INSURANCE

CHAPTER 330

HOUSE BILL NO. 1175
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE FRAUD REPORT IMMUNITY

AN ACT to provide persons making reports of fraudulent insurance acts immunity from all liability.

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

SECTION 1. Definition. For the purpose of this Act, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

SECTION 2. Immunity from liability. In the absence of fraud or bad faith, no person is subject to civil liability of any kind, including for libel and slander, by virtue of filing reports, without malice, or furnishing other information, without malice, required by the insurance laws of this state or required by the commissioner, and no civil cause of action of any nature may arise against such person for any of the following:

1. Any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents and employees.

2. Any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this chapter.

3. Any such information furnished in reports to the insurance fraud bureau, national association of insurance commissioners or any organization established to detect

and prevent fraudulent insurance acts, their agents, employees or designees, nor is the commissioner or any employee of the insurance frauds bureau, in the absence of fraud or bad faith, subject to civil liability and no civil cause of actions of any nature may arise against such person by virtue of the publication of any report or bulletin related to the official activities of the insurance frauds bureau. Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 331

HOUSE BILL NO. 1243
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

GROUP INSURANCE REQUIREMENTS

AN ACT to require certain insurance companies to submit information to the commissioner of insurance relating to group life and health insurance trust filing and solicitation requirements; and to amend and reenact section 26.1-36-23 of the North Dakota Century Code, relating to the continuation of group hospital insurance benefits.

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

SECTION 1. Group life and health insurance trust filing - Exemption requirements. Any insurance company claiming an exemption under subsection 6 of section 26.1-02-05 from a requirement that the company have a certificate of authority to do business in this state or comply with the insurance laws of this state must provide the following information to the commissioner of insurance for the commissioner's approval of the exemption:

1. A copy of the trust agreement for the group.

2. A full copy of the master contract.

3. A copy of the certificate of insurance to be issued or sold in this state.

4. A copy of the application for the certificate of insurance.

5. A copy of a disclosure statement used in the solicitation of the insurance indicating that the protection of North Dakota's insurance laws will not be provided to the holders of certificates of insurance issued by the group.

6. An assurance that only one type of insurance coverage may be included in each mailing or mass market solicitation.

7. Such other information as the commissioner of insurance deems necessary to assure that the group is organized for

purposes other than the procurement of insurance or otherwise meets the requirements of subsection 6 of section 26.1-02-05.

No company may issue or deliver a policy of insurance or issue or deliver for issue a certificate of insurance in this state without a certificate of authority unless it has first been granted approval in writing to do so by the commissioner of insurance under this section.

SECTION 2. AMENDMENT. Section 26.1-36-23 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-23. Continuation of group hospital, surgical, and major medical coverage after termination of employment or membership. A group policy or certificate of insurance or certificate on a master policy of a group as defined by subsection 6 of section 26.1-02-05 delivered or issued for delivery in this state issued by any insurance company, nonprofit health service corporation, health maintenance organization, or any other insurer that provides hospital, surgical, or major medical expense insurance or any accommodation of these coverages on an expense incurred basis, but not a policy that provides benefits for specific diseases or for accidental injuries only, must provide that employees or members whose insurance under the group policy would otherwise terminate because of termination of employment or membership are entitled to continue their hospital, surgical, and major medical insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and to the following conditions:

1. Continuation is only available to an employee or member who has been continuously insured under the group policy (and for similar benefits under any group policy which it replaced) during the entire three-month period ending with the termination.

2. Continuation is not available for any person who is covered by medicare. Neither is continuation available for any person who is covered by any other insured or uninsured arrangement which provides hospital, surgical, or medical coverages for individuals in a group and under which the person was not covered immediately prior to the termination.

3. Continuation need not include dental, vision care, or prescription drug benefits or any other benefits provided under the group policy in addition to its hospital, surgical, or major medical benefits.

4. An employee or member who wishes continuation of coverage must request the continuation in writing within the ten-day period following the later of the date of

termination, or the day the employee is given notice of the right of continuation by either the employer or the group policyholder. The employee or member may not elect continuation more than thirty-one days after the date of termination.

5. An employee or member electing continuation shall pay to the group policyholder or the employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, but not more than the group rate for the insurance being continued under the group policy on the due date of each payment. The employee's or member's written election of continuation, together with the first contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer within thirty-one days of the date the employee's or member's insurance would otherwise terminate.

6. Continuation of insurance under the group policy for any person terminates when the person fails to satisfy subsection 2 or, if earlier, at the first to occur of the following:

   a. The date thirty-nine weeks after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.

   b. If the employee or member fails to make timely payment of a required contribution, the end of the period for which contributions were made.

   c. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this subdivision applies and the coverage ceasing by reason of such termination is replaced by similar coverage under another group policy, the following apply:

      (1) The employee or member may become covered under that other group policy for the balance of the period that the employee or member would have remained covered under the prior group policy in accordance with this subsection had a termination described in this subdivision not occurred.

      (2) The minimum level of benefits to be provided by the other group policy is the applicable level of benefits of the prior group policy reduced by any benefits payable under that prior group policy.

(3) The prior group policy must continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the replacement had not occurred.

7. A notification of the continuation privilege must be included in each certificate of coverage.

8. Upon termination of the continuation period, the member, surviving spouse, or dependent is entitled to exercise any option which is provided in the group plan to elect a conversion policy. The member electing a conversion policy shall notify the carrier of the election and pay the required premium within thirty-one days of the termination of the continued coverage under the group contract.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 332

SENATE BILL NO. 2271
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

ANNUAL INSURANCE COMPANY STATEMENTS

AN ACT to require insurance companies to file their annual statements with the national association of insurance commissioners to monitor solvency.

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

SECTION 1. Domestic insurance company annual statements - Filed with national association of insurance commissioners.

1. Every domestic, foreign, and alien insurance company in this state must transmit to the national association of insurance commissioners, not later than March first of each year, a copy of its annual statement, along with any additional filings as described by the commissioner for the preceding year. The information filed with the national association of insurance commissioners must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing subsequently filed with the commissioner must also be filed with the national association of insurance commissioners. The commissioner of insurance may exempt any domestic company or category or class of domestic companies from the filing requirement.

2. Foreign insurance companies domiciled in a state which has a law substantially similar to subsection 1 are deemed to be in compliance with this section.

SECTION 2. Immunity of national association of insurance commissioners employees. In the absence of actual malice, members of the national association of insurance commissioners and their employees and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement act as agents of the commissioner under the authority of this Act and are not subject to civil

liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required by this Act.

SECTION 3. Confidentiality. All financial analysis ratios and examination synopsis concerning insurance companies that are submitted to the department by the national association of insurance commissioners' insurance regulatory information system are confidential, may not be disclosed by the department, and are exempt from section 44-04-18.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 333

SENATE BILL NO. 2164
(Committee on Finance and Taxation)
(At the request of the Commissioner of Insurance)

INSURANCE PREMIUM TAX PAYMENT

AN ACT to amend and reenact section 26.1-03-17 of the North Dakota Century Code, relating to the payment and amount of insurance company premium taxes, the penalty for failure to make timely payment of those taxes, and credit against future liability for overpayment of those taxes.

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

* SECTION 1. AMENDMENT. Section 26.1-03-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one-half of one percent with respect to accident and health insurance, and one percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and shall be deposited in the general fund in the state treasury.

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid

* NOTE: Section 26.1-03-17 was also amended by section 1 of House Bill No. 1192, chapter 334.

legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under subsection 1 of section 26.1-38-08, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, and 26.1-03-19 through 26.1-03-22 and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection shall be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

3. ~~After March 1, 1984, any~~ Any person failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of five percent of the amount of tax due or one hundred dollars, whichever is greater, plus ~~six percent of such tax for each day of delay, excepting the first day after the tax became due~~ interest of one percent per month on the unpaid tax for each month or fraction of a month of delay, excepting the first day after the tax became due, or twenty-five dollars per day, whichever is greater. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.

4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment shall be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of either the total tax paid during the previous calendar year, or eighty percent of the actual tax for the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.

5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, the amount of overpayment must be credited against any tax due, or to become due, under this section from the taxpayer who made the erroneous payment. The taxpayer who made the erroneous payment must present a claim for credit to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 334

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Office of Management and Budget)

INSURANCE PREMIUMS TAX RATES

AN ACT to amend and reenact subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the rate of the premium tax on accident and health insurance and property and casualty insurance.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, ~~one-half of~~ one and one-fourth percent with respect to accident and health insurance, and one and one-fourth percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and shall be deposited in the general fund in the state treasury.

Approved April 14, 1987
Filed April 15, 1987

* NOTE: Section 26.1-03-17 was also amended by section 1 of Senate Bill No. 2164, chapter 333.

CHAPTER 335

SENATE BILL NO. 2402
(Mutch)

INSURANCE COMPANY EXAMINATION CONFIDENTIALITY

AN ACT to amend and reenact section 26.1-03-21 of the North Dakota Century Code, relating to the confidentiality of preliminary data generated by the commissioner of insurance in conducting examinations of insurance companies.

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

SECTION 1. AMENDMENT. Section 26.1-03-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-21. Powers of commissioner or person making an examination. For the purposes of making any examination required or authorized by law, the commissioner, or the person making the examination, has free access to all books, papers, and securities of an insurance company relating to its business and to the books and papers kept by any of its agents, and may summon as witnesses and examine under oath the directors, officers, agents, and trustees of any such company and any other person in relation to the company's affairs, transactions, and condition. All preliminary data, drafts, notes, impressions, memoranda, working papers, and work product generated by the commissioner or the person making an examination or inspection pursuant to this chapter are confidential and not open for public inspection until the commissioner releases a final report concerning the examination or inspection or upon a declaration by the commissioner that the material is nonconfidential. If a declaration of nonconfidentiality is requested by any person and denied, the commissioner, in the denial, shall state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when it will be made public.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 336

SENATE BILL NO. 2287
(Yockim)

INSURANCE DISCRIMINATION PRACTICES

AN ACT to create and enact a new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to unfair discrimination practices by insurance companies; and to amend and reenact section 26.1-04-05.1 of the North Dakota Century Code, relating to discrimination by insurance companies relating to the visual acuity of policy applicants.

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

SECTION 1. A new subdivision to subsection 7 of section 26.1-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses his or her eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

SECTION 2. AMENDMENT. Section 26.1-04-05.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-04-05.1. Visual acuity prohibited as factor in life or accident and sickness contracts. No insurance company, benevolent society, nonprofit health service corporation, or health maintenance organization may issue any policy, certificate, or contract on life, accident and sickness, health services, or health care protection for which visual acuity is used as a criteria for accepting or rejecting risks or for setting of rates charged for that coverage ~~except where the refusal, limitation, or rate differential is based on sound actuarial principles~~.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 337

SENATE BILL NO. 2097
(Maixner)

UNEARNED INSURANCE PREMIUM REFUNDS

AN ACT to create and enact a new subsection to section 26.1-04-03, a new subsection to section 26.1-33-05, and a new subdivision to subsection 1 of section 26.1-36-04 of the North Dakota Century Code, relating to unfair insurance practices and required insurance premium refunds.

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

SECTION 1. A new subsection to section 26.1-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to refund unearned premiums. Failing to refund within thirty days of the cancellation of an insured's policy the unearned premium paid for that insurance policy. However, for commercial lines of insurance policies which are audited by the insurer to determine premium, the refund of premium must be made within thirty days from the date the insurer receives from the insured that information which is reasonably necessary for the insurer to audit the insured's business to determine the premium due to the insurer.

SECTION 2. A new subsection to section 26.1-33-05 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the proportion of the premium, fee, or other sum as corresponds with the unexpired time upon the amount of policy remaining. This provision does not apply to term life insurance or to any policy where the insurer has a valid defense to the payment of benefits under the policy.

SECTION 3. A new subdivision to subsection 1 of section 26.1-36-04 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death that proportion of the premium, fees, or other sum as corresponds with the unexpired time upon the amount of the policy remaining after deducting any claim for losses during the current term of the policy. This provision does not apply where the insurer has a valid defense to the payment of benefits under the policy.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 338

SENATE BILL NO. 2273
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANY STOCK AND SURPLUS

AN ACT to amend and reenact sections 26.1-05-04, 26.1-05-32, subsection 4 of section 26.1-12-08, and section 26.1-12-10 of the North Dakota Century Code, relating to the required amount of paid in capital stock and surplus of domestic stock and mutual insurance companies.

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

SECTION 1. AMENDMENT. Section 26.1-05-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-04. Capital stock and surplus requirements ~~upon organization~~ of domestic stock company - Exceptions. A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company must maintain authorized capital stock and surplus which satisfies the capital stock and surplus requirements in effect at that time. Except as otherwise provided in this section, the total value of paid in capital stock and surplus of a stock insurance company organized under the laws of this state may not at any time be depleted to an amount totaling less than one million dollars.

SECTION 2. AMENDMENT. Section 26.1-05-32 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-32. Impairment of capital or surplus of domestic life company - Determination of deficiency - Notice not to issue policies. If a domestic stock life insurance company's minimum basic paid-in capital or surplus required by section 26.1-05-04 or the minimum basic surplus of a domestic mutual insurance company required by section 26.1-12-10 becomes impaired, the commissioner shall prohibit the company and its agents from issuing new policies until the deficiency is cured. The commissioner shall determine the amount of the deficiency, notify the company of the deficiency and require the company to cure the deficiency, and require the company to file proof thereof with the commissioner within a period specified in the notice. The period may not be less than thirty days nor more than ninety days from the date of issuance of the notice.

SECTION 3. AMENDMENT. Subsection 4 of section 26.1-12-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. It must maintain a surplus of at least ~~five hundred thousand~~ one million dollars, except if the minimum assets and surplus requirements for the company are more than the minimum requirements provided by this subsection at the time the company was originally issued a license to do business, the company may maintain assets and surplus which satisfy the requirements in effect at that time.

SECTION 4. AMENDMENT. Section 26.1-12-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-10. Mutual life company - Amount of subscribed insurance required - Surplus required. A mutual life insurance company may not issue a policy until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner may not issue a certificate of authority for the transaction of business to the company unless it has a surplus of assets over all liabilities of at least ~~five hundred thousand~~ one million dollars. A domestic mutual life insurance company must maintain surplus of at least this amount. If the minimum asset and surplus requirements required by this section are more than the minimum requirements required at the time a company was issued its original certificate of authority, the company must maintain assets and surplus which satisfy the assets and surplus requirements in effect at that time.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 339

SENATE BILL NO. 2437
(Lips)

CLEARING CORPORATIONS

AN ACT to create and enact a new section to chapter 26.1-05 of the North Dakota Century Code, relating to the authority of domestic insurance companies to participate in clearing corporations and book entry systems.

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

SECTION 1. A new section to chapter 26.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Participation in clearing corporations and book entry systems - Rulemaking authority. A domestic insurance company may participate, subject to a written agreement with a custodian and subject to rules adopted by the commissioner regarding such participation, in clearing corporations and the federal reserve book entry system.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 340

HOUSE BILL NO. 1488
(Rydell, Gates)

CHAND PARTICIPATION

AN ACT to amend and reenact subsections 6 and 9 of section 26.1-08-01 of the North Dakota Century Code, relating to the insurance companies that must participate in the comprehensive health association.

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

SECTION 1. AMENDMENT. Subsections 6 and 9 of section 26.1-08-01 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Insurance company" means a company or organization operating pursuant to chapter 26.1-17, 26.1-18, or 26.1-36, and offering or selling accident and health insurance policies or health care or health service contracts. ~~Insurance company does not include a health maintenance organization.~~

9. "Policy" means insurance, health care plan, or nonprofit health service plan contracts providing benefits for hospital, surgical, and medical care. Policy does not include coverage which is (a) limited to disability or income protection coverage, (b) automobile medical payment coverage, (c) supplemental to liability insurance, (d) designed solely to provide payment on a per diem basis, daily indemnity, or non-expense-incurred basis, or (e) credit accident and health insurance.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 341

HOUSE BILL NO. 1379
(Representatives Ulmer, A. Olson)
(Senator Wogsland)

COMPREHENSIVE HEALTH ASSOCIATION ENROLLMENT

AN ACT to amend and reenact subsection 4 of section 26.1-08-12 of the North Dakota Century Code, relating to enrollment in the plan offered by the comprehensive health association.

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

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-08-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first six months of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application~~, except that coverage of a preexisting condition during the first six months must be provided upon the insured's payment of an additional premium set by the association and approved by the commissioner~~. This subsection does not apply to a person who has had continuous coverage under an individual, a family, or group policy for the twelve-month period immediately preceding the filing of an application for nonelective procedures or to a person who is treated by nonelective procedures for a congenital or genetic disease.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 342

HOUSE BILL NO. 1506
(Representatives Wald, Koland, Whalen)
(Senators Tallackson, Lips)

RESIDENT INSURANCE MARKETING

AN ACT to create and enact two new sections to chapter 26.1-39 of the North Dakota Century Code, relating to requiring certain commercial insurance programs to be marketed through resident licensed agents or brokers and to suspension or revocation of license or certificate of authority for noncompliance; and to amend and reenact section 26.1-11-07 of the North Dakota Century Code, relating to signature requirements of resident insurance agents.

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

SECTION 1. AMENDMENT. Section 26.1-11-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, except as provided in section 2 of this Act, there may not be any requirement that an agent resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an agent resident in that state on an insurance policy written by a nonresident agent or nonresident broker of that state, then any insurance policy written by an agent resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an agent resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an agent resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the agent in that state at the request of a nonresident agent or nonresident broker of that state, then the agent resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident agent in this state

covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

SECTION 2. A new section to chapter 26.1-39 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Certain property and casualty insurance programs to be marketed through resident agents or brokers - Service fee. All commercial multiple peril or commercial casualty insurance sponsored, endorsed, or promoted by a group, association, or franchise which is issued by an insurer authorized to transact business in this state and which insures any person or property in this state must be marketed through a resident licensed insurance agent of the insurer or a resident licensed insurance broker, as selected by the policyholder. The agent or broker is entitled to receive a service fee of five percent of the annual premium for such insurance marketed through the agent or broker, but is not responsible for collecting the premiums or any charges or fees for the insurance. This section does not apply to bonds, medical malpractice insurance, directors and officers insurance, errors and omissions insurance, insurance on mining operations, insurance of property of religious organizations, insurance on property of institutions, and insurance on rural electric and electrical generating cooperatives, utilities, pipelines, and oil and gas operations.

SECTION 3. A new section to chapter 26.1-39 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Suspension or revocation of certificate or license for noncompliance or for acceptance of a reduced service fee. The commissioner shall suspend or revoke the certificate of authority of any insurer who intentionally fails to comply with this Act. The commissioner may suspend or revoke the license of any resident agent or broker who agrees to accept or who accepts a service fee in an amount less than the service fee provided for in section 2 of this Act, and may suspend or revoke the license of any nonresident agent who seeks to induce or who induces any resident agent into accepting a service fee in an amount less than the service fee provided for in section 2 of this Act.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 343

HOUSE BILL NO. 1205
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

DEMUTUALIZATION OF INSURANCE COMPANIES

AN ACT to authorize the commissioner of insurance to adopt rules for the demutualization of domestic mutual insurance companies.

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

SECTION 1. Demutualization of domestic mutual insurance companies - Rules. The commissioner of insurance may adopt rules necessary to provide for the orderly and equitable demutualization of domestic insurance companies. Rules adopted must provide for the requirements to be included in a plan of conversion; guarantee that policyholders receive an equitable share of the surplus or stock, or both, of the company being demutualized; address the compensation paid to any person providing services relating to the proposed demutualization; and establish a procedure for the commissioner's approval of a plan for conversion prior to the adoption of such a plan by the company's policyholders.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 344

HOUSE BILL NO. 1270
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsh)

FORMATION OF COUNTY MUTUAL INSURANCE COMPANIES

AN ACT to amend and reenact section 26.1-13-01 of the North Dakota Century Code, relating to the residence of persons forming a county mutual insurance company.

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

SECTION 1. AMENDMENT. Section 26.1-13-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-01. County mutual insurance company - Organization. A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than ~~ten~~ fifteen counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 345

HOUSE BILL NO. 1269
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsh)

COUNTY MUTUAL INSURANCE COMPANY POLICIES

AN ACT to amend and reenact sections 26.1-13-15 and 26.1-25-02 of the North Dakota Century Code, relating to insurance policies issued by a county mutual insurance company.

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

SECTION 1. AMENDMENT. Section 26.1-13-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable. A county mutual insurance company may not insure any property beyond the limits of the territory comprised in the formation of the company except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state~~, except that a~~ unless:

1. The policy ~~may be~~ issued ~~providing~~ provides coverage on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof as specified in sections 26.1-13-14 and 26.1-13-16 to existing members within the platted limits of any incorporated city in this state; or

2. The policy issued provides coverage specified in sections 26.1-13-14 and 26.1-13-16 on property located within the platted limits of any incorporated city with a population of less than two thousand five hundred located within the territory comprised in the formation of the company.

The company may insure all property located outside of incorporated cities ~~in this state~~ within the limits of the territory comprised in the formation of the company.

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

SECTION 2. AMENDMENT. Section 26.1-25-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-02. Scope of chapter. This chapter applies to fire, marine, inland marine, hail, windstorm, cyclone, tornado, explosion, water damage, and all other forms of insurance on property, and the loss of use and occupancy thereof, and to casualty insurance, including fidelity, surety, and guaranty bonds, and all other forms of motor vehicle insurance, as defined and set forth in subsections 1, 2, 4, 5, 6, and 7 of section 26.1-12-11 and in subsections 1, 2, 5, 6, and 7 of section 26.1-05-02, except as hereinafter excluded. Inland marine insurance is deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance. This chapter does not apply to:

1. Reinsurance other than joint reinsurance to the extent stated in section 26.1-25-11.

2. Accident and health insurance.

3. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

4. Insurance against loss or damage to aircraft or against liability, other than workmen's compensation and employers' liability, arising out of ownership, maintenance, or use of aircraft.

This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to subsection 2 of section 26.1-13-15, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.

If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner a designation as to which rate regulatory act is applicable to it with respect to the kind of insurance, subdivision, or combination thereof, or type of coverage.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 346

HOUSE BILL NO. 1253
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsh)

COUNTY MUTUAL INSURANCE EXPENSE AND LOSS FUND

AN ACT to amend and reenact section 26.1-13-25 of the North Dakota Century Code, relating to the permanent expense and loss fund of a county mutual insurance company.

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

SECTION 1. AMENDMENT. Section 26.1-13-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-25. Permanent expense and loss fund - Assessment or premiums - Delinquent loss assessments credited. The board of directors of a county mutual insurance company may levy and collect an assessment or may charge premiums on its policies for the purpose of providing funds for the payment of the current expenses of the company or for the purpose of establishing a permanent loss fund. The fund may not exceed ~~two~~ four percent of the amount of insurance in force in the company, except that where a company writes a combined policy of fire and windstorm insurance, it may maintain a permanent loss fund not to exceed ~~four~~ eight percent of the amount of insurance in force in the company. Assessments levied for the purposes specified in this section must be collected as assessments made for the payment of current losses are collected. If a delinquent loss assessment is collected after other assessments to cover the loss have been collected, the amount collected on the delinquent loss assessment must be added to the permanent loss fund.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 347

SENATE BILL NO. 2376
(Senators Lips, Heigaard)
(Representatives Strinden, Mertens)

FRATERNAL BENEFIT SOCIETIES

AN ACT to create and enact chapter 26.1-15.1 of the North Dakota Century Code, relating to fraternal benefit societies; to amend and reenact section 26.1-16-02 of the North Dakota Century Code, relating to application to fraternal benefit societies; to repeal chapter 26.1-15 of the North Dakota Century Code, relating to fraternal benefit societies; to provide a penalty; and to provide an effective date.

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

SECTION 1. Chapter 26.1-15.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-15.1-01. Definitions. Whenever used in this chapter:

1. "Benefit contract" means the agreement for provision of benefits authorized by section 26.1-15.1-16, as that agreement is described in section 26.1-15.1-19.

2. "Benefit member" means an adult member designated by the laws or rules of the society as a benefit member under a benefit contract.

3. "Certificate" means the document issued as written evidence of the benefit contract.

4. "Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

5. "Laws" means the society's articles of incorporation, constitution and bylaws, however designated, of the society.

6. "Lodge" means subordinate member units of the society, whether known as camps, courts, councils, branches, or by any other designation.

7. "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

8. "Society" means fraternal benefit society, unless otherwise indicated.

26.1-15.1-02. Fraternal benefit societies. Any incorporated society, order, or supreme lodge without capital stock, including one exempted under subdivision b of subsection 1 of section 26.1-15.1-38 whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is a fraternal benefit society.

26.1-15.1-03. Lodge system defined.

1. A society operates on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted under its laws, rules, and ritual. Subordinate lodges shall hold regular or stated meetings at least one each month in furtherance of the purposes of the society.

2. A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of such children, nor may they have a voice or vote in the management of the society.

26.1-15.1-04. Representative form of government defined. A society has a representative form of government when:

1. It has a supreme governing body constituted in one of the following ways:

   a. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members of their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates must constitute a majority in number and have not less than two-thirds of the votes and not less than the number of votes required to amend the laws of the society. The assembly must be elected and meet at least once every four years and must elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the constitution and laws of the society.

b. The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the constitution or laws of the society. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the constitution or laws of the society. A person filling the unexpired term of an elected board member is considered to be an elected member. Those persons elected to the board must constitute a majority in number and not less than the number of votes required to amend the laws of the society. The board shall meet at least quarterly to conduct the business of the society.

2. The officers of the society may be elected by either the supreme governing body or the board of directors.

3. Only benefit members are eligible for election to the supreme governing body and the board of directors.

4. Each voting member has one vote.

5. No vote may be cast by proxy.

26.1-15.1-05. Purposes and owners.

1. A society shall operate for the benefit of members and their beneficiaries by:

a. Providing benefits as specified in section 26.1-15.1-16.

b. Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members, which may also be extended to others. Such purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

2. Every society has the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It has the power to change, alter, add to or amend such laws and rules and such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

26.1-15.1-06. Qualifications for membership.

1. A society shall specify in its laws or rules:

a. Eligibility standards for each class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one.

b. The process for admission to membership for each membership class.

c. The rights and privileges of each membership class, provided that only benefit members may vote on the management of the insurance affairs of the society.

2. A society may also admit social members who have no voice or vote in the management of the insurance affairs of the society.

3. Membership rights in the society are personal to the member and are not assignable.

26.1-15.1-07. Location of office - Meetings - Communications to members - Grievance procedures.

1. The principal office of any domestic society must be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory in which the society has at least one subordinate lodge, or in any other location as determined by the supreme governing body, and all business transacted at the meetings is valid in all respects. The minutes of the proceedings of the supreme governing body and of the board of directors must be in the English language.

2. a. A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

b. Not later than June first of each year, a synopsis of the annual statement of the society providing an explanation of the facts concerning the condition of the society must be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the official publication of the society.

3. A society may provide in its laws or rules for grievance or complaint procedures for members.

26.1-15.1-08. Officers and members not personally liable for benefit contracts.

1. The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by the society.

2. Any society may indemnify and reimburse any person for expenses reasonably incurred by, and liabilities imposed upon, that person in connection with or arising out of any action or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which that person served in any capacity at the request of the society. A person may not be so indemnified or reimbursed in relation to any matter as to which the person is adjudged to be or has been guilty of breach of a duty as a director, officer, employee, or agent of the society unless the person acted in good faith for a purpose the person reasonably believed to be in the best interests of the society and, in a criminal action or proceeding, had no reasonable cause to believe that the conduct was unlawful. The determination whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the matter or by a court of competent jurisdiction. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, does not in itself create a presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law and inures to the benefit of that person's heirs, executors, and administrators.

3. A society may purchase and maintain insurance on behalf of any director, officer, employee, or agent of the society who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against or incurred by that person in any such capacity or arising out of that person's status as such, regardless of whether the society has the power to indemnify the person against such liability under this section.

26.1-15.1-09. Waiver. The laws of the society may provide that no subordinate body nor any of its subordinate officers or members has the power or authority to waive any of the provisions of the laws of the society. The provision is binding on the society and every member and beneficiary of a member.

26.1-15.1-10. Organization. A domestic society organized after December 31, 1987, must be formed as follows:

1. Seven or more citizens of the United States of America, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, which must contain:

   a. The proposed corporate name of the society, which must not so closely resemble the name of any society or insurance company as to be misleading or confusing.

   b. The purposes for which it is being formed and the mode in which its corporate powers are to be exercised, within the powers granted by this chapter.

   c. The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to exercise the general management of the affairs and funds of the society for the first year or until election of officers by the supreme governing body to be held not later than one year from the date of issuance of the permanent certificate of authority.

2. The articles of incorporation, duly certified copies of the bylaws and rules, copies of all proposed forms of certificates, applications therefor, circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year must be filed with the commissioner, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner must be in an amount of not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the commissioner. All documents filed must be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

3. No preliminary certificate of authority granted under this section is valid after one year from its issuance, except as may be authorized by the commissioner upon cause shown for not more than one additional year, unless the five hundred applicants required under subsection 4 have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings under this chapter become void one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business as hereinafter provided.

4. Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society may incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, offer, or promise to pay any benefit to any person until:

   a. Actual bona fide applications for benefits have been secured from not fewer than five hundred applicants and any necessary evidence of insurability has been furnished to and approved by the society.

   b. At least ten subordinate lodges have been established into which the five hundred applicants have been admitted.

   c. There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, containing their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, and amount of benefits to be granted and premiums thereof.

   d. It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium, which premiums in the aggregate must amount to at least one hundred fifty thousand dollars. The advance premiums must be held in trust during the period of organization and if the society does not qualify for a certificate of authority, the premiums must be returned to the applicants.

5. The commissioner may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue to the society a certificate of authority allowing the society to transact business under this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. A certified copy of the certificate may be given in evidence with like effect as the original certificate of authority.

26.1-15.1-11. Amendments to laws.

1. A domestic society may amend its laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. A referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum may be adopted unless, within six months from the date of submission thereof, a majority of the members voting shall have signified their consent to the amendment by one of the methods herein specified.

2. No amendment to the laws of any domestic society may take effect until approved by the commissioner who shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves an amendment within sixty days after filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for disapproval must be stated in the written notice of denial.

3. Within ninety days after approval by the commissioner of an amendment or a synopsis of it, the society shall furnish a copy of the amendment to all members of the society either by mail or by publication in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopses, stating facts that show the same have been duly addressed and mailed, is prima facie evidence that the amendments or synopses have been furnished to the addressees.

4. Every foreign society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments to its laws within ninety days after enactment.

5. Printed copies of the laws, certified by the secretary or corresponding officer of the society, are prima facie evidence of the legal adoption thereof.

26.1-15.1-12. Institutions.

1. A society may create, maintain, and operate, or may establish organizations to operate, not for profit institutions to further the purposes permitted by section 26.1-15.1-05. The institutions may furnish services free or at a reasonable charge. Any property owned, held, or leased by the society for these purposes must be reported in every annual statement.

2. No society may own or operate funeral homes or undertaking establishments.

26.1-15.1-13. Reinsurance.

1. A domestic society may by reinsurance agreement cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner, but no society may reinsure substantially all of its insurance in force without first obtaining the written permission of the commissioner. A society may take credit for the reserves on such ceded risks to the extent reinsured, but no credit may be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after December 31, 1987, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

2. Notwithstanding the limitation in subsection 1, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 26.1-15.1-14.

26.1-15.1-14. Consolidations and mergers.

1. A domestic society may consolidate or merge with any other society by complying with this section. It shall file with the commissioner:

a. A certified copy of the contract containing in full the terms and conditions of the consolidation or merger.

b. A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition of the society on a date fixed by the commissioner but not earlier than December thirty-first next preceding the date of the contract.

c. A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society conducted at a regular or special meeting of each or, if the laws of the society permit, by mail.

d. Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

2. If the commissioner finds that the contract conforms to this section, that the financial statements are correct, and that the consolidation of merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract is in effect unless any society that is a party to the contract is incorporated under the laws of any other state or territory. A consolidation or merger involving a society from another state or territory is not effective until it has been approved as provided by the laws of the other state or territory and a certificate of that approval has been filed with the commissioner.

3. Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property are vested in the resulting society without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real property vested under the laws of this state in any of the societies consolidated or merged does not revert nor is it in any way impaired by reason of the consolidation or merger, but vests absolutely in the society resulting from the consolidation or merger.

4. The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

26.1-15.1-15. Conversion of fraternal benefit society into mutual life insurance company. Any domestic society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion must be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the conversion plan. No conversion may take effect until approved by the commissioner who may approve the conversion if the commissioner finds that the proposed change conforms to the requirements of law and is not prejudicial to the certificate holders of the society.

26.1-15.1-16. Benefits.

1. A society may provide the following contractual benefits in any form:

   a. Death benefits.

   b. Endowment benefits.

   c. Annuity benefits.

   d. Temporary or permanent disability benefits.

   e. Hospital, medical, or nursing benefits.

   f. Monument or tombstone benefits to the memory of deceased members.

   g. Other benefits authorized for life insurers which are not inconsistent with this chapter.

2. A society shall specify in its rules those persons who may be covered by the contractual benefits in subsection 1, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult member.

26.1-15.1-17. Beneficiaries.

1. The owner of a benefit contract has the right to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary has or obtains any vested interest in the proceeds of any certificate until the certificate has

become due and payable in conformity with the provisions of the benefit contract.

2. A society may make provision for the payment of funeral benefits to the extent of incurred expense occasioned by the burial of the member, not to exceed the sum of one thousand dollars.

3. If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection 2, is payable to the personal representative of the deceased insured, except that the proceeds shall be payable to the owner of the certificate if the owner was not the insured.

26.1-15.1-18. Benefits not attachable. All money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society is exempt from liability for debts of the person to or on account of whom the items are paid, provided, or rendered, and are not subject to seizure upon execution or other process.

26.1-15.1-19. The benefit contract.

1. Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision is void.

2. Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate are binding upon the owner and the beneficiaries and govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment destroys or diminishes benefits that the society contracted to give the owner as of the date of issuance.

3. Any person upon whose life a benefit contract is issued prior to attaining the age of majority is bound by the

terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

4. A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board. If the payment is not made, either the proportionate amount shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or the owner may accept a proportionate reduction in benefits under the certificate, either alone or in combination with an indebtedness against the certificate. The society may specify the manner of the election and which alternative is to be presumed if the member makes no election.

5. Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, are prima facie evidence of their terms and conditions.

6. No certificate may be delivered or issued for delivery in this state unless a copy of the form has been filed with and approved by the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued after December 31, 1988, must meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificates must also contain a provision stating the amount of premiums which is payable under the certificate and a provision reciting or setting forth the substance of any sections of the laws or rules of the society in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate must also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

7. Benefit contracts issued on the lives of persons below the minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of the certificates and all rights, obligations, and liabilities incident thereto. Ownership rights prior to transfer of control or ownership must be specified in the certificate.

8. A society may specify the terms and conditions on which benefit contracts may be assigned.

26.1-15.1-20. Nonforfeiture benefits, cash surrender values, certificate loans and other options.

1. For certificates issued before January 1, 1989, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately before January 1, 1988.

2. For certificates issued after December 31, 1988, for which reserves are computed on the commissioners' 1958 standard ordinary mortality table or the commissioners' 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon those tables.

26.1-15.1-21. Investments. A society may invest its funds only in investments authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, meets the requirements of this section for the investment of funds.

26.1-15.1-22. Funds.

1. All assets must be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary has or acquires individual rights therein or becomes entitled to any apportionment on the surrender of any part thereof except as provided in the benefit contract.

2. A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

3. A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such contracts. To the extent the society determines it to be necessary in order to comply with any applicable federal or state laws or rules, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may provide special voting and other rights for persons having beneficial interests in those accounts, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which subsections 2 and 4 of section 26.1-15.1-19 do not apply.

26.1-15.1-23. Exemption from insurance laws. Societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, except as expressly designated therein or as specifically made applicable by this chapter.

26.1-15.1-24. Taxation. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds are exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment.

26.1-15.1-25. Valuation.

1. Standards of valuation for certificates issued before January 1, 1989, are those provided by the laws applicable immediately before January 1, 1988.

2. The minimum standards of valuation for certificates issued after December 31, 1988, are based on the following tables:

   a. For certificates of life insurance - the commissioners' 1958 standard ordinary mortality table, the commissioners' 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers.

   b. For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits - tables authorized for use by life insurers in this state.

All of the above must be under valuation methods and standards, including interest assumptions, in accordance with chapter 26.1-35.

3. The commissioner may accept other standards for valuation if the commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

4. Any society, with the consent of the insurance department of the state of domicile of the society and under conditions, if any, which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member may not be affected thereby.

26.1-15.1-26. Reports. Reports must be filed in accordance with this section.

1. Every society transacting business in this state shall annually on or before the first day of March file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay the fee prescribed by section 26.1-01-07. The statement must be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by the commissioner.

2. As part of the annual statement, each society shall on or before the first day of March file with the commissioner a valuation of its certificates in force on the preceding December thirty-first. The commissioner may for cause shown extend the time for filing the valuation, report for not more than two calendar months. The valuation must be done in accordance with the standards specified in section 26.1-15.1-25. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the insurance department of the state of domicile of the society.

3. A society neglecting to file the annual statement in the form and within the time provided by this section must forfeit one hundred dollars for each day during which the neglect continues and, upon notice by the commissioner to that effect, its authority to do business in this state ceases while the default continues.

26.1-15.1-27. Annual license. The authority of every society annually terminates on April thirtieth and may be renewed. A license continues in full force and effect until the new license is issued or specifically refused. For each license or renewal the society shall before April first pay the commissioner the fee established under section 26.1-01-07. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society.

26.1-15.1-28. Examination of societies.

1. The commissioner may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers are applicable to the examination of societies.

2. The expense of each examination and of each valuation, including compensation and actual expense of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

26.1-15.1-29. Foreign or alien society - Admission. No foreign society may transact business in this state without a license issued by the commissioner. Any foreign society desiring admission to this state shall comply with the requirements and limitations of this chapter applicable to domestic societies. Any foreign society may be licensed to transact business in this state upon filing with the commissioner:

1. A duly certified copy of its articles of incorporation;

2. A copy of its bylaws, certified by its secretary or corresponding officer;

3. A power of attorney to the commissioner as required under section 26.1-15.1-35;

4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

5. Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;

6. Copies of its certificate forms; and

7. Such other information as the commissioner may deem necessary.

The foreign society must also show that its assets are invested in accordance with this chapter.

26.1-15.1-30. Injunction - Liquidation - Receivership of domestic society.

1. The commissioner shall notify the society of the deficiency or deficiencies stating in writing the reasons for the commissioner's dissatisfaction and requiring that the deficiency or deficiencies be corrected, if the commissioner upon investigation finds that a domestic society has committed any of the following acts:

   a. Exceeded its powers.

   b. Failed to comply with any provision of this chapter.

   c. Not fulfilled any of its contracts in good faith.

   d. Has a membership of less than four hundred after an existence of one year or more.

   e. Conducted business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

   After notice the society has a thirty-day period in which to comply with the commissioner's request for correction. If the society fails to comply the commissioner shall notify the society of noncompliance and require the society to show cause on a date specified why it should not be enjoined from carrying on any business until the violations complained of have been corrected or why an action in quo warranto should not be commenced against the society.

2. If the society does not present good and sufficient reasons why it should not be so enjoined or why an action in quo warranto should not be commenced, the commissioner may present the facts to the attorney general who may commence an action to enjoin the society from transacting business or in quo warranto.

3. The attorney general shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined may do business until:

a. The commissioner finds that the violation complained of has been corrected;

b. The costs of the action have been paid by the society if the court finds that the society was in default as charged;

c. The court has dissolved its injunction; and

d. The commissioner has reinstated the certificate of authority.

4. If the court orders the society liquidated, it must be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

5. No action under this section may be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner or the commissioner's designee as receiver.

6. The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership are applicable to a society that voluntarily determines to discontinue business.

26.1-15.1-31. Suspension, revocation, or refusal of license of foreign society.

1. If the commissioner upon investigation finds that a foreign society transacting or applying to transact business in this state has committed any of the acts set forth in subdivision a, b, c, or e of subsection 1 of section 26.1-15.1-30, the commissioner shall notify the society of the deficiency or deficiencies stating in writing the reasons for the commissioner's dissatisfaction and requiring that the deficiency or deficiencies be corrected. After the notice the society has a thirty-day period in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of noncompliance and require the society to show cause on a date specified why its license should not be suspended, revoked, or refused. If the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may suspend or refuse the license of the society to do

business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn or the commissioner may revoke the authority of the society to do business in this state.

2. This section does not prevent any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state.

26.1-15.1-32. Injunction. No application or petition for injunction against any domestic, foreign, or alien society, or lodge thereof, may be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

26.1-15.1-33. Licensing of agents. Agents of societies must be licensed under chapter 26.1-26.

26.1-15.1-34. Unfair methods of competition and unfair and deceptive acts and practices. Every society authorized to do business in this state is subject to the provisions of chapter 26.1-04 relating to unfair trade practices, except that nothing in those provisions may be construed as applying to or affecting the right of any society to determine eligibility requirements for membership or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

26.1-15.1-35. Service of process.

1. Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it may be served and agrees that any lawful process against it which is served on the commissioner is of the same legal force and validity as if served upon the society. The authority continues in force so long as any liability of the society remains outstanding in this state. Copies of the appointment, certified by the commissioner, are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original.

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.

26.1-15.1-36. Penalties.

1. Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society is guilty of a class A misdemeanor.

2. Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate is guilty of a class C felony.

3. Any person who solicits membership for or in any manner assists in procuring membership in any society not licensed to do business in this state is guilty of an infraction.

26.1-15.1-37. Exemption of certain societies.

1. Except as otherwise provided, this chapter does not affect or apply to:

   a. Grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges.

   b. Orders, societies, or associations that admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and auxiliaries to such orders, societies, or associations.

   c. Domestic societies that limit their membership to employees of a particular city, designated firm, business house, or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both.

   d. Domestic societies or associations of a purely religious, charitable, or benevolent description which

provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

2. Any society or association described in subdivision c or d of subsection 1 which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subdivision d of subsection 1 which has more than one thousand members, is not exempt from this chapter but shall comply with all requirements thereof.

3. No society that, by this section, is exempt from the requirements of this chapter, except any society described in subdivision d of subsection 1, may give, allow, or promise to give or allow to any person any compensation for procuring new members.

4. Every society that provides for benefits in case of death or disability resulting solely from accident and which does not obligate itself to pay natural death or sick benefits has all of the privileges and is subject to all the applicable provisions of this chapter, except that the provisions relating to medical examination, valuations of benefit certificates, and incontestability, do not apply to such society.

5. The commissioner may require from any society or association, by examination or otherwise, information to enable the commissioner to determine whether such society or association is exempt from this chapter.

6. Societies exempted under this section are also exempt from all other provisions of the insurance laws of this state.

SECTION 2. AMENDMENT. Section 26.1-16-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-16-02. Chapter not applicable to fraternal benefit society. This chapter does not apply to a fraternal benefit society as defined in chapter ~~26-1-15~~ 26.1-15.1 nor to a benefit society organized within and limited to members of a fraternal benefit society.

SECTION 3. APPLICATION TO EXISTING FRATERNAL BENEFIT SOCIETIES. Any incorporated fraternal benefit society authorized to transact business in this state on January 1, 1988, is not required to reincorporate under this Act. A fraternal benefit society authorized to transact business in this state on January 1, 1988, may continue business until May 1, 1988, after which the society must obtain the license required by section 26.1-15.1-27.

SECTION 4. REPEAL. Chapter 26.1-15 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective January 1, 1988.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 348

SENATE BILL NO. 2174
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

NONPROFIT HEALTH SERVICE CORPORATION DIRECTORS

AN ACT to amend and reenact section 26.1-17-04 of the North Dakota Century Code, relating to the directors of nonprofit health service corporations.

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

SECTION 1. AMENDMENT. Section 26.1-17-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-04. Directors - Responsibilities and qualifications. A board of directors must manage the business and affairs of a health service corporation. The board is to consist of at least nine members. ~~The qualifications of the members are as follows:~~

~~1. A majority of the directors of a health service corporation must be persons who are providers of health services or representatives of partnerships, corporations, or associations which are providers of health services which have contracted with the health service corporation to render health services to its subscribers. If a health service provider is not an individual, its representative, who serves as a member of the board of directors, must be a director, trustee, hospital administrator, officer, partner, or member of the clinical staff of the health service provider.~~

~~2. The balance of the directors must be persons who are subscribers for health services and who have no direct affiliation with any of the health service providers.~~

~~3. Directors may be physicians who are affiliated with or are members of the same health service providers. However, a director who is not a physician may not be affiliated with or be a member of the same health service provider as another director.~~

~~4. Additional qualifications for directors may be set forth in the articles of incorporation or the bylaws of the health service corporation.~~

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 349

HOUSE BILL NO. 1463
(Rydell, Hamerlik)

CONVERSION TO MUTUAL INSURANCE COMPANY

AN ACT to authorize the conversion of nonprofit health service corporations into mutual insurance companies.

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

SECTION 1. **Nonprofit health service corporation - Conversion to mutual insurance company.** Any nonprofit health service corporation organized under chapter 26.1-17, having admitted assets in excess of all liabilities at least equal to the original surplus required of a mutual insurance company by section 26.1-12-10, may without reincorporation, and upon adoption of a resolution by its board of directors, petition the commissioner of insurance for an order to become a mutual insurance company subject to chapter 26.1-12. For the purpose of obtaining approval from the commissioner of insurance, conversion to a mutual insurance company under this section is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described therein must be followed. Upon becoming subject to chapter 26.1-12, the company may continue to provide health care and related services to its present or future members and subscribers by health care contracts and may make provision for the payment of health care services directly to hospitals and other agencies or institutions or persons rendering health care services or related services or may make direct payment to the member or subscriber. The conversion of a nonprofit health service corporation into a mutual insurance company must not impair the rights or obligations of any existing contractual rights of a health care service corporation or its members.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 350

HOUSE BILL NO. 1355
(Schneider, Kretschmar)

HEALTH MAINTENANCE ORGANIZATION PROCEDURES

AN ACT to amend and reenact section 26.1-18-04, subsection 4 of section 26.1-25-04, section 26.1-30-20, and subsection 1 of section 26.1-30-21 of the North Dakota Century Code, relating to the period of time in which the commissioner must approve insurance policies, rates, and notices of modification relating to the operation of a health maintenance organization.

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

SECTION 1. AMENDMENT. Section 26.1-18-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-04. Notice of modification - Filing. A health maintenance organization must, unless otherwise provided in this chapter, file a notice describing any modification of the operation set out in the information required by section 26.1-18-03. The notice must be filed with the commissioner prior to effecting the modification. If the commissioner does not disapprove ~~within fifteen days of~~ the filing within the time period provided for approval in section 26.1-30-20, the modification is deemed approved.

The commissioner may adopt rules exempting those items the commissioner deems unnecessary from the filing requirements of this section.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-25-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Subject to the exceptions specified in subsection 5, each filing ~~shall~~ must be on file for a waiting period of ~~thirty~~ sixty days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the

insurer or rating organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

SECTION 3. AMENDMENT. Section 26.1-30-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-30-20. Procedure for approval, disapproval, and withdrawal of approval by commissioner. No insurance policy, certificate, contract, agreement, or rate schedule, except as is otherwise provided, may be issued, nor may any application, rider, or endorsement be used in connection therewith until the expiration of ~~thirty~~ sixty days after it has been filed unless the commissioner gives written approval. The commissioner may extend the ~~thirty-day~~ sixty-day period for an additional period not to exceed fifteen days if the commissioner gives written notice within the ~~thirty-day~~ sixty-day period to the insurer which made the filing that the commissioner needs the additional time for the consideration of the filing.

SECTION 4. AMENDMENT. Subsection 1 of section 26.1-30-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If the commissioner disapproves any form, the commissioner shall notify the company or organization which filed the form within ~~thirty~~ sixty days after filing or within the additional period provided for in section 26.1-30-20 and provide written notice of disapproval of the form, specifying the reasons for disapproval and stating that a hearing may be requested in writing within forty-five days. No company or organization may issue any insurance policy in the form which has been disapproved. If a hearing is requested, the commissioner may suspend or postpone the effective date of disapproval.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 351

HOUSE BILL NO. 1446
(Representative Strinden)
(Senator Heigaard)

DEFENSE OF STATE EMPLOYEES

AN ACT to create and enact two new sections to chapter 26.1-21 of the North Dakota Century Code, relating to expenses paid from the state bonding fund for the defense of state employees and assessments against state agencies for the expenses of defending state employees; to amend and reenact section 32-12.1-15 of the North Dakota Century Code, relating to authorization for state agencies to purchase insurance upon approval by the commissioner of insurance; and to provide an appropriation.

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

SECTION 1. A new section to chapter 26.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

State employee defense - Expenses withdrawn by attorney general. The attorney general may withdraw from the state bonding fund those amounts, not exceeding a total of two hundred fifty thousand dollars, necessary to pay the costs of the defense of employees of the state provided a defense under this Act.

SECTION 2. A new section to chapter 26.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

State employee - Defense.

1. As used in this section, unless the context or subject matter otherwise requires:

   a. "Employee of the state" means all present or former officers or employees of the state or any of its agencies, departments, boards, or commissions, or persons acting on behalf of such agencies, departments, boards, or commissions in an official capacity, temporarily or permanently, with or without

compensation. The term does not include an independent contractor.

b. "Scope of office or employment" means the officer or employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned to the employee by competent authority. Actions of an employee which constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's office or employment for purposes of this chapter.

c. "State" means the state of North Dakota and each of its agencies, departments, boards, commissions, and offices.

2. The state of North Dakota shall defend any employee of the state in connection with any civil claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring heretofore or hereafter during the employee's period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand, and if the actions complained of were within the scope of the employee's employment. The head of the agency, department, board, or commission that employs the employee shall advise the attorney general as to whether it deems the employee's actions which are the subject of the action to have been within the scope of the employee's employment. The determination of whether an employee of the state was acting within the scope of the employee's employment must be made by the attorney general. If the attorney general determines that the employee was acting within the scope of the employee's employment, the state shall provide the employee with a defense by or under the control of the attorney general or the attorney general's assistants. This section may not be construed as a waiver, limitation, or modification of any existing immunity or other defenses of the state or any of its agencies, departments, commissions, boards, officers, or employees, nor may it be construed as creating any causes of action against any of these entities. Nothing provided by this section may be construed to be insurance within the meaning of section 32-12.1-15.

SECTION 3. AMENDMENT. Section 32-12.1-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-15. State agencies authorized to purchase insurance - Approval by commissioner of insurance.

1. ~~The~~ After review by the commissioner of insurance and after receiving the commissioner's approval, the state or

any state agency, bureau, or department may insure against liabilities provided by this chapter for its own protection ~~and~~ or for the protection of any state employee. If a premium savings will result therefrom and the commissioner of insurance approves, the insurance policies may be taken out for more than one year, but in no event beyond a period of five years. No purchase of insurance pursuant to this section may be construed as a waiver of any existing immunity to suit.

2. ~~If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage. Provided, the purchaser or its insurance carrier is not liable for claims arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.~~

3. ~~The insurance coverage authorized by this chapter may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law.~~

4. ~~The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing the employee has not purchased liability insurance coverage pursuant to law. If both parties to an action are state employees, the attorney general shall determine which state employee the attorney general shall represent, and the other employee may employ counsel to represent the employee. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.~~

No employee of the state may be held liable in the employee's personal capacity for actions or omissions occurring within the scope of the employee's employment unless such actions or omissions constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct.

SECTION 4. APPROPRIATION - EMERGENCY COMMISSION. There is hereby appropriated to the attorney general out of the state bonding fund the sum of $250,000, or so much thereof as may be necessary, for the purpose of providing the defense services as may be required under section 1 of this Act. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1987, and ending June 30, 1989, to approve the transfer of funds hereby appropriated from the state bonding fund to the extent necessary and based upon applications therefor by the attorney general. Funds appropriated hereby and authorized to be transferred to the attorney general must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-first legislative assembly.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 352

HOUSE BILL NO. 1428
(Representatives Gerntholz, V. Olson)
(Senator Kelly)

WINTER SHOW INSURANCE

AN ACT to amend and reenact sections 26.1-22-01, 26.1-22-02, 26.1-22-05, 26.1-22-06, 26.1-22-09, 26.1-22-10, 26.1-22-11, 26.1-22-14, 26.1-22-15, 26.1-22-18, and 26.1-22-22 of the North Dakota Century Code, relating to a winter show obtaining insurance through the state fire and tornado fund.

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

SECTION 1. AMENDMENT. Section 26.1-22-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Fund" means the state fire and tornado fund.

2. "Permanent contents" refers only to such public property usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. Permanent contents includes similar property owned by a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.

3. "Political subdivision" includes a county, city, township, school district, or park district of this state.

4. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 2. AMENDMENT. Section 26.1-22-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-02. State fire and tornado fund under management of commissioner. The commissioner shall manage the fund. The fund shall be maintained as a fund to insure the various state industries ~~and~~, the various political subdivisions, and any winter show against loss to the public buildings, or buildings owned by a winter show, and fixtures and permanent contents therein, through fire, lightning, inherent explosion, windstorm, cyclone, and tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, and at the option of the insured the fund shall have the authority to insure against any other risks of direct physical loss. All moneys collected under this chapter shall be paid into the fund for use only for the purposes provided for in this chapter.

SECTION 3. AMENDMENT. Section 26.1-22-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-05. Public buildings insurable only in fund. The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries, and the political subdivisions~~, shall~~ must, and the buildings and fixtures and the permanent contents therein belonging to a winter show, may be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

SECTION 4. AMENDMENT. Section 26.1-22-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values for ~~state-owned~~ property. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, ~~and~~ commissions, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to a winter show for insurance coverage as authorized by law.

SECTION 5. AMENDMENT. Section 26.1-22-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-09. ~~Public buildings~~ Buildings to be reported to commissioner. In each odd-numbered year, or upon application for insurance, the state board of higher education, and each officer, department, or agent of the state and of any industry thereof having in charge any public building belonging to the state, ~~and~~ each county auditor, city auditor, township clerk, and school district clerk, as the case may be, and the agent for a winter show, if applicable, shall report to the commissioner the insurable value of each public building, or of each building owned by a winter show with the exception of buildings insured by private insurance companies, and of the fixtures and permanent contents therein, with the exception of fixtures and permanent contents insured by private insurance companies, belonging to the state ~~or~~, political subdivision, or a winter show, and shall supply such other information as may be required by the commissioner on forms provided by the commissioner.

SECTION 6. AMENDMENT. Section 26.1-22-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-10. Commissioner to provide insurance on all ~~public~~ buildings. Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, ~~and~~ political subdivisions, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is determined by the commissioner and approved by the officer or board having control of such property, or, in case of disagreement, by approval through arbitration.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which shall be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

SECTION 7. AMENDMENT. Section 26.1-22-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-11. Arbitration. In case the commissioner and the board or officer having charge of any property are unable to agree upon the insurable value of the property, the value shall be determined by a recognized appraisal company at the expense of the state industry ~~or~~, political subdivision, or a winter show owning the property, if the appraisal company arbitrator meets with the approval of both the commissioner and the board or officer concerned. If they are unable to agree on an arbitrator, then the matter shall be submitted to arbitration by a board of arbitration selected as provided by this section. The commissioner and the board or officer in charge of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or one of the members of such board, and the two so chosen shall select a third person of similar qualification. The three arbitrators shall proceed to determine the insurable value of the property, and the decision of the arbitrators, or a majority of them, shall be given in writing to the commissioner and the board or officials concerned and shall be binding upon both parties. Each party to the dispute shall pay the expense and charges of the arbitrator chosen by the party, and the expense and the charges of the third arbitrator shall be borne equally by both parties to the dispute. The decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it. Until the commissioner and board or officer in charge shall have agreed, or in case of dispute, until the decision of the appraisal company or arbitrators, the property shall continue to be valued in the same amount as previously, or in case of new buildings or property, in the amount fixed by the commissioner. The same procedure shall be followed in case of new construction or in any increase or decrease in values.

SECTION 8. AMENDMENT. Section 26.1-22-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 and the commissioner shall then levy an assessment against every policy in force with the fund on all public property or property belonging to a winter show. The assessment shall be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property to which the eighty percent or ninety percent coinsurance rate may be applicable, and the full rate established for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, shall 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 shall set the tentative assessment to be made against the policy. The total of all tentative assessments shall then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars shall then be computed and collected on each policy; provided, that until the reserve balance shall reach twelve million dollars, the assessment shall be in an amount determined by the commissioner but in no event in excess of sixty percent of the rates set by the insurance services office unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent shall be used in such computation.

The commissioner shall submit not later than December thirty-first of each odd-numbered year, all data concerning premiums written and losses incurred during the previous biennium ending July thirty-first 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.

SECTION 9. AMENDMENT. Section 26.1-22-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-15. Collection of premiums and assessments. The commissioner, as soon as possible after providing for the insurance of any property belonging to the state ~~or~~, a political subdivision, or a winter show, shall certify to the board or officer in charge of the property the amount of premium or assessment due from the state, state industry, ~~or~~ political subdivision, or a winter show. The certificate must give the name, location, and description of the property insured, the amount of insurance written thereon, and the amount of the premium or assessment. The proper officer shall remit to the commissioner the amount of the premium or assessment within sixty days after the date of the certification. The commissioner shall deposit the premiums and assessments with the state treasurer to the credit of the fund. If the premiums or assessments are not paid within sixty days after the date on which they are certified, they shall bear interest at the rate of six percent per annum and collection thereof may be enforced by appropriate action. The attorney general and the state's attorney of the several counties shall bring appropriate actions to enforce the collections of the premium and assessment upon request of the commissioner. Payment of the premiums or assessments certified pursuant to this section may be made by any state department, officer, board, institution, or agency and by any political subdivision, out of any available funds, notwithstanding that no specific appropriation or tax levy has been made therefor.

SECTION 10. AMENDMENT. Section 26.1-22-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-18. Arbitration of loss. In case an agreement as to the amount of loss sustained by any building or property insured under this chapter cannot be arrived at between the commissioner or the commissioner's representative and the person or board representing the state ~~or~~, political subdivision, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

SECTION 11. AMENDMENT. Section 26.1-22-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-22. Commissioner may waive subrogation rights during construction. The commissioner may, in the commissioner's discretion, waive any right of the fund to recover for damage sustained by any ~~public~~ structure as a result of fire or explosion caused by a contractor, its employees or agents, in the performance of a contract for the alteration of, or the construction of an addition to, a ~~public~~ building insured in the fund.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 353

SENATE BILL NO. 2095
(Senator Nalewaja)
(Representative Koland)

INSURANCE PREMIUMS DISCLOSURE

AN ACT to amend and reenact section 26.1-25-04.1 of the North Dakota Century Code, relating to discounts from certain motor vehicle insurance premiums and disclosure of the amounts of the discounts.

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

SECTION 1. AMENDMENT. Section 26.1-25-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-04.1. Motor vehicle insurance rate filings - Premium reduction for accident prevention course completion. All rate filings with the commissioner for motor vehicle liability and physical damage insurance must provide for an appropriate reduction in premium charges for those persons fifty-five years of age and older for at least a two-year period following their successful completion of a motor vehicle accident prevention course. The reduction in premium charges must be separately disclosed. The premium billing must disclose the reduction in premium charges with respect to the person eligible for the reduction. The course must be approved by the superintendent of the state highway patrol. The course sponsor shall provide each successful participant a certificate which is the basis for the insurance discount.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 354

SENATE BILL NO. 2484
(Senators Wogsland, Krauter, Nething)
(Representatives Laughlin, Scherber, Gerntholz)

INSURANCE AGENT CONTINUING EDUCATION

AN ACT to amend and reenact section 26.1-26-31.1 of the North Dakota Century Code, relating to continuing education requirements of insurance agents.

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

SECTION 1. AMENDMENT. Section 26.1-26-31.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-26-31.1. Continuing education required.

1. ~~Beginning January 1, 1987~~ Except as otherwise provided in this section, any person licensed as an insurance agent, insurance broker, surplus lines insurance broker, or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom ~~work~~ hours. The commissioner may reduce the minimum number of hours per year of approved coursework for any person having a license limited to a single line of insurance as described in section 26.1-26-11. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over ~~fifteen~~ the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at

the end of each four-year period following licensure, except as provided in subsection 2.

2. ~~On or before January 1, 1986, the~~ The commissioner shall by rule divide the persons subject to this section into four equal segments for the purpose of reporting, as follows:

a. One-fourth of the persons shall file their report showing ~~fifteen~~ at least the minimum number of required hours ~~or more~~ of approved coursework for the first year under this section within thirty days of January 1, 1987.

b. One-fourth of the persons shall file a report showing ~~thirty~~ at least the minimum number of required hours ~~or more~~ of approved coursework for the first two years under this section within thirty days of January 1, 1988.

c. One-fourth of the persons shall file a report showing ~~forty-five~~ at least the minimum number of required hours ~~or more~~ of approved coursework for the first three years under this section within thirty days of January 1, 1989.

d. One-fourth of the persons shall file a report showing ~~sixty~~ at least the minimum number of required hours ~~or more~~ of approved coursework for the first four years under this section within thirty days of January 1, 1990.

3. All persons licensed after January 1, 1987, shall report within thirty days of the first day of January of the year following the fourth anniversary of the person's licensure.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 355

HOUSE BILL NO. 1411
(Representatives Opedahl, Schneider, Flaagan)
(Senator Redlin)

INSURANCE AGENT CONTACT WITH COMPLAINANT

AN ACT to create and enact a new subsection to section 26.1-26-42 of the North Dakota Century Code, relating to the causes for suspension or revocation of insurance agents' licenses.

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

SECTION 1. A new subsection to section 26.1-26-42 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 356

SENATE BILL NO. 2422
(Senator Lips)
(Representatives Whalen, Wald)

INDEPENDENT INSURANCE AGENT CONTRACTS

AN ACT to regulate the termination of independent insurance agent contracts.

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

SECTION 1. **Definitions.** For the purposes of this Act an "independent insurance agent" means any licensed property and casualty insurance agent representing a property and casualty insurance company on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place property and casualty insurance accounts with any insurance company or group of companies. This Act only applies to contracts which have been in effect for more than one year between an independent insurance agent and a property and casualty insurance company.

SECTION 2. **Agent and company rehabilitation.** In an effort to avoid termination, a property and casualty insurance company and an independent insurance agent may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed upon by them. Any written plan agreed upon must identify the problem areas and specify what the agent must do in order to avoid termination.

SECTION 3. **Notice of termination.** Contracts between an independent insurance agent and any property and casualty insurance company may not be terminated or amended by the company except by mutual agreement or unless ninety-day prior written notice has been provided to the independent insurance agent. The rate of commission and renewal terms must be in accordance with those in effect immediately prior to the termination.

SECTION 4. **Termination of agents for cause - Exceptions.** This Act does not apply to terminations for abandonment, insolvency of the terminating company, gross and willful misconduct, refusal, suspension, revocation, or termination of the agent's license by the commissioner of insurance, sale or material change or ownership of agency, fraud, material misrepresentation or failure to pay an independent insurance agent's account less the independent insurance agent's commission and any disputed items within thirty days after written demand by the company.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 357

HOUSE BILL NO. 1514
(Representatives Whalen, Wald)
(Senators Mutch, Dotzenrod)

INSURABLE INTEREST

AN ACT to create and enact a new section to chapter 26.1-29 of the North Dakota Century Code, relating to insurable interest in personal insurance; and to repeal section 26.1-29-09 of the North Dakota Century Code, relating to insurable interest in life and health insurance.

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

SECTION 1. A new section to chapter 26.1-29 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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 person may procure or cause to be procured an insurance contract upon the life or body of another person 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.

3. "Insurable interest", with reference to personal insurance, includes only the following interests:

a. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.

b. In the case of persons other than those 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 which would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.

c. An individual party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in the shares, has an insurable interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest which may otherwise exist as to the life of the individual.

SECTION 2. REPEAL. Section 26.1-29-09 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 358

HOUSE BILL NO. 1579
(Wald)

AUTO INSURANCE RESCISSION

AN ACT to amend and reenact section 26.1-29-15 of the North Dakota Century Code, relating to rescission of insurance contracts due to concealment.

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

SECTION 1. AMENDMENT. Section 26.1-29-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-29-15. Rescission for concealment. A concealment, whether intentional or unintentional, entitles the injured party to rescind an insurance contract. An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind. This section does not apply to automobile insurance policies, but such policies are subject to cancellation as provided in section 26.1-40-02.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 359

HOUSE BILL NO. 1452
(Representatives Wald, Dorso, Enget)
(Senators Tallackson, Lips)

COMMERCIAL LIABILITY INSURANCE

AN ACT to provide notice requirements for the cancellation and nonrenewal of commercial liability insurance; and to provide a penalty.

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

SECTION 1. Application. This Act applies to policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise except workmen's compensation policies, private passenger automobile policies, inland marine policies, excess umbrella liability policies, errors and omissions policies, and officers and directors liability policies.

SECTION 2. Mid-term cancellation of liability insurance. No insurer may cancel a policy of commercial liability insurance during the term of the policy, except for one or more of the following reasons:

1. Nonpayment of premiums;

2. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy;

3. Actions by the insured that have substantially increased or substantially changed the risk insured;

4. Refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed;

5. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;

6. Loss of reinsurance by the insurer which provided coverage to the insurer for a significant amount of the underlying

risk insured. Any notice of cancellation pursuant to this subsection must advise the policyholder that the policyholder has ten days from the date of receipt of the notice to appeal the cancellation to the insurance commissioner and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within five business days after receipt of the appeal;

7. A determination by the insurance commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or

8. Nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing such insurance; except this provision for cancellation for failure to pay dues does not apply to persons who are retired at sixty-two years of age or older or to any person who is disabled according to social security standards.

SECTION 3. Notice. Cancellation under subsections 2 through 8 of section 2 of this Act is not effective prior to thirty days after notice to the policyholder. The notice of cancellation must contain a specific reason for cancellation as provided in section 2 of this Act. A policy may not be canceled for nonpayment of premium pursuant to subsection 1 of section 2 of this Act unless the insurer, at least ten days prior to the effective cancellation date, has given notice to the policyholder of the amount of premium due and the due date. The notice must state the effect of nonpayment by the due date. No cancellation for nonpayment of premium is effective if payment of the amount due is made prior to the effective date set forth in the notice.

SECTION 4. New policies. Sections 2 and 3 of this Act do not apply to insurance policies which have been in effect less than ninety days at the time the notice of cancellation is mailed or delivered. No cancellation under this section is effective until at least ten days after the written notice to the policyholder.

SECTION 5. Longer term policies. A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer for the reasons stated in section 2 of this Act by giving a notice as required by section 3 of this Act at least thirty days prior to any anniversary date.

SECTION 6. Nonrenewal of commercial liability insurance policies - Notice required - Exceptions.

1. An insurer shall renew the policy, unless at least thirty days prior to the date of expiration provided in the policy, a notice of intention not to renew the policy

beyond the agreed expiration date is made to the policyholder.

2. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

SECTION 7. Renewal of insurance with altered rates.

1. Subject to subsection 2, if the insurer offers or purports to renew a policy at less favorable terms as to the dollar amount of coverage or deductibles or increases the rates in excess of fifteen percent, the new terms and new rates may take effect on the renewal date if the insurer has sent to the policyholder notice of the new terms and rates at least ten days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the ten-day period after receipt of the notice. Earned premium for the period of coverage, if any, must be calculated on a pro rata basis and the rates must be based on the previous policy term.

2. Subsection 1 does not apply if the change relates to guide "A" rates or excess rates also known as "consent to rate".

SECTION 8. Penalties.

1. A violation of any of the provisions of sections 1 through 7 of this Act must be deemed an unfair trade practice in the business of insurance and subject the violator to a penalty as determined by the commissioner not exceeding one thousand dollars for each and every act or violation. After three violations of any of the provisions of sections 1 through 7 of this Act within a twelve-month period, and after a hearing upon fifteen days' notice, the commissioner may revoke the license to transact business in this state of any insurance organization that committed such violations.

2. All notices required by this Act must be made by first-class mail addressed to the policyholder's last known address as stated in the policy. Notice by first-class mail is effective upon deposit in the United States mail. In addition to giving notice to the policyholder, the insurer shall also give notice to the agent of record, if any, in the manner specified for the policyholder.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 360

SENATE BILL NO. 2053
(Legislative Council)
(Interim Judicial Process Committee)

JUDGMENT EXEMPTIONS

AN ACT to amend and reenact sections 26.1-33-36 and 28-22-03.1 of the North Dakota Century Code, relating to the exemption of rights in life insurance policies and pensions from executions of judgments.

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

SECTION 1. AMENDMENT. Section 26.1-33-36 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-33-36. Rights in life policies exempt from claims of creditors. The surrender value of any life insurance policy which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support, is exempt absolutely from the claims of creditors of the insured to the extent provided in section 28-22-03.1. No creditor of the insured, and no court or officer of a court acting for any such creditors, may elect for the insured to have the life insurance policy surrendered or in anywise converted into money, and no life insurance policy or property right in the policy belonging to the holder, ~~and no~~ except for the value thereof in excess of the amount provided by section 28-22-03.1, may be subject to seizure under any process of any court under any circumstance.

* SECTION 2. AMENDMENT. Section 28-22-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.

* NOTE: Section 28-22-03.1 was repealed by section 2 of Senate Bill No. 2052, chapter 386.

2. A motor vehicle exemption not to exceed one thousand two hundred dollars.

3. ~~Accrued dividend, interest, or cash value of an unmatured life insurance policy not to exceed four thousand dollars.~~ Pensions; annuity policies or plans; life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

4. The debtor's right to receive, or property that is traceable to:

   a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

   b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

   c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.

   d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 361

HOUSE BILL NO. 1513
(Representatives Whalen, Wald)
(Senators Dotzenrod, Mutch)

SUICIDE UNDER INSURANCE POLICIES

AN ACT to amend and reenact section 26.1-33-37 of the North Dakota Century Code, relating to the determination of suicide as a defense to payment of a life insurance policy.

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

SECTION 1. AMENDMENT. Section 26.1-33-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-33-37. Suicide no - Determination - No defense to life policy after one year. The sanity or insanity of the person is not a factor in determining whether a person committed suicide within the terms of a life insurance policy regulating the payment of benefits in the event of the insured's suicide. In any suit on a life insurance policy, it is no defense after the policy has been in force one year that the insured committed suicide, and any provision or stipulation to the contrary in the policy is void.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 362

HOUSE BILL NO. 1329
(Representative Wentz)
(Senator J. Meyer)

ADOPTED CHILD INSURANCE

AN ACT to amend and reenact section 26.1-36-07 of the North Dakota Century Code, relating to required group health insurance coverage for adopted children.

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

SECTION 1. AMENDMENT. Section 26.1-36-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-07. Health insurance coverage ~~per~~ for newborn and adopted children - Scope of coverage - Notification of birth or adoption.

1. All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provides coverage for a family member of the insured or subscriber must, as to the family members' coverage, also provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the insured or subscriber from the moment of birth and are also payable from the date of placement by a licensed child placement agency with respect to an adopted child.

2. The coverage for newly born children and for children placed for adoption by a licensed child placement agency consists of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

3. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child or child placed for adoption by a licensed child placement agency and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth or date of placement by a licensed child placement agency of the child in order to have the coverage continue beyond the thirty-one-day period.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 363

HOUSE BILL NO. 1338
(Representatives Mertens, J. DeMers)
(Senators Waldera, Stenehjem)

SUBSTANCE ABUSE AND MENTAL CARE INSURANCE

AN ACT to amend and reenact sections 26.1-36-08 and 26.1-36-09 of the North Dakota Century Code, relating to group health policy and health service contract substance abuse and mental disorder coverage.

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

SECTION 1. AMENDMENT. Section 26.1-36-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis ~~where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage~~ unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, ~~in~~ by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01 ~~or in~~, by a regional human ~~resource~~ service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist. For health services provided in

regional human service centers, reimbursement rates must be reasonably similar to the charges for care provided by hospitals as defined in this section.

2. The benefits ~~may~~ must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:

   a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of ~~seventy~~ sixty days of services covered under this section and section 26.1-36-09 in any calendar year.

   b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred ~~forty~~ twenty days of services covered under this section and section 26.1-36-09 in any calendar year.

   c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization, provided however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.

   d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section and section 26.1-36-09 in any calendar year. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.

   "Partial hospitalization" means ~~that level and intensity of~~ continuous treatment ~~that is greater than outpatient treatment, but less than inpatient treatment~~ for at least three hours, but not more than twelve hours, in any twenty-four-hour period.

3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

SECTION 2. AMENDMENT. Section 26.1-36-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-09. Group health policy and health service contract mental disorder coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis ~~where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage~~ unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness ~~in~~ by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01, by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder and other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist.

2. The benefits ~~may~~ must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:

   a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of ~~seventy~~ sixty days of services covered under this section and section 26.1-36-08 in any calendar year.

   b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred ~~forty~~ twenty days of services covered under this section and section 26.1-36-08 in any calendar year.

   c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization, provided however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.

d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section and section 26.1-36-08 in any calendar year. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.

"Partial hospitalization" means ~~that level and intensity of~~ continuous treatment ~~that is greater than outpatient treatment, but less than inpatient treatment~~ for at least three hours, but not more than twelve hours, in any twenty-four-hour period.

3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 364

HOUSE BILL NO. 1366
(Representatives J. DeMers, Kelly, Shaw)
(Senators Waldera, Holmberg)

FORMER SPOUSE UNDER GROUP INSURANCE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to group accident and health insurance conversion and continuation rights for spouses and children.

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

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

Former spouse's and dependent children's accident and health coverage to continue - Conditions.

1. No group accident and health insurance policy, including a policy issued under a self-insured plan, group health service contract issued under chapter 26.1-17, or evidence of coverage issued under chapter 26.1-18, providing coverage for hospital or medical expenses, delivered, issued for delivery, renewed, or amended after July 1, 1987, which in addition to covering the insured also provides coverage to the spouse of the insured may contain a provision for termination of coverage for a spouse covered under the policy, contract, or evidence of coverage solely as a result of a break in the marital relationship except by reason of an entry of a decree of annulment of marriage or divorce.

2. Every policy, contract, or evidence of coverage described in subsection 1 must contain a provision that permits continuation of coverage of the insured's former spouse and dependent children upon entry of a decree of annulment of marriage or divorce, if the decree requires the insured to provide continued coverage for those persons. The coverage may be continued until the date of remarriage of the insured's former spouse or the date coverage would otherwise terminate, whichever occurs first, but not to

exceed thirty-six months. The insured shall pay any required premium contributions for the coverage not to exceed one hundred two percent of the premium for the group coverage.

3. Every policy, contract, or evidence of coverage described in subsection 1 must contain a provision allowing a former spouse and dependent children, without providing evidence of insurability, to obtain from the insurer at the expiration of any continuation of coverage under subsection 2 or upon termination of coverage by reason of an entry of a decree of annulment or divorce which does not require the insured to provide continued coverage for the former spouse and dependent children, conversion coverage providing comparable benefits of the group policy, contract, or evidence of coverage, if an application is made to the insurer within thirty days following notice of the expiration of the continued coverage and upon payment of the appropriate premium. A policy, contract, or evidence of coverage providing reduced benefits at a reduced premium rate may be accepted by the former spouse and dependent children in lieu of the existing coverage. The policy, contract, or evidence of coverage must be renewable at the option of the former spouse as long as the former spouse is not covered under another accident and health insurance plan, policy, or contract, up to age sixty-five or to the day before the date of eligibility for coverage under title XVIII of the Social Security Act [42 U.S.C. 1305 et seq.], as amended.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 365

SENATE BILL NO. 2391
(Senators Mushik, Vosper)
(Representatives W. Williams, Whalen)

MEDICARE SUPPLEMENT POLICIES

AN ACT to create and enact a new subsection to section 26.1-36-32 of the North Dakota Century Code, relating to standards for medicare supplement policies; and to amend and reenact subsection 4 of section 26.1-36-31 and section 26.1-36-37 of the North Dakota Century Code, relating to the definition of medicare supplement policy and limitations on preexisting conditions in nursing home policies.

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

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-36-31 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include:

   a. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

   b. A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(1) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(2) Has been maintained in good faith for purposes other than obtaining insurance; and

(3) Has been in existence for at least two years prior to the date of its initial offering of the policy or plan to its members.

c. Individual policies or contracts issued pursuant to a conversion privilege under an individual or group insurance policy or contract when the individual or group policy or contract includes provisions which are inconsistent with the requirements of sections 26.1-36-32 through 26.1-36-36.

SECTION 2. A new subsection to section 26.1-36-32 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer in addition to another medicare supplement policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

* **SECTION 3. AMENDMENT.** Section 26.1-36-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-37. Nursing home policy - Guaranteed renewable for life - Limitation on preexisting conditions. Any policy providing benefits for confinement to a nursing home must be guaranteed renewable for life. For the purposes of this section, "guaranteed renewable for life" means ~~a policy which~~ the insured has the right to continue the policy in force for life subject to ~~its~~ the policy's terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy providing nursing home coverage may not contain any provision limiting payment of benefits due to preexisting conditions

* NOTE: Section 26.1-36-37 was also amended by section 11 of House Bill No. 1629, chapter 371.

of the insured after the policy has been in force for a period of six months. However, a policy or certificate of insurance providing benefits for confinement to a nursing home which is sold to a consumer in addition to another nursing home policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 366

HOUSE BILL NO. 1405
(Rydell, Gates)

HMO INSOLVENCY INSURANCE

AN ACT to amend and reenact section 26.1-38-01 of the North Dakota Century Code, relating to the insurance companies that must participate in the life and health insurance guaranty association.

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

SECTION 1. AMENDMENT. Section 26.1-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-38-01. Scope. This chapter applies to direct life insurance policies, accident and health insurance policies, health care or service contracts, annuity contracts, and contracts supplemental to life and accident and health insurance policies and annuity contracts issued by persons licensed to transact business in this state at any time. This chapter does not apply to:

1. That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer.
2. That portion or part of any policy or contract under which the risk is borne by the policyholder.
3. Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.
4. Any policy or contract issued by a health maintenance organization which has insolvency coverage in force, a fraternal benefit society, a benevolent society, or the comprehensive health association.
5. Any policy or contract within the application of section 26.1-42-01.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 367

HOUSE BILL NO. 1622
(Tollefson)

PROPERTY AND CASUALTY COVERED LOSSES

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

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

* SECTION 1. AMENDMENT. Section 26.1-39-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-39-05. Face of ~~fire~~ policy to be paid in case of covered loss ~~by fire or lightning~~.

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 ~~fire or lightning~~ or resulting from any covered cause of loss and the insured property is wholly, completely, or partially destroyed by ~~fire~~ 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 ~~fire~~ covered loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for ~~fire~~ covered loss incurred during the first ninety days shall be the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.

* NOTE: Section 26.1-39-05 was also amended by section 1 of House Bill No. 1310, chapter 368.

b. 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 ~~the fire or lightning~~ any covered cause of loss.

c. In case of double ~~fire~~ insurance, each insurer must contribute proportionally toward the loss without regard to the dates of the insurance policies.

2. This section does not apply as to personal property or any interest therein.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 368

HOUSE BILL NO. 1310
(Wald)

FIRE POLICY FACE AMOUNT PAYMENT

AN ACT to amend and reenact subsection 1 of section 26.1-39-05 of the North Dakota Century Code, relating to the payment of the face amount of a fire policy.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-39-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 by fire or lightning and the insured property is wholly, or completely, ~~or partially~~ destroyed by fire 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 fire loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for fire loss incurred during the first ninety days ~~shall be~~ is the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.

   b. 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 the fire or lightning loss.

   c. In case of double fire insurance, each insurer ~~must~~ shall contribute proportionally toward the loss without regard to the dates of the insurance policies.

* NOTE: Section 26.1-39-05 was also amended by section 1 of House Bill No. 1622, chapter 367.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 369

HOUSE BILL NO. 1279
(Dorso, Shaft)

UNINSURED OR UNDERINSURED MOTOR VEHICLES

AN ACT to amend and reenact sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the North Dakota Century Code, relating to uninsured motor vehicle insurance and underinsured motor vehicle insurance.

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

SECTION 1. AMENDMENT. Section 26.1-40-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-13. ~~"Uninsured motor vehicle" defined - Includes insolvent insurer~~ Definitions applicable to sections 26.1-40-13 through 26.1-40-15. ~~For the purposes of~~ As used in sections 26.1-40-13 through 26.1-40-15, ~~"uninsured~~ and unless the context otherwise requires:

1. "Underinsured motor vehicle" means a motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident, the applicable limit of bodily injury liability of which is:

   a. Less than the applicable limit for underinsured motor vehicle coverage under the insured's policy; or

   b. Has been reduced, by payments to persons other than the insured injured in the accident, to an amount less than the limit the insured has for underinsured motorist coverage under the insured's policy.

2. "Uninsured motor vehicle" means any motor vehicle not subject to insurance providing at least the bodily injury and death limits set forth in section 39-16.1-11 and includes an insured motor vehicle where the liability insurer is unable to make payment with respect to the

legal liability of its insured within the specified limits because of insolvency.

SECTION 2. AMENDMENT. Section 26.1-40-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-14. Uninsured and underinsured motorist coverage - Compulsory - Stacking not permitted.

1. No motor vehicle liability insurance policy against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of ownership, maintenance, or use of any motor vehicle may be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in amounts not less than ~~that~~ those set forth in section 39-16.1-11 for bodily injury or death for the protection of insureds who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, underinsured motor vehicles, and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

2. Underinsured motorist coverage limits need not be provided in excess of fifty thousand dollars per person and one hundred thousand dollars per accident or, if consistent with the rating plan and rules, a combined single limit of one hundred thousand dollars per accident, or the insured's bodily injury liability limits, whichever is greater. Underinsured motorist coverage must pay compensatory damages for bodily injury, sickness, disease, or death when an insured is legally entitled to collect from the owner or operator of an underinsured motor vehicle.

3. The liability of the insurer providing underinsured motorist coverage cannot exceed the limits of the underinsured motorist coverage stated in the policy, and the maximum liability of the underinsured motorist coverage is the lesser of:

   a. The difference between the amount paid in compensatory damages to the insured by and for any person or organization who may be legally liable for the bodily injury, sickness, disease, or death resulting therefrom, and the limit of underinsured motorist coverage; or

   b. The amount of compensatory damages, established but not recovered by any agreement, settlement, or judgment with or for the person or organization

legally liable for the bodily injury, sickness, disease, or death resulting therefrom.

4. Any motor vehicle liability insurance policy which provides uninsured or underinsured motorist coverage, as specified in subsection 1, must provide that an insured or named insured is only protected to the extent of the coverage provided on the vehicle covered by the policy and involved in the accident. If no such vehicle is involved, coverage is only available to the extent of the applicable uninsured or underinsured motorist coverage provided on any of the insured or named insured's vehicles. In either instance, coverage on any other vehicle may not be added or stacked upon the applicable coverage.

SECTION 3. AMENDMENT. Section 26.1-40-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-15. Rights of insurer making payments under uninsured or underinsured motorist coverage. In the event of payment by an insurer to any person under the uninsured or underinsured motorist coverage, the insurer making the payments is, to the extent thereof, entitled to the proceeds of any settlement ~~of~~ or judgment resulting from the exercise of any rights of recovery of ~~such~~ that person against any person or organization legally responsible for the damage for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer. This section does not allow any insurer a claim for relief against or recovery from the unsatisfied judgment fund.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 370

SENATE BILL NO. 2413
(Mutch)

COORDINATION OF NO-FAULT BENEFITS

AN ACT to amend and reenact subsection 3 of section 26.1-41-13 of the North Dakota Century Code, relating to coordination of no-fault insurance benefits.

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

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-41-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of five thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 371

HOUSE BILL NO. 1629
(A. Williams, Myrdal, A. Olson)

LONG-TERM CARE INSURANCE

AN ACT to provide for regulation of long-term care insurance; and to amend and reenact section 26.1-36-37 of the North Dakota Century Code, relating to nursing home policies.

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

SECTION 1. Definitions. In this Act, unless the context requires otherwise:

1. "Applicant" means:

   a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.

   b. In the case of a group long-term care insurance policy, the proposed certificate holder.

2. "Certificate" means any certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

3. "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state to:

   a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or both, or for members or former members or both, of the labor organizations.

   b. Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(2) Has been maintained in good faith for purposes other than obtaining insurance.

c. An association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations meeting the requirements of section 2 of this Act.

d. A group other than a group described in subdivision a, b, or c if the commissioner finds that:

(1) The issuance of the group policy is not contrary to the best interest of the public;

(2) The issuance of the group policy would result in economies of acquisition or administration; and

(3) The benefits are reasonable in relation to the premiums charged.

4. "Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health service corporations, prepaid health plans, health maintenance organizations, or any similar entity. The term does not include any insurance policy that is offered primarily to provide catastrophic coverage and comprehensive coverage, basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expenses coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

5. "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health service corporation, prepaid health plan, health maintenance organization, or any similar entity.

SECTION 2. Group long-term care insurance - Association requirements - Approval. Group long-term care insurance may be

issued or delivered for the benefit of members of an association, as defined in subdivision c of subsection 3 of section 1 of this Act, if prior to advertising, marketing, or offering a policy within this state, the association, or the insurer of the association, files evidence with the commissioner of insurance that the association have at the outset a minimum of one hundred persons, has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one year, and has a constitution and bylaws that provide that:

1. The association hold regular meetings not less than annually to further the purposes of the members.

2. Except for credit unions, the association collect dues or solicit contributions from members.

3. The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing, the association is deemed to satisfy the organizational requirements, unless the commissioner makes a finding that the association does not satisfy the organizational requirements.

SECTION 3. Limits of group long-term care insurance. No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in subdivision d of subsection 3 of section 1 unless the commissioner of insurance or an insurance department in another state having statutory and regulatory long-term care insurance requirements substantially similar to those in this state has made a determination that the long-term care insurance requirements have been met.

SECTION 4. Disclosure and standards for long-term care insurance. The commissioner of insurance may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

SECTION 5. Cancellation - Nonrenewal - Termination. No long-term care insurance policy may:

1. Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group certificate.

SECTION 6. Pre-existing conditions.

1. No long-term care insurance policy or certificate may define "preexisting condition" as more restrictive than meaning the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within:

   a. Six months preceding the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or

   b. Twenty-four months preceding the effective date of coverage of an insured who is under age sixty-five on the effective date of coverage.

2. No long-term care insurance policy may exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within:

   a. Six months following the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or

   b. Twenty-four months following the effective date of coverage of an insured who is under sixty-five on the effective date of coverage.

3. The commissioner may extend the limitation periods set forth in this section as to the specific age group categories or specific policy forms upon findings that the extension is in the best interest of the public.

4. The limitation on defining a preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

SECTION 7. Prior institutionalization. No long-term care insurance policy that only provides benefits following institutionalization may condition the benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

SECTION 8. Loss ratio standards. The commissioner may adopt or amend rules establishing loss ratio standards for long-term care insurance policies; provided, that a specific reference to long-term care insurance policies is contained in the rules.

SECTION 9. Right to return policy - Outline of coverage required - Contents of certificate.

1. a. Individual long-term care insurance policyholders may return the policy within ten days of its delivery and may have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

   b. A person insured under a long-term care insurance policy or certificate issued pursuant to a direct response solicitation may return the policy within thirty days of its delivery and have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies or certificates issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to the first page stating in substance that the insured person may return the policy within thirty days of its delivery and may have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

2. An outline of coverage must be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, or at the time the policy is delivered whichever comes first. The outline of coverage must include:

   a. A description of the principal benefits and coverage provided in the policy.

   b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

   c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

3. A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state must include:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

SECTION 10. Application. This Act does not supersede the obligations of entities subject to this Act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this Act, except that laws and rules designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or solely as nursing home insurance need not meet the requirements of this Act.

* **SECTION 11. AMENDMENT.** Section 26.1-36-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-37. Nursing home policy - Guaranteed renewable for life ~~--limitation on preexisting conditions~~. Any long-term care insurance policy providing benefits for confinement to a nursing home must be guaranteed renewable for life. However, the commissioner may for good cause shown allow, on whatever terms and conditions the commissioner deems necessary, an insurer to nonrenew long-term care insurance policies on a statewide basis. For the purposes of this section, "guaranteed renewable" means a policy which the insured has the right to continue in force for life subject to its terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

~~A policy providing nursing home coverage may not contain any provision limiting payment of benefits due to preexisting conditions of the insured after the policy has been in force for a period of six months.~~

Approved April 4, 1987
Filed April 6, 1987

* NOTE: Section 26.1-36-37 was also amended by section 3 of Senate Bill No. 2391, chapter 365.

CHAPTER 372

HOUSE BILL NO. 1350
(Representative Stofferahn)
(Senators Waldera, Lips)

RISK RETENTION GROUPS

AN ACT to provide for the regulation of the formation and operation of risk retention groups and purchasing groups under the federal Product Liability Risk Retention Act of 1981; and to provide a penalty.

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

SECTION 1. Definitions. As used in this Act, unless the context requires otherwise:

1. "Commissioner" means the North Dakota commissioner of insurance or the commissioner, director, or superintendent of insurance in any other state.

2. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:

   a. For a corporation, the state in which the purchasing group is incorporated.

   b. For an unincorporated entity, the state of its principal place of business.

3. "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.

4. "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.

5. "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 to such other persons resulting from or arising out of either of the following:

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

   b. Any activity of any state or local government, or any agency or political subdivision thereof.

   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.].

6. "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 5.

7. "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. 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 procedures, managerial oversight methods, 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.

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

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

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

b. The group purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.

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

d. The group is domiciled in any state.

10. "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands and which meets the qualifications for such groups as defined in the federal Product Liability Risk Retention Act of 1981 as amended.

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

SECTION 2. Risk retention groups chartered in this state. A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this Act, must comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and licensed in this state and with section 3 of this Act to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, each risk retention group doing business in this state which has more than twenty-five resident members or

insureds shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. Immediately upon receipt of an application for charter in this state the risk retention group shall provide summary information concerning the filing to the national association of insurance commissioners including the name of the risk retention group, the identity of the initial members of the group, the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Providing notification to the national association of insurance commissioners is in addition to, and is not sufficient to satisfy, the requirements of this Act.

SECTION 3. Risk retention groups not chartered in this state - Requirements for operation. Risk retention groups chartered in states other than this state, and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

1. Notice of operations and designation of commissioner as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:

   a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subsection 10 of section 1 of this Act.

   b. For risk retention groups doing business in this state which have more than twenty-five resident members or insureds, a copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

2. Financial condition. Any risk retention group doing business in this state shall submit to the commissioner upon the commissioner's request all of the following:

a. A copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist according to criteria established by the national association of insurance commissioners.

b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.

d. Such information as may be required to verify its continuing qualifications as a risk retention group under subsection 10 of section 1 of this Act.

3. Taxation.

a. All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that are applicable to foreign-admitted insurers.

b. To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

c. To the extent the agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

d. This subsection does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.

4. Compliance with prohibited practices act. Any risk retention group, its agents and representatives, shall comply with chapter 26.1-04.

5. Examination regarding financial condition. Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination, within sixty days after a request by the commissioner of this state. Any such examination must be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioner's examiner handbook.

6. Notice to purchasers. Any policy issued by a risk retention group must contain in ten point type of the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

7. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are prohibited:

   a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.

   b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

8. Prohibition on ownership by an insurance company. No risk retention group may be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

9. Delinquency proceedings. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 4 of this section.

SECTION 4. Compulsory associations. No risk retention group may join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor may any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

SECTION 5. Countersignatures not required. A policy of insurance issued to a risk retention group or any member of that group may not be required to be countersigned except as otherwise provided in section 26.1-11-07.

SECTION 6. Purchasing groups - Exemption from certain laws relating to the group purchase of insurance. Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 is exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group is subject to all other applicable laws of this state.

SECTION 7. Notice and registration requirements of purchasing groups.

1. A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall do all of the following:

   a. Identify the state in which the group is domiciled.

   b. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.

   c. Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company.

   d. Identify the principal place of business of the group.

   e. Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subsection 9 of section 1 of this Act.

2. The purchasing group shall register with and designate the commissioner of insurance as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements do not apply in the

case of a purchasing group to which all of the following apply:

a. The group was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

b. Before October 27, 1986, the group purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, the group purchased its insurance from an insurance carrier licensed in any state.

c. The group was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.

d. The group does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

SECTION 8. Restrictions on insurance purchased by purchasing groups. 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 agent or broker acting pursuant to the surplus lines laws and regulations of such state.

SECTION 9. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to make use of any of the powers and requirements established under title 26.1 so long as those powers or requirements are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirements that any injunction be issued by a court of competent jurisdiction.

SECTION 10. Penalties. A risk retention group which violates any provision of this Act is subject to fines and penalties applicable to licensed insurers generally, including revocation of its certificate of authority to do business in this state.

SECTION 11. Duty of agents or brokers to obtain license. Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, shall,

before commencing any such activity, obtain a license from the commissioner. This section does not apply to any person acting as an agent or broker for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

SECTION 12. Binding effect of orders issued in United States district court. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state or in all states or in any territory or possession of the United States upon a finding that such a group is in a hazardous financial condition is enforceable in the courts of the state.

SECTION 13. Rules and regulations. The commissioner may adopt such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of the Act.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 373

HOUSE BILL NO. 1231
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

PREFERRED PROVIDER ORGANIZATIONS

AN ACT to provide for the regulation of the establishment and operation of preferred provider organizations; and to provide a penalty.

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

SECTION 1. **Definitions.** As used in this Act, unless the context indicates otherwise:

1. "Commissioner" means the insurance commissioner of the state of North Dakota.

2. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.

3. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.

4. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18-01, and a fraternal benefit society as defined in section 26.1-15-01.

5. "Health care provider" means licensed providers of health care services in this state.

6. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.

7. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this Act, to provide health care services to covered persons under a health benefit plan.

8. "Preferred provider agreement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this Act.

SECTION 2. Preferred provider arrangements. Notwithstanding any provision of law to the contrary, any health care insurer may enter into preferred provider arrangements.

1. Preferred provider arrangements must:

   a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.

   b. Include mechanisms which are designed to minimize the cost of the health benefit plan. These mechanisms may:

      (1) Provide for the review and control of utilization of health care services.

      (2) Establish a procedure for determining whether health care services rendered are medically necessary.

   c. Include mechanisms which are designed to preserve the quality of health care.

2. Preferred provider arrangements may not unfairly deny health benefits to persons for covered medically necessary services.

SECTION 3. Health benefits plans.

1. Health care insurers may issue policies or subscriber agreements which provide for incentives for covered persons to use the health care services of preferred providers. These policies or subscriber agreements must contain all of the following provisions:

   a. A provision that if a covered person receives emergency care and cannot reasonably reach a preferred provider that care will be reimbursed as though the covered person had been treated by a preferred provider.

b. A provision that if covered services are not available through a preferred provider, reimbursement for those services will be made as though the covered person had been treated by a preferred provider.

c. A provision which clearly discloses differentials between benefit levels for health care services of preferred providers and benefit levels for health care services of other providers.

2. If the policy or subscriber agreement provides differences in benefit levels payable to preferred providers compared to other providers, the differences may not unfairly deny payment for covered services and may be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

SECTION 4. Preferred provider participation requirements. Health care insurers may place reasonable limits on the number of classes of preferred providers which satisfy the standards set forth by the health care insurer, provided that there be no discrimination against any providers on the basis of religion, race, color, national origin, age, sex, or marital status, and further provided that selection of preferred providers is made on the combined basis of least cost and highest quality of service.

SECTION 5. General requirements. Health care insurers complying with this Act are subject to all other applicable laws, rules, and regulations of this state.

SECTION 6. Rules. The commissioner may adopt rules necessary to enforce and administer this Act.

SECTION 7. Penalty. The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this Act. Any person who violates this Act is guilty of a class A misdemeanor.

Approved April 17, 1987
Filed April 20, 1987