

INSURANCE

CHAPTER 211

SENATE BILL NO. 2103

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

AN ACT to amend and reenact sections 26.1-01-04 and 26.1-01-07 and subsection 2 of section 26.1-15.1-35 of the North Dakota Century Code, relating to fees chargeable by the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-04. Service of process upon commissioner - Procedure.

When a consent to service of any process, notice, order, or demand upon the commissioner is provided under this title, the service is to be in duplicate. The commissioner immediately shall forward one copy by registered mail to the person against whom the process, notice, order, or demand is directed at that person's last reasonably ascertainable address and shall file the other copy in the office of the commissioner. ~~The person serving process upon the commissioner shall pay the fee provided in section 26.1-01-07.~~ The commissioner shall keep a record of the date and hour of service.

SECTION 2. AMENDMENT. Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07. Fees chargeable by commissioner.

1. The commissioner shall charge and collect the following fees:
 - 1- a. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
 - 2- b. For each original certificate of authority issued upon admittance and for each annual renewal thereof, one hundred dollars and for ~~renewal of certificate of authority~~, amendment to certificate of authority, or certified copy thereof, fifty dollars.
 - 3- c. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
 - 4- d. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five one hundred dollars.

5. ~~For filing bylaws or amendments thereof, ten dollars.~~
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. ~~For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.~~
8. ~~For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.~~
9. e. For filing an annual statement, twenty-five dollars.
10. f. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.
11. g. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.
12. h. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits and for any renewal of the certificate, ~~ten~~twenty-five dollars.
13. i. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.
14. j. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.
15. k. For issuing an insurance producer's license, one hundred dollars.
16. l. For issuing a duplicate of any license or registration issued under this title, ten dollars.
17. ~~For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.~~
18. ~~For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.~~
19. ~~For a copy of any paper filed in the commissioner's office, twenty cents per folio.~~

- ~~20. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.~~
- ~~21. m. For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.~~
- ~~22. n. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.~~
- ~~23. o. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.~~
- ~~24. p. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.~~
- ~~25. q. For issuing and each annual renewal of a license to an advisory organization, fifty dollars.~~
- ~~26. r. For filing an individual insurance producer licensing continuation, twenty-five dollars.~~
2. Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, 15, 18, 19, and 20 subdivisions b, f, g, and k of subsection 1.
3. However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 3. AMENDMENT. Subsection 2 of section 26.1-15.1-35 of the North Dakota Century Code is amended and reenacted as follows:

2. Service may be made only upon the commissioner or upon any person in charge of the commissioner's office. It must be made in duplicate and constitutes sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forthwith forward one of the duplicate copies by registered mail, postage prepaid, directed to the secretary or corresponding officer. No service may require a society to file its answer, pleading, or defense in less than twenty days from the date of mailing the copy of the service to a society. Legal process may not be served upon a society except in the manner herein provided. ~~At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee specified in section 26.1-01-07.~~

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 212

HOUSE BILL NO. 1112

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

AN ACT to amend and reenact sections 26.1-02.1-01, 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-39 of the North Dakota Century Code, relating to licensing and insurance producers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-01. Definitions.

As used in this chapter:

1. "Breach of trust" means any criminal act or an element of a criminal act by a person, including an act that constitutes or involves misuse, misapplication, or misappropriation of the following:
 - a. Anything of value held as a fiduciary, in which "fiduciary" includes a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director, or public service; or
 - b. Anything of value of any public, private, or charitable organization.
2. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or who are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf. The term does not include the activities of the North Dakota life and health insurance guaranty association or the North Dakota insurance guaranty association.
3. "Dishonesty" means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.
- ~~2-4.~~ "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.
- ~~3-5.~~ "Fraudulent insurance act" includes the following acts or omissions committed by a person knowingly and with intent to defraud:
 - a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer,

or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:

- (1) An application for the issuance or renewal of an insurance policy or reinsurance contract;
 - (2) The rating of an insurance policy or reinsurance contract;
 - (3) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (4) Premiums paid on an insurance policy or reinsurance contract;
 - (5) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (6) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (7) The financial condition of an insurer or reinsurer;
 - (8) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (9) The issuance of written evidence of insurance;
 - (10) The reinstatement of an insurance policy; or
 - (11) The formation of an agency, brokerage, or insurance producer contract.
- b. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
 - c. Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance.
 - d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.
 - e. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions specified in this section.
- 4-6. "Insurance" means a contract or arrangement in which one undertakes to pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance; pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies; pay an annuity to another; or act as surety. The term does not include a debt cancellation contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor and

does not include a debt suspension contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor.

- 5-7. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subsection 4, whether the person has or is required to have a certificate of authority or denies being an insurer. The term does not include the North Dakota life and health insurance guaranty association, the risk management fund, a bank, credit union, or savings association as a party to a debt cancellation contract or debt suspension contract, or the North Dakota insurance guaranty association.
- 6-8. "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing.
- 7-9. "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
- 8-10. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.
- 9-11. "Reinsurance" means a contract, binder of coverage including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

SECTION 2. AMENDMENT. Section 26.1-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation, and licensure of convicted felons prohibited.

1. A person may not commit a fraudulent insurance act.
2. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
3. a. A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance. The commissioner shall deny an application for license under chapter 26.1-26, or shall revoke or shall refuse to renew a license issued under chapter 26.1-26, if the commissioner finds the applicant or licensee has been convicted of a felony involving dishonesty or breach of trust.
b. A person in the business of insurance may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

SECTION 3. AMENDMENT. Section 26.1-26-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-15. License requirement - Character.

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

SECTION 4. AMENDMENT. Section 26.1-26-39 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-39. Refusal of license - Notification of applicant - No refund of fees.

If the commissioner finds that the applicant has not met the requirements for licensing or license renewal, the commissioner shall refuse to issue or renew the license. The commissioner shall, in writing, promptly notify the applicant ~~and the appointing insurer, if applicable,~~ of the refusal, stating the grounds for the refusal. All fees accompanying the application for license are not refundable.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 213

HOUSE BILL NO. 1100

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

AN ACT to amend and reenact section 26.1-03.2-08 of the North Dakota Century Code, relating to confidentiality for risk-based capital reports; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03.2-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03.2-08. Confidentiality - Prohibition on announcements - Prohibition on use in ratemaking.

1. All risk-based capital reports, to the extent the information 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 a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to a domestic health organization or foreign health organization, which are filed with the commissioner constitute information that might be damaging to the health organization if made available to its competitors, and therefore shall 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 pursuant to this chapter or any other provision of the insurance laws of this state.
2. Neither the commissioner nor any person that 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 subsection 1.
3. To assist in the performance of the commissioner's duties, the commissioner may:
 - a. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1, 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. 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 documents, materials, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information; and

- c. Enter agreements governing sharing and use of information consistent with this subsection.
4. A waiver of an applicable privilege or claim of confidentiality in the documents, materials, 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 subdivision c of subsection 3.
5. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of 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 a 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 health organization, or of any component derived in the calculation, by any health organization, insurance producer, 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 a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the health organization's risk-based capital levels is published in any written publication and the health organization 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 health organization 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 legislature 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 health organizations and the need for possible corrective action with respect to health organizations 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 a health organization or any affiliate is authorized to write.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 214

SENATE BILL NO. 2140

(Senators O. Larsen, Kannianen)
(Representative Kasper)

AN ACT to amend and reenact subdivision c of subsection 8 of section 26.1-04-03, subsection 2 of section 26.1-04-06, and subsection 2 of section 26.1-25-16 of the North Dakota Century Code, relating to limitations on insurance rebates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 8 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fiftyone hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fiftyone hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo

merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

SECTION 3. AMENDMENT. Subsection 2 of section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of ~~forty~~ **fortyone** hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

Approved March 9, 2017

Filed March 9, 2017

CHAPTER 215

HOUSE BILL NO. 1147

(Representatives Monson, Pyle, D. Ruby)
(Senators Anderson, Campbell, Krebsbach)

AN ACT to amend and reenact subsection 3 of section 26.1-13-15 of the North Dakota Century Code, relating to authority of county mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

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;
 - c. A nonresidential property that is not used by the general public; or
 - d. A nonresidential property that is part of an existing policy.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 216

HOUSE BILL NO. 1101

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

AN ACT to amend and reenact section 26.1-22-14 of the North Dakota Century Code, relating to assessments and reporting of premiums and losses for the state fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-14. Assessments and reporting of premiums and losses.

If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars. The commissioner shall then levy an assessment against every policy in force with the fund. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property for which that rate may be applicable, and the full rate established for policies providing coverage against indirect losses and for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance sets the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance reaches twelve million dollars, the assessment must be in an amount determined by the commissioner but may not exceed sixty percent of the rates set by the insurance services office for insured property unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent must be used in such computation.

The commissioner shall submit, not later than December thirty-first of each ~~odd-numbered year~~ every five-year period, all data concerning premiums written and losses incurred during the previous ~~biennium~~ five-year period ending ~~July thirty-first~~ June thirtieth to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 217

SENATE BILL NO. 2105

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

AN ACT to create and enact a new section to chapter 10-04 and a new section to chapter 26.1-26 of the North Dakota Century Code, relating to exemption of agent or investment adviser representative records and insurance producer records; and to amend and reenact subsection 2 of section 26.1-02-30 of the North Dakota Century Code, relating to exemption of personal, financial, or health records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Agent or investment adviser representative records - Exempt record.

The home address of an agent or investment adviser representative received by the commissioner is an exempt record as defined in section 44-04-17.1.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-02-30 of the North Dakota Century Code is amended and reenacted as follows:

2. As used in this section, "personal, financial, or health information" means information ~~collected from or on behalf of an individual requesting consumer assistance which that~~ would reveal:
 - a. ~~The~~An individual's personal health condition, disease, or injury;
 - b. The existence, nature, source, or amount of ~~the~~an individual's personal income;
 - c. The existence, nature, source, or amount of ~~the~~an individual's personal expenses;
 - d. Records of or relating to ~~the~~an individual's personal financial transactions of any kind;
 - e. The existence, identification, nature, or value of ~~the~~an individual's personal assets, liabilities, or net worth;
 - f. A history of ~~the~~an individual's personal medical diagnosis or treatment;
 - g. The existence, identification, nature, value, or content of ~~the~~an individual's coverage or status under any insurance policy;
 - h. ~~The~~An individual's personal contractual rights or obligations; or

- i. Any social security number, date of birth, file number, bank account number, or other number used for identification of ~~thean~~ individual or any account in which ~~thean~~ individual has a personal financial interest.

SECTION 3. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Insurance producer records - Exempt record.

The home address of any licensed insurance producer or insurance consultant received by the commissioner is an exempt record as defined in section 44-04-17.1.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 218

HOUSE BILL NO. 1286

(Representatives Kasper, Keiser, K. Koppelman, Louser, Rohr, D. Ruby)
(Senators Casper, Dever, Klein, Kreun, Laffen, Roers)

AN ACT to amend and reenact section 26.1-29-09.1 of the North Dakota Century Code, relating to insurable interests in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-29-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-29-09.1. Insurable interest in personal insurance.

1. An individual of competent legal capacity may procure or effect an insurance contract upon that individual's own life or body for the benefit of any person. ~~No~~A person may not procure or cause to be procured an insurance contract upon the life or body of another ~~person~~individual unless the benefits under the contract are payable to the individual insured or that individual's personal representatives, or to a person having, at the time the contract was made, an insurable interest in the individual insured.
2. If the beneficiary, assignee, or other payee under a contract made in violation of this section receives from the insurer any benefits from the contract upon the death, disablement, or injury of the individual insured, the individual insured or that individual's executor or administrator may maintain an action to recover the benefits from the person receiving ~~them~~the benefits.
3. "Insurable interest", with reference to personal insurance, includes only the following interests:
 - a. In the case of ~~individuals~~an individual related closely by blood or by law, a substantial interest engendered by love and affection.
 - b. In the case of ~~persons~~a person other than ~~those~~an individual described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
 - c. In the case of an individual ~~parties~~party to a contract or option for the purchase or sale of an interest in a business partnership or firm, of a membership interest in a limited liability company, or of shares of stock of a closed corporation or of an interest in the shares, an interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest that may otherwise exist as to the life of the individual.
 - d. In the case of a religious, educational, eleemosynary, charitable, or benevolent ~~organizations~~organization, a lawful interest in the life of the

- individual insured if that individual has executed a written consent to the insurance contract.
- e. In the case of a ~~corporation~~ an employer or the trustee of a trust providing life, health, disability, retirement, or similar benefits to employees of one or more ~~corporations~~ employers, and acting in a fiduciary capacity with respect to the employees, retired employees, or ~~the employees'~~ the employees' dependents or beneficiaries, a ~~corporation~~ an employer or the trustee of a trust has an insurable interest in the lives of employees for whom the benefits are to be provided and the ~~corporation~~ employer or trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance as a beneficiary or owner. Written consent of the insured individual is required if the personal insurance purchased names the ~~corporation~~ employer or the trustee of a trust as a beneficiary.
- f. In the case of a service recipient or the trustee of a trust providing a nonqualified deferred compensation plan, as defined by section 409A(d)(1) of the Internal Revenue Code [26 U.S.C. 409A(d)(a)], to a service provider, an insurable interest in the life of the service provider for whom the nonqualified deferred compensation plan is provided. The service recipient or the trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance with the trust as a beneficiary or owner. Written consent of the insured individual is required. As used in this subdivision:
- (1) "Service provider" means an individual, other than an employee, who provides significant services to a service recipient.
- (2) "Service recipient" means the entity for which services are performed by a service provider.

Approved March 22, 2017

Filed March 23, 2017

CHAPTER 219

SENATE BILL NO. 2052

(Human Services Committee)

(At the request of the Public Employees Retirement System)

AN ACT to create and enact section 26.1-36-09.15 of the North Dakota Century Code, relating to individual and group health insurance coverage of telehealth services; and to amend and reenact section 54-52.1-04.13 of the North Dakota Century Code, relating to public employees retirement system uniform group insurance coverage of telehealth services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-36-09.15 of the North Dakota Century Code is created and enacted as follows:

26.1-36-09.15. Coverage of telehealth services.

1. As used in this section:

- a. "Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.
- b. "Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.
- c. "Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.
- d. "Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.
- e. "Policy" means an accident and health insurance policy, contract, or evidence of coverage on a group, individual, blanket, franchise, or association basis.
- f. "Store-and-forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a distant site at a later date by a health care provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video, and data communication.
- g. "Telehealth":

- (1) Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site and that is delivered over a secure connection that complies with the requirements of state and federal laws.
- (2) Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology.
- (3) Does not include the use of audio-only telephone, electronic mail, or facsimile transmissions.
2. An insurer may not deliver, issue, execute, or renew a policy that provides health benefits coverage unless that policy provides coverage for health services delivered by means of telehealth which is the same as the coverage for health services delivered by in-person means.
3. Payment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the insurer with the health services providers in the same manner as the insurer with the health services providers in the same manner as the insurer establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.
4. Coverage under this section may be subject to deductible, coinsurance, and copayment provisions.
5. This section does not require:
- a. A policy to provide coverage for health services that are not medically necessary, subject to the terms and conditions of the policy;
- b. A policy to provide coverage for health services delivered by means of telehealth if the policy would not provide coverage for the health services if delivered by in-person means;
- c. A policy to reimburse a health care provider or health care facility for expenses for health services delivered by means of telehealth if the policy would not reimburse that health care provider or health care facility if the health services had been delivered by in-person means; or
- d. A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.

SECTION 2. AMENDMENT. Section 54-52.1-04.13 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.13. (~~Effective through July 31, 2017~~) Insurance coverageCoverage of telehealth services.

1. As used in this section:

- a. ~~"Distant site" means a site at which a health care provider or health care facility is located while providing medical services by means of telehealth.~~
- b. ~~"Health care facility" means any office or institution at which health services are provided. The term includes hospitals; clinics; ambulatory surgery centers; outpatient care facilities; nursing homes; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any health care provider.~~
- c. ~~"Health care provider" includes an individual licensed under chapter 43-05, 43-06, 43-12.1 as a registered nurse or as an advanced practice registered nurse, 43-13, 43-15, 43-17, 43-26.1, 43-28, 43-32, 43-37, 43-40, 43-41, 43-42, 43-44, 43-45, 43-47, 43-58, or 43-60.~~
- d. ~~"Originating site" means a site at which a patient is located at the time health services are provided to the patient by means of telehealth.~~
- e. ~~"Policy" means health 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.~~
- f. ~~"Store and forward technology" means electronic information, imaging, and communication that is transferred, recorded, or otherwise stored in order to be reviewed at a distant site at a later date by a health care provider or health care facility without the patient present in real time. The term includes telehome monitoring and interactive audio, video, and data communication.~~
- g. ~~"Telehealth":~~
- (1) ~~Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site; and that is delivered over a secure connection that complies with the requirements of state and federal laws.~~
 - (2) ~~Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store and forward technology.~~
 - (3) ~~Does not include the use of audio only telephone, electronic mail, or facsimile transmissions.~~
2. ~~For all policies that become effective after June 30, 2015, and which do not extend past June 30, 2017, the board shall provide health benefits coverage under a policy that provides coverage for health services delivered by means of telehealth which is the same as the coverage for health services delivered by in-person means.~~
3. ~~Payment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the board or the board's contractor with the health services providers in the same manner as the board establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.~~

4. ~~Coverage under this section may be subject to deductible, coinsurance, and copayment provisions.~~
5. ~~This section does not require:~~
 - a. ~~A policy to provide coverage for health services that are not medically necessary, subject to the terms and conditions of the policy;~~
 - b. ~~A policy to provide coverage for health services delivered by means of telehealth if the policy would not provide coverage for the health services if delivered by in-person means;~~
 - c. ~~A policy to reimburse a health care provider or health care facility for expenses for health services delivered by means of telehealth if the policy would not reimburse that health care provider or health care facility if the health services had been delivered by in-person means; or~~
 - d. ~~A health care provider to be physically present with a patient at the originating site unless the health care provider who is delivering health services by means of telehealth determines the presence of a health care provider is necessary.~~

The board shall provide health 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 health services delivered by means of telehealth in the same manner as provided under section 26.1-36-09.15.

Approved April 18, 2017

Filed April 18, 2017

CHAPTER 220

SENATE BILL NO. 2267

(Senator Casper)
(Representatives Lefor, Streyle)

AN ACT to amend and reenact section 26.1-36-41 of the North Dakota Century Code, relating to the authority of the insurance commissioner to investigate health insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-41. Contract limitations.

1. An insurance company as defined by section 26.1-02-01 issuing a health and accident policy, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not terminate a practitioner's participating contract, designate a practitioner as nonpayable, or otherwise impose sanctions on any practitioner solely for an excessive or inappropriate practice pattern unless the requirements of this section are met. If a practitioner engages in an excessive or inappropriate practice pattern for the practitioner's specialty, the entity shall inform the practitioner, in writing, as to the manner in which the practitioner's practice is excessive or inappropriate. The entity shall consult with the practitioner and provide a reasonable time period of not less than six months within which to modify the practitioner's practice pattern. If the excessive or inappropriate practice pattern continues, the entity may impose reasonable sanctions on the practitioner, terminate the practitioner's participating contract, or designate the practitioner as nonpayable. If considered for sanction, termination, or nonpayable status, the affected practitioner must first be given the opportunity to be present and to be heard by a committee appointed by the entity which must include at least one representative of the practitioner's specialty. The entity may not impose sanctions on a practitioner, terminate a practitioner, or designate a practitioner as nonpayable in the absence of the committee's recommendation to do so. All reports, practice profiles, data, and proceedings of the entity relative to a practitioner who is sanctioned, terminated, or considered for designation as nonpayable are confidential and may not be disclosed or be subject to subpoena or other legal process. Nonpayable status under this section may not commence until after appropriate notification to the entity's subscribers and the affected practitioner. As used in this section, "practitioner" includes an optometrist, a physician, a chiropractor, or an advanced registered nurse practitioner duly licensed to practice in this state.
2. If the entity uses a practice profile as a factor to evaluate a practitioner's practice pattern, the entity shall provide upon request of the practitioner at any time a description of the criteria, data sources, and methodologies used to compile the practice profile concerning the practitioner and the manner in which the practice profile is used to evaluate the practitioner. An entity may not sanction a practitioner, terminate a practitioner's participating contract, or

designate a practitioner as nonpayable on the basis of a practice profile without informing the practitioner of the specific data underlying those findings. For purposes of this section, a "practice profile" means a profile, summary, economic analysis, or other analysis of data concerning the cost, quality, or quantity of services rendered by an individual practitioner, group of practitioners, or preferred provider. In addition, an entity in developing practice profiles or otherwise measuring practitioner performance shall:

- a. Make severity adjustments, including allowances for the severity of illness or condition of the patient mix and allowances for patients with multiple illnesses or conditions;
 - b. Periodically evaluate, with input from specialty-specific practitioners as appropriate, the quality and accuracy of practice profiles, data sources, and methodologies;
 - c. Develop and implement safeguards to protect against the unauthorized use or disclosure of practice profiles; and
 - d. Provide the opportunity for any practitioner at any time to examine the accuracy, completeness, or validity of any practice profile concerning the practitioner and to prepare a written response to the profile. The entity shall negotiate in good faith with the practitioner to correct any inaccuracies or to make the profile complete. If the inaccuracies or deficiencies are not corrected to the satisfaction of the practitioner, the entity shall submit the written response prepared by the practitioner along with the profile at the time the profile is used pursuant to subsection 1 or provided to any third party consistent with section 26.1-36-12.4.
3. This section does not limit the authority of the commissioner to obtain from an insurer information relating to an investigation of suspected or actual fraudulent insurance acts.

Approved March 15, 2017

Filed March 16, 2017

CHAPTER 221

HOUSE BILL NO. 1302

(Representatives Schobinger, Delzer, Dobervich, Kasper)
(Senators Klein, Krebsbach)

AN ACT to amend and reenact subsection 1 of section 26.1-39-05 of the North Dakota Century Code, relating to property and casualty insurance covered loss.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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~~sixty days after the policy effective date or within ~~ninety~~sixty 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~~sixty days is the lesser of:
 - (1) The full value of the policy; or
 - (2) ~~The actual cash value or replacement cost of the property, depending on the policy provisions applicable to the structure~~The amount paid in accordance with the policy provisions as if a partial loss occurred.
 - b. Subdivision a does not apply to:
 - (1) Renewal policies with policy limits increases of less than twenty-five percent;
 - (2) 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.
 - 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.

- d. In case of double insurance, each insurer shall contribute proportionally toward the loss without regard to the dates of the insurance policies.

Approved March 21, 2017

Filed March 22, 2017

CHAPTER 222

HOUSE BILL NO. 1247

(Representatives Keiser, Kasper)

AN ACT to amend and reenact subsection 4 of section 26.1-39-11, section 26.1-39-20, subsection 5 of section 26.1-40-01, and section 26.1-40-09 of the North Dakota Century Code, relating to termination of insurance and duplicate property insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-39-11 of the North Dakota Century Code is amended and reenacted as follows:

4. "Termination" means ~~either a cancellation or nonrenewal~~ of property insurance coverage in whole or in part. ~~A cancellation~~ Cancellation occurs during the policy term. ~~A nonrenewal~~ Nonrenewal occurs at the end of the policy term as set forth in subsection 3. For purposes of sections 26.1-39-10 through 26.1-39-21, the transfer of a policy between companies within the same insurance holding company system is not a termination. Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

SECTION 2. AMENDMENT. Section 26.1-39-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-20. Duplicate coverage - Termination of coverage when another policy in force - Notice.

Notwithstanding the failure of an insurer to comply with sections 26.1-39-13 through 26.1-39-16, if an insured obtains a replacement policy that provides providing equal or more extensive coverage for any a property covered in both policies, the first insurer's coverage of the that property may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the second policy providing duplicate replacement coverage. Upon termination, the insured is entitled to a refund of the premium and written notice must be mailed or delivered to the named insured.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-40-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Termination" means ~~either a cancellation or nonrenewal~~ of automobile insurance coverage in whole or in part. ~~A cancellation~~ Cancellation occurs during the policy term. ~~A nonrenewal~~ Nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination. The transfer of a policy between companies within the same insurance holding company system is not a termination.

SECTION 4. AMENDMENT. Section 26.1-40-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-09. Duplicate coverage - Termination of coverage when another policy in force - Notice.

Notwithstanding the failure of an insurer to comply with sections 26.1-40-01 through 26.1-40-12, termination of any coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement of the motor vehicle if an insured obtains a replacement policy providing equal or more extensive coverage for a motor vehicle covered in both policies, the first insurer's coverage of that motor vehicle may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the second policy providing duplicate replacement coverage. Upon termination, the insured is entitled to a refund of the premium and written notice must be mailed or delivered to the named insured.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 223

HOUSE BILL NO. 1198

(Representatives Nathe, Bosch)
(Senator D. Larson)

AN ACT to amend and reenact section 26.1-39-23 of the North Dakota Century Code, relating to property and casualty insurance binders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-39-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-23. Temporary insurance - Use of binders.

A binder or contract for temporary ~~farm and personal property~~ lines of insurance may be made orally or in writing and is deemed to include all the terms of a standard fire insurance policy and all applicable endorsements as may be designated in the binder. However, the cancellation clause of the standard fire insurance policy and the clause specifying the hour of the day at which the insurance commences may be superseded by the express terms of the binder. A duly authorized binder must be accepted as evidence of insurance coverage required as a condition of financing the purchase of property, except that a mortgagee or lender is not required to accept a renewal or extension of the binder. Any insurance producer who has express authority to bind ~~farm and personal property~~ and casualty lines of insurance coverage, and who orally agrees on behalf of an insurer to provide insurance coverage, if requested, shall execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time of the oral agreement.

Approved April 10, 2017

Filed April 10, 2017