

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.

Legislative Assembly

- 1 3. Transactions involving a policy lawfully solicited, written, and delivered outside of this
2 state covering only subjects of insurance not resident, located, or expressly to be
3 performed in this state at the time of issuance, and which transactions are subsequent
4 to the issuance of such policy.
- 5 4. Transactions involving life insurance, health insurance, or annuities provided to
6 educational or religious or charitable institutions organized and operated without profit
7 to any private shareholder or individual, for the benefit of the institutions and
8 individuals engaged in the service of the institutions.
- 9 5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of
10 claims or losses.
- 11 6. Transactions involving group life, accident, and health, or blanket accident and health
12 insurance, or group annuities if the master policy of the group was lawfully issued and
13 delivered in and pursuant to the laws of a state in which the insurance company was
14 authorized to do an insurance business, to a group organized for purposes other than
15 the procurement of insurance, and where the policyholder is domiciled or otherwise
16 has a bona fide situs.
- 17 7. Transactions involving any insurance policy or annuity contract issued before July 1,
18 1973.
- 19 8. Transactions relative to a policy issued or to be issued outside this state involving
20 insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection
21 and indemnity or other risk, including strikes and war risks commonly insured under
22 ocean or wet marine forms of policy.
- 23 9. Transactions involving insurance contracts issued to one or more industrial insureds;
24 provided, that this does not relieve an industrial insured from taxation imposed upon
25 independently procured insurance. An industrial insured is an insured:
 - 26 a. Which procures the insurance of any risk or risks other than life and annuity
27 contracts by use of the services of a full-time employee acting as an insurance
28 manager or buyer or the services of a regularly and continuously retained
29 qualified insurance consultant;
 - 30 b. Whose aggregate annual premiums for insurance on all risks total at least
31 twenty-five thousand dollars; and
 - 32 c. Which has at least twenty-five full-time employees.

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~~

Legislative Assembly

~~of the registration statement, the summary specified in subsection 10 of section 26.1-10-04, or other information filed by the insurer with the insurance regulatory authority of the domiciliary jurisdiction.~~

~~2. Every 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 insurer and any person in control of the insurer.~~

~~b. The identity and relationship of every member of the insurance holding company system.~~

~~c. The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:~~

~~(1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the 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 insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the 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 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~~

Legislative Assembly

- 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.~~

Legislative Assembly

- ~~7. The commissioner may allow an 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 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 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 insurer or a disclaimer may be filed by the 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 insurer as well as the basis for disclaiming the affiliation. 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 insurer, when the information is reasonably necessary to enable the 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.~~

Legislative Assembly

~~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.

Legislative Assembly

- 1 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
2 collection expenses, general expenses, taxes, licenses, and fees.
- 3 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
4 coverage for a commercial risk pursuant to which two or more insurers jointly contract
5 with the insured at a price and under policy terms agreed upon between the insurers.
- 6 7. "Large commercial risk" means an insured that has:
7 a. Total insured property values of five²⁵ million dollars or more;
8 b. Total annual gross revenue of ten⁵⁰ million dollars or more; or
9 c. A total premium of twenty-five thousand¹⁰⁰ dollars or more for property insurance,
10 twenty-five thousand¹⁰⁰ dollars or more for general liability insurance, or fifty
11 thousand²⁰⁰ dollars or more for multiperil insurance.
- 12 8. ^d "Loss trending" means any procedure for projecting developed losses to the average
13 ^r date of loss for the period during which the policies are to be effective.
- 14 8-9. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
15 insurance markets together with any other line of commercial risk insurance that has
16 not been found by the commissioner to have a reasonable degree of competitiveness
17 within the market considering:
- 18 a. Market concentration and changes in market concentration determined through
19 the use of the Herfindahl-Hirschman index and the United States department of
20 justice merger guidelines for an unconcentrated market;
- 21 b. The existence of financial and other barriers that prevent a company from
22 entering the market;
- 23 c. The number of insurers or groups of affiliated insurers providing coverage in the
24 market;
- 25 d. The extent to which any insurer or group of affiliated insurers controls the market;
- 26 e. Whether the total number of companies writing the line of insurance in this state
27 is sufficient to provide multiple insurance options in the market;
- 28 f. The availability of insurance coverage to consumers in the markets by specific
29 geographic area, by line of insurance, and by class of risk; and
- 30 g. The opportunities available in the market to acquire pricing and other consumer
31 information.

Legislative Assembly

- 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

- 1 c. Descriptions of methods used in making the rates and any other information
2 required by the commissioner to be filed.

3 SECTION 53. AMENDMENT. Section 26.1-25-16 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-25-16. Rebates prohibited - Exception.**

- 6 1. ~~No insurance producer~~ An insurance producer may not knowingly charge, demand, or
7 receive a premium for any insurance policy except in accordance with this chapter. No
8 insurer or employee of an insurer, and no insurance producer, broker or agent may
9 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an
10 inducement to insurance, or after insurance has been effected, any rebate, discount,
11 abatement, credit, or reduction of the premium named in an insurance policy, or any
12 special favor or advantage in the dividends or other benefits to accrue on the policy, or
13 any valuable consideration or inducement whatever, not specified in the insurance
14 policy, except to the extent provided for in applicable filing. No insured named in an
15 insurance policy, nor any employee of the insured, may knowingly receive or accept,
16 directly or indirectly, any such rebate, discount, abatement, credit, or reduction of
17 premium, or any such special favor or advantage or valuable consideration or
18 inducement. This section does not prohibit the payment of commissions or other
19 compensation to licensed insurance producers, nor any insurer from allowing or
20 returning to its participating policyholders, members, or subscribers dividends,
21 savings, or unabsorbed premium deposits. As used in this section, "insurance"
22 includes suretyship and "policy" includes bond.
- 23 2. Notwithstanding any other provision in this section, if the cost does not exceed an
24 aggregate retail value of one hundred dollars per person per year, an insurance
25 producer may give a gift, prize, promotional article, logo merchandise, meal, or
26 entertainment activity directly or indirectly to a person in connection with marketing,
27 promoting, or advertising the business. As used in this subsection, "person" means the
28 named insured, policy owner, or prospective client or the spouse of any of these
29 individuals, but the term does not include a certificate holder, child, or employee of the
30 named insured, policy owner, or prospective client. Subject to the limits of this
31 subsection, an insurance producer may give a gift card for specific merchandise or
32 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. 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;

Legislative Assembly

- 1 (f) Enhance financial wellness through items such as education of
- 2 financial planning services;
- 3 (g) Provide post-loss services;
- 4 (h) Incent behavioral changes to improve the health or reduce the risk of
- 5 death or disability of an individual defined as policyholder, potential
- 6 policyholder, certificate holder, potential certificate holder, insured,
- 7 potential insured, or applicant; or
- 8 (i) Assist in the administration of the employee or retiree benefit
- 9 insurance coverage.
- 10 (2) If offered by the insurer or producer, the insurer or producer, upon request,
- 11 shall ensure the person is provided with contact information to assist the
- 12 person with questions regarding the product or service.
- 13 (3) Is based on fair documented criteria and offered in a manner not unfairly
- 14 discriminatory. The documented criteria must be maintained by the insurer
- 15 or producer and produced at the request of the commissioner.
- 16 (4) Is reasonable in comparison to that person's premiums or insurance
- 17 coverage for the policy class.
- 18 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
- 19 belief the product or service meets the criteria in subdivision a, the provision by
- 20 the insurer or producer of a product or service in a manner that is not unfairly
- 21 discriminatory as part of a pilot or testing program no longer than one year. An
- 22 insurer or producer shall notify the department of the pilot or testing program
- 23 offered to consumers in this state before launching and may proceed with the
- 24 program unless the department objects within twenty-one days of notice.
- 25 4. An insurer, producer, or representative of an insurer or producer may not offer or
- 26 provide insurance as an inducement to the purchase of another policy or otherwise
- 27 use of the words "free" or "no cost" or words of similar import in an advertisement.
- 28 5. The commissioner may adopt regulations when implementing the permitted practices
- 29 set forth in this regulation to ensure consumer protection. Consistent with applicable
- 30 law, the topics addressed by the regulations may include consumer data protections
- 31 and privacy, consumer disclosure, and unfair discrimination.

1 6. Subsections 1 and 2 do not apply to a large commercial risk as defined in section
2 26.1-25-02.1.

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

5 **26.1-26-04.1. Fees for services - Rules.**

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

Legislative Assembly

- 1 e. The insurance producer may not pay or return, or offer to pay or return, all or part
- 2 of a fee charged as an inducement to purchase a specific policy, or coverage
- 3 within a policy, or coverage from a particular insurer.
- 4 f. Any fee charged under this section must bear a reasonable relationship to the
- 5 services provided and may not be discriminatory.
- 6 2. An insurance producer charging a fee for services rendered for risk management
- 7 services under this section owes the person to be charged a higher standard of care
- 8 than the ordinary standard of care otherwise owed by an insurance producer to fully
- 9 advise the party to be charged as to the party's insurance needs, including the duty to
- 10 inform the person to be charged as to a potential source of risk and to recommend, if
- 11 available, insurance coverage for that risk.
- 12 3. An insurance producer may charge an individual, for personal or commercial lines, a
- 13 fee for paying agency-billed premiums and fees by credit card or other electronic
- 14 means, if the fee is disclosed to the client in writing and agreed to by the client in
- 15 writing.
- 16 4. Subdivisions b through e of subsection 1 do not apply to a large commercial risk as
- 17 defined in section 26.1-25-02.1.
- 18 5. The commissioner may adopt rules determined necessary by the commissioner for the
- 19 administration of this section.

20 **SECTION 75.** A new section to chapter 26.1-30 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Mandatory arbitration endorsements for property insurance - Written acceptance -**
23 **Penalty.**

- 24 1. A property insurance policy may be issued or delivered in this state with mandatory
- 25 binding arbitration provisions if the:
- 26 a. Mandatory binding arbitration provisions are contained in a separate
- 27 endorsement;
- 28 b. Named insured accepts the mandatory binding arbitration endorsement in writing
- 29 in accordance with subsection 2; and
- 30 c. Property insurance policy does not require mandatory binding arbitration upon
- 31 request.
- 32 2. The written acceptance of the insured required under subsection 1 must:

Legislative Assembly

- 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 86.** A new section to chapter 26.1-30 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Managed repair programs - Penalty.**

- 4 1. A property insurance policy may be issued or delivered in this state with a managed
5 repair program provision and offer premium incentives for managed repair program
6 participation. As used in this section, "managed repair program" means any program
7 in which an insurer restricts an insured's choice of repair vendors or contractors for
8 covered repairs.
- 9 2. An insurer offering a managed repair program shall:
 - 10 a. Prominently disclose on the policy declarations page the policy restricts the
11 insured's right to choose repair vendors;
 - 12 b. Specify any premium benefits for program participation;
 - 13 c. Include a separate disclosure form, written in at least twelve-point font, which
14 explains the restrictions on vendor selection, including:
 - 15 (1) The process for repairs under the program;
 - 16 (2) The insured's rights and responsibilities; and
 - 17 (3) Any warranty or guarantee provided for repairs.
- 18 3. An insured retains the option to select the insured's own contractor, subject to
19 standard policy terms, and request an alternate program contractor.
- 20 4. This section applies to all property and casualty insurance policies issued or renewed
21 after the effective date of this Act.
- 22 5. The commissioner shall enforce this section.
- 23 6. The commissioner may assess a penalty on an insurer in violation of this section, as
24 determined by the commissioner.

25 **SECTION 97.** A new section to chapter 26.1-39 of the North Dakota Century Code is
26 created and enacted as follows:

27 **Civil remedy actions against property insurers.**

28 Notwithstanding any provision under title 26.1, before a named insured may proceed with a
29 bad faith claim against a property insurer, the named insured shall establish through an adverse
30 adjudication by a court of law the property insurer breached the insurance contract and a final
31 judgment or decree must have been rendered against the insurer.

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;

Legislative Assembly

- 1 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
2 ~~admitted to do business in this state. The full amount or type of insurance may be~~
3 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
4 ~~among the insurers who are admitted to transact and are actually writing the particular~~
5 ~~type of insurance in this state if any are writing it;~~
- 6 4. At the time of placement the surplus lines producer has determined that the
7 nonadmitted insurer:
- 8 a. Has established satisfactory evidence of good repute and financial integrity and
9 has capital and surplus or its equivalent under the laws of its domiciliary
10 jurisdiction which equals the greater of:
- 11 (1) (a) The minimum capital and surplus requirements under the law of this
12 state; or
13 (b) Fifteen million dollars.
- 14 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
15 less than the minimum capital and surplus upon an affirmative finding of
16 acceptability by the commissioner. The finding must be based upon such
17 factors as quality of management, capital and surplus of any parent
18 company, company underwriting profit and investment income trends,
19 market availability, and company record and reputation within the industry.
20 The commissioner may not make an affirmative finding of acceptability
21 when the nonadmitted insurer's capital and surplus is less than four million
22 five hundred thousand dollars; or
- 23 b. For an insurer not domiciled in the United States or its territories, the insurer is
24 listed on the quarterly listing of alien insurers maintained by the national
25 association of insurance commissioners international insurers department; and

26 ~~5.4.~~ All other requirements of this chapter are met.

27 **SECTION 1210.** A new section to chapter 26.1-44 of the North Dakota Century Code is
28 created and enacted as follows:

29 **Surplus lines insurance policies.**

30 A surplus lines insurer may not issue a policy designed to satisfy any law mandating
31 insurance coverage by a licensed insurance company.

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

3 **26.1-46-01. Definitions.**

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

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

Legislative Assembly

a- (1) Any business whether profit or nonprofit, trade, product, services including professional services, premises, or operations.

b- (2) Any activity of any state or local government, or any agency or political subdivision thereof.

b. The term does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employer's Liability Act [45 U.S.C. 51 et seq.].

7. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 56.

8. "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum, all of the following:

a. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

b. Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available.

c. Pro forma financial statements and projections.

d. Appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

e. Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies.

f. Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

g. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are

Legislative Assembly

- 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

business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

- d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.
- e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.
- f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.
- g. Whose activities do not include the provision of insurance other than:
 - (1) Liability insurance for assuming and spreading all or any portion of the liability of its group members, except a nonmaterial amount of commercial property coverage incidental to the liability exposure of its group members also may be insured.
 - (2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.
- h. The name of which includes the phrase "risk retention group".

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

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

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

7 **SECTION 1513. AMENDMENT.** Section 26.1-46-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-46-08. Restrictions on insurance purchased by purchasing groups.**

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

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