

INSURANCE DEPT. PROPOSED AMENDMENT TO SENATE BILL NO. 2374

Legislative Assembly
of North Dakota

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

1 A BILL for an Act to create and enact two new sections to chapter 26.1-30, two new sections to
2 chapter 26.1-39, a new section to chapter 26.1-44, and a new subsection to section 26.1-46-03
3 of the North Dakota Century Code, relating to mandatory arbitration endorsements for property
4 insurance, managed repair programs, civil remedy actions against property insurers, notice of
5 property insurance claims, and surplus lines insurance policies; to amend and reenact section
6 26.1-02-05, subsection 2 of section 26.1-10-01, and sections 26.1-10-04, 26.1-25-02.1,
7 26.1-25-16, 26.1-26-04.1, 26.1-44-03, 26.1-46-01, 26.1-46-08, and 26.1-46-08.1 of the North
8 Dakota Century Code, relating to the presumption and delegation of control in insurance holding
9 company systems, exceptions to unauthorized insurance transactions, exceptions for large
10 commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk
11 retention groups and purchasing groups, restrictions on insurance purchased by purchasing
12 groups, and purchasing group taxation and fees; to repeal section 26.1-44-03.3 of the North
13 Dakota Century Code, relating to an exemption from search requirements for licensed surplus
14 line producers; and to provide a penalty.

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

16 SECTION 1. AMENDMENT. Section 26.1-02-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **26.1-02-05. Unauthorized insurance prohibited - Exceptions.**

19 An insurance company may not transact insurance business in this state, as set forth in
20 section 26.1-02-06, without a certificate of authority from the commissioner. This section does
21 not apply to:

- 22 1. The lawful transaction of surplus lines insurance.
- 23 2. The lawful transaction of reinsurance by insurers.

- 1 10. Transactions involving insurance contracts covering a large commercial risk as
2 defined in section 26.1-25-02.1, provided an industrial insured is not relieved from
3 taxation imposed upon independently procured insurance.

4 ~~SECTION 2. AMENDMENT. Subsection 2 of section 26.1-10-01 of the North Dakota~~
5 ~~Century Code is amended and reenacted as follows: —~~

6 ~~— 2. "Control" means the possession, direct or indirect, of the power to direct or cause the~~
7 ~~direction of the management and policies of a person, whether through the ownership~~
8 ~~of voting securities, by contract other than a commercial contract for goods or~~
9 ~~nonmanagement services, or otherwise, unless the power is the result of an official~~
10 ~~position with or corporate office held by the person. Control is presumed to exist if any~~
11 ~~person, directly or indirectly, owns, controls, holds with the power to vote, or holds~~
12 ~~proxies representing ten percent or more of the voting securities of any other person.~~
13 ~~This presumption may be rebutted by a showing made in the manner provided for in~~
14 ~~subsection 9 of section 26.1-10-04, that control does not exist in fact. The~~
15 ~~commissioner may determine, after furnishing all persons in interest notice and~~
16 ~~opportunity to be heard and making specific findings of fact to support such~~
17 ~~determination, that control exists in fact, notwithstanding the absence of a presumption~~
18 ~~to that effect.~~

19 ~~SECTION 3. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is~~
20 ~~amended and reenacted as follows:~~

21 ~~— 26.1-10-04. Registration of insurers.~~

22 ~~— 1. Every insurer that is authorized to do business in this state and which is a member of~~
23 ~~an insurance holding company system shall register with the commissioner, except a~~
24 ~~foreign insurer subject to registration requirements and standards adopted by statute~~
25 ~~or rule in the jurisdiction of its domicile which are substantially similar to those~~
26 ~~contained in this section and section 26.1-10-05. Any insurer subject to registration~~
27 ~~under this section shall register within fifteen days after it becomes subject to~~
28 ~~registration, and annually thereafter by March first of each year for the previous~~
29 ~~calendar year unless the commissioner for good cause shown extends the time for~~
30 ~~registration, and then within the extended time. The commissioner may require any~~
31 ~~insurer authorized to do business in the state which is a member of an insurance~~
32 ~~holding company system not subject to registration under this section to furnish a copy~~

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- 1 ~~States securities and exchange commission pursuant to the federal Securities~~
2 ~~Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities~~
3 ~~Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial~~
4 ~~statement pursuant to this subdivision may satisfy the request by providing the~~
5 ~~commissioner with the most recently filed parent corporation financial statements~~
6 ~~that have been filed with the United States securities and exchange commission.~~
- 7 ~~f. Other matters concerning transactions between registered insurers and any~~
8 ~~affiliates as may be included from time to time in any registration forms adopted~~
9 ~~or approved by the commissioner.~~
- 10 ~~g. Statements that the insurer's board of directors is responsible for and supervises,~~
11 ~~relating to corporate governance and internal controls that the insurer's officers or~~
12 ~~senior management have approved, implemented, and continue to maintain and~~
13 ~~monitor.~~
- 14 ~~h. Any other information required by the commissioner by rule.~~
- 15 ~~3. No information~~~~Information does not need to be disclosed on the registration statement~~
16 ~~filed pursuant to subsection 2 if the information is not material for the purposes of this~~
17 ~~section. Unless the commissioner by rule or order provides otherwise, sales,~~
18 ~~purchases, exchanges, loans or extensions of credit, or investments, or guarantees~~
19 ~~involving one-half of one percent or less of an insurer's admitted assets as of~~
20 ~~December thirty-first next preceding are not material for purposes of this section.~~
- 21 ~~4. In addition to the annual filing requirement under subsection 1, each registered insurer~~
22 ~~shall keep current the information required to be disclosed in its registration statement~~
23 ~~by reporting all material changes or additions on amendment forms approved by the~~
24 ~~commissioner within fifteen days after the end of the month in which it learns of each~~
25 ~~change or addition; provided, however, that subject to subsections 7, 8, and 9 of~~
26 ~~section 26.1-10-05, each registered insurer shall report all dividends and other~~
27 ~~distributions to shareholders within five business days following the declaration and no~~
28 ~~less than ten business days prior to payment thereof.~~
- 29 ~~5. The commissioner shall terminate the registration of any insurer that demonstrates it~~
30 ~~no longer is a member of an insurance holding company system.~~
- 31 ~~6. The commissioner may require or allow two or more affiliated insurers subject to~~
32 ~~registration to file a consolidated registration statement.~~

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

~~14. 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 accordance with subsection 9 that control does not exist in fact. The commissioner may determine, after providing all interested persons notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.~~

~~15. A person that would otherwise have control may delegate control to one or more other persons under a delegation agreement that must be substantially in the form designated by the commissioner so the person delegating the control will no longer be considered to have control.~~

SECTION **42**. AMENDMENT. Section 26.1-25-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-02.1. Definitions.

1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities as enumerated in this chapter. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.
2. "Commercial risk" means any kind of risk which is not a personal risk.
3. "Competitive market" means a commercial risk market that has not been found to be noncompetitive as provided for in section 26.1-25-04. All commercial risk markets except crop hail, farmowners, and medical malpractice insurance are presumed to be competitive.
4. "Developed losses" means losses including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss including loss adjustment expense payments.

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- 1 A determination that a market is noncompetitive may not be based solely on the
2 consideration of any one factor.
- 3 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
4 mobile homes, and other property and casualty insurance for personal, family, or
5 household needs.
- 6 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
7 which two or more insurers participate in the sharing of risks on a predetermined
8 basis. The pool may operate through an association, syndicate, or other pooling
9 agreement.
- 10 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
11 for expenses other than loss adjustment expenses, or profit, and are based on
12 historical aggregate losses and loss adjustment expenses adjusted through
13 development to their ultimate value and projected through trending to a future point in
14 time.
- 15 ~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
16 member or as a prospective loss cost with an adjustment to account for the treatment
17 of expenses, profit, and individual insurer variation in loss experience, prior to any
18 application of individual risk variations based on loss or expense considerations, and
19 does not include minimum premium.
- 20 ~~43-14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
21 by law, involving participation by insurers in the equitable apportionment among them
22 of insurance which may be afforded applicants who are unable to obtain insurance
23 through ordinary methods.
- 24 ~~44-15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
25 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
26 plan, and any other similar information needed to determine the applicable rate in
27 effect or to be in effect.
- 28 ~~45-16.~~ "Supporting information" means:
29 a. The experience and judgment of the filer and the experience or date of other
30 insurers or advisory organizations relied upon by the filer;
31 b. The interpretation of any other data relied upon by the filer; and

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. No person insured by a federal crop insurance policy is eligible to receive any of the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give any item of value to a person insured by a federal crop insurance policy.

Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be contingent on the purchase, continued purchase, or renewal of a policy.

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 contract of insurance.

3. The provisions in this section may not be construed as including within the definition of discrimination or rebates any of the following practices:

a. The offer or provision by an insurer or producer, by or through an employee, an affiliate, or a third-party representative, of value-added products or services at no or reduced cost if the products or services are not specified in the policy of insurance if the product or service:

(1) Relates to the insurance coverage and is designed to satisfy one or more of the following:

- (a) Provide loss mitigation or loss control;
- (b) Reduce claims costs or claim settlement costs;
- (c) Provide education about liability risk or risk of loss to persons or property;
- (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- (e) Enhance health;

6. Subsections 1 and 2 do not apply to a large commercial risk as defined in section

26.1-25-02.1.

SECTION 64. AMENDMENT. Section 26.1-26-04.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04.1. Fees for services - Rules.

1. Notwithstanding any other provision of this title, an insurance producer may charge a fee for any services rendered in connection with the sale, solicitation, negotiation, placement, or servicing of an insurance contract, if the following conditions are met:
 - a. The fees may not be charged on a personal lines account, such as personal homeowners and automobile, personal life, and health insurance.
 - b. Before rendering the services and accepting any payment, a written disclosure must be provided to the party to be charged on a form approved by the commissioner disclosing:
 - (1) The nature of the services for which the fees will be charged along with a separate itemization of the amount of the fees;
 - (2) That the fees are charged in addition to any premiums paid;
 - (3) That if the insurance producer is also an appointed agent of an insurer with which coverage is being considered for placement, a statement that the insurance producer also represents the insurer in the transaction and owes a duty of loyalty to the insurer; and
 - (4) That if the insurance producer is to receive a commission from the sale of an insurance policy related to the services rendered, a statement clearly and completely disclosing that the:
 - (a) Insurance producer will receive a commission from the insurer which is paid from the premiums owed for the insurance; and
 - (b) Amount of commission received by the insurance producer may differ depending on the product sold and the insurer.
 - c. The disclosure required by this section must be signed and dated by both the producer and the party to be charged.
 - d. The producer shall retain the signed disclosure required by this section for not less than five years following the completion of the service. A copy of the signed disclosure must be available to the commissioner for inspection upon request.

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- 1 a. Be on a form separate from the policy application and other policy forms;
- 2 b. Clearly state the rights being waived in exchange for the premium discount,
- 3 including the right to a trial by jury; and
- 4 c. Include the following statement in at least twelve-point bold font:
- 5 "By signing this form, I agree to resolve all covered property insurance claims
- 6 through mandatory binding arbitration. I understand that by agreeing to
- 7 mandatory binding arbitration:
- 8 I am giving up my right to have disputes resolved in court.
- 9 I am giving up my right to a jury trial.
- 10 I am accepting these terms in exchange for a premium discount of [dollar amount
- 11 or percentage of premium amount].
- 12 This agreement is binding on all insureds under the policy and remains effective
- 13 upon policy renewal, replacement, or reinstatement unless I request removal of
- 14 the mandatory binding arbitration endorsement in writing".
- 15 3. All arbitration proceedings under this section must:
- 16 a. Be conducted in this state if involving a resident of this state;
- 17 b. Be governed by state law; and
- 18 c. Not require arbitration in another state.
- 19 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
- 20 insureds under the policy and remains effective upon policy renewal, replacement, or
- 21 reinstatement unless the named insured requests a change in writing.
- 22 5. This section applies to all property and casualty insurance policies issued or renewed
- 23 after the effective date of this Act.
- 24 6. This section does not apply to a:
- 25 a. Voluntary arbitration agreement entered after a dispute has arisen; ~~or~~
- 26 b. Large commercial risk as defined in section 26.1-25-02.1; or
- 27 c. Commercial surplus lines insurance policies, unless this state is the home state
- 28 as defined in chapter 26.1-44 and one hundred percent of the risk insured is
- 29 located in this state.
- 30 7. ~~The commissioner shall enforce this section.~~
- 31 8. The commissioner may assess a penalty on an insurer in violation of this section, as
- 32 determined by the commissioner.

1 **SECTION 108.** A new section to chapter 26.1-39 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Notice of property insurance claim.**

4 1. As used in this section:

5 a. "Reopened claim" means a claim an insurer closed and reopened upon an
6 insured's request for additional ~~costs for loss or~~ reimbursement of damage arising
7 out of the original occurrence and not previously identified or disclosed to the
8 insurer.

9 b. "Supplemental claim" means a claim for additional loss or damage costs from the
10 same ~~peril occurrence~~ the insurer previously ~~adjusted or for which costs have~~
11 ~~been incurred while completing repairs or replacement under an open claim for~~
12 ~~which timely notice was previously provided to the insurer~~ compensated the
13 insured.

14 2. A ~~claim or~~ reopened claim under an insurance policy that provides property insurance,
15 including a policy issued by an eligible surplus lines insurer, for loss or damage
16 ~~caused by any peril~~ is barred unless notice of the claim was given to the insurer ~~in~~
17 ~~accordance with the terms of the policy~~ within one year after the date of loss. A
18 supplemental claim is barred unless notice of the supplemental claim was given to the
19 insurer ~~in accordance with the terms~~ of the policy within ~~eighteen~~ twelve months after
20 the date of ~~loss~~ the last payment issued by the insurer for that element of the loss.

21 3. The time limitations under subsection 2 are tolled during any term of deployment for a
22 named insured service member to a combat zone or combat support posting that
23 materially affects the ability of the named insured to file a claim, supplemental claim,
24 or reopened claim.

25 **SECTION 119. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **26.1-44-03. Surplus lines insurance.**

28 The placement of nonadmitted insurance is subject to this section only if the insured's home
29 state is this state. Surplus lines insurance may be placed by a surplus lines producer if:

- 30 1. Each insurer is an eligible surplus lines insurer;
31 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;

SECTION ~~13~~11. AMENDMENT. Section 26.1-46-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-01. Definitions.

As used in this chapter, ~~unless the context requires otherwise~~:

1. "Commissioner" means the North Dakota insurance commissioner or the commissioner, director, or superintendent of insurance in any other state.
2. "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by any person who performs that work or any person who hires an independent contractor to perform that work, but includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.
3. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:
 - a. For a corporation or limited liability company, the state in which the purchasing group is incorporated or organized.
 - b. For an entity which is not a corporation or limited liability company, the state of its principal place of business.
4. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to do either of the following:
 - a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims.
 - b. To pay other obligations in the normal course of business.
5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.
6. a. "Liability" means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss, including contractual claims and expenses, to such other persons resulting from or arising out of either of the following:

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1 exposed by virtue of any related, similar, or common business, trade, product,
2 services, premises, or operations.

3 h. Identification of each state in which the risk retention group has obtained, or
4 sought to obtain, a charter and license, and a description of its status in each
5 such state.

6 9. "Product liability" means liability for damages because of any personal injury, death,
7 emotional harm, consequential economic damage, or property damage, including
8 damages resulting from the loss of use of property, arising out of the manufacture,
9 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
10 does not include the liability of any person for those damages if the product involved
11 was in the possession of such a person when the incident giving rise to the claim
12 occurred.

13 10. "Purchasing group" means any group which meets all of the following:

14 a. The group has as one of its purposes the purchase of liability insurance on a
15 group basis.

16 b. The group purchases such insurance only for its group members and only to cover their
17 similar or related liability exposure, as described in subdivision c, except a
18 nonmaterial amount of commercial property coverage incidental to the liability
19 exposure of its group members also may be insured.

20 c. The group is composed of members whose business or activities are similar or
21 related with respect to the liability to which members are exposed by virtue of any
22 related, similar, or common business, trade, product, services, premises, or
23 operations.

24 d. The group is domiciled in any state.

25 11. "Risk retention group" means any corporation or other limited liability association:

26 a. Whose primary activity consists of assuming and spreading all, or any portion, of
27 the liability exposure of its group members.

28 b. Which is organized for the primary purpose of conducting the activity described
29 under subdivision a.

30 c. Which is chartered and licensed as a liability insurance company and authorized
31 to engage in the business of insurance under the laws of any state; or, before
32 January 1, 1985, was chartered or licensed and authorized to engage in the

12. "State" means any state of the United States or the District of Columbia.

SECTION 1412. A new subsection to section 26.1-46-03 of the North Dakota Century Code is created and enacted as follows:

A risk retention group that is not chartered in this state but is in compliance with this section is deemed an authorized insurer for the satisfaction of any requirement, under the laws of this state, that insurance coverage be placed with an authorized insurer.

SECTION 4513. AMENDMENT. Section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08. Restrictions on insurance purchased by purchasing groups.

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members unless the purchasing group uses a policyholder's disclosure statement approved by the commissioner which clearly explains in simplified language the policy is subject to a group deductible or self-insured retention and provides a detailed explanation of the process of the satisfaction of the deductible or self-insured retention among members.
4. ~~Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance. A purchasing group may not purchase insurance providing for a shared aggregate limit applicable to the group as a whole unless the purchasing group uses a policyholder's disclosure statement approved by the commissioner which clearly explains in simplified language the policy is subject to a group aggregate limit and coverage for~~