INSURANCE

CHAPTER 341

HOUSE BILL NO. 1297
(Representatives Whalen, Wald, Skjerven)
(Senators Todd, Krauter)

PETROLEUM RELEASE COMPENSATION

AN ACT to provide for cleanup of petroleum spills through the establishment of a petroleum release compensation fund; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. It is hereby declared to be the purpose of this Act to establish:

1. A petroleum tank release compensation fund; and

2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Administrator" means the manager of the state fire and tornado fund.

2. "Board" means the petroleum release compensation advisory board.

3. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of damaged equipment.

4. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.

5. "Department" means the state department of health and consolidated laboratories.

6. "Fund" means the petroleum release compensation fund.

7. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this Act.

8. "Owner" means any person who holds title to controls or possesses an interest in the tank before the discontinuation of its use.

9. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission,

political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

10. "Petroleum" means any of the following:

    a. Gasoline and petroleum products as defined in chapter 19-10.

    b. Constituents of gasoline and fuel oil under subdivision a.

    c. Oil sludge and oil refuse.

11. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

12. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. Exemptions from this definition include:

    a. Tanks owned by the federal government;

    b. Tanks used for the transportation of petroleum; and

    c. A pipeline facility, including gathering lines, regulated under:

        (1) The Natural Gas Pipeline Safety Act of 1968.

        (2) The Hazardous Liquid Pipeline Safety Act of 1979.

        (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.

    d. A farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less used for storing motor fuel for noncommercial purposes.

    e. A tank used for storing heating oil for consumptive use on the premises where stored.

    f. A surface impoundment, pit, pond, or lagoon.

    g. A flowthrough process tank.

    h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.

    i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

j. A tank used for the storage of propane.

13. "Tariff" means a fee imposed on all petroleum products subject to the taxes imposed under chapters 57-43.1 and 57-43.2, except liquefied petroleum.

SECTION 3. **Petroleum release compensation advisory board.** The petroleum release compensation advisory board consists of three members, two of whom are active in petroleum marketing, appointed by the governor. Members must be appointed to terms of three years with the terms arranged so that the term of one member expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. **Administration of fund - Staff.** The administrator shall administer the fund according to this Act. The administrator shall convene the board as is necessary to keep the board apprised of the fund's general operations and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation.

SECTION 5. **Adoption of rules.** The administrator shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 6. **Release discovery.** If the department has reason to believe a release has occurred, it shall notify the administrator and the board. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. **Owner or operator not identified.** The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. **Imminent hazard.** Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. **Duty to notify.** Nothing in this Act limits any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this Act.

SECTION 10. **Providing of information.** Any person whom the administrator or the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to

be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 10 of this Act; and

2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 10 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, and for legal actions of the administrator or the department. This Act does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;

2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

3. Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. Other remedies. Nothing in this Act limits the powers of the administrator or department, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any tariffs imposed by sections 16 and 17 of this Act;

2. Any registration fees collected under section 21 of this Act;

3. Any money recovered by the fund under section 27 of this Act, and any money paid under an agreement, stipulation, or settlement;

4. Any interest attributable to investment of money in the fund; and

5. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. **Tariff authorized.** The administrator shall notify the state tax commissioner to collect the tariff authorized by section 17 of this Act and the tax commissioner shall collect the tariff beginning July 1, 1989, until the fund reaches three million dollars, at which time the tariff shall temporarily cease being collected. If the unexpended balance of the fund falls below one million dollars, the administrator shall reinstate the tariff established in section 17 of this Act. The tariff must be collected until the fund is equal to or exceeds three million dollars during any full tariff collection period. Reasonable forecasts of future expenses and income may be used in imposing and ceasing to collect the fund tariff.

SECTION 17. **Tariff levied.** A dealer shall pay to the tax commissioner a tariff of nine-fortieths of a cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil except liquefied petroleum, or diesel fuel subject to taxation under chapters 57-43.1 and 57-43.2. The dealer shall collect the tariff from the purchaser or user and, notwithstanding any other provision of law, the tariff may not be refunded. The tariff must accompany the monthly report required by section 18 of this Act. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the treasurer shall place the money in the petroleum release compensation fund for the sole purpose of reimbursement of corrective costs authorized under this Act. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels not in conflict with this Act govern the administration of the tariff levied by this section. To aid and monitor the collection of the tariff, the administrator and the tax commissioner may exchange information provided by the dealer.

SECTION 18. **Report of petroleum products.** No later than the twenty-fifth day of each calendar month, a dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must include the same information as required by chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes.

SECTION 19. **Bond required of dealer.** The tax commissioner may require a dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of tariffs due from the dealer for any calendar month during the preceding year, whichever amount is greater, guaranteeing true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and payment of all tariffs imposed under section 17 of this Act. The tax commissioner shall determine the sufficiency of the bond. A bond may cover delinquent tariffs for one or all of the petroleum products subject to a tariff under section 17 of this Act. When a tariff is not paid within twenty days after it is due, the bond is forfeited to the extent of the delinquent tariff.

SECTION 20. Penalty. A dealer violating this Act is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 21. Registration fee. An owner or operator of a tank shall pay an annual registration fee of ten dollars for each aboveground tank and twenty-five dollars for each underground tank owned or operated by that person. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 22. Reimbursement for corrective action. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than seven thousand five hundred dollars and less than one hundred thousand dollars. A reimbursement may not be made unless the administrator determines that:

1. At the time of release, the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;

2. The department was given notice of the release as required by federal and state law;

3. The owner or operator has paid the first seven thousand five hundred dollars of the cost of corrective action; and

4. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

SECTION 23. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 22 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after the effective date of this Act.

SECTION 24. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

SECTION 25. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 26. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 27. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the amount allowed by section 22 of this Act, in taking a corrective action, including costs of investigating

a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 28. **Costs exceeding reimbursement.** If the cost of any extraordinary authorized action under this Act exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 29. **Administrator may borrow startup funds.** If necessary, the administrator may borrow up to twenty thousand dollars from other funds of the state for startup, cost of administration, and organizational expenses, which amount must be repaid with interest at the rate of ten percent per annum after the effective date of this Act as money becomes available from collection of the tariff or registration fees.

SECTION 30. **Report to legislative assembly and governor.** The administrator and the board shall prepare by December 1, 1990, a report to the legislative assembly and the governor explaining the status of the government's and business' ability to respond to and clean up all past and future petroleum spills.

SECTION 31. **Fund appropriations.** Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this Act.

SECTION 32. **APPROPRIATION.** There is hereby appropriated out of any moneys in the petroleum release compensation fund in the state treasury generated from the registration fees collected under section 21 of this Act, not otherwise appropriated, the sum of $54,000, or so much thereof as may be necessary, to the administrator for the purpose of administering the fund for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 33. **EXPIRATION DATE.** This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 342

SENATE BILL NO. 2093
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE LAW VIOLATION ADMINISTRATIVE PENALTY

AN ACT to amend and reenact section 26.1-01-03.1 of the North Dakota Century Code, relating to general penalties for violation of provisions of the insurance title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear. The commissioner may issue an order to cease and desist when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. The commissioner shall provide written notice to the person named in the order stating the time and place of the hearing on the matter and setting forth the alleged violation. A hearing must be held not later than ten days after the issuance of the order unless a delay is requested by all persons named in the order. The commissioner shall, within thirty days after the issuance of the cease and desist order, issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing. If no civil monetary penalty is otherwise provided by law, the offender is, after hearing by the commissioner, subject to payment of an administrative monetary penalty of up to ten thousand dollars.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 343

SENATE BILL NO. 2129
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMMISSIONER FEES

AN ACT to amend and reenact section 26.1-01-07 and subsection 1 of section 26.1-01-07.1 of the North Dakota Century Code, relating to fees charged by the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-07. Fees chargeable by commissioner. The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.

2. For each original certificate of authority issued upon admittance, one hundred dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, fifty dollars.

3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.

4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.

5. For filing bylaws or amendments thereof, ten dollars.

6. For filing of articles of merger, or copies thereof, thirty dollars.

7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.

8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.

9. For filing an annual statement, twenty-five dollars.

10. For each abstract of the annual statement of an insurance company for publication, ten dollars.

11. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including but not limited to, actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of the certificate, ten dollars.

13. For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.

14. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which shall be paid to the testing service.

15. For issuing and each annual renewal of a resident insurance broker's, surplus lines insurance broker's and insurance consultant's license, or duplicate thereof, ten dollars.

16. For issuing and each annual renewal of a nonresident insurance broker's, surplus lines insurance broker's and insurance consultant's license, or duplicate thereof, fifteen dollars.

17. For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate, ten dollars.

18. For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars.

19. For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, ten dollars.

20. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.

21. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.

22. For a copy of any paper filed in the commissioner's office, twenty cents per folio.

23. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.

24. For each insurance company appointment and renewal of an appointment of an insurance agent or limited insurance representative, ten dollars.

25. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, 13, 19, 22, 23, and 24.

However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-01-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby created a trust fund designated "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:

   a. All sums received under section 26.1-01-07.

   b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust fund investments.

   c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.

   d. All administrative penalties, fines, and fees collected by the commissioner from any person subject to this title.

   e. Any other amounts provided by legislative appropriation.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 344

SENATE BILL NO. 2287
(Senator Richard)
(Representatives Wald, Whalen)

INSURANCE PREMIUM FINANCE COMPANIES

AN ACT to create and enact two new subsections to section 26.1-01-07 and a new chapter to title 26.1 of the North Dakota Century Code, relating to insurance premium finance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 26.1-01-07 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.

For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.

SECTION 2. A new chapter to title 26.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Insurance premium finance company" means a person engaged in the business of entering into or acquiring insurance premium finance agreements.

2. "Licensee" means a person holding a license issued under this chapter.

3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums where a life or disability insurance policy is made the security or collateral for the repayment of a debt.

License required - Renewal - Application.

1. No person may finance insurance premiums in this state without a license issued by the commissioner. Licenses may be renewed each year upon payment of the required fee.

2. The commissioner shall issue or renew a license if the commissioner finds that the person to be licensed:

   a. Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;

   b. Has a good business reputation and has had experience, training, or education qualifying the person to finance insurance premiums; and

   c. If a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state.

3. This chapter does not apply to resident insurance agents; insurers who finance their own premiums; banks; savings and loan associations; credit unions; annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

License suspension, revocation, or refusal - Grounds. The commissioner may, after notice to the licensee and a hearing, suspend, revoke, or refuse to continue or refuse to issue any license issued under this chapter if the commissioner finds any of the following conditions:

1. The licensee acquired or attempted to acquire a license through misrepresentation or fraud.

2. The licensee, in the conduct of affairs under the license, used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

3. An officer, employee, stockholder, or partner of an applicant, who may materially influence the applicant's conduct, does not meet the standards required by this chapter.

4. The licensee violated or did not comply with this chapter or a lawful rule or order of the commissioner.

Interrogatories. A person who applies for a license or the renewal of a license shall file sworn answers to interrogatories if requested by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees.

Books and records. Every licensee shall maintain books and records, satisfactory to the commissioner, of the licensee's premium finance agreements. The records must be maintained for a period of three years after making the final entry with respect to a premium finance agreement. The records may be preserved in photographic form. The records must be available for inspection by the commissioner during ordinary business hours. The commissioner may require any licensee to bring the licensee's records to the commissioner's office for examination.

Contents of insurance premium finance agreement.

1. A premium finance agreement must:

   a. Be dated and signed by or on behalf of the insured, and the printed portion of the agreement must be in at least eight-point type;

   b. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed including the term and type of policy; and

   c. Include the following items:

      (1) The total amount of the premiums.

      (2) The amount of the down payment.

      (3) The amount financed, which is the difference between paragraphs 1 and 2.

      (4) The amount of the finance charge and the flat service fee, if any.

      (5) The total of the payments, which is the sum of paragraphs 3 and 4.

      (6) The number of installments.

2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed resident agent which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

Maximum finance charge.

1. No insurance premium finance company may charge, contract for, receive, or collect a finance charge plus a flat service fee with respect to a premium finance agreement other than as permitted by this section.

2. The finance charge must be computed on the premiums due after subtracting the down payment made by the insured in accordance with

the premium finance agreement, from the effective date of the insurance coverage for which the premiums are being advanced, to and including the date when the final installment under the premium finance agreement is payable.

3. The annual percentage rate charged under a premium finance agreement made to finance an insurance policy for agricultural, personal, family, or household use may not exceed the annual percentage rate permitted under section 47-14-09. In addition, an insurance premium finance company may contract for a flat rate service or application fee not exceeding the greater of one percent of the amount financed or twenty dollars per premium finance agreement for expenses incurred in servicing the loan. The finance rate and flat rate service or application fee charged under a premium finance agreement made to finance an insurance policy for business, corporate, or other purposes may be agreed to by the parties to the agreement.

4. The finance charge must be computed in advance on the principal balance of a premium finance agreement according to the actuarial method on terms payable in substantially equal successive monthly installments.

5. Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. If the insured prepays the obligation, the insured must receive a refund credit if the amount of the refund is one dollar or more. The amount of the refund credit must represent at least as great a proportion of the finance charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. If, in addition to the finance charge, an additional flat service fee was imposed, the flat service fee need not be refunded nor taken into consideration in computing the refund credit.

Delinquency and cancellation charges. A premium finance agreement may provide for the payment by the insured of a delinquency charge for any payment that is in default for a period of ten days or more. The amount of the delinquency charge may not exceed five dollars. If the default results in the cancellation of any insurance policy listed in the premium finance agreement, the premium finance agreement may provide for a cancellation charge of ten dollars in addition to the delinquency charge.

Cancellation of insurance contract upon default. If a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance policy listed in the premium finance agreement, an insurance policy may be canceled by the insurance premium finance company as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance agent or insurance broker indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf

of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

2. Where statutory, regulatory, or contractual restrictions provide that an insurance policy may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party, the insurer shall give the prescribed notice on behalf of itself or the insured to the governmental agency, mortgagee, or other third party within a reasonable time after the insurer receives the notice of cancellation from the insurance premium finance company. The insurance policy must be continued beyond the date of cancellation requested by the premium finance company until the date specified by the insurance company in the prescribed notice.

Application of unearned premiums.

1. Whenever a financed insurance policy or assigned risk policy is canceled, the insurer shall return whatever gross unearned premiums, computed on a pro rata basis, are due under the insurance policy or assigned risk policy to the insurance premium finance company for the account of the insured. The unearned premiums must be returned within thirty days after the date of cancellation. This action by the insurer satisfies the insurer's obligation under the insurance policy or assigned risk policy to return unearned premiums.

2. If a premium is subject to an audit to determine the final premium amount, the gross unearned premium must be calculated upon the premium deposited and the insurer shall return whatever gross unearned premiums are due based upon the deposit rather than the actual unearned premium to the insurance premium finance company for the account of the insured or insureds.

3. If the crediting of returned premiums to the account of the insured results in a surplus over the amount due from the insured, the insurance premium finance company must refund any amount of one dollar or more to the insured within thirty days after receipt of the returned premium.

Exemption from filing. No filing or recording of an insurance premium finance agreement is necessary to perfect the validity of the agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrances, successors, or assigns.

Application to premium finance agreements. This chapter applies to premium finance agreements and amendments to existing premium finance agreements executed after the effective date of this Act.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 345

HOUSE BILL NO. 1448
(Stenehjem, D. Larson)

INSURANCE PREMIUM TAX DUE DATE

AN ACT to amend and reenact subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the payment of insurance company premium taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1987 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, 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 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 must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Subsection 1 of section 26.1-03-17 was also amended by section 1 of House Bill No. 1029, chapter 346, and section 3 of Senate Bill No. 2436, chapter 261.

CHAPTER 346

HOUSE BILL NO. 1029
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

INSURANCE PREMIUM TAX RATE

AN ACT to amend and reenact subsections 1 and 2 of section 26.1-03-17 of the North Dakota Century Code, relating to the rate of insurance premium tax on accident and health insurance and other lines of insurance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 26.1-03-17 of the 1987 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, 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 and ~~one-fourth~~ three-fourths percent with respect to accident and health insurance, and one and ~~one-fourth~~ three-fourths 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 must be deposited in the general fund in the state treasury.

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid 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, 26.1-17-32, and 26.1-18-27 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

* NOTE: Subsection 1 of section 26.1-03-17 was also amended by section 3 of Senate Bill No. 2436, chapter 261, and section 1 of House Bill No. 1448, chapter 345.

the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 347

SENATE BILL NO. 2491
(Lips)

INSURANCE COMPANY EXAMINATIONS

AN ACT to amend and reenact section 26.1-03-20 of the North Dakota Century Code, relating to the examination of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-20. Examinations - By whom conducted - Compensation to be paid into ~~state treasury~~ insurance regulatory trust fund. Qualified regular employees of the commissioner, or the commissioner's designated representatives acting as independent contract examiners under the direction of regular employees of the commissioner, shall conduct all examinations of an insurance company required or permitted by law to be conducted by the commissioner, whether or not the examinations are convention examinations called in accordance with rules promulgated by the national association of insurance commissioners. Their compensation is to be paid out of the appropriation for the commissioner's office. Any sums paid to the employees or to the commissioner by the company examined, as an examination fee or otherwise, is state money, and forthwith shall be paid into the insurance regulatory trust fund. Any sums paid to the employee or the commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which expenses or any part thereof have been paid by any other person, firm, or corporation. However, independent contract examiners must be paid directly by the company examined after approval by the commissioner. The commissioner may contract for and procure the services of financial and market conduct examiners and other or additional specialized technical or professional assistants, as independent contractors. None of the persons providing those services or assistance on a contract or fee basis may be in the classified service of the state.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 348

HOUSE BILL NO. 1275
(Martinson, V. Olson)

NURSING HOME INSURANCE PRACTICES

AN ACT to amend and reenact subdivision 1 of subsection 9 of section 26.1-04-03 of the North Dakota Century Code, relating to unfair insurance claim settlement practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision 1 of subsection 9 of section 26.1-04-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Providing coverage under a policy issued under chapter 26.1-45 or as defined in section 26.1-36-31 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy ~~was confined to a hospital for three days or more~~ and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 349

HOUSE BILL NO. 1142
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANY SOLVENCY AND RESIDENCY

AN ACT to amend and reenact sections 26.1-05-04, 26.1-12-10, and 26.1-18-23 of the North Dakota Century Code, relating to solvency requirements for stock insurance companies, incorporated mutual insurance companies, and health maintenance organizations; and to repeal section 26.1-05-05 of the North Dakota Century Code, relating to residence requirements of directors and executive officers of domestic insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-04 of the 1987 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 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~~ increase its authorized capital stock and surplus ~~which satisfies the capital stock and surplus requirements in effect at that time~~ to a minimum of two hundred fifty thousand dollars. 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 26.1-12-10 of the 1987 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 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~~ increase its assets and surplus ~~which satisfy the assets and surplus requirements in effect at that time~~ to a minimum of one hundred thousand dollars.

SECTION 3. AMENDMENT. Section 26.1-18-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-23. ~~Protection~~ Protections against insolvency ~~—Deposit of bond, cash, or securities~~ and deposit. ~~A health maintenance organization must furnish a surety bond in an amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount, as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement whenever satisfied that the assets of the organization or its contracts with insurers, health service corporations, governments, or other organizations are such as to reasonably assure the performance of its obligations.~~

1. Unless otherwise provided in this section, each health maintenance organization shall deposit with the commissioner, or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner in the amount set forth in this section.

   The amount for an organization that is beginning operation is the greater of one hundred thousand dollars or one percent of the amount it expects to collect as premium, subscriber, or enrollee fees from members.

   At the beginning of the second fiscal year of operation, the amount of the deposit must equal the greater of one hundred thousand dollars or two percent of the amount it collects as premium, subscriber, or enrollee fees from members.

   At the beginning of the third fiscal year of operation, the amount of deposit must equal the greater of one hundred thousand dollars or three percent of the amount it collects as premium, subscriber, or enrollee fees from members.

   At the beginning of the fourth fiscal year of operation, the amount of deposit must equal the greater of one hundred thousand dollars or four percent of the amount it collects as premium, subscriber, or enrollee fees from members.

2. The commissioner may waive all or any part of the deposit requirements in this section if the commissioner is satisfied that the organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year, or its performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income, or the assets of the organization or its

contracts with insurers, hospital or medical service corporations, governments, or other organizations are reasonably sufficient to assure the performance of its obligations.

3. When an organization has achieved a net worth not including land, buildings, and equipment of at least one million dollars or has achieved a net worth including organization-related land, buildings, and equipment of at least five million dollars, the annual deposit requirement does not apply.

4. All income from deposits belongs to the depositing organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw all or part of that deposit after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities must be approved by the commissioner before being substituted.

5. Each health maintenance organization that obtains a certificate of authority after the effective date of this Act shall have and maintain a capital account, if a stock company, of at least five hundred thousand dollars in addition to any deposit requirements under this section. The capital account must be net of any accrued liabilities and be in the form of cash, securities, or any combination of these or other measures acceptable to the commissioner.

6. Each health maintenance organization existing within the state as of July 1, 1989, shall deposit with the commissioner, or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner in the amount of one hundred thousand dollars. Each existing health maintenance organization must meet the maximum deposit requirements set forth in subsections 1 through 4 by July 1, 1990, unless the commissioner grants an extension to a date no later than July 1, 1992. Additionally, each existing stock health maintenance organization shall meet the capital account requirements of subsection 5 by July 1, 1990, unless the commissioner grants an extension to a date no later than July 1, 1992.

SECTION 4. REPEAL. Section 26.1-05-05 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 350

SENATE BILL NO. 2282
(Lips)

INSURANCE COMPANY INVESTMENTS

AN ACT to create and enact two new subsections to section 26.1-05-19 of the North Dakota Century Code, relating to hydrocarbon production and royalty loans and collateral loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 26.1-05-19 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Ownership of, or loans secured by first liens upon:

a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant;

b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produce, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced,

as determined by independent petroleum engineers at the time of investment.

Obligations secured by a pledge of personal property, as follows:

a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.

b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subsections a and b may not exceed five percent of the admitted assets of the life insurance company.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 351

SENATE BILL NO. 2299
(Lips)

FINANCIAL FUTURES CONTRACT OPTIONS

AN ACT to create and enact a new section to chapter 26.1-05 of the North Dakota Century Code, relating to call options and financial futures contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Call options - Financial futures contracts. The purchase and sale of put options or call options or financial futures contracts are subject to this section.

1. As used in this section:

   a. "Call option" means an exchange-traded option contract under which the holder has the right to buy, or to make a cash settlement in lieu of buying, a fixed number of shares of stock, a fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.

   b. "Commodity futures trading commission" means the trading regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974, as amended, with the regulation of futures trading in commodities.

   c. "Financial futures contract" means an exchange-traded agreement to make or take delivery of, or to make cash settlement in lieu of delivery of, a fixed amount of an underlying security, or an index of underlying securities, on a specified date or during a specified period of time, or a call or put option on such an agreement, made through a registered futures commission merchant on a board of trade that has been designated by the commodity futures trading commission as a contract market. "Financial futures contract" includes a contract involving United States treasury bills, bonds, or notes; securities or pools of securities issued by the government national mortgage association; bank certificates of deposit; standard and poor's 500 stock price index; New York stock exchange composite index; or any other agreement that has been approved by and which is governed by the rules and regulations of the commodity futures trading commission and the respective contract markets on which such financial futures contracts are traded.

d. "Margin" means any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to ensure performance of the terms of the financial futures contract. For the purposes of this section, "margin" includes initial, maintenance, and variation margins as those terms are commonly and customarily employed in the futures industry.

e. "Put option" means an exchange-traded option contract under which the holder has the right to sell, or to make a cash settlement in lieu of sale of, a fixed number of shares of stock, fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.

f. "Securities and exchange commission" means the federal regulatory agency charged and empowered under the Securities Exchange Act of 1934, as amended, with the regulation of trading in securities.

g. "Underlying security" means the security subject to being purchased or sold upon exercise of a call option or put option, or the security subject to delivery under a financial futures contract.

2. The purchase and sale of put options or call options may take place under the following conditions:

a. An insurance company may purchase put options or sell call options with regard to underlying securities owned by the insurance company, underlying securities that the insurance company may reasonably expect to obtain through exercise of warrants or conversion rights owned by the insurance company at the time the put option is purchased or the call option is sold, or to reduce the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.

b. An insurance company may sell put options or purchase call options to reduce the economic risk associated with an insurance company asset or liability group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business, or to offset obligations and rights of the insurance company under other options held by the insurance company pertaining to the same underlying securities, or index of underlying securities.

c. An insurance company may purchase or sell put options or call options only on underlying securities, or an index of underlying securities, which are eligible for investment by a life insurance company under the laws of this state.

d. An insurance company may purchase or sell put or call options only through an exchange that is registered with the securities and exchange commission as a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as amended.

e. An insurance company may not purchase call options or sell put options, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under the laws of this state for investment in those particular underlying securities.

f. The net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, plus the net amount of financial futures contracts purchased minus financial futures contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets.

3. The purchase and sale of financial futures contracts may take place under the following conditions:

a. An insurance company may purchase or sell financial futures contracts for the purpose of hedging against the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in its normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.

b. An insurance company may not purchase or sell financial futures contracts or options on such contracts, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under laws of this state for investment in those particular underlying securities.

c. The net amount of financial futures contracts purchased minus financial futures contracts sold, plus the net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets. For the purposes of transactions in financial futures contracts, the admitted assets limitation is calculated by taking the net asset value of the property used to margin the financial futures contract positions, plus option premiums paid on financial futures contracts, less option premiums received on financial futures contracts.

4. This section may not be utilized by a domestic insurance company without the prior approval of the commissioner.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 352

HOUSE BILL NO. 1343
(R. Larson)

HEALTH SERVICE NOT INSURANCE COMPANY

AN ACT to amend and reenact subsection 6 of section 26.1-08-01 of the North Dakota Century Code, relating to the definition of an insurance company for purposes of the comprehensive health association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 26.1-08-01 of the 1987 Supplement to the North Dakota Century Code is 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. The term does not include a health service corporation operating under chapter 26.1-17 which does not write hospital or medical service contracts.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 353

SENATE BILL NO. 2062
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

COMPREHENSIVE HEALTH ASSOCIATION DIRECTORS AND COVERAGE

AN ACT to create and enact a new subdivision to subsection 6 of section 26.1-08-03 of the North Dakota Century Code, relating to the powers of the comprehensive health association board of directors; and to amend and reenact subsection 2 of section 26.1-08-03, sections 26.1-08-04, 26.1-08-05, 26.1-08-06, 26.1-08-07, and subsection 4 of section 26.1-08-12 of the North Dakota Century Code, relating to the comprehensive health association's board of directors and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 26.1-08-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board of directors of the association must consist of ~~ten individuals,~~ the commissioner of insurance, the state health officer, the director of the office of management and budget, one senator appointed by the president of the senate of the legislative assembly, one representative appointed by the speaker of the house of representatives of the legislative assembly, and one individual from each of the ~~ten~~ three participating member insurance companies of the association with the highest annual premium volumes of accident and health insurance contracts as determined in subsection 1. ~~Each board member is entitled to votes, in person or by proxy, based on the member's annual premium volume of accident and health insurance contracts as determined in subsection 1, in accordance with the following schedule:~~

~~$ 100,000~~	~~-~~	~~4,999,999~~	~~1 vote~~
~~$ 5,000,000~~	~~-~~	~~9,999,999~~	~~2 votes~~
~~$10,000,000~~	~~-~~	~~14,999,999~~	~~3 votes~~
~~$15,000,000 or more~~			~~4 votes~~

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them due to their service as board members, but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with subsection 4 of section 26.1-08-09.

SECTION 2. A new subdivision to subsection 6 of section 26.1-08-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Exempt, by a two-thirds majority vote, an applicant from the provisions of subsection 4 of section 26.1-08-12 when required under emergency circumstances to allow the applicant access to medical procedures determined to be necessary to preserve life.

SECTION 3. AMENDMENT. Section 26.1-08-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-04. Minimum benefits of association plan. The association through its plan ~~must~~ shall offer policies ~~which~~ that provide at least the benefits of a number one~~,~~ and two~~,~~ ~~and three~~ qualified plan A and qualified plan B and a qualified medicare extended plan.

SECTION 4. AMENDMENT. Section 26.1-08-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-05. Minimum benefits of a qualified plan A.

1. A plan of health coverage is a number ~~three~~ two qualified plan A if it otherwise meets the requirements established by chapter 26.1-36, and other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

   a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which ~~does~~ must not ~~exceed one~~ be less than five hundred ~~fifty~~ dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

   b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:

      (1) Hospital services.

      (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.

      (3) Use of radium or other radioactive materials.

      (4) Oxygen.

      (5) Anesthetics.

      (6) Diagnostic X-rays and laboratory tests.

      (7) Services of a physical therapist.

(8) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.

d. Covered expenses for the services or articles specified in this subsection do not include:

(1) Drugs requiring a physician's prescription.

(2) Services of a nursing home.

(3) Services of a home health agency.

(4) Home and office calls.

(5) Prostheses.

(6) Rental or purchase of durable medical equipment.

(7) The first twenty dollars of diagnostic X-ray and laboratory charges in each fourteen-day period.

(8) Oral surgery.

(9) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent to self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.

(10) Any charge for treatment for cosmetic purposes other than for surgery for the repair of an injury or birth defect.

(11) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(12) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.

(13) That part of a charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

(14) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(15) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(16) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.

2. ~~A plan of coverage is a number two qualified plan A if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.~~

~~3.~~ A plan of health coverage is a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which ~~does~~ must not ~~exceed~~ be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 5. AMENDMENT. Section 26.1-08-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-06. Minimum benefits of a qualified plan B.

1. A plan of health coverage is a number ~~three~~ two qualified plan B if it otherwise meets the requirements established by chapter 26.1-36, and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

   a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which ~~does~~ must not ~~exceed one~~ be less than five hundred ~~fifty~~ dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:

(1) Hospital services.

(2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.

(3) Drugs requiring a physician's prescription.

(4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.

(5) Service of a home health agency up to a maximum of one hundred eighty visits per year.

(6) Use of radium or other radioactive materials.

(7) Oxygen.

(8) Anesthetics.

(9) Prostheses.

(10) Rental or purchase, as appropriate, of durable medical equipment.

(11) Diagnostic X-rays and laboratory tests.

(12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.

(13) Services of a physical therapist.

(14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.

d. Covered expenses for the services or articles specified in this subsection do not include:

(1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or

similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.

(2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.

(3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.

(4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.

(5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

(6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.

(8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.

2. ~~A plan of health coverage is a number two qualified plan B if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.~~

~~3.~~ A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which ~~does~~ must not ~~exceed~~ be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 6. AMENDMENT. Section 26.1-08-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-07. Certification of qualified plans. Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of this chapter, the commissioner shall make a determination within ninety days as to whether the plan is qualified. All plans of health coverage ~~shall~~ must be labeled as "qualified plan A", "qualified plan B", or "nonqualified" on the front of the policy or evidence of insurance. All qualified plans ~~shall~~ must indicate whether they are number one~~,~~ or two~~, or three~~ coverage plans.

SECTION 7. AMENDMENT. Subsection 4 of section 26.1-08-12 of the 1987 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. This subsection does not apply to a person who has lost dependent status under a parent's or guardian's family or group policy and 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 April 28, 1989
Filed April 28, 1989

CHAPTER 354

SENATE BILL NO. 2428
(Senators Tennefos, Freborg, Heinrich)
(Representatives Oban, Kingsbury)

CHIROPRACTIC INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to payment for chiropractic services under contracts issued by health service corporations; and to amend and reenact subsection 9 of section 26.1-17-01 of the North Dakota Century Code, relating to practitioners entitled to contract with health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 26.1-17-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Practitioner" includes an optometrist ~~and~~, a physician, or a chiropractor duly licensed to practice his or her profession under North Dakota law.

SECTION 2. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health service corporation contract provision denying insured or subscriber right to employ doctor or enter hospital prohibited. Any provision in any health service contract issued by a health service corporation denying the insured or subscriber, subscriber member, officer, or employee, in case of accident or sickness, the right to consult or employ any doctor, including doctors of chiropractic, licensed to practice in this state whom the insured, subscriber, subscriber member, officer, or employee may choose, or to enter any hospital or sanitarium organized and operating under the laws of this state which the insured, subscriber, subscriber member, officer, or employee may select, is void. The health service corporation must recognize any proof of claim duly certified by the doctor, hospital, or sanitarium notwithstanding any provision contained in the contract.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 355

HOUSE BILL NO. 1370
(Representatives Wald, V. Olson, Mertens)
(Senators Streibel, Axtman, Tallackson)

HMO AND PREFERRED PROVIDER COVERAGE

AN ACT to create and enact a new subsection to section 26.1-18-12 and a new subdivision to subsection 1 of section 26.1-47-03 of the North Dakota Century Code, relating to the provision of health care services under health maintenance organization health care plans and preferred provider arrangements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-18-12 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

An evidence of coverage must contain a provision that entitles the enrollee, if the furnishing of any health care services through providers under contract with or employed by the health maintenance organization is not available within fifty miles [80.47 kilometers] of the certificate holder's legal residence, to coverage for the provision of those health care services under the health care plan by a provider not under contract with or employed by the health maintenance organization and located within fifty miles [80.47 kilometers] of the certificate holder's legal residence. For the enrollee to be eligible for benefits under this subsection, the provider not under contract with or employed by the health maintenance organization must furnish the health care services at the same cost or less that would have been incurred had the enrollee secured the health care services through a provider under contract with or employed by the health maintenance organization.

SECTION 2. A new subdivision to subsection 1 of section 26.1-47-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that entitles the covered person, if any health care services covered under the health benefit plan are not available through a preferred provider within fifty miles [80.47 kilometers] of the policyholder's legal residence, to the provision of those covered services under the health benefit plan by a health care provider not under contract with the health care insurer and located within fifty miles [80.47 kilometers] of the policyholder's legal residence. For the covered person to be eligible for benefits under this subdivision, the health care provider not under contract with the health care insurer must furnish the health care services at the same cost or less that would have been incurred had the covered person secured the health care services through a preferred provider.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 356

HOUSE BILL NO. 1073
(Representatives Haugland, Nowatzki)
(Senators O'Connell, Stenehjem)

PEACE GARDEN INSURANCE, BONDING, AND VEHICLES

AN ACT to amend and reenact sections 26.1-21-01, 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, 39-01-02, 39-01-03, subsection 1 of section 39-01-08, and subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to an international peace garden obtaining insurance through the state fire and tornado fund, the bonding of officers and employees of an international peace garden, and the licensing of motor vehicles of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-21-01. Definitions. In this chapter, unless the context ~~or subject matter~~ otherwise requires:

1. "Blanket bond" means a bond ~~which~~ that covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.

2. "Fund" means the state bonding fund.

3. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.

4. "Political subdivision" means a county, city, township, school district or park district, or any other unit of local government.

~~4.~~ 5. "Public employee" means any person employed by the state or any of its political subdivisions, an officer or employee eligible under section 57-15-56, ~~and~~ an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include a person employed by an occupational and professional board or commission under title 43 or by the state bar association.

~~5.~~ 6. "Public official" means any officer or deputy, either elected or appointed, of the state or any of its political subdivisions who is required to be bonded by any law of this state, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.

~~6.~~ 7. "State" means state departments, agencies, industries, and institutions, and an international peace garden.

* SECTION 2. AMENDMENT. Section 26.1-22-01 of the 1987 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. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.

3. "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 an international peace garden or a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.

~~3.~~ 4. "Political subdivision" includes a county, city, township, school district, or park district of this state.

~~4.~~ 5. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 3. AMENDMENT. Section 26.1-22-02 of the 1987 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

* NOTE: Section 26.1-22-01 was also amended by section 1 of Senate Bill No. 2147, chapter 357.

maintained as a fund to insure the various state industries, the various political subdivisions, any international peace garden, and any winter show against loss to the public buildings, or buildings owned by an international peace garden or a winter show, and fixtures and permanent contents therein, through fire, lightning, inherent explosion, windstorm, cyclone, 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 4. AMENDMENT. Section 26.1-22-05 of the 1987 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 must, and the buildings and fixtures and the permanent contents therein belonging to an international peace garden or 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 5. AMENDMENT. Section 26.1-22-06 of the 1987 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 property. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law.

SECTION 6. AMENDMENT. Section 26.1-22-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-09. 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, each county auditor, city auditor, township clerk, and school district business manager, as the case may be, the agent for an international peace garden, 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 an international peace garden or 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, political subdivision, an international peace garden, or a winter show, and shall supply such other information as may be required by the commissioner on forms provided by the commissioner.

* SECTION 7. AMENDMENT. Section 26.1-22-10 of the 1987 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 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, political subdivisions, international peace gardens, 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 8. AMENDMENT. Section 26.1-22-11 of the 1987 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 must be determined by a recognized appraisal company at the expense of the state industry, political subdivision, an international peace garden, 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 must 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

* NOTE: Section 26.1-22-10 was also amended by section 2 of Senate Bill No. 2147, chapter 357.

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, must 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 must 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 must be followed in case of new construction or in any increase or decrease in values.

SECTION 9. AMENDMENT. Section 26.1-22-14 of the 1987 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 an international peace garden or a winter show. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property 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, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance shall set the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance shall reach twelve million dollars, the assessment must 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 must 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 10. AMENDMENT. Section 26.1-22-15 of the 1987 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, a political subdivision, an international peace garden, 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, political subdivision, an international peace garden, 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 11. AMENDMENT. Section 26.1-22-18 of the 1987 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, political subdivision, an international peace garden, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

SECTION 12. AMENDMENT. Section 39-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty. All motor vehicles owned and operated by the state, except the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required height. The color of the lettering must be in clear and sharp contrast to the background. The state highway patrol and all peace officers of this state shall enforce ~~the provisions of~~ this section. The state auditor, in the course of spot checking or verifying the inventory of any state agency, shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section that comes to the auditor's attention. The above requirements do not apply to vehicles ~~owned and~~ operated by the attorney general's office, the bureau of criminal investigation, or the highway patrol, vehicles used for drivers education at state institutions, ~~the state highway patrol, or~~ vehicles used principally in juvenile, parole, and placement service, ~~or~~ selected cars or vehicles of the

state penitentiary approved by the director of institutions, vehicles owned and operated by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; or to any truck owned by any state agency. A passenger motor vehicle bearing official plates must be in compliance with this section. The administrator of any state agency who uses or authorizes the use of a motor vehicle which is not marked as required by this section is guilty of a class B misdemeanor.

SECTION 13. AMENDMENT. Section 39-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-03. State-owned motor vehicle not to be used for private use or in political activities. No person, officer, or employee of the state or of any department, board, bureau, commission, institution, industry, or other agency of the state, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, may use or drive any motor vehicle belonging to the state or to any department, board, bureau, commission, institution, industry, or other agency of the state, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, for private use, or while engaged in any political activity.

SECTION 14. AMENDMENT. Subsection 1 of section 39-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school districts, and park districts, and any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, using or operating motor vehicles and aircrafts, may carry insurance for their own protection and for the protection of any employees from claims for loss or damage arising out of or by reason of the use or operation of the motor vehicle or aircraft, whether the vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, the insurance policy may be taken out for more than one year, but in no event beyond a period of five years.

SECTION 15. AMENDMENT. Subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. Motor vehicles owned by or in possession of Indian mission schools ~~or~~, by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the motor vehicle department at actual cost.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate bearing a decal with the words "driver education" appearing on it. The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

No person may use a motor vehicle bearing official license plates bearing a decal with the words "driver education" appearing on it as provided for in this subdivision for any purpose other than driver education course instruction. No person is in violation of this subdivision if he is required by the dealer or a school administrator to house or otherwise protect the vehicle at his home or other facility.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 357

SENATE BILL NO. 2147
(Committee on State and Federal Government)
(At the request of the Commissioner of Insurance)

FIRE AND TORNADO FUND COVERAGE

AN ACT to amend and reenact subsection 2 of section 26.1-22-01 and section 26.1-22-10 of the North Dakota Century Code, relating to insurance of permanent contents through the fire and tornado fund and the insurable value of property; and to repeal sections 26.1-22-07, 26.1-22-12, and 26.1-22-20 of the North Dakota Century Code, relating to fire and tornado fund insurance on farm buildings and property owned by the Bank of North Dakota, insurance policy fees collected, and the replacement of fire and tornado fund insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 26.1-22-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Permanent contents" refers only to such public property, either owned or leased, 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.

** SECTION 2. AMENDMENT. Section 26.1-22-10 of the 1987 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 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, 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~~ agreed to between the commissioner and ~~approved by~~ the officer or board having control of such property, or, in case of disagreement, by approval through arbitration.

* NOTE: Section 26.1-22-01 was also amended by section 2 of House Bill No. 1073, chapter 356.

** NOTE: Section 26.1-22-10 was also amended by section 7 of House Bill No. 1073, chapter 356.

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 3. REPEAL. Sections 26.1-22-07, 26.1-22-12, and 26.1-22-20 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 358

HOUSE BILL NO. 1107
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

UNSATISFIED JUDGMENT FUND LEGAL COSTS

AN ACT to provide the unsatisfied judgment fund with authority to pay legal costs associated with collections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Collection of amounts owed the unsatisfied judgment fund - Costs paid. Payments from the unsatisfied judgment fund may be made, without court order, to pay contingent professional fees and costs incurred in connection with the recovery of amounts owed to the fund by any person on whose behalf the fund has previously paid a full or partial judgment.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 359

SENATE BILL NO. 2242
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

GOVERNMENT SELF-INSURANCE POOLS

AN ACT to provide for the regulation of government self-insurance pools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Government self-insurance pools - Regulation - Reinsurance.

1. Any two or more entities that have united to self-insure against their legal liability under chapter 32-12.1 or any state agency that unites with another state agency, political subdivision, or both, to self-insure against their legal liabilities are subject to the provisions of this Act with the exception of a city and its park district established pursuant to chapter 40-49. Government self-insurance pools may only provide coverage of the following types for pool members, their officers, employees, and agents:

   a. Casualty insurance, including general, public officials, and professional liability coverages.

   b. Automobile insurance including motor vehicle liability insurance coverage, security for motor vehicles owned or operated as required by chapter 26.1-41, and protection against other liability and laws associated with the ownership of motor vehicles and automobile physical damage coverages.

   c. Property insurance, including inland marine coverage, money and securities coverage, and extra expense coverage. However, this subdivision does not authorize government self-insurance pools to write those types of insurance coverages offered by the state fire and tornado fund under the provisions of chapter 26.1-22 as they existed on December 31, 1988.

   d. Other coverages authorized by the commissioner and necessary to a pool's membership.

2. A government self-insurance pool may not expose itself to loss on any single risk or hazard in an amount exceeding ten percent of the amount of its admitted assets unless the pool obtains excess insurance or reinsurance with insurance companies approved for such business by the commissioner of insurance.

SECTION 2. Government self-insurance pools not insurers. Any government self-insurance pool organized under chapter 32-12.1 is not an insurance company or insurer. The coverages provided by such pools and the administration of such pools does not constitute the transaction of insurance

business. Participation in a self-insurance pool under this Act does not constitute a waiver of any existing immunities otherwise provided by the constitution or laws of this state.

SECTION 3. Government self-insurance pool approval from the commissioner of insurance. Before the commissioner of insurance authorizes the operation of a government self-insurance pool, the pool shall provide the following:

1. A financial plan setting forth:

   a. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against.

   b. The amount of cash reserves to be set aside for the payment of claims.

   c. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period.

2. A plan of management which must provide the following:

   a. The means of establishing the governing authority of the pool and, if the governing authority of the pool is set forth in articles of incorporation, the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner may not issue a certificate to the pool if, in the commissioner's judgment, the company's name too closely resembles the name of an existing corporation or is liable to mislead the public.

   b. The responsibility of the governing authority with regard to fixing contributions to the pool by participating government political subdivisions, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surplus, and administering the pool in the event of termination or insolvency.

   c. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by, the pool.

   d. The identification of funds and reserves by exposure areas.

   e. Other provisions necessary or desirable for the operation of the pool.

3. A plan for the election by pool members of a governing authority, which must be a board of directors for the pool.

SECTION 4. Annual financial statements required - Confidentiality.

1. Every government self-insurance pool authorized by the commissioner of insurance shall file with the commissioner on or before March thirty-first of each year an audited statement of its financial

condition and business for the year ending on the preceding December thirty-first. The financial statement must be audited by an independent certified public accountant and the financial statement must be in a form prescribed or approved by the commissioner. The financial statement must be verified by the signature and oath of the pool's authorized representative. If a self-insurance pool fails to provide for the audited financial statement required by this section, the commissioner of insurance shall have the audit performed at the expense of the pool. All working papers of the commissioner's staff are confidential and not open for public inspection until the report is final unless the commissioner declares that the material or any part of the material is not confidential. If a self-insured pool is found to be in a deficit condition, the pool shall file a financial plan acceptable to the commissioner to correct the deficit condition.

2. At least triennially, and at such other times as the commissioner of insurance deems necessary, the commissioner shall inspect and examine the affairs of every government self-insurance pool. The commissioner shall conduct examinations of each self-insured government pool and all expenses and costs relating to the examination must be paid by the pool.

3. The commissioner of insurance shall monitor the financial solvency of government self-insurance pools to ensure that those pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. The commissioner may enjoin a self-insured government pool from conducting further business or take other appropriate regulatory action whenever in the commissioner's judgment a pool is insolvent or otherwise financially impaired.

SECTION 5. Investment of assets. A government self-insurance pool may only invest its funds and accumulations in those investments described in section 26.1-05-19.

SECTION 6. Pool reserve records confidential. Information regarding that portion of the funds or liability reserves of a self-insured government pool established for purposes of satisfying a specific claim or cause of action is confidential. A person is not entitled to discover that portion of the funds or liability reserves established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in any supplementary or ancillary proceeding to enforce a judgment against the pool or a governmental entity participating in the pool.

SECTION 7. Self-insurance contracts - Approval of rates and forms. No insurance policy, certificate, contract, agreement, or evidence of participation may be issued or delivered by a self-insured government pool nor may any application, rider, or endorsement be used in connection therewith until the rate and form thereof has been filed and approved by the insurance commissioner under sections 26.1-30-19 through 26.1-30-21.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 360

HOUSE BILL NO. 1395
(Tollefson, Wald)

INSURANCE PREMIUM AUDITS

AN ACT to create and enact a new section to chapter 26.1-24 of the North Dakota Century Code, relating to insurance audits by insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurer's audit to determine premium - Time limitation. An insurer providing commercial multiple peril insurance may conduct an audit to determine the premium due or to be refunded only within one hundred eighty days after the expiration date of the policy unless the insured agrees in writing to extend that period of time. During the period allowed to conduct the audit, the insurer may not estimate the amount of premium to be refunded to or paid by the insured.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 361

HOUSE BILL NO. 1408
(Tollefson, Wald)

INSURANCE COMPANY RATEMAKING

AN ACT to amend and reenact subdivision a of subsection 1 of section 26.1-25-03 of the North Dakota Century Code, relating to the making of rates for insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 26.1-25-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

a. Due consideration shall be given to past and prospective loss experience within ~~and outside~~ this state and outside this state to the extent that the consideration is given to areas the commissioner determines are representative of this state, to any conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide, as determined by the commissioner, and those specially applicable to this state, and to all other relevant factors within and outside this state. In the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which the experience is available.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 362

SENATE BILL NO. 2271
(Senators Langley, Nething)
(Representatives Dorso, Oban)

ACCIDENT PREVENTION COURSE PREMIUM EFFECT

AN ACT to amend and reenact section 26.1-25-04.1 of the North Dakota Century Code, relating to premium reductions for accident prevention course completion.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-25-04.1 of the 1987 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~~ the principal operators of motor vehicles 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 reduction in premium charges does not apply to an operator who is subject to an experience rating or a driver education premium reduction. If a policy insures two or more motor vehicles, the premium reduction applies only to the motor vehicle principally operated by the person who has satisfactorily completed the motor vehicle accident prevention course. 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 April 12, 1989
Filed April 13, 1989

CHAPTER 363

HOUSE BILL NO. 1489
(Whalen, O. Hanson)

INSURANCE AGENT CONTINUING EDUCATION

AN ACT to amend and reenact section 26.1-26-31.1 of the North Dakota Century Code, relating to an exemption from the continuing education requirements for insurance agents, brokers, and consultants, to credit for certain courses, and to reporting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-31.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-26-31.1. Continuing education required - Exceptions.

1. 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 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 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~~ two-year period following licensure~~, except as provided in subsection 2~~. No continuing education is required of a life insurance agent who is at least sixty-two years of age, who has a combined total years of licensure as such agent and years of age which equals eighty-five, and whose commissions from new business each year do not exceed ten thousand dollars. No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness.

2. The commissioner shall by rule divide the persons subject to this section into ~~four~~ two equal segments for the purpose of reporting, as follows:

   a. ~~One-fourth~~ One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the ~~first year under this section~~ previous two years within thirty days of January ~~1, 1987~~ first of every odd-numbered year.

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

   ~~c. One-fourth of the persons shall file a report showing at least the minimum number of required hours 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 at least the minimum number of required hours 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~~ 1989, shall report within thirty days of the first day of January of the year following the ~~fourth~~ second anniversary of the person's licensure.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 364

HOUSE BILL NO. 1064
(Payne)

PERSONAL INSURANCE INSURABLE INTEREST

AN ACT to amend and reenact subsection 3 of section 26.1-29-09.1 of the North Dakota Century Code, relating to an insurable interest in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-29-09.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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~~ that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.

   c. ~~An~~ In the case of individual ~~party~~ parties 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~~ that may otherwise exist as to the life of the individual.

   d. In the case of religious, educational, eleemosynary, charitable, or benevolent organizations, a lawful interest in the life of the individual insured if that individual has executed a written consent to the insurance contract.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 365

HOUSE BILL NO. 1652
(Shide, Oban, D. Olsen)

INSURANCE POLICY RETURN AND REFUND

AN ACT to create and enact a new section to chapter 26.1-33 of the North Dakota Century Code, relating to the right to return a life insurance policy and receive a refund; and to amend and reenact subdivision a of subsection 1 of section 26.1-45-09 of the North Dakota Century Code, relating to the right to return a long-term care insurance policy and receive a refund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-33 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Life insurance policies - Right to return policy. A person who purchases a life insurance policy issued or delivered in this state may return the policy within twenty days of delivery to the purchaser. If a policy is returned, the purchaser is entitled to a refund of the premium. Every life insurance policy issued or delivered in this state to any person must have a notice prominently printed on or attached to the first page of the policy stating in substance that the purchaser may return the policy within twenty days of its delivery and have the premium refunded if, after examination of the policy, the applicant is not satisfied for any reason.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 26.1-45-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

a. Individual long-term care insurance policyholders under sixty-five years of age may return the policy within ten days of its delivery and policyholders at least sixty-five years of age may return the policy within thirty days of its delivery. Any policyholder that returns a policy under this section 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 if the policyholder is under sixty-five years of age and within thirty days after its delivery if the policyholder is at least sixty-five years of age and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 366

SENATE BILL NO. 2464
(Senators Stenehjem, Olson, Heinrich)
(Representatives R. Larson, Dalrymple, Rydell)

SUBSTANCE ABUSE AND MENTAL ILLNESS COVERAGE

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 coverage for substance abuse and mental illness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-08 of the 1987 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 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, ~~by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' 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 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~~ which benefits meet or exceed the benefits provided in subsection 2.

2. The benefits 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 sixty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto, or as licensed under section 23-17.1-01 offering treatment for

the prevention or cure of alcoholism, drug addiction, or other related illness.

b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or as licensed under section 23-17.1-01, or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

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, provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or the treatment services are provided within the scope of licensure by a licensed addiction counselor. 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 continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

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 1987 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 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 ~~by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' 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~~, which benefits meet or exceed the benefits provided in subsection 2.

2. The benefits 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 sixty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness.

   b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

   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~~ thirty

hours for services covered under this section ~~and section 26.1-36-08~~ in any calendar year provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified social worker who is a board certified diplomate in clinical social work, or the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five ~~visits~~ hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining ~~visits~~ hours.

"Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

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 March 31, 1989
Filed March 31, 1989

CHAPTER 367

HOUSE BILL NO. 1391
(Representatives J. DeMers, Myrdal, Kelly)
(Senators Heinrich, Nalewaja, Mushik)

MAMMOGRAM INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health insurance coverage for mammogram examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health insurance policy and health service contract - Mammogram examination coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any person covered under the policy or contract for:

   a. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.

   b. One mammogram examination every two years or more frequently if ordered by a physician for women who are at least forty but less than fifty years of age.

   c. One mammogram examination every year for women age fifty and over.

2. This section does not apply to individually guaranteed renewable supplemental specified disease, long-term care, or other limited benefit policies.

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

Insurance to cover mammogram examinations. The board shall provide medical benefits coverage under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for:

1. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.

2. One mammogram examination every two years or more frequently if ordered by a physician for women who are at least forty but less than fifty years of age.

3. One mammogram examination every year for women age fifty and over.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 368

SENATE BILL NO. 2527
(Keller, J. Meyer)
(Approved by Committee on Delayed Bills)

PREGNANCY COMPLICATIONS INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to maternity benefit health insurance coverage for complications of pregnancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health insurance policy and health service contract - Involuntary complications of pregnancy coverage. No insurance company, nonprofit health service corporation, or health maintenance organization may deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis if the policy, contract, or evidence of coverage contains any exclusion, reduction, or other limitation as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the policy, contract, or evidence of coverage. If a fixed amount is specified in the policy, contract, or evidence of coverage for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy must be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy are an illness and entitled to benefits otherwise provided by the policy, contract, or evidence of coverage. If the policy, contract, or evidence of coverage contains a maternity deductible, the maternity deductible applies only to expenses resulting from normal delivery and caesarean section delivery; however, expenses for caesarean section delivery in excess of the deductible must be treated as expenses for any other illness under the policy, contract, or evidence of coverage. For purposes of this section, "involuntary complications of pregnancy" includes nonelective caesarean section delivery.

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

Insurance to cover involuntary complications of pregnancy. Medical benefits coverage provided under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 may not contain any exclusion, reduction, or other limitation as to coverage, deductible, or coinsurance provision, as to involuntary complications of pregnancy unless the provisions apply generally to all

benefits paid under the coverage. If a fixed amount is specified for in the coverage for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy must be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy are an illness and entitled to benefits otherwise provided by the coverage. Where the coverage contains a maternity deductible, the maternity deductible applies only to expenses resulting from normal delivery and caesarean section delivery; however, expenses for caesarean section delivery in excess of the deductible must be treated as expenses for any other illness under the coverage. For purposes of this section, "involuntary complications of pregnancy" includes nonelective caesarean section delivery.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 369

SENATE BILL NO. 2416
(Todd)

INSURANCE COVERAGE FOR CERTAIN DISORDERS

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to mandated coverage for temporomandibular joint and craniomandibular disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Coverage for treatment of certain disorders. Except for policies which only provide coverage for specified diseases, no policy or certificate of health, medical, hospitalization, or accident and sickness insurance regulated under this chapter, or a subscriber contract provided by a nonprofit health service corporation, preferred provider organization, or health maintenance organization, may be issued, renewed, continued, delivered, issued for delivery, or executed in this state after January 1, 1990, unless the policy, certificate, plan, or contract specifically provides coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of eight thousand dollars per person for surgery, and two thousand dollars for nonsurgical treatment.

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

Coverage for treatment of certain disorders. The board shall provide coverage under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of eight thousand dollars per person for surgery, and two thousand dollars for nonsurgical treatment.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 370

SENATE BILL NO. 2283
(Lips)

PHARMACY CHOICE UNDER INSURANCE CONTRACTS

AN ACT to create and enact a new section to title 26.1 of the North Dakota Century Code, relating to freedom of choice for pharmacy services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 26.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Freedom of choice for pharmacy services.

1. No third party payor including a health care insurer as defined in section 26.1-47-01, providing pharmacy services and prescription drugs to any beneficiary may:

   a. Prevent a beneficiary from selecting the pharmacy or pharmacist of the beneficiary's choice to provide pharmaceutical goods and services, provided that pharmacist or pharmacy is licensed in this state;

   b. Impose upon any beneficiary selecting a participating or contracting provider a copayment, fee, or other condition not equally imposed upon all beneficiaries in the plan selecting a participating or contracting provider; or

   c. Deny any pharmacy or pharmacist the right to participate as a preferred provider under chapter 26.1-47 or as a contracting provider for any policy or plan, provided the pharmacist or pharmacy is licensed in this state, and accepts the terms of the third-party payor's contract.

2. Notwithstanding the provisions of subsection 1, the department of human services may exclude, from participation in the medical assistance program administered under chapter 50-24.1 and title XIX of the Social Security Act [Pub. L. 89-97; 79 Stat. 343; 42 U.S.C. 1396, et seq.], as amended, any provider of pharmacy services who does not agree to comply with state and federal requirements governing the program, or who, after so agreeing, fails to comply with those requirements.

3. Any provision in a health insurance policy in this state which violates the provisions in subsection 1 is void.

4. Any person who violates this section is guilty of a class A misdemeanor and each violation is a separate offense. The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this section.

5. The commissioner of insurance shall enforce the provisions of this section.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 371

HOUSE BILL NO. 1124
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

MEDICARE SUPPLEMENT INSURANCE

AN ACT to create and enact a new subsection to section 26.1-36-32 and two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to standards for medicare supplement insurance policies, filing requirements for medicare supplement issuance policy advertising, and noncustodial care coverage; and to amend and reenact subsection 4 of section 26.1-36-31 and section 26.1-36-34 of the North Dakota Century Code, relating to the definition of medicare supplement insurance policies and medicare supplement insurance policy loss ratio standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-36-31 of the 1987 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 <u>by reason of age</u>. 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 North Dakota Century Code is hereby created and enacted to read as follows:

No medicare supplement insurance policy, contract, or certificate in force in the state may contain benefits that duplicate benefits provided by medicare.

SECTION 3. AMENDMENT. Section 26.1-36-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-34. Medicare supplement policy loss ratio standards. Medicare supplement policies must return benefits to individual policyholders in the aggregate of not less than sixty percent of premium received. The commissioner shall adopt rules to establish minimum standards for medicare supplement policy loss ratios on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of individual solicitations through the mail or mass media advertising, including both print and broadcast advertising, are treated as individual policies. No entity may provide compensation to its agents or other producers which is greater than the renewal compensation that would have been paid on an existing policy if the existing policy is replaced by another policy with the same company where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurer group.

SECTION 4. Two new sections to chapter 26.1-36 of the North Dakota Century Code are hereby created and enacted to read as follows:

Filing requirements for advertising. Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state shall provide a copy of any medicare supplement advertisement within ten days after its first use in this state whether through written, radio, or television medium for review or approval by the commissioner to the extent required or authorized by state law.

Noncustodial care coverage. An insurer offering convalescent nursing home, extended care facility, or skilled nursing facility coverage in excess of the one hundred fifty day medicare benefit shall also cover intermediate care confinements in the same manner as skilled care confinements.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 372

HOUSE BILL NO. 1123
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

LONG-TERM CARE INSURANCE

AN ACT relating to the rescission of long-term care insurance policies; and to amend and reenact sections 26.1-36-37, 26.1-45-06, and 26.1-45-07, and subsection 2 of section 26.1-45-09 of the North Dakota Century Code, relating to guaranteed renewability coverage of preexisting conditions, prior institutionalization requirements for long-term care insurance benefits, levels of care reimbursed by long-term care insurance policies, and outlines of coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-37 of the 1987 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 or certificate 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 or certificates on a statewide basis. For the purposes of this section, "guaranteed renewable for life" means the insured has the right to continue the policy in force for life subject to 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 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.

SECTION 2. Rescission of long-term care insurance policy or certificate. An insurer may not rescind a long-term care insurance policy or certificate after it has been in effect for six months except upon a showing

by the insurer that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

SECTION 3. AMENDMENT. Section 26.1-45-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-45-06. Preexisting conditions.

1. No long-term care insurance policy or certificate other than a policy or certificate issued to a group as defined in subdivision a of subsection 3 of section 26.1-45-01 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~~ six months preceding the effective date of coverage of an insured person.

2. No long-term care insurance policy or certificate issued on a group long-term care insurance policy other than a policy or certificate issued to a group as defined in subdivision a of subsection 3 of section 26.1-45-01 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~~ six months following the effective date of coverage of an insured person.

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 4. AMENDMENT. Section 26.1-45-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-45-07. Prior institutionalization requirement prohibited. ~~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.~~

1. Effective one year after the effective date of this Act, no long-term care insurance policy or certificate may be delivered or issued for delivery in this state if such policy:

   a. Conditions eligibility for any benefits on a prior hospitalization requirement; or

   b. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of such institutional care.

2. Effective one year after the effective date of this Act, a long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in subsection 1 must clearly label such limitations or conditions in the manner prescribed by the commissioner.

SECTION 5. AMENDMENT. Subsection 2 of section 26.1-45-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.~~

   a. An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

      (1) The commissioner shall prescribe a standard format including style, arrangement, overall appearance, and the content of an outline of coverage.

(2) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(3) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

b. The outline of coverage must include:

(1) A description of the principal benefits and coverage provided in the policy.

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy.

(3) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described.

(4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains the governing contractual provisions.

(5) A description of the terms under which the policy or certificate may be returned and premium refunded.

(6) A brief description of the relationship of cost of care and benefits.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 373

HOUSE BILL NO. 1576
(Payne)

IMPAIRED OR INSOLVENT INSURERS

AN ACT to create and enact chapter 26.1-38.1 of the North Dakota Century Code, relating to life and health insurance policies and annuity contracts; and to repeal chapter 26.1-38 of the North Dakota Century Code, relating to the North Dakota life and health insurance guaranty association and the performance of contractual obligations under life and health insurance policies and annuity contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-38.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-38.1-01. Scope.

1. This section provides coverage for the policies and contracts specified in subsection 2:

   a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees of the persons covered under subdivision b; and

   b. To persons who are owners of or certificate holders under such policies or contracts; or, in the case of unallocated annuity contracts, to the persons who are contractholders, and who

      (1) Are residents; or

      (2) Are not residents, but only under all of the following conditions:

         (a) The insurers that issued such policies or contracts are domiciled in this state;

         (b) Such insurers never held a license or certificate of authority in the states in which such persons reside;

         (c) Such states have associations similar to the association created by this Act; and

         (d) Such persons are not eligible for coverage by such associations.

2. This Act provides coverage to the persons specified in subsection 1 for direct, nongroup life, health, annuity, and supplemental

policies or contracts for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

3. This Act does not provide coverage for:

a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder;

b. Any policy or contract of reinsurance, unless assumption certificates have been issued;

c. Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(1) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(2) On and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

d. Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured including benefits payable by an employer association or similar entity under:

(1) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(2) A minimum premium group insurance plan;

(3) A stop-loss group insurance plan; or

(4) An administrative services only contract;

e. Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or administration of such policy or contract;

f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

g. Any unallocated annuity contract issued by an employee benefit plan protected under the federal pension benefit guaranty corporation; and

h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association, or natural persons benefit plan or a government lottery.

4. The benefits for which the association may become liable shall in no event exceed the lesser of:

a. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;

b. With any respect to one life, regardless of the number of policies, or contracts:

(1) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(2) One hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values; or

(3) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

c. With respect to each individual participating in a government retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values; provided, however, that in no event shall the association be liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under this subdivision and subdivision b; or

d. With respect to any one contractholder covered by an unallocated annuity contract not included in subdivision b, five million dollars in benefits, irrespective of the number of such contracts held by that contractholder.

26.1-38.1-02. Definitions. As used in this chapter:

1. "Account" means either of the two accounts created under section 26.1-38.1-03.

2. "Association" means the North Dakota life and health insurance guaranty association created under section 26.1-38.1-03.

3. "Commissioner" means the commissioner of insurance of this state.

4. "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 26.1-38.1-01.

5. "Covered policy" means any policy or contract within the scope of this Act under section 26.1-38.1-01.

6. "Impaired insurer" means a member insurer which, after the effective date of this Act, is not an insolvent insurer, and is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

7. "Insolvent insurer" means a member insurer which, after the effective date of this Act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

8. "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 26.1-38.1-01, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

   a. A health maintenance organization;

   b. A fraternal benefit society;

   c. A mandatory state pooling plan;

   d. A mutual assessment company or any entity that operates on an assessment basis;

   e. An insurance exchange; or

   f. Any entity similar to any of the above.

9. "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, incorporated, or any successor thereto.

10. "Person" means any individual, corporation, partnership, association, or voluntary organization.

11. "Premiums" means amounts received in any calendar year on covered policies or contracts less premiums, considerations, and deposits returned thereon, and less dividends and experience credits

thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsections 2 and 3 of section 26.1-38.1-01 and except that assessable premium shall not be reduced on account of subdivision c of subsection 3 of section 26.1-38.1-01, relating to interest limitations, and subsection 3 of section 26.1-38.1-01, relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code.

12. "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

13. "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

14. "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

26.1-38.1-03. Creation of the association.

1. There is created a nonprofit legal entity to be known as the North Dakota life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 26.1-38.1-07 and shall exercise its powers through a board of directors established under section 26.1-38.1-04. For purposes of administration and assessment, the association shall maintain two accounts:

   a. The life insurance and annuity account which includes the following subaccounts:

      (1) Life insurance account;

      (2) Annuity account; and

      (3) Unallocated annuity account which shall include contracts qualified under section 403(b) of the United States Internal Revenue Code.

   b. The health insurance account.

2. The association shall come under the immediate supervision of the commissioner of insurance and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or

records of the association may be opened to the public upon majority vote of the board of directors of the association.

26.1-38.1-04. Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights of the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

3. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

26.1-38.1-05. Powers and duties of the association.

1. If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

   a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

   b. Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subdivision a and assume payment of the contractual obligations of the impaired insurer pending action under subdivision a; or

   c. Loan money to the impaired insurer.

2. If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in subsection 3, the association shall, in its discretion, either:

a. Take any of the actions specified in subsection 1, subject to the conditions therein; or

b. Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

3. The association shall be subject to the requirements of subsection 2 only if:

a. The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(1) The delinquency proceeding shall not be dismissed;

(2) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;

(3) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored;

b. If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

c. If the impaired insurer is a foreign or alien insurer,

(1) It has been prohibited from soliciting or accepting new business in this state;

(2) Its certificate of authority has been suspended or revoked in this state;

(3) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state; and

d. With respect only to life and health insurance policies, provide benefits and coverage in accordance with subsection 4.

4. When proceeding under subdivision b of subsection 2 or subdivision d of subsection 3, the association shall, with respect to only life and health insurance policies:

a. Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and

renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:

(1) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies.

(2) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies.

b. Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days notice of the termination of the benefits provided.

c. With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision d, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

d. In providing the substitute coverage required under subdivision c, the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(1) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(2) The association may reinsure any alternative or reissued policy.

e. Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types of future issuance without regard to any particular impairment or insolvency.

f. Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not

reflect any changes in the health of the insured after the original policy was last underwritten.

g. Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

h. If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

i. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

5. When proceeding under subdivision b of subsection 2 or subsection 3 with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision c of subsection 3 of section 26.1-38.1-01.

6. Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract of substitute coverage shall terminate the association's obligations under such policy or coverage under this chapter with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

7. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

8. The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

9. In carrying out its duties under subsections 2 and 3, the association may, subject to approval by the court:

a. Impose permanent policy or contract liens in connection with any guarantee assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the

imposition of such permanent policy or contract liens, to be in the public interest.

b. Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral or cash or policy loan value.

10. If the association fails to act within a reasonable period of time as provided in subsections 2, 3, and 4, the commissioner shall have the powers and duties of the association under this Act with respect to impaired or insolvent insurers.

11. The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

12. The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

13. Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

14. The subrogation rights of the association under this section shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

15. In addition to subsections 13 and 14, the association shall have all common-law rights of subrogation and other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contract.

16. The association may:

    a. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

    b. Sue or be sued, including taking any legal actions necessary or properly to recover any unpaid assessments under section 26.1-38.1-06 and to settle claims or potential claims against it;

    c. Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

    d. Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;

    e. Take such legal action as may be necessary to avoid payment of improper claims; and

    f. Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the power of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.

17. The association may join an organization of one or more state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

26.1-38.1-06. Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at eighteen percent per annum on and after the due date.

2. There shall be two classes of assessment, as follows:

    a. Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 26.1-38.1-09. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

    b. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association with regard to an impaired or insolvent insurer.

3. The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro

rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed one hundred fifty dollars per member insurer in any one calendar year.

4. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

5. Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

6. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under subsection 2 and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

7. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

8. The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

9. The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

10. If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection 4, the board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection 8 above.

11. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

12. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

13. The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

26.1-38.1-07. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or after thirty days if he has not disapproved the plan of operation and any amendments thereto.

2. If the association fails to submit a suitable plan of operation within one hundred twenty days following the effective date of this Act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

3. All member insurers shall comply with the plan of operation.

4. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

   a. Establish procedures for handling the assets of the association;

   b. Establish the amount and method of reimbursing members of the board of directors under section 26.1-38.1-04;

   c. Establish regular places and times for meetings including telephone conference calls of the board of directors;

   d. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

   e. Establish the procedures whereby elections for the board of directors will be made and submitted to the commissioner;

   f. Establish any additional procedures for assessments under section 26.1-38.1-06;

   g. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

5. The plan of operation may provide that any or all powers and duties of the association, except those under subsection 15 of section 26.1-38.1-05 and section 26.1-38.1-06, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Act.

26.1-38.1-08. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this Act:

1. The commissioner shall:

   a. Upon request of the board of directors, provide the association with a statement of premiums in this and any other appropriate states for each member insurer;

   b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Act; and

c. In any liquidation or rehabilitation proceedings involving a domestic insurer, be appointed as the liquidator or rehabilitator.

2. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month.

3. Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

4. The liquidator, rehabilitator, or conservator of any impaired insurer may notify any interested persons of the effect of this Act.

26.1-38.1-09. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies or impairments, it shall be the duty of the commissioner:

1. To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

   a. Revokes its license;

   b. Suspends its license; or

   c. Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

   Such notice must be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs.

2. To report to the board of directors when the commissioner has taken any of the actions set forth in subsection 1 or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

3. To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer.

4. To furnish to the board of directors the national association of insurance commissioners insurance regulation information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

5. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

6. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.

7. It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

8. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1.

   The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

9. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

10. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

26.1-38.1-10. Credits for assessments paid.

1. A member insurer may offset against its premium tax liability to this state an assessment described in subsection 13 of section 26.1-38.1-06 to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited againsts its premiums tax liability for the year it ceases doing business.

2. Any sums which are acquired by refund, pursuant to subsection 11 of section 26.1-38.1-06, from the association by member insurers, and which have theretofore been offset against premium taxes as provided in subsection 1 above, shall be paid by such insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

26.1-38.1-11. Miscellaneous provisions.

1. Nothing in this Act shall be construed to reduce the liability for unpaid assessments of the insured of an impaired or insolvent insurer operating under a plan with assessment liability.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 26.1-38.1-11.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsections 13, 14, and 15 of section 26.1-38.1-05. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue as covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are

that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, any policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

5. No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 26.1-38.1-05 with respect to such insurer have been fully recovered by the association.

6. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have the right to recover on behalf of the insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections 7 through 9.

7. No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

8. Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

9. The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

10. If any person liable under subsection 7 is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

26.1-38.1-12. Examination of the association - Annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred twenty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

26.1-38.1-13. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state on any of its subdivisions, except taxes levied on real property.

26.1-38.1-14. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action or omission by them in the performance of their powers and duties under this Act. Such immunity shall extend to the participation of any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

26.1-38.1-15. Stay of proceedings - Reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

26.1-38.1-16. Prohibited advertisement of Insurance Guaranty Association Act in insurance sales - Notice to policyholders.

1. No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the North Dakota Life and Health Insurance Guaranty Association Act. Provided, however, that this section shall not apply to the North Dakota life and health insurance guaranty association or any other entity which does not sell or solicit insurance.

2. Within one hundred eighty days after the effective date of this Act, the association shall prepare a summary document describing the general purposes and current limitations of the Act and complying with subsection 3. This document should be submitted to the commissioner for approval. Sixty days after receiving such approval, no insurer may deliver a policy or contract described in subdivision a of subsection 2 of section 26.1-38.1-01 to a policyholder or contractholder unless the document is delivered to

the policyholder or contractholder to or at the time of delivery of the policy or contract except if subsection 4 applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the association as amendments to the Act may require. Failure to receive this document does not give the policyholder, contractholder, certificate holder, or insured any greater rights than those stated in this chapter.

3. The document prepared under subsection 2 shall contain a clear and conspicuous disclaimer on its face. The commissioner shall adopt a rule establishing the form and content of the disclaimer. The disclaimer shall:

   a. State the name and address of the life and health insurance guaranty association and insurance department;

   b. Prominently warn the policyholder or contractholder that the North Dakota life and health guaranty association may not cover the policy, or, if coverage is available, it will be subject to substantial limitations, exclusions and conditioned on continued residence in this state;

   c. State that the insurer and its agents are prohibited by law from using the existence of the North Dakota life and health guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

   d. Emphasize that the policyholder or contractholder should not rely on coverage under the North Dakota life and health guaranty association when selecting an insurer; and

   e. Provide other information as directed by the commissioner.

4. No insurer or agent may deliver a policy or contract described in subsection 2 of section 26.1-38.1-01 and excluded under subdivision a of subsection 3 to section 26.1-38.1-01 from coverage under this Act unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contractholder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the North Dakota life and health guaranty association. The commissioner shall by rule specify the form and content of the notice.

SECTION 2. REPEAL. Chapter 26.1-38 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 374

HOUSE BILL NO. 1540
(Representatives Vander Vorst, Murphy, Belter)
(Senators Krauter, Axtman, Streibel)

PROPERTY AND CASUALTY INSURANCE BINDERS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-39 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

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

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 375

HOUSE BILL NO. 1155
(Representative Wald)
(Senator Lips)

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

AN ACT to create and enact seven new sections to chapter 26.1-40 of the North Dakota Century Code, relating to uninsured and underinsured motorist coverage on motor vehicle liability insurance policies; and to repeal sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the North Dakota Century Code, relating to uninsured and underinsured motorist coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions - Applicable to sections 1 through 7 of this Act. As used in sections 1 through 7 of this Act, and unless the context otherwise requires:

1. "Motor vehicle" means a vehicle, excluding motor vehicles weighing more than twenty thousand pounds, having two or more load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.

2. "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, but the applicable limit of bodily injury liability of such policy or bond:

   a. Is less than the applicable limit for underinsured motorist coverage under the insured's policy; or

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

3. "Uninsured motor vehicle" means a motor vehicle for which:

   a. There is no bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident.

   b. There is an applicable policy or bond, but the insurer or issuer thereof refuses to provide coverage, denies coverage, or

is or becomes insolvent as defined in subsection 4 of section 26.1-42-02.

c. The identity of the owner or operator cannot be ascertained and the bodily injury, sickness, disease, or death of the insured is either caused by actual physical contact of such motor vehicle with the insured, or with a motor vehicle occupied by the insured, or is independently verified by a disinterested witness.

4. The terms "uninsured motor vehicle" and "underinsured motor vehicle" do not mean a motor vehicle:

a. Insured under the liability coverage of the same policy of which the uninsured motorist or underinsured motorist coverage is a part.

b. Owned by any governmental unit, political subdivision, or agency thereof.

c. Located for use as a residence or premises.

d. With respect to uninsured motorist coverage, a self-insured motor vehicle within the meaning of the financial or safety responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law.

e. Operated by any person who is specifically excluded from coverage in the policy.

The term "underinsured motor vehicle" may not be construed to include an "uninsured motor vehicle".

SECTION 2. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Uninsured motorist coverage.

1. No motor vehicle liability insurance policy may be delivered, issued for delivery, or renewed in this state with respect to any specifically insured or identified motor vehicle registered, licensed, and principally garaged in this state unless uninsured motorist coverage is provided therein or supplemental thereto in limits set forth in section 39-16.1-11. Uninsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, or disease, including death resulting therefrom, or such insured, from the owner or operator of an uninsured motor vehicle arising out of the ownership, maintenance, or use of such uninsured motor vehicle.

2. At the request of a named insured, or applicant for insurance, the insurer providing uninsured motorist coverage shall also make available higher limits of uninsured motorist coverage in accordance with its rating plan and rules. The insurer need not provide uninsured motorist coverage limits in excess of the insured's bodily injury liability limits, or one hundred thousand dollars per person and three hundred thousand dollars per accident

(or if consistent with such rating plan and rules, a combined single limit equivalent of three hundred thousand dollars per accident), whichever is less.

3. The maximum liability of the uninsured motorist coverage is the lower of:

   a. 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; or

   b. The limits of liability of the uninsured motorist coverage.

SECTION 3. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Underinsured motorist coverage.

1. The insurer shall also provide underinsured motorist coverage at limits equal to the limits of uninsured motorist coverage. Underinsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, disease, including death resulting therefrom, of such insured, from the owner or operator of an underinsured motor vehicle arising out of the ownership, maintenance, or use of such underinsured motor vehicle.

2. The maximum liability of the underinsured motorist coverage is the lowest of:

   a. 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; or

   b. The limits of liability of the underinsured motorist coverage.

SECTION 4. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Other insurance and priority of payment.

1. Any damages payable to or for any insured for uninsured or underinsured motorist coverage must be reduced by:

   a. The amount paid, or payable under any workers compensation or other similar law, exclusive of nonoccupational disability benefits; and

   b. Amounts paid or payable under any valid and collectible motor vehicle medical payments, personal injury protection insurance, or similar motor vehicle coverages.

2. Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured

motorist or underinsured motorist coverage may not be added to or stacked upon limits for such coverages applying to other motor vehicles to determine the amount of coverage available to an insured in any one accident.

3. If an insured is entitled to uninsured motorist or underinsured motorist coverage under more than one policy, the maximum amount such insured may recover may not exceed the highest limit of such coverage provided for any one vehicle under any one policy. If more than one policy applies, the following order of priority applies:

   a. A policy covering a motor vehicle occupied by the injured person at the time of the accident;

   b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured;

   c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

   Coverage available under a lower priority policy applies only to the extent it exceeds the coverage of a higher priority policy.

SECTION 5. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reimbursement and subrogation.

1. In the event of payment under uninsured or underinsured motorist coverage, the insurer making payment to the extent of the payment is entitled to the proceeds of any agreement, settlement, or judgment resulting from the exercise of any rights of recovery of such insured for compensatory damages or be entitled to exercise a right of subrogation against any person or organization legally responsible for the bodily injury, sickness, disease or death for which such payment is made.

2. No insurer providing underinsured motorist coverage has a right of subrogation against an underinsured motorist where the insurer has been provided with a written notice in advance of an agreement, settlement, or judgment between its insured and the underinsured motorist, and the insurer fails to advance a payment to the insured in an amount equal to the tentative agreement or settlement within thirty days following receipt of such notice. An insurer advancing such payment has full rights of subrogation.

3. Whenever an insurer makes payment under uninsured or underinsured motorist coverages because of an insurer insolvency, as defined in subsection 4 of section 26.1-42-03, the paying insurer's rights of reimbursement and subrogation do not include any rights of recovery against the insured of the insolvent insurer, nor against the North Dakota guaranty fund, except for the amount which is in excess of the limits of liability of the policy of the insolvent insurer.

SECTION 6. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitations. The uninsured and underinsured coverages provided for in sections 1 through 7 of this Act do not apply to bodily injury, sickness, disease, or death resulting therefrom of an insured:

1. While occupying a motor vehicle owned by, furnished or available for the regular use of the insured, a resident spouse or resident relative, if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy;

2. While operating or occupying a motor vehicle without the specific permission of the owner thereof, or without a reasonable belief that the insured is entitled to do so;

3. For damages for pain, suffering, mental anguish, inconvenience, or other noneconomic loss which could not have been recovered had the owner or operator of the motor vehicle responsible for such loss maintained the security required under any applicable state no-fault law;

4. For punitive, exemplary, or other noncompensatory damages;

5. With respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist;

6. Until the limits of all bodily injury liability policies and bonds that apply have been exhausted by payment of settlements or judgments, or such limits or the remaining part of them have been offered to the insured in writing;

7. Where the insured shall, without the written consent of the insurer, make any agreement or settlement with any person who may be legally liable therefor, if such agreement adversely affects the rights of the insurer. The insurer is not bound by any agreement or settlement without its prior knowledge and consent. This limitation does not apply to underinsured motorist coverage where the insured has advised the insurer, in compliance with subsection 2 of section 5 of this Act, and the insurer has failed to advance the required payment to protect its right of reimbursement and subrogation; and

8. If the insured has failed to report the accident to the proper law enforcement authorities as soon as practicable.

SECTION 7. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

General provisions.

1. After selection of limits by a named insured or applicant for insurance, the insurer or any of its affiliates is not required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of optional

limits. Such selection by a named insured or an applicant is valid for all insureds under the policy. The insured may make, subject to the limitations expressed in sections 1 through 7 of this Act, a request for additional coverage or coverage more extensive than that provided on a prior policy.

2. No insurer is required to offer, provide, or make available coverage conforming to sections 1 through 7 of this Act in connection with any excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation, or use of a specifically insured motor vehicle.

3. Notwithstanding any other provision of sections 1 through 7 of this Act, an insurer may make underinsured motorist coverage a part of uninsured motorist coverage.

4. Notwithstanding any other provision of sections 1 through 7 of this Act or other laws of this state, a motor vehicle liability insurance policy may provide as to uninsured and underinsured motorist coverage, that any dispute with respect to issues of liability and damages may be submitted to binding arbitration if both parties agree. Such policy may also provide that coverage questions are not subject to arbitration.

5. Nothing in sections 1 through 7 of this Act may be construed to prevent an insurer from offering, making available, or providing coverage terms and conditions more favorable to its insured or limits higher than are required by sections 1 through 7 of this Act.

SECTION 8. REPEAL. Sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 376

SENATE BILL NO. 2098
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

AUTO LIABILITY INSURANCE RENTAL AUTO COVERAGE

AN ACT to require motor vehicle liability insurance policies for private passenger automobiles to include property damage coverage for rented automobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Motor vehicle liability policy - Rental vehicles covered.

1. Every motor vehicle liability insurance policy, as that term is defined in section 39-16.1-11, covering private passenger motor vehicles must provide that all of the obligation for damage and loss of use to a rented vehicle will be covered by the property damage liability portion of the policy. The obligation of the policy must not be contingent on fault or negligence of the insured.

2. A vehicle is rented for purposes of this section if the vehicle is rented under an agreement for thirty continuous days or less.

3. The policy or certificate issued by the insurer must inform the insured of the application of the insurance policy to rental vehicles and that the insured may not need to purchase additional coverage from the rental company.

4. If an insured has two or more vehicles covered by a plan or plans of liability insurance containing the rented motor vehicle coverage required under subsection 1, the insured may select the policy that the insured wishes to collect from and the insurer that issued that plan is entitled to a pro rata contribution from any other plan or insurers based upon the property damage limits of liability. If the person renting the motor vehicle is also covered by that person's employer's insurance policy or the employer's automobile self-insurance plan, the insurer or obligor under the employer's policy or self-insurance plan has primary responsibility to pay claims arising from use of the rented vehicle.

5. A notice advising the insured of rental vehicle coverage must be given by the insurer to each current insured with their first renewal notice following the effective date of this Act. The notice must be approved by the commissioner of insurance. The commissioner may specify the form of the notice.

6. A rental car company may not require as a condition to its rental contract that the renter make a deposit for a prior payment of damage to the rented vehicle or loss of use of that vehicle.

7. For each day a damaged vehicle is out of service because of damage to the vehicle while rented to others, the rental car company is entitled to collect sixty percent of the daily rental fee applicable to the contract in force when the car was damaged, but not to exceed fifteen days.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 377

HOUSE BILL NO. 1409
(Tollefson, Wald)

EXCESS NO-FAULT BENEFITS

AN ACT to amend and reenact sections 26.1-41-04 and 26.1-41-14 of the North Dakota Century Code, relating to optional excess no-fault benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-41-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-04. Optional excess no-fault benefits. Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of eighty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident, including an accident where the person who purchased the optional excess no-fault benefits or that person's relative is injured in a motor vehicle not owned by the insured or as a pedestrian. A basic no-fault insurer may also offer benefits and limits other than those prescribed in this section, and a basic no-fault insurer may incorporate in optional excess no-fault coverage the terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide for subrogation to the injured person's right of recovery against any responsible third party.

SECTION 2. AMENDMENT. Section 26.1-41-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-14. Stacking of basic no-fault benefits prohibited. When an injured person is provided basic no-fault benefits by an insurance policy issued in compliance with this chapter, the injured person is covered only to the extent of the basic no-fault benefits provided on the secured motor vehicle involved in the accident and the optional excess no-fault benefits purchased by the injured person, or a relative of the injured person, on a secured motor vehicle, if any, in excess of the basic no-fault benefits provided on the secured motor vehicle involved in the accident. If any person is injured while occupying an unsecured motor vehicle, basic no-fault benefits are only available to the extent of the applicable basic no-fault benefits provided to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle. In either instance, basic no-fault benefits on any secured motor vehicle may not be added or stacked upon basic no-fault benefits available from any other source.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 378

HOUSE BILL NO. 1467
(Tollefson, Wald)

NO-FAULT INSURANCE STATUTE OF LIMITATIONS

AN ACT to amend and reenact subsections 1 and 2 of section 26.1-41-19 of the North Dakota Century Code, relating to the statute of limitations for no-fault insurance claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 26.1-41-19 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. If no basic or optional excess no-fault benefits have been paid for loss, an action for the benefits may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or optional excess no-fault benefits have been paid for loss, an action for recovery of further benefits for the loss by either the same or another claimant, may be commenced not later than ~~two~~ four years after the last payment of benefits.

2. If no basic or optional excess no-fault benefits have been paid to the decedent or dependent survivors, an action for benefits for survivors' income loss and replacement services loss and funeral and burial expenses may be commenced not later than ~~one year~~ two years after the death or ~~four~~ six years after the accident from which death results, whichever is earlier. If survivors' income loss and replacement services loss benefits have been paid to any dependent survivor, an action for recovery of further survivors' income loss or replacement services loss benefits by either the same or another claimant may be commenced not later than ~~two~~ six years after the last payment of benefits. If basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before the injured person's death resulting from the injury, an action for recovery of survivors' income loss or replacement services loss benefits may be commenced not later than ~~one year~~ two years after the death or ~~four~~ six years after the last payment of benefits, whichever is earlier.

Approved March 21, 1989
Filed March 23, 1989