or entity that will acquire the stock of the converted stock company.
14. "Voting member" means a member who is an eligible member and is also a member of the converting mutual company as of a date not more than ninety

days before the date of the meeting at which the plan of conversion must be voted upon by members.

### **26.1-12.2-02. Adoption of plan of conversion.**

1. A plan of conversion does not become effective unless the converting mutual company seeking to become a converted stock company adopted, by the affirmative vote of not less than two-thirds of its governing body, a plan of conversion consistent with the requirements of sections 26.1-12.2-03 and 26.1-12.2-04, or of section 26.1-12.2-05. At any time before approval of a plan of conversion by the commissioner, the converting mutual company, by the affirmative vote of not less than two-thirds of its governing body, may amend or withdraw the plan.
2. Before the eligible members of a converting mutual company may vote on approval of a plan of conversion, a converting mutual company whose governing body has adopted a plan shall file all of the following documents with the commissioner within ninety days after adoption of the plan of conversion together with the application fee:
  - a. The plan of conversion, including the independent evaluation required by subsection 4 of section 26.1-12.2-03.
  - b. The form of notice and proxy required by subsection 7 of section 26.1-12.2-02.
  - c. The form of notice required by section 26.1-12.2-09 to persons whose policies are issued after adoption of the plan of conversion but before the plan of conversion's effective date.
  - d. The proposed certificate of incorporation and bylaws of the converted stock company.
  - e. The acquisition of control statement, as required by section 26.1-10-03.
  - f. The application fee, equal to the greater of ten thousand dollars or an amount equal to one-tenth of one percent of the estimated pro forma market value of the converted stock company as determined in accordance with subsection 4 of section 26.1-12.2-03. If such value is expressed as a range of values, the application fee must be based upon the midpoint of the range. The application fee is in addition to other direct costs incurred by the commissioner in reviewing the proposed plan of conversion. For good cause shown, the commissioner may waive the application fee in whole or in part, or permit a portion of the application fee to be deferred until completion of the conversion.
  - g. Such other information as the commissioner may request.
3. Upon filing with the commissioner the documents required under subsection 2, the converting mutual company shall send to eligible members a notice advising eligible members of the adoption and filing of the plan of conversion, the ability of the eligible members to provide the commissioner and the converting mutual company with comments on the plan of conversion within thirty days of the date of such notice, and the procedure of providing such comments.

4. The commissioner shall approve the plan if the commissioner finds:
  - a. The plan complies with this chapter;
  - b. The plan is fair and equitable to the converting mutual company, the members of the converting mutual company, and the eligible members of the converting mutual company;
  - c. The plan's method of allocating subscription rights is fair and equitable;
  - d. The plan will not otherwise prejudice the interests of the members; and
  - e. The converted stock company will have the amount of capital and surplus deemed by the commissioner to be reasonable for its future solvency.
5. At the expense of the converting mutual company, the commissioner may retain any qualified expert not otherwise a part of the commissioner's staff, including counsel and financial advisors, to assist in reviewing the plan of conversion and the independent valuation required under subsection 4 of section 26.1-12.2-03.
6. The commissioner shall order a hearing on whether the terms of the plan of conversion comply with this chapter after giving written notice by mail or publication to the converting mutual company and other interested persons, all of whom have the right to appear at the hearing.
7. The commissioner shall give written notice of any decision to the converting mutual company and, in the event of disapproval, a detailed statement of the reasons for the decision.
8. All voting members must be sent notice of the members' meeting to vote on the plan of conversion no later than forty-five days before the meeting. The notice must describe the proposed plan of conversion, must inform the member how the proposed plan of conversion will affect the member's membership rights, must inform the voting member of the voting member's right to vote upon the plan of conversion, and must be sent to each voting member's last-known address, as shown on the records of the converting mutual company. The notice must provide instructions on how the member can obtain, either by mail or electronically, a full copy of the proposed plan of conversion. If the meeting to vote upon the plan of conversion is held during the annual meeting of policyholders, only a combined notice of meeting is required.
9. The plan of conversion must be voted upon by voting members and must be adopted upon receiving the affirmative vote of at least two-thirds of the votes cast by voting members at the meeting. Voting members entitled to vote upon the proposed plan of conversion may vote in person or by proxy. The number of votes each voting member may cast must be determined by the bylaws of the converting mutual company. If the bylaws are silent, each voting member may cast one vote.
10. The certificate of incorporation of the converted stock company must be considered at the meeting of the voting members called for the purpose of adopting the plan of conversion and must require for adoption the affirmative vote of at least two-thirds of the votes cast by voting members.

11. Within thirty days after the voting members have approved the plan of conversion in accordance with the requirements of this section, the converted stock company shall file with the commissioner:
  - a. The minutes of the meeting of the voting members at which the plan of conversion was approved, which must include the record of total votes cast in favor of the plan; and
  - b. The certificate of incorporation and bylaws of the converted stock company.

**26.1-12.2-03. Required provisions of plan of conversion.**

1. The following provisions must be included in the plan of conversion:
  - a. The reasons for proposed conversion.
  - b. The effect of conversion on existing policies, including all of the following:
    - (1) A provision that all policies in force on the effective date of conversion continue to remain in force under the terms of the policies, except that the following rights, to the extent the rights existed in the converting mutual company, must be extinguished on the effective date of the conversion:
      - (a) Any voting rights of the policyholders provided under the policies.
      - (b) Except as provided under paragraph 2, any right to share in the surplus of the converting mutual company, unless such right is expressly provided for under the provisions of the existing policy.
      - (c) Any assessment provisions provided for under certain types of policies.
    - (2) A provision that holders of participating policies in effect on the date of conversion continue to have a right to receive dividends as provided in the participating policies, if any.
  - c. The grant of subscription rights to eligible members.
    - (1) For purposes of any plan, the transfer of subscription rights from any of the following may not be deemed an unpermitted transfer for purposes of this chapter:
      - (a) An individual to such individual and the individual's spouse or children or to a trust or other estate or wealth planning entity established for the benefit of such individual or the individual's spouse or children;
      - (b) An individual to such individual's individual or joint individual retirement account or other tax-qualified retirement plan;
      - (c) An entity to the shareholders, partners, or members of such entity; or

(d) The holder of such rights back to the converting mutual company, its proposed subsidiary holding company, or an unaffiliated corporation or entity that will purchase the stock of the converted stock company as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1.

(2) The grant of subscription rights to eligible members must include:

(a) A provision that each eligible member is to receive, without payment, nontransferable subscription rights to purchase the capital stock of the converted stock company and that, in the aggregate, all eligible members have the right, before the right of any other party, to purchase one hundred percent of the capital stock of the converted stock company, exclusive of any shares of capital stock required to be sold or distributed to the holders of surplus notes, if any, and any capital stock purchased by the company's tax-qualified employee stock benefit plan which is in excess of the pro-forma market value of the capital stock established under subsection 4, as permitted by subsection 3 of section 26.1-12.2-04. As an alternative to subscription rights in the converting mutual company, the plan of conversion may provide each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

[1] A corporation or entity organized for the purpose of becoming a holding company for the converted stock company;

[2] A stock insurance company owned by the mutual company into which the mutual company will be merged; or

[3] An unaffiliated stock insurer or other corporation or entity that will purchase the stock of the converted stock company.

(b) A provision that subscription rights must be allocated in whole shares among the eligible members using a fair and equitable formula. The formula need not allocate subscription rights to eligible members on a pro rata basis based on premium payments or contributions to surplus, but may take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company or any other factors that may be fair or equitable. Allocation of subscription rights on a per capita basis are entitled to a presumption that such method is fair, subject to a rebuttal of fairness by clear and convincing evidence. In accordance with subsection 5 of section 26.1-12.2-02, the commissioner may retain an independent consultant to assist in the determination that the allocation of subscription rights is fair and equitable.

2. The plan must provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received under subdivision c of subsection 1.
3. The plan must provide any shares of capital stock not subscribed to by eligible members exercising subscription rights received under subdivision c of

subsection 1 or any other individuals or entities granted subscription rights pursuant to section 26.1-12.2-04 must be sold:

- a. In a public offering; however, if the number of shares of capital stock not subscribed by eligible members is so small in number or other factors exist that do not warrant the time or expense of a public offering, the plan of conversion may provide for sale of the unsubscribed shares through a private placement or other alternative method approved by the commissioner which is fair and equitable to eligible members; or
  - b. To a standby investor or to another corporation or entity that is participating in the plan of conversion, as provided in paragraph 2 of subdivision c of subsection 1.
4. The plan must provide for the preparation of a valuation by a qualified independent expert which establishes the dollar value of the capital stock for which subscription rights must be granted pursuant to subdivision c of subsection 1 which must be equal to the estimated pro forma market value of the converted stock company. The qualified independent expert may, to the extent feasible, determine the pro forma market value by reference to a peer group of stock companies and the application of generally accepted valuation techniques; state the pro forma market value of the converted stock company as a range of value; and establish the value as the value estimated to be necessary to attract full subscription for the shares.
  5. The dollar value of a subscription right based upon the application of the Black-Scholes option pricing model or another generally accepted option pricing model. In connection with the determination of stock price volatility or other valuation inputs used in option pricing models, the qualified independent expert may assume that the attributes of the converted stock company will be substantially similar to the attributes of the stock of the peer companies used to determine the estimated pro forma market value of the converted stock company. The term of a subscription right is a minimum of ninety days for the sole purpose of determining the value of a subscription right.
  6. The plan must provide that each eligible member has the right to require the mutual company to redeem such subscription rights, in lieu of exercising the subscription rights allocated to each eligible member, at a price equal to the number of subscription rights allocated to each eligible member multiplied by the dollar value of the subscription right as determined by the qualified independent expert pursuant to subsection 4. The obligation of the mutual company to redeem subscription rights arises only upon the effective date of the plan. The redemption price payable to each eligible member must be paid to the member within thirty days of the effective date of the plan. Alternatively, the converted stock company may offer each eligible member the option of receiving the redemption amount in cash or having the redemption amount credited against future premium payments. An eligible member that does not exercise the member's subscription rights, and which also fails to affirmatively request redemption of the member's subscription rights before the expiration of the subscription offering, nevertheless is deemed to have requested redemption of the member's subscription rights and shall receive the redemption amount in cash in the manner otherwise provided in this subsection.

7. The plan must set the purchase price per share of capital stock equal to any reasonable amount. However, the minimum subscription amount required of any eligible member may not exceed five hundred dollars, but the plan may provide that the minimum number of shares any person may purchase pursuant to the plan is twenty-five shares. The purchase price per share at which capital stock is offered to persons that are not eligible members may be greater than but not less than the purchase price per share at which capital stock is offered to eligible members.
8. The plan must provide that any person or group of persons acting in concert may not acquire, in the public offering or pursuant to the exercise of subscription rights, more than five percent of the capital stock of the converted stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1, except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase one hundred percent of the capital stock of the converted stock company as part of the plan of conversion approved by the commissioner or to any person that acts as a standby investor for the capital stock of the converted stock company for an amount equal to ten percent or more of the capital stock of the converted stock company, if in each case such purchase is approved by the commissioner in accordance with the provisions of North Dakota law following the filing of an acquisition of control statement under section 26.1-10-03.
9. The plan must provide that a director or officer or person acting in concert with a director or officer of the mutual company may not acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1, for three years after the effective date of the plan of conversion, except through a broker-dealer, without the permission of the commissioner. This provision does not prohibit the directors and officers from:
  - a. Making block purchases of one percent or more of the outstanding common stock other than through a broker-dealer if approved in writing by the insurance department;
  - b. Exercising subscription rights received under the plan; or
  - c. Participating in a stock benefit plan permitted by subsection 3 of section 26.1-12.2-04 or approved by shareholders pursuant to subsection 2 of section 26.1-12.2-11.
10. The plan must provide that a director or officer may not sell stock purchased pursuant to this section or subsection 1 of section 26.1-12.2-04 within one year after the effective date of the conversion, except that nothing contained in this section may be deemed to restrict a transfer of stock by such director or officer if the stock is the stock of an unaffiliated corporation that is participating in the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 and has a class of stock registered under the federal Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or if the transfer is to the spouse or minor children of such director or officer, or to a trust or other estate or wealth planning entity established for the benefit of such director or officer, or the spouse or minor children of such director or officer.

11. The plan of conversion must provide the rights, if any, of a holder of a surplus note to participate in the conversion are governed by the terms of the surplus note.
12. The plan of conversion must provide that without the prior approval of the commissioner, for a period of two years from the date of the completion of the conversion, a converted stock company or any corporation participating in the plan of conversion pursuant to item 1 of subparagraph a of paragraph 2 of subdivision c of subsection 1 or item 2 of subparagraph a of paragraph 2 of subdivision c of subsection 1, may not repurchase any of its capital stock from any person. However, this restriction does not apply to a:
  - a. Repurchase on a pro rata basis pursuant to an offer made to all shareholders of the converted stock company or any corporation participating in the plan of conversion pursuant to, or item 1 of subparagraph a of paragraph 2 of subdivision c of subsection 1, or item 2 of subparagraph a of paragraph 2 of subdivision c of subsection 1; or
  - b. Purchase in the open market by a tax-qualified or nontax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

#### **26.1-12.2-04. Optional provisions of plan of conversion.**

1. The plan of conversion may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to ten percent of the capital stock of the converting mutual company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03. A tax-qualified employee benefit plan may exercise subscription rights granted under this subsection regardless of the total number of shares purchased by eligible members. If eligible members purchase shares sufficient to yield gross proceeds equal to the maximum of the valuation range established by subsection 4 of section 26.1-12.2-03, then the tax-qualified employee benefit plan may purchase additional shares of capital stock of the converting mutual company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 in an amount sufficient to equal ten percent of the total shares of capital stock of the converted stock company outstanding.
2. The plan may provide that other classes of subscribers approved by the commissioner shall receive nontransferable subscription rights to purchase capital stock of the converting stock company or the stock of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 provided that such subscription rights are subordinate to the subscription rights of eligible members. Other classes of subscribers that may be approved by the commissioner include:
  - a. Members of the converting mutual company which became members after the date fixed for establishing eligible members;
  - b. The shareholders of another corporation that is participating in the plan of conversion, as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03; or

- c. The shareholders of another corporation that is a party to an acquisition, merger, consolidation, or other similar transaction with the converting mutual company.

#### **26.1-12.2-05. Alternative plan of conversion.**

The governing body of the converting mutual company may adopt a plan of conversion that does not rely in whole or in part upon issuing nontransferable subscription rights to members to purchase stock of the converting stock company if the commissioner finds the plan of conversion does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent of this chapter. Subject to a finding of the commissioner that an alternative plan of conversion is fair and equitable and is not inconsistent with the purpose and intent of this chapter, an alternative plan of conversion may:

1. Include the merger of a domestic mutual insurance company into a domestic or foreign stock insurance company.
2. Provide for the issuance of transferable or redeemable subscription rights.
3. Provide for issuing stock, cash, policyholder credits, or other consideration, or any combination of the foregoing, to policyholders instead of subscription rights.
4. Set forth another plan of conversion containing any other provisions approved by the commissioner.

#### **26.1-12.2-06. Minority stock offering by a mutual holding company.**

A mutual holding company may make a minority stock offering in accordance with the provisions of chapter 26.1-12.1 or this chapter. A minority stock offering pursuant to chapter 26.1-12.1 may not include the grant of subscription rights to policyholders. Except as otherwise provided in section 26.1-12.2-05 concerning an alternative plan of conversion, a minority stock offering pursuant to this chapter must include the grant of subscription rights to policyholders.

#### **26.1-12.2-07. Conversion of a mutual holding company.**

1. If a mutual holding company converts from a mutual to stock form, the conversion must comply with the provisions of this chapter.
2. If a mutual holding company seeks to convert to stock form under this chapter and it has previously completed one or more minority stock offerings in which policyholders were granted subscription rights pursuant to this chapter, the valuation required by subsection 4 of section 26.1-12.2-03 must take into account the existence of this minority interest as provided in this section. The amount of capital stock required to be offered by the mutual holding company or another corporation that is participating in the plan of conversion as provided in item 3 of subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03 may be expressed as a range of value and must equal: the pro forma fair market value of the mutual holding company, multiplied by one minus a quotient equal to the number of issued minority shares, divided by the sum of the issued minority shares and the number of shares held by the mutual holding company.

3. The plan of conversion of a mutual holding company must provide that any outstanding issued minority shares must be exchanged for stock issued by the converting mutual company or the stock of any corporation participating in the conversion of the mutual holding company pursuant to subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03. The mutual holding company shall demonstrate to the satisfaction of the commissioner that the basis for the exchange is fair and reasonable. An exchange in which the holders of outstanding issued minority shares retain approximately the same percentage ownership in the resulting company as the quotient of the number of issued minority shares, divided by the sum of issued minority shares and the number of shares held by the mutual holding company, is presumed to be fair and reasonable.
4. If a mutual holding company seeking to convert under this chapter previously completed one or more minority stock offerings, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued and outstanding to persons other than the mutual holding company vote in favor of the conversion. This vote requirement is in addition to the required policyholder vote.

#### **26.1-12.2-08. Effective date of plan of conversion.**

A plan of conversion is effective when the commissioner has approved the plan of conversion, the voting members have approved the plan of conversion and adopted the certificate of incorporation of the converted stock company, and the certificate of incorporation is filed in the office of the secretary of state of this state.

#### **26.1-12.2-09. Rights of members whose policies are issued after adoption of the plan of conversion and before effective date.**

1. All members whose policies are issued after the proposed plan of conversion has been adopted by the governing body and before the effective date of the plan of conversion must be sent a written notice regarding the plan of conversion upon issuance of such policy.
2. Except as provided in subsection 3, each member of a property or casualty insurance company entitled to receive the notice provided for in subsection 1 must be advised of the member's right of cancellation and to a pro rata refund of unearned premiums.
3. A member of a property or casualty insurance company who has made or filed a claim under such member's insurance policy is not entitled to any right to receive any refund under subsection 2. A person that has exercised the rights provided by subsection 2 is not entitled to make or file any claim under such person's insurance policy.

#### **26.1-12.2-10. Corporate existence.**

1. On the effective date of the conversion, the corporate existence of the converting mutual company continues in the converted stock company. On the effective date of the conversion, all the assets, rights, franchises, and interests of the converting mutual company in and to every species of property, real, personal, and mixed, and any accompanying things in action, are vested in the converted stock company without any deed or transfer and the converted stock company assumes all the obligations and liabilities of the converting mutual company.

2. Unless otherwise specified in the plan of conversion, the individuals who are directors and officers of the converting mutual company on the effective date of the conversion shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are elected pursuant to the certificate of incorporation and bylaws of the converted stock company.

#### **26.1-12.2-11. Conflict of interest.**

1. A director, officer, agent, or employee of the converting mutual company may not receive any fee, commission, or other valuable consideration, other than such person's usual regular salary or compensation, for aiding, promoting, or assisting in a conversion under this chapter. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, financial advisors, and actuaries for services performed in the independent practice of their professions, even if the attorney, accountant, financial advisor, or actuary is also a director or officer of the converting mutual company.
2. For a period of two years after the effective date of the conversion, a converted stock company may not implement any nontax-qualified stock benefit plan unless the plan is approved by a majority of votes cast at a duly convened meeting of shareholders held not less than six months after the effective date of the conversion.
3. All the costs and expenses connected with a plan of conversion must be paid for or reimbursed by the converting mutual company or the converted stock company. However, if the plan of conversion provides for participation by another entity in the plan pursuant to subparagraph a of paragraph 2 of subdivision c of subsection 1 of section 26.1-12.2-03, such entity may pay for or reimburse all or a portion of the costs and expenses connected with the plan of conversion.

#### **26.1-12.2-12. Failure to give notice.**

If the converting mutual company complies substantially and in good faith with the notice requirements of this chapter, the failure of the converting mutual company to send a member the required notice does not impair the validity of any action taken under this chapter.

#### **26.1-12.2-13. Limitation on actions.**

Any action challenging the validity of or arising out of acts taken or proposed to be taken under this chapter must be commenced on or before the later of:

1. Sixty days after the approval of the plan of conversion by the commissioner; or
2. Thirty days after notice of the meeting of voting members to approve the plan of conversion is first mailed or delivered to voting members or posted on the website of the converting mutual company.

#### **26.1-12.2-14. Converting mutual company insolvent or in hazardous financial condition.**

1. If a converting mutual company seeking to convert under this chapter is insolvent or is in hazardous financial condition according to information supplied in the mutual company's most recent annual or quarterly statement

filed with the insurance department or as determined by a financial examination performed by the insurance department, the requirements of this chapter, including notice to and policyholder approval of the plan of conversion, may be waived at the discretion of the commissioner. If a waiver under this section is ordered by the commissioner, the converting mutual company shall specify in the mutual company's plan of conversion:

- a. The method and basis for the issuance of the converted stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the converted stock company to a sound financial condition.
  - b. That the conversion must be accomplished without granting subscription rights or other consideration to policyholders.
2. This section does not alter or limit the authority of the commissioner under any other provisions of law, including receivership and liquidation provisions applicable to insurance companies.

#### **26.1-12.2-15. Rules.**

The commissioner may adopt rules to administer and enforce this chapter.

#### **26.1-12.2-16. Laws applicable to converted stock company.**

1. A converting mutual company is not permitted to convert under this chapter if, as a direct result of the conversion, any person or any affiliate thereof acquires control of the converted stock company, unless that person and such person's affiliates comply with the provisions of North Dakota law regarding the acquisition of control of an insurance company.
2. Except as otherwise specified in this chapter, a converted stock company has and may exercise all the rights and privileges and is subject to all of the requirements and regulations imposed on stock insurance companies under the laws of North Dakota relating to the regulation and supervision of insurance companies, but the converting stock company may not exercise rights or privileges that other stock insurance companies may not exercise.

#### **26.1-12.2-17. Commencement of business as a stock insurance company.**

A converting mutual company may not engage in the business of insurance as a stock company until the converting stock company complies with all provisions of this chapter.

#### **26.1-12.2-18. Amendment of policies.**

A mutual company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the effective date of the conversion amend any outstanding insurance policy for the purpose of extinguishing the membership rights of such policyholder.

#### **26.1-12.2-19. Prohibition on acquisitions of control.**

Except as otherwise specifically provided in section 26.1-12.2-03, from the date a plan of conversion is adopted by the governing body of a converting mutual company until three years after the effective date of the plan of conversion, a person may not directly or indirectly offer to acquire, make any announcement to acquire, or acquire

in any manner, including making a filing with the insurance department for such acquisition under a statute or regulation of this state, the beneficial ownership of ten percent or more of a class of a voting security of the converted stock company or of a person that controls the voting securities of the converted stock company, unless the converted stock company or a person that controls the voting securities of the converted stock company consents to such acquisition and such acquisition is otherwise approved by the commissioner.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 12 of section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. The restructured company must be treated as a mutual insurance company subject to the provisions of chapter 26.1-12, except for sections 26.1-12-01, 26.1-12-02, 26.1-12-03, 26.1-12-05, 26.1-12-06, 26.1-12-07, 26.1-12-08, 26.1-12-09, 26.1-12-10, 26.1-12-14, 26.1-12-16, 26.1-12-18, 26.1-12-19, 26.1-12-23, 26.1-12-24, 26.1-12-25, 26.1-12-26, 26.1-12-29, and 26.1-12-30, and 26.1-12-32.

**SECTION 4. REPEAL.** Section 26.1-12-32 of the North Dakota Century Code is repealed.

Approved April 20, 2015  
Filed April 20, 2015

## CHAPTER 210

### HOUSE BILL NO. 1310

(Representatives Monson, Keiser)  
(Senators Campbell, Klein)

AN ACT to amend and reenact section 26.1-13-15 of the North Dakota Century Code, relating to the territorial limits of a county mutual company's operations.

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

**SECTION 1. AMENDMENT.** Section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable.**

1. A county mutual insurance company may not insure any property beyond the company's authorized territory of operation except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts.
2. A policy may not be issued to exceed five years.
3. A policy may not be issued covering property located within the platted limits of an incorporated city in this state, except the policy may provide coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of the incorporated city on:
  - a. The place of residence; or
  - b. A rental property that is no larger than a four residential rental unit.
4. The company may insure all property located outside of incorporated cities within the limits of the company's territory comprised in the formation of the company, as provided under section 26.1-13-02.
5. Policies issued under subsection 3 on property located within the platted limits of an incorporated city with a population over ten thousand must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency. ~~A company may not exceed thirty-five percent of the company's gross net written premiums of the previous current year for in cities with a population over ten thousand may not exceed thirty-five percent of the gross written premiums in cities with a population over ten thousand of the previous year.~~
6. A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

Approved March 27, 2015  
Filed March 27, 2015

## CHAPTER 211

### HOUSE BILL NO. 1312

(Representatives Keiser, Klemin)  
(Senator Klein)

AN ACT to amend and reenact section 26.1-20-04 of the North Dakota Century Code, relating to title insurance limitation on risks.

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

**SECTION 1. AMENDMENT.** Section 26.1-20-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-20-04. Limitation on risks.**

~~A title insurance company transacting business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding fifty percent of its paid-up capital and surplus if a stock company, or fifty percent of its surplus if a mutual company, unless the excess is reinsured.~~

1. Except as provided in subsection 2, a title insurance company may issue a title insurance policy on property located in this state involving a potential policy liability up to ninety percent of the sum of the company's surplus as regards policyholders and statutory premium reserves as stated in the most recent annual statement of the company.
2. A title insurance company may exceed the limit established in subsection 1 if the excess liability is reinsured in due course with an authorized title insurance company or in compliance with subsection 3 or 4.
3. Notwithstanding contrary provisions of this section, a title insurance company may acquire reinsurance on an individual policy or facultative basis from a title insurance company not authorized to engage in the business of title insurance in this state if the title insurance company from which the reinsurance is acquired:
  - a. Has a combined capital and surplus of at least twenty million dollars as stated in the company's most recent annual statement preceding the acceptance of reinsurance; and
  - b. Is domiciled in another state and is authorized to engage in the business of title insurance in one or more states.
4. Notwithstanding contrary provisions in this section, a title insurance company may obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from the A.M. Best Company, Inc., or with an alternative rating the commissioner may approve which the commissioner determines is an equivalent rating by another recognized rating organization.

Approved March 27, 2015

Filed March 27, 2015

## CHAPTER 212

### SENATE BILL NO. 2283

(Senators Klein, O'Connell, Oehlke)  
(Representatives Kasper, Kelsh, Ruby)

AN ACT to create and enact sections 26.1-26-54 and 26.1-26-55 of the North Dakota Century Code, relating to lines of insurance and procedures for travel insurance.

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

**SECTION 1.** Section 26.1-26-54 of the North Dakota Century Code is created and enacted as follows:

#### **26.1-26-54. Insurance licenses for limited lines travel insurance producers.**

1. Travel insurance, as that term is defined in this section, is a limited line of insurance.
2. As used in this section:
  - a. "Limited lines travel insurance producer" means a:
    - (1) Licensed managing general agent or third-party administrator; or
    - (2) Licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity as set forth under subsection 9.
  - b. "Offer and disseminate" means to provide general information, including a description of the coverage and price, as well as to process the application, collect premiums, and perform other nonlicensable activities permitted by the state.
  - c. "Travel insurance" means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, or sickness, accident, disability, or death occurring during travel. The term does not include a major medical plan that provides comprehensive medical protection for an individual on a trip lasting at least six months.
  - d. "Travel retailer" means a business entity that makes, arranges, or offers travel services and which may offer and disseminate travel insurance as a service to customers on behalf of and under the direction of a limited lines travel insurance producer.
3. Notwithstanding any other provision of law:
  - a. The commissioner may issue a limited lines travel insurance producer license to an individual or business entity that files an application with the commissioner in a form and manner prescribed by the commissioner. A

licensed limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed insurer.

b. A travel retailer may offer and disseminate travel insurance, if:

(1) The limited lines travel insurance producer or travel retailer provide:

(a) The actual material terms of the insurance coverage;

(b) A description of the claim filing process;

(c) A description of the policy review or cancellation process; and

(d) The identity and contact information of the insurer and limited lines producer.

(2) At the time of licensure, the limited lines travel insurance producer establishes and maintains a register of each travel retailer that offers insurance on the behalf of the producer. The register must be on a form prescribed by the commissioner. Annually, the register must be updated by the limited lines travel insurance producer. The register must include the name, address, and contact information of the travel retailer and a person that controls the travel retailer's operations. The register must include the travel retailer's federal tax identification number. Upon request, the limited lines travel insurance producer shall submit the register to the insurance department. The limited lines producer shall certify that the travel retailer complies with the Violent Crime and Law Enforcement Act of 1994 [Pub. L. 103-322; 108 Stat. 1796; 18 U.S.C. 1033 et seq.].

(3) The limited lines travel insurance producer designates one of the producer's licensed insurance employees as the individual responsible for the compliance with the state's travel insurance laws, rules, and regulations.

(4) The designated employee, president, secretary, treasurer, or any other individual who controls the producer's insurance operations complies with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

(5) The limited lines travel insurance producer pays all applicable licensing fees as set forth in state law.

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer, who offer and disseminate travel insurance, to receive training. The commissioner may review the training procedures. The training material must contain instructions on the type of insurance offered, ethical sales practices, and required disclosures to prospective customers, and upon request must be provided to the commissioner for inspection.

4. The limited lines travel insurance producer and any travel retailer and the travel retailer's employees offering and disseminating travel insurance under the limited lines travel insurance producer license shall be subject to the provisions of chapters 26.1-04 and 26.1-26.

5. The travel retailer and its employees act on behalf of the limited lines producer and the producer is responsible for any representations made by the employees of the travel retailer relating to insurance products offered or disseminated through the travel retailer.
6. If the insurance commissioner determines that a travel retailer, or a travel retailer's employee has violated any provision of this chapter or any other provision of this title, the commissioner may:
  - a. Direct the limited lines travel insurance producer to implement a corrective action plan with the travel retailer; or
  - b. Revoke the authorization of the travel retailer to transact travel insurance on behalf of the limited lines travel insurance producer under its license and direct the limited lines travel insurance producer to remove the travel retailer's name from its register.
7. If the insurance commissioner determines that a travel retailer, or a travel retailer's employee, has violated any provision in this chapter or any other provision of this title, the commissioner may:
  - a. Suspend or revoke the license of the limited lines travel insurance producer;
  - b. Issue a cease and desist order against the license of the limited lines travel insurance producer; and
  - c. Impose a monetary fine on the limited lines travel insurance producer.
8. Limited lines travel insurance producers, and those registered under the producer's license, are exempt from continuing education requirements.
9. A travel retailer shall make brochures or other written materials available to prospective purchasers which:
  - a. Provide the identity and contact information of the insurer and the limited lines travel insurance producer;
  - b. Explain purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and
  - c. Explain an unlicensed travel retailer may provide general information about the insurance offered by the travel retailer, including a description of the coverage and price. An unlicensed travel retailer may not answer technical questions about the terms and conditions of the insurance offered by the travel retailer or evaluate the adequacy of existing insurance coverage.
10. An unlicensed employee or authorized representative of a travel retailer may not:
  - a. Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

- b. Evaluate or advise a prospective purchaser regarding existing insurance coverage;
  - c. Be held out as a licensed insurer, licensed producer, or insurance expert; or
  - d. Be directly paid a commission or any other compensation by an insurer for the sale of insurance.
11. Notwithstanding any other provision of law, a travel retailer who is in compliance with all requirements of this section may receive fair compensation for offering and disseminating travel insurance.
12. Travel insurance may be provided under an individual policy or under a group or master policy.
13. The limited lines travel insurance producer is responsible for the acts of the travel retailer. The limited lines travel insurance producer shall ensure the travel retailer complies with this chapter.

**SECTION 2.** Section 26.1-26-55 of the North Dakota Century Code is created and enacted as follows:

**26.1-26-55. Rulemaking.**

The commissioner may adopt rules for the implementation and administration of this chapter.

Approved April 8, 2015

Filed April 8, 2015

## CHAPTER 213

### SENATE BILL NO. 2270

(Senators Armstrong, Casper, Hogue)  
(Representatives Maragos, Nathe)

AN ACT to amend and reenact section 26.1-26.6-08 of the North Dakota Century Code, relating to commissions, premiums, fees, and mileage reimbursement charged by bail bond agents.

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

**SECTION 1. AMENDMENT.** Section 26.1-26.6-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-26.6-08. Maximum commission or fee - Mileage.**

A bail bond agent may not charge a premium, commission, or fee for a bond in an amount more than ~~ten~~twenty percent of the amount of bail furnished by the bail bond agent, or ~~seventy-five~~one hundred fifty dollars, whichever is greater. In addition to the premium, commission, or fee charged under this section, a bail bond agent may charge for mileage reimbursement, which may not exceed mileage reimbursement rates provided for state employees under section 54-06-09.

Approved April 1, 2015

Filed April 1, 2015

## CHAPTER 214

### HOUSE BILL NO. 1384

(Representatives Louser, Beadle, Kasper)  
(Senators Casper, Murphy, Oehlke)

AN ACT to create and enact chapter 26.1-26.7 of the North Dakota Century Code, relating to portable electronics insurance.

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

**SECTION 1.** Chapter 26.1-26.7 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-26.7-01. Definitions.**

For purposes of this chapter:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
2. "Customer" means a person that purchases a portable electronic device or services related to the use of a portable electronic device.
3. "Enrolled customer" means a customer that elects coverage under a portable electronics insurance policy issued to a vendor of portable electronic devices.
4. "Location" means any physical location in this state or any website, call center site, or similar location directed to residents of this state.
5. "Person" means an individual or a business entity.
6. "Portable electronic device":
  - a. Means personal, self-contained, easily carried by hand, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cellular or satellite phones, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, and accessories for any of these devices with a retail value of less than five thousand dollars.
  - b. Does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers.
7. "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronic devices due to one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar cause of loss. The term includes any

agreement whereby a person, in exchange for consideration paid, agrees to provide for the future repair or replacement of a portable electronic device. The term does not include:

- a. A property service contract as defined under section 9-01-21;
  - b. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or
  - c. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.
8. "Portable electronics transaction" means the sale or lease of portable electronic devices by a vendor to a customer or the sale of a service related to the use of a portable electronic device by a vendor to a customer.
9. "Vendor" means a person in the business of engaging in portable electronics transactions, directly or indirectly.

#### **26.1-26.7-02. Licensure of vendors.**

1. A vendor shall hold a limited lines license under this section to sell or offer coverage under a policy of portable electronics insurance.
2. A limited lines license issued under this section is limited to authorizing a vendor and the vendor's employees or authorized representatives to sell or offer coverage under a policy of portable electronics insurance to a customer to whom the vendor and the vendor's employees or authorized representatives sells or leases a portable electronic device or services related to the use of a portable electronic device.
3. A limited lines license issued under this section authorizes a vendor and the vendor's employees or authorized representatives to sell or offer portable electronics insurance coverage at each location at which the vendor engages in portable electronics transactions.
4. The vendor shall maintain a registry of locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner, and with five days' notice to the vendor, the vendor shall provide the registry to the commissioner for inspection and examination.
5. Notwithstanding any other provision of law, a license issued under this section authorizes the licensee and the licensee's employees or authorized representatives to engage only in those activities that are permitted in this chapter in connection with the business of insurance unless authorized to do so under an existing license issued by the commissioner.

#### **26.1-26.7-03. Requirements for sale of portable electronics insurance.**

1. At every location where portable electronics insurance is offered to customers, the vendor shall make available to a prospective customer brochures or other written materials that:
  - a. Disclose portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage.

- b. State the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease a portable electronic device or services.
  - c. Summarize the material terms of the insurance coverage, including:
    - (1) The identity of the insurer;
    - (2) The amount of any applicable deductible and how the deductible is to be paid;
    - (3) Benefits of the coverage; and
    - (4) Key terms and conditions of coverage, such as whether a portable electronic device may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment.
  - d. Summarize the process for filing a claim, including a description of how to return a portable electronic device and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements.
  - e. State an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.
2. The written materials required by this section are not subject to filing or approval requirements with the commissioner.
  3. Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronic devices for the vendor's enrolled customers.
  4. A policy of portable electronics insurance must provide primary coverage in the event of a covered loss under more than one policy.
  5. Eligibility and underwriting standards for customers electing to enroll in coverage must be established for each portable electronics insurance program.

#### **26.1-26.7-04. Authority of vendors of portable electronic devices.**

1. An employee and an authorized representative of a vendor may sell or offer portable electronics insurance to customers and are not subject to licensure as an insurance producer under this chapter if:
  - a. The vendor obtains a limited lines license to authorize the vendor's employees or authorized representatives to sell or offer portable electronics insurance under this chapter.
  - b. The vendor files an acknowledgment with the commissioner in a form and manner directed by the commissioner which the vendor's counter sales personnel and authorized representatives act on the vendor's behalf and the vendor is responsible for any representations made by the counter sales personnel or authorized representatives relating to insurance

- products offered through the vendor. The acknowledgment must state the commissioner may take any administrative action contemplated in this title.
- c. The insurer issuing the portable electronics insurance either directly supervises or the vendor supervises the development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision must comply with the following:
- (1) The training must be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance, and the training materials must be maintained by the vendor and be made available to the commissioner for inspection upon request; and
- (2) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under section 26.1-26.7-03; and
- d. An employee or authorized representative of a vendor of portable electronic devices may not advertise, represent, or otherwise hold out to the public as a nonlimited lines-licensed insurance producer.
2. A vendor's employees and authorized representatives may not be paid directly by an insurance company, a commission, or any other compensation for the sale of insurance. However, this section does not prevent a vendor from including the insurance products in an overall employee performance compensation incentive program.
3. The vendor of portable electronic devices may bill and collect charges for portable electronic devices insurance coverage. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of a portable electronic device or related service must be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of a portable electronic device or related services, the vendor clearly and conspicuously shall disclose to the enrolled customer any portable electronics insurance coverage included with the portable electronic device or related service, and the stand-alone cost of the premium for the same or similar insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. A vendor billing and collecting the charges are not required to maintain the funds in a segregated account if the vendor is authorized by the insurer to hold the funds in an alternative manner. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance must be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

#### **26.1-26.7-05. Termination of portable electronics insurance.**

Notwithstanding any other provision of law:

1. An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty days notice.

2. If the insurer changes the terms and conditions, the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes.
3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon thirty days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.
4. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon ten days notice for nonpayment of premium.
5. Notwithstanding subsection 1, an insurer immediately may terminate an enrolled customer's enrollment under a portable electronics insurance policy without prior notice:
  - a. If the enrolled customer ceases to have an active service with the vendor of portable electronic devices; or
  - b. If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty calendar days after exhaustion of the limit. However, if notice is not timely sent, coverage must continue, notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.
6. If a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice must be mailed or delivered to the enrolled customer at least thirty days before the termination.
7. If notice or correspondence with respect to a policy of portable electronics insurance is required under this section or is otherwise required by law, the notice or correspondence must be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it must be sent to the vendor of portable electronic devices at the vendor's mailing address specified for this purpose and to the vendor's affected enrolled customers' last known mailing addresses on file with the insurer. The insurer or vendor of portable electronic devices, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, the notice or correspondence must be sent to the vendor of portable electronic devices at the vendor's electronic mail address specified for this purpose and to the vendor's affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronic devices, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address

to the insurer or vendor of portable electronic devices, as the case may be, is deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronic devices, as the case may be, shall maintain proof the notice or correspondence was sent.

8. Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by a business entity that is a licensed insurance producer and that is appointed by the insurer issuing the portable electronics insurance policy to assist with the administration of the portable electronics insurance program.

#### **26.1-26.7-06. Application for license and fees.**

1. A vendor shall apply for licensure under subsection 2 of section 26.1-26-13.3.
2. An applicant shall apply for licensure under the provisions of section 26.1-26-13.3. In lieu of providing the information for all officers, directors, and shareholders owning more than ten percent of the applicant, the requirements for the applicant are limited to requiring the applicant to provide the name, residence address, and other information required by the commissioner for an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this chapter. However, if the vendor derives more than fifty percent of the vendor's revenue from the sale of portable electronics insurance the information required under this subsection must be provided for all officers, directors, and shareholder of record having beneficial ownership of ten percent or more.
3. Each vendor of portable electronic devices licensed under this chapter shall pay to the commissioner a fee as prescribed by the commissioner.
4. Any vendor engaging in portable electronics insurance transactions before July 1, 2015, shall apply for licensure within ninety days of the application being made available by the commissioner. Any applicant commencing operations after July 1, 2015, shall obtain a license before offering portable electronics insurance. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 215

### SENATE BILL NO. 2130

(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-31.2-01, 26.1-31.2-02, 26.1-31.2-03, and 26.1-31.2-04 of the North Dakota Century Code, relating to reinsurance credit of insurers; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 26.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-31.2-01. Credit allowed a domestic ceding insurer.**

Credit for reinsurance must be allowed a domestic ceding insurer as either an asset or a ~~deduction~~reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of ~~either~~ subsection 1, 2, 3, 4, ~~or 5, or 6.~~ Credit will be allowed under subsection 1, 2, or 3 only with respect to cessions of a kind or class of business that the assuming insurer is licensed or otherwise ~~allowed~~permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. ~~If meeting the requirements of Credit must be allowed under subsection 3 or 4, only if the applicable requirements of subsection 6 must also be met~~7 have been satisfied.

1. Credit must be allowed when the reinsurance is ceded to an assuming insurer ~~or nonprofit health service corporation which~~that is licensed to transact insurance or reinsurance in this state.
2. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is accredited by the commissioner as a reinsurer in this state. ~~An accredited~~In order to be eligible for accreditation, a reinsurer is one which:
  - a. ~~Files~~Shall file with the commissioner evidence of its submission to this state's jurisdiction;
  - b. ~~Submits~~Shall submit to this state's authority to examine its books and records;
  - c. ~~Is~~Must be licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, ~~is~~be entered through and licensed to transact insurance or reinsurance in at least one state; and
  - d. ~~Files annually~~Annually, shall file 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

e. Shall demonstrate to the satisfaction of the commissioner the assuming insurer has adequate financial capacity to meet the assuming insurer's reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of application the assuming insurer maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose the assuming insurer's accreditation has not been denied by the commissioner within ninety days of its after 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 of its application.~~

3. a. 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- (1) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

b- (2) Submits to the authority of this state to examine its books and records.

~~Provided, however, that the~~

b. The requirement of subdivision a 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 that~~ 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~~ to enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of. The assuming insurer shall submit to examination of the insurer's books and records by the commissioner and bear the expense of examination.

b. (1) Credit for reinsurance may not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

- (a) The commissioner of the state in which the trust is domiciled; or
    - (b) The commissioner of another state who, pursuant to the terms of the trust instrument, accepted principal regulatory oversight of the trust.
  - (2) The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to the trust's assets in the trust's trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner.
  - (3) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February twenty-eighth of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing of the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify the trust will not expire before the following December thirty-first.
- c. The following requirements apply to the following categories of assuming insurer:
- (1) The trust fund for a single assuming insurer, ~~the trust must consist of a trustee account representing the~~ must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars, ~~except as provided in paragraph 2.~~
  - (2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
  - (3) (a) In the case of a group, including incorporated and individual unincorporated underwriters;

- [1] For reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date after December 31, 1992, the trust must consist of a trustee account representing the group's liabilities in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;
- [2] For reinsurance ceded under a reinsurance agreement with an inception date before January 1, 1993, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, the trust must consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and, in
- [3] In addition to these trusts, the group shall maintain a trustee surplus of which one hundred million dollars which must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account; the,
- (b) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.
- (c) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements prepared by each underwriter's independent public accountants of each underwriter member of the group.
- b. (4) In the case of a group of incorporated insurers/underwriters under common administration which complies with the filing requirements contained in subdivision a, and which has, the group:
- (a) Must have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has;
- (b) Shall maintain aggregate policyholders' surplus of at least ten billion dollars; the
- (c) Shall maintain a trust must be fund in an amount equal to not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such the group plus the group shall;

- (d) ~~Shall maintain a joint trustee surplus of which one hundred million dollars must be held jointly and exclusively for the benefit of United States domiciled ceding insurers of any member of the group as additional security for any such these liabilities; and~~
- (e) ~~Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, each member of the group shall make available to the commissioner an annual certification of the each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.~~
- e. ~~The trust and any amendments to the trust must be established in a form approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust.~~
- d. ~~No later than February twenty eighth of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding yearend and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty first.~~
5. Credit must be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures the assuming insurer's obligations in accordance with the requirements of this subsection.
- a. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
- (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subdivision c;
  - (2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rule;
  - (3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to rule;

- (4) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;
  - (5) The assuming insurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and
  - (6) The assuming insurer shall satisfy any other requirements for certification deemed relevant by the commissioner.
- b. An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision a:
- (1) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and the association's members which must include a joint central fund that may be applied to any unsatisfied obligation of the association or any of the association's members, in an amount determined by the commissioner to provide adequate protection;
  - (2) The incorporated members of the association may not be engaged in any business other than underwriting as a member of the association and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
  - (3) Within ninety days after the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.
- c. The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified re-insurer.
- (1) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to re-insurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified re-insurers domiciled within that jurisdiction. A jurisdiction

may not be recognized as a qualified jurisdiction if the commissioner has determined the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

- (2) A list of qualified jurisdictions must be published through the national association of insurance commissioner committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified which does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.
  - (3) United States jurisdictions that meet the requirement for accreditation under the national association of insurance commissioners financial standards and accreditation program must be recognized as qualified jurisdictions.
  - (4) If a certified re-insurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, in lieu of revocation, the commissioner may suspend the re-insurer's certification indefinitely.
- d. The commissioner shall assign a rating to each certified re-insurer. Giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to rule. The commissioner shall publish a list of all certified re-insurers and the re-insurer's ratings.
- e. A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with the certified reinsurer's rating, as specified in rules adopted by the commissioner.
- (1) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of section 26.1-31.2-02 or in a multibeneficiary trust in accordance with subsection 4, except as otherwise provided in this subsection.
  - (2) If a certified reinsurer maintains a trust to fully secure the certified reinsurer's obligations subject to subsection 4, and chooses to secure the certified reinsurer's obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the certified reinsurer's obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for the certified reinsurer's obligations subject to subsection 4. As a condition to the grant of certification under subsection 5, the certified reinsurer must have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

- (3) The minimum trusteed surplus requirements provided in subsection 4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust must maintain a minimum trusteed surplus of ten million dollars.
- (4) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and may impose further reductions in allowable credit upon finding there is a material risk the certified reinsurer's obligations will not be paid in full when due.
- (5) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure one hundred percent of the certified reinsurer's obligations.
- (a) As used in this subsection, "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.
- (b) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
- f. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner may defer to that jurisdiction's certification, and may defer to the rating assigned by that jurisdiction, and such assuming insurer must be considered to be a certified reinsurer in this state.
- g. A certified reinsurer that ceases to assume new business in this state may request to maintain the certified reinsurer's certification in inactive status in order to continue to qualify for a reduction in security for the certified reinsurer's in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
6. Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, ~~or 4, or 5~~ but only ~~with respect to~~ the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
- 6-7. a. If the assuming insurer is not licensed ~~or~~ accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 may not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- a. (1) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give

- ~~such~~the court jurisdiction, and will abide by the final decision of ~~such~~the court or of any appellate court in the event of an appeal; and
- b. (2) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding ~~company~~insurer.
- b. This ~~provisionsubsection~~ is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if ~~such an~~this obligation is created in the agreement.
8. If the assuming insurer does not meet the requirements of subsection 1, 2, or 3, the credit permitted by subsection 4 or 5 may not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:
- a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because the trust fund contains an amount less than the amount required by subdivision c of subsection 4, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.
- b. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled which are applicable to the liquidation of domestic insurers.
- c. If the commissioner with regulatory oversight determines the assets of the trust fund or any part of this trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part of the assets must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
- d. The grantor shall waive any right otherwise available to the grantor under United States law that is inconsistent with this provision.
9. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.
- a. The commissioner shall give the reinsurer notice and opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order on a hearing, unless:
- (1) The reinsurer waives the reinsurer's right to a hearing;
- (2) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in the reinsurer's domiciliary jurisdiction or in the

primary certifying state of the reinsurer under subdivision f of subsection 5; or

- (3) The commissioner finds an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
- b. During the period of suspension of a reinsurer's accreditation or certification, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 26.1-31.2-02. If a reinsurer's accreditation or certification is revoked, credit for reinsurance may not be granted after the effective date of the revocation, except to the extent the reinsurer's obligations under the contract are secured in accordance with subdivision e of subsection 5 or section 26.1-31.2-02.
10. a. A ceding insurer shall take steps to manage the ceding insurer's reinsurance recoverables proportionate to the ceding insurer's own book of business. A domestic ceding insurer shall notify the commissioner within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceed fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate the exposure is safely managed by the domestic ceding insurer.
- b. A ceding insurer shall take steps to diversify the ceding insurer's reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after the ceding insurer's determined the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate the exposure is safely managed by the domestic ceding insurer.
- c. Credit for reinsurance ceded to a certified reinsurer is limited to reinsurance contracts entered or renewed on or after the effective date of the commissioner's certification of the assuming insurer.

**SECTION 2. AMENDMENT.** Section 26.1-31.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-31.2-02. ReductionAsset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01.**

An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to

withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03. This security may be in the form of:

1. Cash;
2. Securities listed by the securities valuation office of the national association of insurance commissioners, including those securities deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, and qualifying as admitted assets;
3.
  - a. Clean, irrevocable, unconditional, ~~and evergreen~~ letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of section 26.1-31.2-03, effective no later than December thirty-first in respect of the year for which the filing is being made, and in the possession of, or in trust for, the ceding ~~company~~insurer on or before the filing date of its annual statement; ~~or~~
  - b. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
4. Any other form of security acceptable to the commissioner.

**SECTION 3. AMENDMENT.** Section 26.1-31.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-31.2-03. Qualified United States financial institutions.**

1. For purposes of subsection 3 of section 26.1-31.2-02, a "qualified United States financial institution" means an institution that:
  - a. Is organized, or in case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;
  - b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
  - c. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
2. A "qualified United States financial institution" means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
  - a. Is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United

States or any state thereof and has been granted authority to operate with fiduciary powers; and

- b. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

**SECTION 4. AMENDMENT.** Section 26.1-31.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-31.2-04. Rulemaking authority.**

The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on January 1, 2016.

Approved April 1, 2015  
Filed April 1, 2015

## CHAPTER 216

### HOUSE BILL NO. 1143

(Representative Keiser)  
(Senator Klein)

AN ACT to amend and reenact sections 26.1-33-18, 26.1-33-19, 26.1-33-20, 26.1-33-21, 26.1-33-22, 26.1-33-23, 26.1-33-24, 26.1-33-25, 26.1-33-27, and 26.1-33-28 of the North Dakota Century Code, relating to the standard nonforfeiture law for life insurance; and to provide a contingent effective date.

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

**SECTION 1. AMENDMENT.** Section 26.1-33-18 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-18. Required provisions relating to lapsing policyholder Nonforfeiture benefits.**

In the case of policies issued after December 31, 1978, ~~no~~ a life insurance policy, except as stated in section 26.1-33-28, may not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements ~~hereinafter specified~~ in this section and are essentially in compliance with section 26.1-33-27:

1. In the event of default in any premium payment, the ~~company insurer~~ 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 the due date, of the amount as may be hereinafter specified. In lieu of the stipulated paid-up nonforfeiture benefit, the ~~company insurer~~ may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.
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 insurer~~ will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of the amount as may be hereinafter specified.
3. A specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make the election elects another available option not later than sixty days after the due date of the premium in default.
4. If the policy has 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

~~companyinsurer~~ will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of the amount as may be hereinafter specified.

5. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, 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 ~~companyinsurer~~ 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 ~~this~~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 ~~companyinsurer~~ on the policy. If a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the commissioner. 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 ~~companyinsurer~~ 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 2. AMENDMENT.** Section 26.1-33-19 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-19. MinimumComputation of cash surrender value.**

1. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 26.1-33-18, must be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:
  - a. The then present value of the adjusted premiums as defined in sections 26.1-33-21 through 26.1-33-24 corresponding to premiums which would have fallen due on and after ~~such~~the anniversary; and

- b. The amount of any indebtedness to the ~~company~~insurer on the policy.
2. Any life insurance policy issued on or after the operative date of section 26.1-33-24, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection 1 must be an amount not less than the sum of the cash surrender value ~~as defined in that subsection~~ for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value as defined in ~~that subsection~~ 1 for a policy which provides only the benefits otherwise provided by the rider or supplemental policy provision.
  3. For any family life ~~insurance~~ policy issued on or after the operative date of section 26.1-33-24, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in subsection 1 must be an amount not less than the sum of the cash surrender value ~~as defined in that subsection~~ for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in ~~that subsection~~ 1 for a policy which provides only the benefits otherwise provided by ~~such~~ term insurance on the life of the spouse.
  4. 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 26.1-33-18, must be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the ~~company~~insurer on the policy.

**SECTION 3. AMENDMENT.** Section 26.1-33-20 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-20. Minimum Computation of paid-up nonforfeiture benefit~~benefits~~.**

Any paid-up nonforfeiture benefit available under a ~~life insurance~~the policy in the event of default in a premium payment due on any policy anniversary must be such that its present value as of the anniversary must be at least equal to the cash surrender value then provided ~~for~~ by the policy or, if none is provided ~~for~~, that cash surrender value which would have been required by sections 26.1-33-18 through 26.1-33-28 in the absence of the condition that premiums must have been paid for at least a specified period.

**SECTION 4. AMENDMENT.** Section 26.1-33-21 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-21. Definition~~Calculation~~ of adjusted premiums used in ~~obtaining~~ minimum cash surrender value.**

1. ~~This section does not apply to policies issued on or after the operative date of section 26.1-33-24.~~ Except as provided in subsection 3, the adjusted premiums for any policy must be calculated on an annual basis and must 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 the adjusted premiums equals the sum of:

- a. The then present value of the future guaranteed benefits provided for by the policy.
- b. Two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy.
- c. Forty percent of the adjusted premium for the first policy year.
- d. Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life insurance 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.

In applying the percentages specified in subdivisions c and d, no adjusted premium may be deemed to exceed four percent of the amount of insurance or level amount equivalent uniform amount. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

2. In the case of a ~~life insurance~~ policy providing an amount of insurance varying with duration of the policy, the equivalent ~~uniform~~level amount of insurance for the purpose of this section is ~~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~~inception of the ~~policy~~insurance as ~~do~~ the benefits under the policy.
3. The adjusted premiums for any life insurance policy providing term insurance benefits by rider or supplemental policy provision must be equal to ~~(a) the~~ :
  - 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 the term insurance benefits are payable, by ~~(b) the~~ :
  - b. ~~The~~ adjusted premiums for such term insurance, ~~the foregoing items (a) and (b) must be~~ subdivisions a and b being calculated separately and as specified in subsections 1 and 2 except that, for the purposes of subdivisions b, c, and d of subsection 1, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in ~~(b)~~subdivision b of subsection 1 must 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)~~subdivision a.
4. ~~This section does not apply to life insurance policies issued on or after the operative date of section 26.1-33-24~~Except as otherwise provided in sections 26.1-33-22 and 26.1-33-23, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28, for all policies of ordinary insurance, must be calculated on the basis of the commissioners 1941

standard ordinary mortality table. However, for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to any age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance must be made on the basis of the 1941 standard industrial mortality table. All calculations must be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. 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 more than one hundred thirty percent of the rates of mortality according to the applicable table. For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

**SECTION 5. AMENDMENT.** Section 26.1-33-22 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-22. Mortality and interest bases for Calculation of adjusted premiums and present values - Ordinary insurance policies.**

This section does not apply to ordinary policies issued on or after the operative date of section 26.1-33-24. In the case of ordinary policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must be calculated on the basis of the ~~commissioners'~~ commissioners' 1958 standard ordinary mortality table and the rate of rates of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. ~~No such, provided that the rate of interest may not exceed three and one-half percent per annum except that a rate of interest may exceed~~ not exceeding five and one-half percent per year may be used for policies issued after June 30, 1977, 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. For, 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. 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~~ more than those shown in the ~~commissioners'~~ commissioners' 1958 extended term insurance table. 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~~ insurer and approved by the commissioner. ~~This section does not apply to ordinary life insurance policies issued on or after the operative date of section 26.1-33-24. Upon the operative date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, upon the specified date, which must be the operative date of this section for that insurer, this section becomes operative with respect to the ordinary policies issued by the insurer after that date. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1966.~~

**SECTION 6. AMENDMENT.** Section 26.1-33-23 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-23. Mortality and interest bases for Calculation of adjusted premiums and present values - Industrial insurance policies.**

This section does not apply to industrial policies issued on or after the operative date of section 26.1-33-24. In the case of industrial policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in sections 26.1-33-18 through 26.1-33-28 must 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. No such, provided that such rate of interest may not exceed three and one-half percent per annum except that a rate of interest may exceed not exceeding five and one-half percent per year may be used for policies issued after June 30, 1977, 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. 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 more than those shown in the commissioners' 1961 industrial extended term insurance table. 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 insurer and approved by the commissioner. This section does not apply to industrial policies issued on or after the operative date of section 26.1-33-24. Upon the operative date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, upon the specified date, which must be the operative date of this section for that insurer, this section must become operative with respect to the industrial policies issued after that date by the insurer. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1968.

**SECTION 7. AMENDMENT.** Section 26.1-33-24 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-24. Determination of minimum values Calculations of adjusted premiums by the nonforfeiture net level premium method.**

1. This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection 7, the adjusted premiums for any policy must be calculated on an annual basis and must be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums equals the sum of:
  - a. The then present value of the future guaranteed benefits provided for by the policy;
  - b. One percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
  - c. One hundred twenty-five percent of the nonforfeiture net level premium as hereinafter defined.

In applying the percentage specified in subdivision c, no nonforfeiture net level premium may exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section is the date as of which the rated age of the insured is determined.

2. The nonforfeiture net level premium is equal to the present value, at the date of issue of the life insurance policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of ~~such~~the policy on which a premium falls due.
3. In the case of life insurance policies that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values must initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any ~~such~~ change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
4. Except as otherwise provided in subsection 7, the recalculated future adjusted premiums for any life insurance policy must be ~~such~~the uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums equals the excess of:
  - a. The sum of ~~the~~:
    - (1) ~~The~~ then present value of the then future guaranteed benefits provided for by the policy, ~~and the~~, plus
    - (2) ~~The~~ additional expense allowance, if any; ~~over~~divided by
  - b. The then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
5. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:
  - a. One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

- b. One hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.
6. The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the sum of:
    - a. ~~The~~ the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and
    - b. ~~The~~ the present value of the increase in future guaranteed benefits provided for by the policy; by
    - c. ~~The~~ the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
  7. Notwithstanding any other provision of this section to the contrary, in the case of a life insurance policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.
  8. All adjusted premiums and present values referred to in sections 26.1-33-18, ~~26.1-33-19, 26.1-33-24 through 26.1-33-26, and 26.1-33-28~~ must for all ordinary life insurance policies be calculated on the basis of the ~~commissioners'commissioners~~ 1980 standard ordinary mortality table, or at the election of the ~~companyinsurer~~ for any one or more specified plans of life insurance, the ~~commissioners'commissioners~~ 1980 standard ordinary mortality table with ten-year select mortality factors; must for all policies of industrial insurance be calculated on the basis of the ~~commissioners'commissioners~~ 1961 standard industrial mortality table; and must for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:
    - a. At the option of the ~~companyinsurer~~, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.
    - b. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by section 26.1-33-18, must be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
    - c. ~~A company~~An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

- d. 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 more than those shown in the ~~commissioners'~~commissioners' 1980 extended term insurance table for ordinary life insurance policies and not more than the ~~commissioners'~~commissioners' 1961 industrial extended term insurance table for industrial insurance policies.
- e. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables.
- f. ~~Any~~For policies issued before the operative date of the valuation manual, ~~any commissioners standard~~ ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the ~~commissioners'~~commissioners' 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the ~~commissioners'~~commissioners' 1980 extended term insurance table. For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table. If the commissioner approves by rule any commissioners standard ordinary mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.
- g. ~~Any~~For policies issued before the operative date of the valuation manual, ~~any commissioners standard~~ industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the ~~commissioners'~~commissioners' 1961 standard industrial mortality table or the ~~commissioners'~~commissioners' 1961 industrial extended term insurance table. For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table. If the commissioner approves by rule any commissioners standard industrial mortality table adopted by the national association of insurance commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.
9. The nonforfeiture interest rate is defined:

- a. For policies issued before the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in sections 26.1-35-01 through 26.1-35-10chapter 26.1-35, rounded to the nearer one quarter of one percent, but the nonforfeiture interest rate may not be less than four percent.
- b. For policies issued on or after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be provided by the valuation manual.
10. Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.
11. This~~Upon the operative date of this section applies to all life insurance policies issued after December 31, 1988, unless the insurance company, by written notice filed with the commissioner, opts for an earlier operative date, any insurer may file with the commissioner a written notice of its election to comply with the provision of this section after a specified date before January 1, 1989, which must be the operative date of this section for the insurer. If an insurer makes no election, the operative date of this section for the insurer is January 1, 1989.~~

**SECTION 8. AMENDMENT.** Section 26.1-33-25 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-25. Determination of minimum value of policies with future premium determination — Indeterminable valueNonforfeiture benefits for indeterminate premium plans.**

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the ~~insurance company~~insurer based on ~~then~~ estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in sections 26.1-33-18 through 26.1-33-24, then:

1. The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by sections 26.1-33-18 through 26.1-33-24;
2. The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and
3. The cash surrender values and paid-up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of sections 26.1-33-18 through 26.1-33-28, as determined by rules adopted by the commissioner; and

4. Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any plan must be affirmatively approved by the commissioner before it can be marketed, issued, delivered, or used in this state.

**SECTION 9. AMENDMENT.** Section 26.1-33-27 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-27. Determination of minimum values after January 1, 1987.**

1. This section, in addition to all other applicable sections of this law, applies to all policies issued after December 31, 1986. Any cash surrender value available under a life insurance policy in the event of default in a premium payment due on any policy anniversary must be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of:
  - a. The greater of zero and the basic cash value hereinafter specified; and
  - b. The present value of any existing paid-up additions less the amount of any indebtedness to the ~~company~~insurer under the policy.
2. The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the ~~company~~insurer, if there had been no default, less the then present value of the nonforfeiture factors, as defined in this chapter, corresponding to premiums that would have fallen due on and after ~~such~~the anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 26.1-33-19 or 26.1-33-21, whichever is applicable, shall be the same as are the effects specified in section 26.1-33-19 or 26.1-33-21, whichever is applicable, on the cash surrender values defined in that section.
3. The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 26.1-33-21 or 26.1-33-24, whichever is applicable. Except as is required by subsection 4, the percentage:
  - a. Must be the same percentage for each policy year between the second policy anniversary and the later of ~~the~~:
    - (1) The fifth policy anniversary; and ~~the~~
    - (2) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
  - b. Must be such that no percentage after the later of the two policy anniversaries specified in subdivision a may apply to fewer than five consecutive policy years.

4. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section ~~26.1-33-21 or 26.1-33-24, whichever is applicable,~~ were substituted for the nonforfeiture factors in the calculation of the basic cash value.
5. All adjusted premiums and present values referred to in this section must for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with sections ~~26.1-33-18, 26.1-33-19, 26.1-33-21 through 26.1-33-26, and~~ 26.1-33-28. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.
6. Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment must be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 26.1-33-18 through 26.1-33-20, 26.1-33-24, and 26.1-33-26. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in subsections 1 through 6 of section 26.1-33-26 must conform with the principles of this section.
7. ~~This section, in addition to all other applicable provisions of sections 26.1-33-18, 26.1-33-19, 26.1-33-21 through 26.1-33-26, and 26.1-33-28, applies to all policies issued on or after January 1, 1987.~~

**SECTION 10. AMENDMENT.** Section 26.1-33-28 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-33-28. Exemptions from nonforfeiture provisions**Exceptions.

Sections 26.1-33-18 through 26.1-33-27 do not apply to:

1. Reinsurance;
2. Group insurance;
3. Pure endowment;
4. An annuity or reversionary annuity contract;
5. A term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
6. A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in sections 26.1-33-21 through 26.1-33-24 is less than the adjusted premium so calculated on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

7. A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in sections 26.1-33-19 through 26.1-33-24, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor
8. A policy delivered outside this state through an insurance producer or other representative of the ~~company~~insurer issuing the policy.

For purposes of determining the applicability of sections 26.1-33-18 through 26.1-33-28, the age of expiry for a joint term life insurance policy is the age of expiry of the oldest life.

**SECTION 11. CONTINGENT EFFECTIVE DATE.** This Act is effective on the January first following the date the insurance commissioner certifies to the secretary of state and the legislative council that all of the following have occurred:

1. The valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote of the greater of at least forty-two members or three-fourths of the members voting.
2. The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements, health annual statements, or fraternal annual statements.
3. The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions:
  - a. The fifty states of the United States of America;
  - b. American Samoa;
  - c. The United States Virgin Islands;
  - d. The District of Columbia;
  - e. Guam; and
  - f. The Commonwealth of Puerto Rico.

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 217

### HOUSE BILL NO. 1142

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact sections 26.1-35-00.1, 26.1-35-00.2, 26.1-35-11, 26.1-35-12, 26.1-35-13, and 26.1-35-14 of the North Dakota Century Code, relating to the standard valuation law for life insurance policies and annuities; to amend and reenact sections 26.1-35-01, 26.1-35-01.1, 26.1-35-02, 26.1-35-03, 26.1-35-04, 26.1-35-05, 26.1-35-06, 26.1-35-07, 26.1-35-08, 26.1-35-09, and 26.1-35-10 of the North Dakota Century Code, relating to the standard valuation law for life insurance; and to provide a contingent effective date.

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

**SECTION 1.** Section 26.1-35-00.1 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-35-00.1. Definitions.**

In this chapter, the following definitions apply on or after the operative date of the valuation manual:

1. "Accident and health insurance" means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.
2. "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection 2 of section 26.1-35-01.1.
3. "Deposit-type contract" means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual.
4. "Insurer" means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state:
  - a. And has at least one such policy in force or on claim; or
  - b. Is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.
5. "Life insurance" means a contract that incorporates mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.
6. "Policyholder behavior" means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this chapter, including lapse.

withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract. The term does not include events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

7. "Principle-based valuation" means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with section 26.1-35-12 as specified in the valuation manual.
8. "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American academy of actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.
9. "Tail risk" means a risk that occurs either when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude.
10. "Valuation manual" means the manual of valuation instructions adopted by the national association of insurance commissioners and approved by the commissioner as specified in this chapter.

**SECTION 2.** Section 26.1-35-00.2 of the North Dakota Century Code is created and enacted as follows:

**26.1-35-00.2. Application of valuation manual - Changes to valuation manual - Requirements of valuation manual.**

1. Except as provided under subsections 4 or 6 of section 26.1-35-00.2, for policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2 of section 26.1-35-01.
2. Unless the commissioner or a change in the valuation manual specifies a later effective date, changes to the valuation manual become effective on January first following the date the commissioner adopts the changes. The commissioner may adopt changes to the valuation manual if the valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote representing:
  - a. At least three-fourths of the members of the national association of insurance commissioners voting, but not less than a majority of the total membership; and
  - b. Members of the national association of insurance commissioners representing jurisdictions totaling greater than seventy-five percent of the direct premiums written as reported in the following annual statements most recently available before the vote in paragraph a: life, accident and health annual statements; health annual statements; or fraternal annual statements.
3. The valuation manual must specify all of the following:

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- a. Minimum valuation standards for and definitions of the policies or contracts subject to subsection 2 of section 26.1-35-01. The minimum valuation standards must be:
- (1) The commissioners reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection 2 of section 26.1-35-01;
  - (2) The commissioners annuity reserve valuation method for annuity contracts subject to subsection 2 of section 26.1-35-01; and
  - (3) Minimum reserves for all other policies or contracts subject to subsection 2 of section 25.1-35-01.
- b. Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection 1 of section 26.1-35-12 and the minimum valuation standards consistent with those requirements.
- c. For policies and contracts subject to a principle-based valuation under section 26.1-35-12.
- (1) Requirements for the format of reports to the commissioner under subdivision c of subsection 2 of section 26.1-35-12 and which must include information necessary to determine if the valuation is appropriate and in compliance with this chapter;
  - (2) Assumptions must be prescribed for risks over which the insurer does not have significant control or influence; and
  - (3) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.
- d. For policies not subject to a principle-based valuation under section 26.1-35-12, the minimum valuation standard must:
- (1) Be consistent with the minimum standard of valuation before the operative date of the valuation manual; or
  - (2) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.
- e. Other requirements, including those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of insurer experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls.
- f. The data and form of the data required under section 26.1-35-13, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

4. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this chapter, with respect to such requirements, the insurer shall comply with minimum valuation standards prescribed by the commissioner by rule.
5. The commissioner may employ or contract with a qualified actuary, at the expense of the insurer, to perform an actuarial examination of the insurer and opine on the appropriateness of any reserve assumption or method used by the insurer, or to review and opine on an insurer's compliance with any requirement set forth in this chapter. The commissioner may rely upon the opinion regarding provisions contained within this chapter, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States.
6. The commissioner may require an insurer to change any assumption or method that, in the opinion of the commissioner, is necessary in order to comply with the requirements of the valuation manual or this chapter; and the insurer shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted under this title.

**SECTION 3. AMENDMENT.** Section 26.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-01. Commissioner to annually value liabilities for life policies and annuities Reserve valuation.**

1. The following apply to policies and contracts issued before the operative date of the valuation manual:
  - a. The commissioner shall annually value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance companylife insurer doing business in this state, and may certify the amount of the 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 the reserves issued after June 30, 1977, and before the operative date of the valuation manual. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of anya foreign or alien companyinsurer, the commissioner may accept anya valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction wherewhen the valuation complies with the minimum standards provided in this chapter, if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the 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.
  - b. Except sections 26.1-35-00.2 and 26.1-35-12, this chapter applies to all policies and contracts, as appropriate, subject to this chapter issued after June 30, 1977, and before the operative date of the valuation manual; however, sections 26.1-35-00.2 and 26.1-35-12 do not apply to such policies and contracts.

- c. The minimum standard for the valuation of policies and contracts issued before July 1, 1977, are the standards provided by the laws in effect immediately before that date.
2. The following apply to policies and contracts issued on or after the operative date of the valuation manual:
- a. Annually, the commissioner shall value, or cause to be valued, the reserve liabilities, in this chapter referred to as reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every insurer issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien insurer, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this chapter.
- b. The provisions set forth in sections 26.1-35-00.2 and 26.1-35-12 apply to all policies and contracts issued on or after the operative date of the valuation manual.

**SECTION 4. AMENDMENT.** Section 26.1-35-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-01.1. Actuarial opinion of reserves.**

This section becomes operative at the end of the first full calendar year following the year of enactment:

1. The following apply to the actuarial opinions issued before the operative date of the valuation manual:
- a. Every life insurance ~~company~~insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
- 2-b. Actuarial analysis of reserves and assets supporting such reserves.
- a-(1) Every life insurance ~~company~~insurer, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection 1, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by ~~regulation~~rule, when considered in light of the assets held by the ~~company~~insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the ~~company's~~insurer's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

- ~~b.(2)~~ The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
- 3-c. Requirement for opinion under ~~subsection 2~~subdivision b. Each opinion required by ~~subsection 2~~subdivision b must be governed by the following provisions:
- a.(1) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.
- ~~b.(2)~~ If the ~~insurance—companyinsurer~~ fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the ~~insurance—companyinsurer~~ fails to meet the standards prescribed by rule or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the ~~companyinsurer~~ to review the opinion and the basis for the opinion and prepare ~~such~~the supporting memorandum ~~as is~~ required by the commissioner.
- 4-d. Requirement for all opinions subject to subsection 1. Every opinion subject to subsection 1 must be governed by the following provisions:
- a.(1) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.
- ~~b.(2)~~ The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.
- e.(3) The opinion must be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.
- ~~d.(4)~~ In the case of an opinion required to be submitted by a foreign or alien ~~companyinsurer~~, the commissioner may accept the opinion filed by that ~~companyinsurer~~ with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a ~~companyan insurer~~ domiciled in this state.
- e.(5) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in ~~such regulation~~the rule.
- f.(6) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the ~~insurance—companyinsurer~~ and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
- g.(7) Disciplinary action by the commissioner against the ~~companyinsurer~~ or the qualified actuary must be defined in rules by the commissioner.

- ~~h.~~(8) Any Except as provided in paragraphs 12, 13, and 14, documents, materials, or other information in the possession or control of the insurance department that are a memorandum in support of the opinion, and any other material provided by the company insurer to the commissioner in connection therewith with the memorandum, must be kept confidential by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted hereunder; provided, however, that the records not subject to section 44-04-18 and are privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
- (9) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph 8.
- (10) In order to assist in the performance of the commissioner's duties, the commissioner:
- (a) May share documents, materials, or other information including the confidential and privileged documents, materials, or information subject to paragraph 8 with other state, federal, and international regulatory agencies; with the national association of insurance commissioners and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
- (b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
- (c) May enter agreements governing sharing and use of information consistent with paragraphs 8, 9, and 10.
- (11) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph 10.
- (12) A memorandum in support of the opinion, and any other material provided by the insurer to the commissioner in connection with the

memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules adopted under this section.

(13) The memorandum or other material may otherwise be released by the commissioner with the written consent of the companyinsurer or to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(14) Once any portion of the confidential memorandum is cited by the companyinsurer in its marketing or is cited before any governmental agency other than a state insurance department or is released by the companyinsurer to the news media, all portions of the confidential memorandum are no longer confidential.

2. The following apply to actuarial opinions of reserves issued after the operative date of the valuation manual:

a. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner annually shall submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual prescribes the specifics of this opinion, including any items deemed to be necessary to its scope.

b. Every insurer with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, also annually shall include in the opinion required by subdivision a an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

c. Each opinion required by this subsection is governed by the following provisions:

(1) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, must be prepared to support each actuarial opinion.

(2) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual.

or the commissioner determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

d. Under this subsection, every opinion is governed by the following provisions:

- (1) The opinion must be in a form and substance as specified in the valuation manual and acceptable to the commissioner.
- (2) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.
- (3) The opinion must apply to all policies and contracts subject to subdivision b, plus other actuarial liabilities as may be specified in the valuation manual.
- (4) The opinion must be based on standards adopted by the actuarial standards board or its successor and approved by the commissioner and on such additional standards as may be prescribed in the valuation manual.
- (5) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state.
- (6) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.
- (7) Disciplinary action by the commissioner against the insurer or the appointed actuary must be defined in rules adopted by the commissioner.

**SECTION 5. AMENDMENT.** Section 26.1-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-02. ~~Minimum standards of valuation for life or accident insurance~~Computation of minimum standard.**

The~~Except as provided in sections 26.1-35-03, 26.1-35-04, and 26.1-35-11, the minimum standards~~standard for the valuation of all life or accident insurance policies and contracts issued prior to July 1, 1977, are those provided by sections 26-03-33, 26-03-34, and 26-10-01 as they existed on June 30, 1977. ~~Except as otherwise provided in sections 26.1-35-03 and, 26.1-35-04, and 26.1-35-11, the minimum standard for the valuation of all life or accident insurance policies and contracts issued after June 30, 1977, is the commissioner's~~commissioners reserve valuation methods defined in sections 26.1-35-05, 26.1-35-06, ~~and 26.1-35-09; and 26.1-35-11,~~ five and one-half percent interest for single premium life insurance

policies and four and one-half percent interest for all other such policies and contracts issued after June 30, 1977, other than annuity and pure endowment contracts, and the following tables:

1. For ~~all ordinary~~ policies of ~~ordinary~~ life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the commissioners 1941 standard ordinary mortality table for policies issued before the operative date of section 26.1-33-22, the commissioners'commissioners 1958 standard ordinary mortality table for policies issued on or after the operative date of section 26.1-33-22 and prior to the earlier of a specified date filed by a companyan insurer with the commissioner in a written notice of the company'sinsurer's election to comply with this chapter or January 1, 1989, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for policies issued on or after the earlier of a specified date filed by a companyan insurer with the commissioner in a written notice of the company'sinsurer's election to comply with this chapter or January 1, 1989:
  - a. The ~~commissioners'commissioners~~ 1980 standard ordinary mortality table;
  - b. At the election of the ~~companyinsurer~~ for any one or more specified plans of life insurance, the ~~commissioners'commissioners~~ 1980 standard ordinary mortality table with ten-year select mortality factors; or
  - c. Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
2. For ~~all policies of~~ industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued before the operative date of section 26.1-33-23, and for policies issued on or after the operative date of section 26.1-33-23, the commissioners'commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies.
3. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table, or at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.
4. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the group annuity mortality table for 1951, a modification of the table approved by the commissioner, or at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.
5. For total and permanent disability benefits in or supplementary to policies or contracts, for policies or contracts issued after December 31, 1965, 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 or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for ~~thethose~~ policies; for policies or contracts issued after December 31, 1960, and before January 1, 1966, either those tables or, at the option of the insurer, the class (3) disability table (1926); and for policies issued before January 1, 1961, the class (3) disability table (1926). The table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

- 4-6. For accidental death benefits in or supplementary to policies ~~or contracts~~ issued after December 31, 1965, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the policies. ~~The; for policies issued after December 31, 1960, and before January 1, 1966, either that table or, at the option of the insurer, the intercompany double indemnity mortality table; and for policies issued before January 1, 1961, the intercompany double indemnity mortality table.~~ Either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies.
- 5-7. For group life insurance, life insurance issued on the substandard basis and other special benefits, any tables ~~that may be~~ approved by the commissioner.

**SECTION 6. AMENDMENT.** Section 26.1-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-03. Minimum standards of valuationComputation of minimum standard for annuities.**

1. Except as provided in section 26.1-35-04, the minimum ~~standards for the standard of~~ valuation ~~of all~~ for individual annuity and pure endowment contracts issued on or after the operative date of this section, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, must be the ~~commissioners'~~ commissioners' reserve valuation methods defined in sections 26.1-35-05 and 26.1-35-06 and the following tables and interest rates:
- 4-a. For individual annuity and pure endowment contracts issued before July 1, 1977, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts.
- b. For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts issued after June 30, 1977, excluding any disability and accidental death benefits in those contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

- 2-c. For individual annuity and pure endowment contracts issued after June 30, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts, the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables 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 individual annuity and pure endowment contracts.
- d. For annuities and pure endowments purchased prior to July 1, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts, the 1971 group annuity mortality table or any modification of this table approved by the commissioner, and six percent interest.
- 3-e. For all annuities and pure endowments purchased after June 30, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under ~~the~~these contracts, the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.
2. After June 30, 1977, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which must be the operative date of this section for that insurer. If an insurer makes no election, the operative date of this section for that insurer must be January 1, 1979.

**SECTION 7. AMENDMENT.** Section 26.1-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-04. ~~Determination~~Computation of minimum standard for valuation -- ~~Interest rates~~by calendar year of issue.**

~~The calendar year statutory valuation interest rates as defined in this section are:~~

1. The interest rates used in determining the minimum standard for the valuation of the following are the calendar year statutory valuation interest rates as defined in this section:
  - a. ~~All life~~Life insurance policies issued in a particular calendar year, on or after the earlier of a specified date filed by ~~a company~~an insurer with the commissioner in a written notice of the ~~company's insurer's~~ election to comply with this chapter or January 1, 1989.
  - b. ~~All individual~~Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984.

- c. ~~All annuities~~ Annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts.
- d. The net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.
2. The calendar year statutory valuation interest rates,  $I$ , must be determined as follows and the results rounded to the nearer one-quarter of one percent:
- a. For life insurance:

$$I = .03 + W (R_1 - .03) + \frac{W}{2} (R_2 - .09)$$

- b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03)$$

where  $R_1$  is the lesser of  $R$  and  $.09$ ,  $R_2$  is the greater of  $R$  and  $.09$ ,  $R$  is the reference interest rate defined in this section, and  $W$  is the weighting factor defined in this section.

- c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision b, the formula for life insurance stated in subdivision a applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subdivision b applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less.
- d. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subdivision b applies.
- e. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subdivision b applies.

However, if the calendar year statutory valuation interest rate for ~~any~~ life insurance ~~policies~~ policy issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies must equal the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 by using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when section ~~26-1-33~~ 26-1-33-24 becomes operative.

3. The weighting factors referred to in the formulas in subsection 2 are given in the following tables:

a. The weighting factors for life insurance are:

| Guarantee<br>Duration                             | Weighting<br>Factors |
|---|----------------------|
| 10 years or less                                  | .50                  |
| More than 10 years, but not<br>more than 20 years | .45                  |
| More than 20 years                                | .35                  |

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

b. The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is eighty hundredths.

c. The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision b, are as specified in paragraphs 1, 2, and 3, according to the requirements and definitions in paragraphs 4, 5, and 6:

(1) For annuities and guaranteed interest contracts valued on an issue year basis:

| Guarantee<br>Duration                             | Weighting Factor<br>for Plan Type |     |     |
|---|-----------------------------------|-----|-----|
|   | A                                 | B   | C   |
| 5 years or less                                   | .80                               | .60 | .50 |
| More than 5 years, but not<br>more than 10 years  | .75                               | .60 | .50 |
| More than 10 years, but<br>not more than 20 years | .65                               | .50 | .45 |
| More than 20 years                                | .45                               | .35 | .35 |

(2) For annuities and

|   |     |     |     |
|---|-----|-----|-----|
| guaranteed interest<br>contracts valued on<br>a change in fund basis,<br>the factors shown in<br>paragraph 1 increased by | .15 | .25 | .05 |
|---|-----|-----|-----|

(3) For annuities and

guaranteed interest  
contracts valued on  
an issue year basis,  
other than those with  
no cash settlement

options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in paragraph 1 or derived in paragraph 2 increased by

.05

.05

.05

- (4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the ~~guarantee~~~~guaranteed~~ duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.
- (5) The plan type as used in the tables in this subsection is defined as follows:
- (a) Plan type A: At any time the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the ~~insurance company~~~~insurer~~, without such adjustment but in installments over five years or more, as an immediate life annuity, or no withdrawal permitted.
  - (b) Plan type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the ~~insurance company~~~~insurer~~, without ~~such an~~ adjustment but in installments over five years or more, or no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without ~~such an~~ adjustment in a single sum or installments over less than five years.
  - (c) Plan type C: The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the ~~insurance company~~~~insurer~~, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

- (6) ~~A company~~An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. ~~As used in this section, an~~ issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. A change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.
4. The reference interest rate referred to in subsection 2 is defined as follows:
- a. For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, ~~of Moody's corporate bond yield average—the monthly average corporatesof the~~ composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.
  - b. For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, ~~of Moody's corporate bond yield average—the monthly average corporatesof the~~ composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.
  - c. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, ~~of Moody's corporate bond yield average—the monthly average corporatesof the~~ composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.
  - d. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision b with guaranteed duration of ten years or less, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, ~~of Moody's corporate bond yield average—the monthly average corporatesof the~~ composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.

- e. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June thirtieth of the calendar year of issue or purchase, of ~~Moody's corporate bond yield average—the monthly average~~ corporates of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.
  - f. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision b the average over a period of twelve months, ending on June thirtieth of the calendar year of the change in the fund, of ~~Moody's corporate bond yield average—the monthly average~~ corporates of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated.
5. If ~~Moody's corporate bond yield average—the monthly average~~ corporates of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, incorporated, or if the national association of insurance commissioners determines that ~~Moody's corporate bond yield average—the monthly average~~ corporates of the composite yield on seasoned corporate bonds as published by Moody's investors service, incorporated, is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, ~~which is~~ adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

**SECTION 8. AMENDMENT.** Section 26.1-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-05. Reserves by commissioners' reserve Reserve valuation method - Life insurance and endowment benefits.**

1. Except as otherwise provided in sections ~~26.1-35-06 and, 26.1-35-09, and 26.1-35-11,~~ reserves according to the ~~commissioners'~~ 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, must be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided ~~for by the~~ those policies, over the then present value of any future modified net premiums for the policies. The modified net premiums for a policy must be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums equals the sum of the present value of the benefits provided by the policy and the excess of subdivision a over subdivision b as follows:
  - a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided ~~for~~ 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 the policy on which a premium falls due; ~~provided, however, that~~ However, the net level annual premium may 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 the policy.
  - b. A net one-year term premium for the benefits provided in the first policy year.

2. For ~~any~~ life insurance policy issued after December 31, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, the reserve according to the ~~commissioners'~~commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, which is defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in section 26.1-35-09, must be the greater of the reserve as of ~~such~~the policy anniversary calculated as described in this section and the reserve as of ~~such~~the policy anniversary calculated as described in this section, but with the value defined in ~~subdivision a~~ of subsection 1 being reduced by fifteen percent of the amount of such excess first year premium; all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; the policy being assumed to mature on such date as an endowment; and the cash surrender value provided on ~~such~~that date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in sections 26.1-35-02 and 26.1-35-04 must be used.
3. Reserves according to the ~~commissioners'~~commissioners' reserve valuation method must be calculated by a method consistent with the principles as described in this section for life:
  - a. Life insurance policies providing a varying amount of insurance or requiring the payment of varying premiums; ~~group~~
  - 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, limited liability company, 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 federal Internal Revenue Code, as amended; ~~disability~~
  - c. Disability and accidental death benefits in all policies and contracts; and ~~all~~
  - 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, ~~must be calculated by a method consistent with the principles of this section.~~

**SECTION 9. AMENDMENT.** Section 26.1-35-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-06. Reserves by commissioners' annuity reserve Reserve valuation - Annuity and pure endowment benefits method.**

1. This section applies to all annuity and pure endowment contracts other than 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 federal Internal Revenue Code of 1954, as amended.

2. Reserves according to the ~~commissioners'~~ commissioner annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, must 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 for by the 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 the contracts, that become payable prior to the end of ~~such~~ the respective contract year. The future guaranteed benefits must be determined by using the mortality tables, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

**SECTION 10. AMENDMENT.** Section 26.1-35-07 of the North Dakota Century Code is amended and reenacted as follows:

**~~26.1-35-07. Minimum aggregate reserves for life policies issued after June 30, 1977.~~**

1. ~~A company's~~ An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after June 30, 1977, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 26.1-35-05, 26.1-35-06, ~~and 26.1-35-09, and 26.1-35-10~~ and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.
2. ~~In no event may the~~ The aggregate reserves for all policies, contracts, and benefits ~~may not~~ be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1.

**SECTION 11. AMENDMENT.** Section 26.1-35-08 of the North Dakota Century Code is amended and reenacted as follows:

**~~26.1-35-08. Calculation of minimum aggregate reserves by other standards~~ Optional reserve calculation.**

1. Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated, at the option of the ~~company~~ insurer, according to any standards which produce greater aggregate reserves for the policies and contracts than the minimum reserves required by the laws in effect on June 30, 1977.
2. Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after July 1, 1977, may be calculated, at the option of the ~~company~~ insurer, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this chapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be ~~higher~~ greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies and contracts.

3. ~~Any company~~An insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this chapter may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this chapter; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a ~~qualified~~the appointed actuary to be necessary to render the opinion required by section 26.1-35-01.1 may not be deemed to be the adoption of a higher standard of valuation.

**SECTION 12. AMENDMENT.** Section 26.1-35-09 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-09. ~~Minimum reserve if~~Reserve calculation - Valuation net premium exceedsexceeding the gross premium charged.**

1. If in any contract year the gross premium charged by ~~any life insurance company~~an insurer 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 ~~on the policy or contract~~ but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation 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. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in sections 26.1-35-02 and 26.1-35-04.
2. For ~~any~~ life insurance policy issued after December 31, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than the excess premium, ~~subsection 4~~the provisions of this section must be applied as if the method actually used in calculating the reserve for the policy was the method described in section 26.1-35-05, ignoring subsection 2 of that section. The minimum reserve at each policy anniversary must be the greater of the minimum reserve calculated in accordance with section 26.1-35-05, including subsection 2 of that section, and the minimum reserve calculated in accordance with this section.

**SECTION 13. AMENDMENT.** Section 26.1-35-10 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-35-10. ~~Future premium determination~~Reserve calculation - Indeterminate premium plans.**

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the ~~insurance company~~insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09, the reserves which are held under the plan must be appropriate in

relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of this chapter, as determined by rules adopted by the commissioner.

**SECTION 14.** Section 26.1-35-11 of the North Dakota Century Code is created and enacted as follows:

**26.1-35-11. Minimum standard for accident and health insurance contracts.**

For an accident and health insurance contract issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection 2 of section 26.1-35-01. For an accident and health insurance contract issued after June 30, 1977, and before the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

**SECTION 15.** Section 26.1-35-12 of the North Dakota Century Code is created and enacted as follows:

**26.1-35-12. Requirements of a principle-based valuation.**

1. An insurer shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:
  - a. Quantify the benefits and guarantees and the funding associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.
  - b. Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the insurer's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.
  - c. Incorporate assumptions that are derived in one of the following manners:
    - (1) The assumption is prescribed in the valuation manual.
    - (2) For assumptions that are not prescribed, the assumptions must:
      - (a) Be established utilizing the insurer's available experience, to the extent the experience is relevant and statistically credible; or
      - (b) To the extent that insurer data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.
  - d. Provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

2. An insurer using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:
  - a. Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.
  - b. Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. The controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on the controls in place as of the end of the preceding calendar year.
  - c. Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.
3. A principle-based valuation may include a prescribed formulaic reserve component.

**SECTION 16.** Section 26.1-35-13 of the North Dakota Century Code is created and enacted as follows:

**26.1-35-13. Experience reporting for policies in force on or after the operative date of the valuation manual.**

An insurer shall submit mortality, morbidity, policyholder behavior, and expense experience and other data as prescribed in the valuation manual.

**SECTION 17.** Section 26.1-35-14 of the North Dakota Century Code is created and enacted as follows:

**26.1-35-14. Confidentiality.**

1. For purposes of this section, "confidential information" means:
  - a. A memorandum in support of an opinion submitted under section 26.1-35-01.1 and any other documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;
  - b. All documents, materials, and other information, including all working papers and copies of working papers, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under subsection 5 of section 26.1-35-00.2. However, if an examination report or other material prepared in connection with an examination made under chapter 26.1-03 is not held as private and confidential information under chapter 26.1-03, an examination report or other material prepared in connection with an examination made under subsection 5 of section 26.1-35-00.2 may not be confidential information to the same extent as if such examination report or other material had been prepared under chapter 26.1-03;

- c. Any reports, documents, materials, and other information developed by an insurer in support of, or in connection with, an annual certification by the insurer under subdivision b of subsection 2 of section 26.1-35-12 evaluating the effectiveness of the insurer's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials, and other information;
  - d. Any principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 and any other documents, materials, and other information, including all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such report; and
  - e. Any documents, materials, data, and other information submitted by an insurer under section 26.1-35-13, collectively referred to as experience data, and any other documents, materials, data, and other information, including all working papers and copies of working papers created or produced in connection with such experience data, in each case that include any potentially insurer-identifying or personally identifiable information, that is provided to or obtained by the commissioner, together with any experience data, the experience materials, and any other documents, materials, data, and other information, including all working papers and copies of working papers created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.
2. a. Except as provided in this section, an insurer's confidential information is confidential and privileged, and is not subject to section 44-04-18, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the confidential information in the furtherance of any regulatory or legal action brought against the insurer as a part of the commissioner's official duties.
- b. Neither the commissioner nor any person that received confidential information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential information.
- c. In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information with other state, federal, and international regulatory agencies and with the national association of insurance commissioners and its affiliates and subsidiaries, and in the case of confidential information specified in subdivisions a and d of subsection 1 only, with the actuarial board for counseling and discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials, provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

- d. The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the actuarial board for counseling and discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.
  - e. The commissioner may enter agreements governing sharing and use of information consistent with this subsection.
  - f. A waiver of any applicable privilege or claim of confidentiality in the confidential information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision c.
  - g. A privilege established under the law of any state or jurisdiction which is substantially similar to the privilege established under this subsection is available and must be enforced in any proceeding in and in any court of this state.
  - h. In this section, reference to regulatory agency, law enforcement agency, and the national association of insurance commissioners, includes the employees, agents, consultants, and contractors of these entities.
3. Notwithstanding subsection 2, any confidential information specified in subdivisions a and d of subsection 1:
- a. May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under section 26.1-35-01.1 or principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 by reason of an action required by this chapter or by rules adopted under this chapter;
  - b. May otherwise be released by the commissioner with the written consent of the insurer; and
  - c. Once any portion of a memorandum in support of an opinion submitted under section 26.1-35-01.1 or a principle-based valuation report developed under subdivision c of subsection 2 of section 26.1-35-12 is cited by the insurer in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the insurer to the news media, all portions of such memorandum or report are no longer confidential.

**SECTION 18. CONTINGENT EFFECTIVE DATE.** This Act is effective on the January first following the date the insurance commissioner certifies to the secretary of state and the legislative council that all of the following have occurred:

1. The valuation manual has been adopted by the national association of insurance commissioners by an affirmative vote of the greater of at least forty-two members or three-fourths of the members voting.

2. The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.
3. The standard valuation law, as amended by the national association of insurance commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions:
  - a. The fifty states of the United States of America;
  - b. American Samoa;
  - c. The United States Virgin Islands;
  - d. The District of Columbia;
  - e. Guam; and
  - f. The Commonwealth of Puerto Rico.

Approved March 20, 2015  
Filed March 20, 2015

## CHAPTER 218

### HOUSE BILL NO. 1072

(Representatives Maragos, Delmore, Beadle, Dockter)  
(Senator Dever)

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to insurance coverage of cancer treatment medications; and to provide for application.

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

**SECTION 1.** A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

##### **Coverage of cancer treatment medications.**

1. As used in this section:
  - a. "Cancer treatment medications" means prescription drugs and biologics that are used to kill, slow, or prevent the growth of cancerous cells.
  - b. "Insurer" means an insurance company, nonprofit health service corporation, or health maintenance organization.
  - c. "Patient-administered" includes oral administration and self-injection.
  - d. "Policy" means an accident and health insurance policy, contract, or evidence of coverage on a group, individual, blanket, franchise, or association basis.
2. An insurer may not deliver, issue, execute, or renew a policy that provides coverage for cancer treatment medications that are injected or are intravenously administered by a health care provider and that provides coverage for patient-administered cancer treatment medications unless the policy copayment, deductible, and coinsurance amounts for patient-administered cancer treatment medications do not exceed the amounts for cancer treatment medications that are injected or are intravenously administered by a health care provider, regardless of the formulation or benefit category.
3. An insurer may not increase a copayment, deductible, or coinsurance amount for covered cancer treatment medications that are injected or intravenously administered in order to avoid compliance with subsection 2. An insurer may not reclassify benefits with respect to cancer treatment medications in a manner that is inconsistent with this section.

**SECTION 2.** A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

**Coverage of cancer treatment medications.**

The board shall provide medical benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 which provides coverage of cancer treatment medications in the same manner as provided under section 1 of this Act.

**SECTION 3. APPLICATION.** This Act is not subject to section 54-03-28, and therefore is not required to be accompanied by a cost-benefit analysis; is not limited in application to the public employees retirement system's health insurance programs; does not require that during the 2015-16 interim the public employees retirement system study the effect of the cancer treatment medication coverage requirements; and does not expire in two years.

Approved April 13, 2015

Filed April 13, 2015

## CHAPTER 219

### SENATE BILL NO. 2105

(Senators Krebsbach, Oehlke)  
(Representative Frantsvog)

AN ACT to amend and reenact section 26.1-39-05 of the North Dakota Century Code, relating to property and casualty insurance valuation.

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

**SECTION 1. AMENDMENT.** Section 26.1-39-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-39-05. Face of policy to be paid in case of covered loss.**

1. Whenever any insurance policy is written or renewed to insure any real property in this state, including structures owned by persons other than the insured, against loss caused by or resulting from any covered cause of loss and the insured property is wholly or completely destroyed by any covered cause of loss without fraud on the part of the insured or the insured's assigns, the amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:
  - a. If the covered loss occurred within ninety days after the policy ~~was issued~~effective date or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for covered loss incurred during the first ninety days is the lesser of:
    - (1) ~~The~~ full value of the policy; ~~;~~ or ~~the~~
    - (2) ~~The~~ actual cash value or replacement cost of the property, ~~whichever is less depending on the policy provisions applicable to the structure.~~  
~~This~~
  - b. ~~subsection~~Subdivision a does not apply to ~~unchanged renewal~~:
    - (1) ~~Renewal policies or policies with policy limits increases of less than twenty-five percent;~~
    - (2) ~~with inflation adjustment limits~~Policies for which limits have increased twenty-five percent or more due to the construction of additions; or
    - (3) Policies for which the increased limits were approved by the insurer before the loss.
  - b-c. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of any covered cause of loss.

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- e.d. In case of double insurance, each insurer shall contribute proportionally toward the loss without regard to the dates of the insurance policies.
2. This section does not apply as to personal property or any interest ~~therein~~ the personal property.
  3. This section does not apply to any claim for loss of an appurtenant structure or separate structure. Any claim for loss of an appurtenant or separate structure must be settled for actual replacement cost or actual cash value, depending on the policy provisions applicable to the structure, unless an appurtenant or separate structure is individually described in the policy and a value is assigned to that specific structure before the loss.

Approved April 8, 2015

Filed April 8, 2015

## CHAPTER 220

### HOUSE BILL NO. 1365

(Representatives Lefor, Beadle, Keiser, Meier)  
(Senators Armstrong, Krebsbach)

AN ACT to amend and reenact subsection 2 of section 26.1-39-13, subsection 1 of section 26.1-39-16, and section 26.1-40-07 of the North Dakota Century Code, relating to proof of mailing of insurance notices.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 26.1-39-13 of the North Dakota Century Code is amended and reenacted as follows:

2. A written notice of cancellation must be mailed or delivered to the named insured, at the last-known address of the named insured, at least thirty days ~~prior to before~~ the effective date of cancellation or when the cancellation is for nonpayment of premium at least ten days ~~prior to before~~ the effective date of cancellation. ~~A postal service certificate of mailing to the named insured at the insured's last-known address is conclusive~~Conclusive proof of mailing and receipt on the third calendar day after the mailing of the notice is established if the insurer produces:
  - a. A United States postal service certificate of mailing to the named insured at the insured's last-known address; or
  - b. Proof or acknowledgment of United States postal service mailing to the named insured at the insured's last-known address using:
    - (1) IMb tracing; or
    - (2) A similar method of first-class mail tracking which identifies the named insured, the insured's last-known address, and the date of mailing.

**SECTION 2. AMENDMENT.** Subsection 1 of section 26.1-39-16 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~An insurer ~~may fail to shall~~ renew a property insurance policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the last-known address of the named insured, at least forty-five days ~~prior to before~~ the expiration date of the policy, except ~~that when~~if the policy provides professional liability coverage for legal and medical services, the nonrenewal notice must be mailed or delivered at least ninety days ~~prior to before~~ the policy expiration date. ~~A postal service certificate of mailing to the named insured at the insured's last-known address is conclusive~~Conclusive proof of mailing and receipt on the third calendar day after the mailing of the notice is established if the insurer produces:
  - a. A United States postal service certificate of mailing to the named insured at the insured's last-known address; or

- b. Proof or acknowledgment of United States postal service mailing to the named insured at the insured's last-known address using:

(1) IMb tracing; or

(2) A similar method of first-class mail tracking which identifies the named insured, the insured's last-known address, and the date of mailing.

**SECTION 3. AMENDMENT.** Section 26.1-40-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-40-07. Proof of notice of termination.**

~~A postal service certificate of mailing to the named insured at the address shown in the policy is sufficient proof of notice.~~

1. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insured's willingness to renew, must be retained for a period of one year by the insurer or insurance producer giving the notice.
2. Sufficient proof of mailing a notice under this section is established if the producer or insurer produces:
  - a. A United States postal service certificate of mailing to the named insured at the address shown on the insured's policy; or
  - b. Proof or acknowledgment of United States postal service mailing to the named insured at the address shown on the insured's policy using:
    - (1) IMb tracing; or
    - (2) A similar method of first-class mail tracking which identifies the named insured, the address shown on the insured's policy, and the date of mailing.

Approved April 2, 2015  
Filed April 2, 2015

## CHAPTER 221

### HOUSE BILL NO. 1311

(Representatives Keiser, Klemin)  
(Senators Campbell, Klein)

AN ACT to create and enact a new section to chapter 26.1-39 of the North Dakota Century Code, relating to electronic delivery of property and casualty insurance notices and documents.

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

**SECTION 1.** A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

##### **Electronic notices and documents.**

1. As used in this section:
  - a. "Delivered by electronic means" includes:
    - (1) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or
    - (2) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice to a party directed to the electronic mail address at which the party has consented to receive notice of the posting.
  - b. "Party" means any recipient of any notice or document required as part of an insurance transaction, including an applicant, an insured or a policyholder.
2. Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or any other document that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if it meets the requirements of chapter 9-16. Electronic means may not be the sole method of providing a notice of cancellation or nonrenewal.
3. Delivery of a notice or document in accordance with this section is equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; or registered mail.
4. A notice or document may be delivered by electronic means by an insurer to a party under this section if all of the following are met:
  - a. The party has affirmatively consented to that method of delivery and has not withdrawn the consent.

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- b. The party, before giving consent, is provided with a clear and conspicuous statement informing the party of each of the following:
- (1) The right of the party at any time to withdraw consent to have a notice or document delivered by electronic means and any conditions or consequences imposed in the event consent is withdrawn.
  - (2) The means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means.
  - (3) The procedure a party shall follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address.
- c. The party:
- (1) Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
  - (2) Consents electronically, or confirms consent electronically, in a manner that demonstrates the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.
- d. After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, provides the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means and complies with subdivision b.
5. This section does not affect requirements related to content or timing of any notice or document required under applicable law.
6. If a provision of this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.
7. The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with paragraph 2 of subdivision c of subsection 4.
8. a. A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.
- b. A withdrawal of consent by a party is effective within a reasonable period of time not to exceed five days after receipt of the withdrawal by the insurer.

9. This section does not apply to a notice or document delivered by an insurer in an electronic form before August 1, 2015, to a party that, before that date, has consented to receive notices or documents in an electronic form otherwise allowed by law.
10. If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before August 1, 2015, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then before delivering such additional notices or documents electronically, the insurer shall provide the insured with a statement that describes:
  - a. The notices or documents that must be delivered by electronic means under this section which were not previously delivered electronically; and
  - b. The party's right to withdraw consent to have notices or documents delivered by electronic means.
11. a. Except as otherwise provided by law, if an oral communication or a recording of an oral communication from a party can be reliably stored and reproduced by an insurer, the oral communication or recording may qualify as a notice or document delivered by electronic means for purposes of this section.
  - b. If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the individual authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.
12. This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. ch. 96].

Approved April 8, 2015  
Filed April 8, 2015

## CHAPTER 222

### SENATE BILL NO. 2179

(Senators Oehlke, Poolman, Unruh)  
(Representatives Oversen, Owens)

AN ACT to amend and reenact section 26.1-40-25 of the North Dakota Century Code, relating to evidence of motor vehicle insurance.

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

**SECTION 1. AMENDMENT.** Section 26.1-40-25 of the North Dakota Century Code is amended and reenacted as follows:

#### **26.1-40-25. Proof of insurance.**

An insurer who issues a policy shall provide proof of insurance to the insured in the form of written or electronic evidence of the policy's terms as to type, duration, and the vehicle covered by the policy.

Approved March 23, 2015

Filed March 23, 2015

## CHAPTER 223

### HOUSE BILL NO. 1144

(Representative Keiser)  
(Senator Klein)

AN ACT to create and enact chapters 26.1-40.1 and 39-34 of the North Dakota Century Code, relating to insurance coverage of motor vehicles participating in transportation network company networks and services, priority of coverage, and minimum limits; and to declare an emergency.

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

**SECTION 1.** Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted as follows:

##### **26.1-40.1-01. Definitions.**

As used in this chapter and chapter 39-34, unless the context otherwise requires:

1. "Application off stage" of operation means the time period when the driver is operating the vehicle for personal noncommercial reasons and not engaged in any manner or operation for the transportation network company.
2. "Application on stage" means the time period the driver is logged onto the online-enabled application of a transportation network company and available for hire but not engaged and there is no passenger on board.
3. "Engaged stage" means the time period from the moment a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later.
4. "Participating driver" or "driver" means an individual who:
  - a. Receives connections to potential passengers and related services from a transportation network company in exchange for payment or a fee to the transportation network company; and
  - b. Uses a personal vehicle to offer or provide prearranged transportation services to a passenger upon connection through an online-enabled application or platform controlled by a transportation network company in return for compensation or payment of a fee.
5. "Passengers on-board stage" means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company.
6. "Personal injury protection" means basic no-fault benefits as defined under subsection 2 of section 26.1-41-01.

7. "Transportation network company" means a person operating in this state which uses an online-enabled application or platform to connect a passenger with an independent participating driver who provides prearranged transportation services using a personal vehicle. A transportation network company may not be deemed to control, direct, or manage the personal vehicles or participating drivers that connect to the transportation network company's online-enabled application or platform, unless agreed to by written contract.
8. "Transportation network company insurance" means an insurance policy that covers a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

**26.1-40.1-02. Required disclosures.**

1. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform and shall advise a participating driver that the driver's personal automobile insurance policy may not provide coverage under the agreement.
2. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, of when the driver's personal automobile insurance policy may not provide collision or comprehensive coverage, under the agreement.
3. A transportation network company shall provide notice in writing or electronically to the driver instructing the driver to notify the driver's personal automobile insurer of the driver's participation in the transportation network.

**26.1-40.1-03. Coverage required when transportation network company application is engaged until completion of ride when the passenger has exited the vehicle.**

1. A transportation network company and any participating driver shall maintain transportation network company insurance that provides for the following requirements that apply to transportation network company insurance during the engaged stage and during the passenger on-board stage.
  - a. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this subdivision may be satisfied by any of the following:
    - (1) Transportation network company insurance maintained by a participating driver.
    - (2) Transportation network company insurance maintained by a transportation network company.
    - (3) Any combination of paragraphs 1 and 2.

- b. Transportation network company insurance coverage provided under this section for uninsured motorist coverage must meet the requirements under section 26.1-40-15.2, which is primary coverage.
- c. Transportation network company insurance coverage provided under this section for underinsured motorist coverage must meet the requirements under section 26.1-40-15.3, which is primary coverage.
- d. Transportation network company insurance coverage must provide primary personal injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.
- e. The primary insurer, in the case of insurance coverage provided under subdivision a, has the sole duty to defend and indemnify the insured.
- f. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
- g. If transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

**26.1-40.1-04. Insurance coverage during the application on stage with no passengers in vehicle.**

1. During the application on stage, the transportation network company insurance must include:
  - a. Motor vehicle liability coverage that is primary coverage. The coverage must include at least fifty thousand dollars per person and one hundred thousand dollars per incident for death and bodily injury and at least twenty-five thousand dollars for property damage.
  - b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary coverage.
  - c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary coverage.
  - d. Personal injury protection under chapter 26.1-41 which is primary coverage.
2. The requirements for coverage under this section may be satisfied by:
  - a. Transportation network company insurance maintained by a participating driver;
  - b. Transportation network company insurance maintained by a transportation network company; or
  - c. Any combination of subdivisions a and b.

3. The following apply to insurance requirements under this section:
- a. The primary insurer, in the case of insurance coverage provided under subdivision a of subsection 1, has the sole duty to defend and indemnify the insured.
  - b. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
  - c. If transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

**26.1-40.1-05. Automobile insurers.**

Insurers that write personal automobile insurance may allow no-fault insurance coverage to be conditional on transportation network company no-fault insurance coverage under sections 26.1-40.1-03 and 26.1-40.1-04.

**26.1-40.1-06. Liability of transportation network company beyond required limits.**

This chapter does not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

**26.1-40.1-07. Discretionary personal insurance where offered by personal automobile insurer.**

A personal automobile insurer may offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle or similar type of vehicle with a passenger capacity of less than eight persons, including the driver, while used in connection with a transportation network company's online-enabled application or platform.

**26.1-40.1-08. Duty to cooperate.**

In a claims coverage investigation involving a participating driver, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred involving a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform.

**26.1-40.1-09. Financial responsibility.**

Transportation network company insurance that meets the requirements of this chapter is deemed to satisfy the financial responsibility requirements of chapter 39-16.

**26.1-40.1-10. Proof of insurance.**

A participating driver of a transportation network company shall carry proof of transportation network company insurance coverage at all times during the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform. In the event of an accident, a participating driver shall provide this insurance coverage information to any other party involved in the accident and to a police officer, upon request.

**26.1-40.1-11. Authorized or eligible carrier.**

Transportation network company insurance required by this chapter may be placed with an insurer authorized to do business in the state or with a surplus lines insurer eligible under section 26.1-44-03.

**SECTION 2.** Chapter 39-34 of the North Dakota Century Code is created and enacted as follows:

**39-34-01. Agent.**

The transportation network company must maintain a registered agent with the secretary of state for service of process in this state.

**39-34-02. Fare charged for services.**

The transportation network company shall provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the transportation network company driver's vehicle.

**39-34-03. Transportation driver requirements.**

1. Before permitting an individual to act as a transportation network company driver on its digital platform, the transportation network company shall:
  - a. Require the individual to submit an application to the transportation network company, which includes information regarding the individual's address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the transportation network company;
  - b. Conduct, or have a third party conduct, a local and national criminal background check for each applicant that must include:
    - (1) Multistate and multijurisdiction criminal records locator or other similar commercial nationwide database with validation; and
    - (2) National sex offender registry database; and
  - c. Obtain and review a driving history research report for the individual.
2. The transportation network company may not permit an individual to act as a transportation network company driver on its digital platform who:
  - a. Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including attempting to evade the police, reckless driving, or driving on a suspended or revoked license;

- b. Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, a sexual offense, use of a motor vehicle to commit a felony, a crime involving property damage, theft, an act of violence, or an act of terror;
- c. Is a match in the national sex offender registry database;
- d. Does not possess a valid driver's license;
- e. Does not possess proof of registration for the motor vehicle used to provide transportation network company services;
- f. Does not possess proof of automobile liability insurance for the motor vehicle used to provide transportation network company services; or
- g. Is not at least twenty-one years of age.

### **39-34-04. Personally identifiable information.**

A transportation network company may not disclose any personally identifiable information of a transportation network company passenger, except pursuant to the publicly disclosed terms of the transportation network company's privacy policy. For any other disclosure not governed by the privacy policy, the transportation network company must obtain the passenger's consent before the company may disclose the passenger's personally identifiable information.

### **39-34-05. Transportation network company reporting requirements - Legislative management report - Penalty.**

1. A transportation network company shall report the following information to the department of transportation on June fifteenth and December fifteenth of each year for the previous six calendar months:
  - a. A list of political subdivisions in which the transportation network company operates;
  - b. The number of accidents that were reported to the transportation network company during the passenger on-board stage; and
  - c. The number and types of traffic violations and any other violations that were reported to the transportation network company during the passenger on-board stage.
2. The department of transportation shall report the information collected from transportation network companies during each biennium to the legislative management.
3. The department of transportation may impose a civil penalty of up to five hundred dollars for the failure of a transportation network company to report as required under this section. A transportation network company with two or more violations of this section may be prohibited by the department of transportation from operating within the state for one hundred eighty days from the date of the department's notification to the transportation network company.

4. All civil penalties collected under this section must be deposited in the state highway fund.

**39-34-06. Controlling authority.**

Notwithstanding any other provision of law, transportation network companies and transportation network company drivers are governed exclusively by this chapter and chapter 26.1-40.1 and any rules adopted consistent with this chapter and by the insurance commissioner under section 1 of this Act. A political subdivision may not impose a tax on, or require a license for, a transportation network company or a transportation network company driver or subject a transportation network company to the political subdivision's rate, entry, operational, or other requirements. A political subdivision may prohibit a transportation network company from operating without a state permit within the jurisdiction of the political subdivision.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 22, 2015  
Filed April 22, 2015

## CHAPTER 224

### HOUSE BILL NO. 1146

(Representative Keiser)  
(Senator Klein)

AN ACT to amend and reenact sections 26.1-44-01.1, 26.1-44-03.1, and 26.1-44-06.1 of the North Dakota Century Code, relating to surplus lines of insurance; to repeal section 26.1-44-11 of the North Dakota Century Code, relating to the surplus lines insurance multistate compliance compact; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 26.1-44-01.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-44-01.1. Definitions.**

1. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.
2. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines producer may place surplus lines insurance pursuant to section 26.1-44-03.
3. "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
  - a. The person employs or retains a qualified risk manager to negotiate insurance coverage.
  - b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.
  - c. (1) The person meets at least one of the following criteria:
    - (a) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to paragraph 2.
    - (b) The person generates annual revenues in excess of fifty million dollars, as such amount is adjusted pursuant to paragraph 2.
    - (c) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.
    - (d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to paragraph 2.

- (e) The person is a municipality with a population in excess of fifty thousand persons.
- (2) Each fifth January first occurring after July 21, 2010, and ongoing thereafter, the amounts in subparagraphs a, b, and d of paragraph 1 will be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the department of labor.
4. "Home state".
- a. Except as provided in subdivision b, "home state" means, with respect to an insured:
- (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
- (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
5. "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.
6. "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.
7. "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
8. "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this state but does not include a risk retention group as defined in paragraph 4 of subdivision a of section 2 of the Liability Risk Retention Act of 1986 [15 U.S.C. 3901(a)(4)].
9. "Reciprocal state" means a state that has:
- a. ~~Entered into a nonadmitted insurance compact; or~~
- b. ~~Otherwise adopted the allocation schedule and reporting forms prescribed by a multistate agreement for nonadmitted insurance.~~
- ~~10. "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, permitted to be placed through a surplus lines producer with a~~

nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.

~~44-10.~~ "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures ~~located or to be performed in this state~~ with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.

~~42-11.~~ "Type of insurance" means coverage afforded under the particular policy that is being placed.

<sup>130</sup> **SECTION 2. AMENDMENT.** Section 26.1-44-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-03.1. Surplus lines tax.**

1. If the insured's home state is this state, in addition to the full amount of gross premiums charged by the insurer for the insurance on properties, risks, or exposures located or to be performed in this state or another state, every surplus lines producer shall collect and pay to the commissioner a sum equal to one and three-fourths percent of the gross premiums charged, assessments, membership fees, subscriber fees, policy fees, and service fees, less any return premiums, for surplus lines insurance provided by the surplus lines producer. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum-payable must be computed based on:~~
  - a. ~~An amount equal to one and three-fourths percent on that portion of the gross premiums allocated to this state plus;~~
  - b. ~~An amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to other properties, risks, or exposures located or to be performed outside of this state less;~~
  - c. ~~The amount of gross premiums allocated to this state and returned to the insured.~~
2. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.
3. ~~Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact for the purpose of collecting, allocating, and disbursing to reciprocal states any funds collected pursuant to subdivision b of subsection 1 applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this state, the net premium tax collected must be retained by this state.~~

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<sup>130</sup> Section 26.1-44-03.1 was also amended by section 11 of Senate Bill No. 2010, chapter 44.

4. At the time of filing the verified report as set forth in section 26.1-44-06.1, each surplus lines producer shall pay the premium tax due for the policies written during the period covered by the report.
5. ~~If the insured's home state is this state, in determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state must be considered written on properties, risks, or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state.~~

<sup>131</sup> **SECTION 3. AMENDMENT.** Section 26.1-44-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-06.1. Reports – ~~Summary of exported business.~~**

1. If the insured's home state is this state, on or before April first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar year, including:
  1. ~~a.~~ Aggregate gross premiums written;
  2. ~~b.~~ Aggregate return premiums;
  3. ~~c.~~ Amount of aggregate tax remitted on risks located or to be performed in this state; and
  4. ~~d.~~ Amount of aggregate tax ~~due or remitted~~ on risks located or to each other state for which an allocation is made pursuant to section 26.1-44-03.1 be performed in another state.
2. A verified report is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

**SECTION 4. REPEAL.** Section 26.1-44-11 of the North Dakota Century Code is repealed.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on June 1, 2015.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 20, 2015  
Filed March 20, 2015

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<sup>131</sup> Section 26.1-44-06.1 was also amended by section 1 of Senate Bill No. 2187, chapter 225.

## CHAPTER 225

### SENATE BILL NO. 2187

(Senator Klein)  
(Representative Keiser)

AN ACT to amend and reenact sections 26.1-44-06.1 and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance filings; to provide a penalty; to provide an effective date; and to declare an emergency.

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

<sup>132</sup> **SECTION 1. AMENDMENT.** Section 26.1-44-06.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-44-06.1. Reports – ~~Summary of exported business.~~**

1. If the insured's home state is this state, ~~on or before April first~~ March second of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner ~~a verified report~~ an annual tax statement of all surplus lines insurance transacted during the preceding calendar year, including:
  - 1-a. Aggregate gross premiums written;
  - 2-b. Aggregate return premiums;
  - 3-c. Amount of aggregate tax remitted to this state; and
  - 4-d. Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to section 26.1-44-03.1.
2. ~~A verified report~~ An annual tax statement is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

**SECTION 2. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **26.1-44-08. Civil penalty for failure to file ~~statement~~ report of placement and affidavit, file annual tax statement, and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.**

1. ~~Every~~ A surplus lines producer who fails is liable for a fine of twenty-five dollars for each day of delinquency if the producer:
  - a. Fails or refuses to file the report of placement or affidavit within sixty days as required under section 26.1-44-02;

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<sup>132</sup> Section 26.1-44-06.1 was also amended by section 3 of House Bill No. 1146, chapter 224.

- b. Fails or refuses to file the endorsement, audit, or cancellation within sixty days after any change to the initial placement which changes the insurance premium amount, except a surplus lines producer that is able to provide written proof of the date the producer obtained knowledge of the change to the initial placement which changes the insurance premium amount has sixty days from the date the producer obtained knowledge of this change:
  - c. Fails or refuses to make and file the verified report annual tax statement required by under section 26.1-44-06.1, and; or
  - d. Fails or refuses to pay the taxes required to be paid prior to before the first second day of May March after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquency.
2. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the verified report annual tax statement, report of placement, endorsement, audit cancellation, or affidavit and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines producer's license if any surplus lines producer fails to make and file the verified report annual tax statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.
  3. If the license of a surplus lines producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

**SECTION 3. EFFECTIVE DATE.** This Act becomes effective June 1, 2015.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 26, 2015

Filed March 26, 2015