

2025 SENATE INDUSTRY AND BUSINESS

SB 2374

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2374
2/5/2025

A bill relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; and relating to the presumption and delegation of control in insurance holding company systems, exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; and relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

10:01 a.m. Senator Enget opened the hearing.

Members present: Chairman Barta, Senator Klein, Senator Enget

Members absent: Vice-Chairman Boehm, Senator Kessel

Discussion Topics:

- Lock Lord interim study
- Property market reform
- Property and casualty market
- "Large commercial risk" definition and percentages
- Over regulation and corporate flexibility
- Federal crop insurance and clients
- National Association of Insurance (NAIC)
- Accreditation standards
- National recognized frameworks
- Mandatory arbitration agreements
- Surplus line markets and laws
- Risk Retention Groups (RRG) and definition
- Statutory Coverage Compliance
- Federal Liability Risk Retention Act
- Nodak Insurance
- Association of ND Insurers
- Manage repairs program
- Coverage denial and bad faith
- Federal Risk Retention Act
- Professional Insurance Agents of ND
- Anti-rebating statues
- Consumer protection
- Fairness and bribery
- Farm and ranch accounts

10:01 a.m. Senator Jeff Barta, District 43, testified in favor and introduced the bill.

10:04 a.m. Jon Godfread, ND Insurance Commissioner, testified in favor and submitted testimony #35426.

10:24 a.m. Chris Oen, Vice President of Nodak Insurers, testified in favor.

10:35 a.m. Levi Andrist, representing the American Property Casualty Insurance Association (APCIA), testified in opposition and submitted testimony #35265.

10:41 a.m. Steve Becher, Executive Director of the Professional Insurance Agents of ND (PIAND), testified in opposition and submitted testimony #35427.

10:55 a.m. Dean Mastel, Principal at Steffes Agency Inc, testified in opposition.

Additional written testimony:

John H. Meetz, WSIA, submitted testimony #34851 in neutral.

11:08 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk



February 5, 2025

Senator Jeff Barta
Senate Industry and Business Committee
600 East Boulevard
Bismarck, ND 58505-0360

Re: SB 2374

Dear Chairman Barta,

The Wholesale & Specialty Insurance Association¹ (WSIA) appreciate the opportunity to provide comments on SB 2374. WSIA has some concerns with Section 7 of the bill regarding binding arbitration, however, we have been in discussions with the North Dakota Department of Insurance, and we believe those discussions will result in an amendment that will alleviate our concerns.

Binding arbitration is an effective method of resolving disputes outside of the courtroom. It allows parties to settle their differences in a more efficient and cost-effective manner than traditional litigation, often preserving business relationships and providing a faster resolution. This process is widely used in both the private and public sectors and serves to reduce the burden on our court system while ensuring that disputes are handled fairly and impartially.

Some of the current restrictions in Section 7 that mandate the venue of law and location where arbitration must be conducted are particularly challenging for commercial surplus lines contracts and would conflict with the goal of bringing down insurance costs. The surplus lines market serves as the safety valve of the insurance industry for consumers. In order to cover hard-to-place risks, surplus lines contracts must have the freedom to be negotiated between the producer and the insured. In many cases, negotiating a different venue for arbitration can result in a reduced premium, higher levels of coverage or other terms that are favorable to the insured.

¹ WSIA is the U.S. professional trade association representing the wholesale and specialty insurance market and the wholesale distribution system. WSIA presents approximately 400 wholesale broker member firms, 100 surplus lines insurance companies, and 200 associates and service providers to the surplus lines market, our membership operates in more than 1,500 offices representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide – all of whom are committed to the wholesale distribution system and U.S. surplus lines market.

Additionally, surplus lines insurance policies frequently cover risk in multiple states. Often the insured covered by a commercial surplus lines policy does not even reside in the state where the risk is located. As such, insureds will often negotiate arbitration venues or governing laws that are different from the state where the risk resides. As SB 2374 is presently drafted, insureds would no longer have the ability to negotiate the forum for arbitration at the inception of an insurance contract.

For these reasons, we would suggest the following sentence be added to Section 7, subsection 6 of the bill (after line 2 on page number 16).

c. Commercial surplus lines insurance policies placed in accordance with section 26.1-44-03.

Thank you for the opportunity to provide comments on SB 2374. We would also like to thank the Department of Insurance for their willingness to work with us on this issue and we will commit to continued dialogue if necessary. If there are any questions, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "John Meetz", with a stylized flourish at the end.

John H. Meetz
Director of Government Relations
WSIA
john@wsia.org
816.799.0863



SENATE BILL NO. 2374

Statement of the American Property Casualty Insurance Association

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA members write 61.6 percent of all auto insurance sold in North Dakota, representing nearly \$430 million dollars in direct written premium. On behalf of our members, we offer this testimony in opposition to Senate Bill 2374 and would request to work with the department on favorable amendments.

APCIA offers the following comments in opposition to several sections below of SB 2374.

Section 7 regarding Mandatory Arbitration Endorsements for Property Insurance APCIA offers the following comments. This new section requires disclosures that are typically not required for surplus lines policies. More importantly, it mandates that arbitration proceedings be conducted in North Dakota and governed by North Dakota law. This requirement applies to any property insurance policy issued or delivered in North Dakota. As a result, it also affects multi-state policies where the bulk of the risk is in another state, but only one property is located in North Dakota. This approach contradicts the Nonadmitted and Reinsurance Reform Act, as well as the recently updated NAIC Nonadmitted Insurance Model Act #870, which states that if the insured's home state is not North Dakota, but there is a risk on the policy within the state's boundaries, then the home state has jurisdiction over the policy, not North Dakota.

Additionally, all property and casualty policies would fall under this requirement. Although there is a carve-out for large commercial risks, which has a new definition under Section 4, overall, it would impact surplus lines insurers. APCIA opposes this section of the bill unless favorable amendments are made to exclude excess and surplus lines policies.

Section 8 of the bill, which addresses managed repair programs, it states that the insured retains the right to choose a contractor and can request a different one. This provision appears contradictory to the rest of the bill and seems to render it ineffective. The APCIA would oppose this unless the section is amended. Companies currently offer optional programs, and this proposed language does not seem to change that. However, if the ability to opt out of a program— for which the insured has already received a discount—is not removed, it is difficult to see any insurer choosing to offer such a program under these terms.

Sections 14, 15, 16 – Changes to Risk Retention Group Regulations These sections implement several changes to the oversight of Risk Retention and Risk Purchasing Groups in state law. Most of these changes are acceptable as they do not conflict with federal law. However, one specific change appears to be noncompliant with the federal Risk Retention Act of 1986 (15 USC Ch. 65: Liability Risk Retention). The relevant text, found at the bottom of page 22 and the top of page 23, states the following:

g. The group's activities must not include providing insurance other than: (1) Liability insurance for assuming and spreading all or any portion of the liability of its group members, except a nonmaterial

amount of commercial property coverage incidental to the liability exposure of its group members also may be insured.

The underlined section is “new” and would not be in compliance with the federal law as property coverage is not allowed. The federal law is very specific with regard to allowing only liability coverage.

APCIA looks forward to working with the department on suggested amendments.

Brooke Kelley

Brooke Kelley
Vice President, State Government Relations American
Property Casualty Insurance Association

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NORTH DAKOTA
Insurance Department

TESTIMONY

Jon Godfread, Insurance Commissioner

Senate Industry and Business Committee

February 5, 2025

Chairman Barta and members of the committee, thank you for the opportunity to testify today. For the Record I am Jon Godfread, North Dakota Insurance Commissioner and I am here today in support of Senate Bill 2374, a bill that represents a targeted, expert-driven modernization of our state's insurance laws. This legislation is based on the recommendations of industry experts who were specifically tasked with identifying ways to make North Dakota's property insurance market more competitive, resilient, and flexible in the face of rapidly changing economic and environmental risks.

The North Dakota property insurance market is facing increasing pressures. Rising costs due to inflation, higher reinsurance rates, more frequent catastrophic weather events, and supply chain disruptions are all contributing to a tightening commercial insurance market. These challenges make it essential for our state to remain attractive to insurers while also providing commercial buyers with more tools to negotiate and secure the coverage they need.

Senate Bill 2374 seeks to achieve this by introducing reasonable, targeted regulatory flexibility—particularly for large commercial policyholders—while maintaining strong oversight where it is truly needed.

Key Provisions of Senate Bill 2374

Section 1 & 4 - 7: Recognizing Large Commercial Risks as Sophisticated Buyers

One of the key components of SB 2374 is recognizing that large commercial policyholders are fundamentally different from individual consumers or small businesses in their insurance needs, risk management expertise, and bargaining power. These policyholders typically:

- Have total insured property values of at least \$5 million or annual gross revenues of at least \$10 million.
- Employ dedicated risk managers or external insurance consultants to negotiate policies.
- Engage in highly customized insurance transactions that are not standardized like personal or small-business policies.

Because of these factors, overregulating their insurance transactions does not provide consumer protection—it creates unnecessary barriers and costs.

To address this, SB 2374:

This amendment will prohibit insurance producers from giving a gift of any value to insurance clients, potential clients or any other persons currently allowed to receive promotional gifts of up to \$100 in value.

We have drafted both of these amendments and would appreciate the committee's consideration of these amendments.

Section 2 & 3: Updating the Insurance Holding Company Systems

The final section of SB 2374 introduces provisions allowing delegation agreements to be filed with the North Dakota Insurance Department. These updates are intended to permit a person or entity to delegate control over an insurer to one or more other persons, subject to the approval of the Insurance Commissioner.

While this provision is aimed at enhancing corporate flexibility within insurance holding company structures, it is important to note that North Dakota's Insurance Holding Company System statute is part of the National Association of Insurance Commissioners (NAIC) Accreditation Program.

The NAIC Accreditation Program was established to ensure that states adopt and enforce consistent solvency regulations for multi-state insurers across life, health, and property & casualty markets. North Dakota has maintained its Accreditation since 1992, and we are committed to preserving that status.

Potential Impact on Accreditation

There is a concern that passing Sections 2 and 3 of SB 2374 in their current form may negatively impact North Dakota's Accreditation standing. We are actively reviewing this issue to determine whether these provisions align with NAIC standards or if they could introduce inconsistencies in solvency regulation.

To ensure that we do not jeopardize our Accreditation, we have drafted an amendment to remove Sections 2 and 3 if it is determined that retaining these provisions would place our Accreditation status in question. Maintaining a strong, nationally recognized regulatory framework remains a top priority, and we will continue to work closely with stakeholders to address any concerns.

These changes align North Dakota's laws with modern industry practices while ensuring that businesses utilizing these alternative models operate within a clear and fair regulatory framework.

Sections 7 - 10: Strengthening Legal Clarity & Efficiency in Claims Handling

SB 2374 also introduces important legal clarity around arbitration, claims reopening, and bad faith litigation. These changes will help reduce costs and uncertainty for insurers, which in turn leads to more affordable coverage options for businesses and consumers alike.

are regulated primarily by the state in which they are domiciled and can operate in multiple states without needing a separate license in each one.

- RRGs are often used by industries where liability insurance is expensive or difficult to obtain, such as healthcare providers, trucking companies, and construction firms.
- Members of an RRG own and control the group, meaning the risk is shared exclusively among them.
- Because they operate under a unique regulatory framework, state laws can sometimes create confusion about whether RRGs meet statutory coverage requirements.

SB 2374 clarifies that compliant RRGs are recognized as authorized insurers, ensuring that businesses using these groups can meet legal insurance requirements without unnecessary barriers. This update provides certainty to policyholders, regulators, and insurers alike while ensuring that RRGs continue to function effectively in North Dakota.

Purchasing Group (PG)

A Purchasing Group (PG) is different from an RRG in that it does not self-insure but instead buys insurance as a group from a traditional insurer. Also established under the federal Liability Risk Retention Act, a PG consists of businesses or individuals with similar liability risks who join together to negotiate better insurance terms than they could obtain individually.

- Purchasing Groups provide greater bargaining power, allowing members to reduce costs and secure more tailored coverage.
- Unlike RRGs, a PG does not form its own insurance company; rather, it buys policies from licensed insurers on behalf of its members.

SB 2374 clarifies and strengthens the regulation of risk retention groups and purchasing groups, ensuring that businesses using these alternative risk-financing mechanisms have clear guidelines. The bill:

- Clarifies that compliant risk retention groups are treated as authorized insurers, allowing them to meet statutory coverage requirements.
- Allows purchasing groups to buy a shared aggregate limit, enabling members to pool risk efficiently.
- Ensures transparency in fees charged by purchasing groups, protecting policyholders while maintaining operational flexibility.

Chairman Barta and members of the committee, in summary SB 2375 is about:

- Recognizing the sophistication of large commercial policyholders and allowing them the flexibility to secure coverage in an increasingly complex market.
- Removing unnecessary barriers that make it harder for businesses to obtain the insurance they need.
- Keeping North Dakota competitive by ensuring our insurance laws reflect modern market realities.

Testimony - SB 2374

Senator Barta and members of the Senate Industry and Business Committee my name is Steve Becher, Executive Director of the Professional Insurance Agents of North Dakota. PIA of ND is an association of well over 1,000 main street insurance agents from about 300 agencies across the entire state of North Dakota. I am providing testimony today in opposition of **SB 2374** in its present form which is a hard thing for me considering the bill sponsors. In truth we don't have any issues with the vast majority of the bill, but have some concerns with a definition and a large concern with one section that in essence makes rebating totally legal for large commercial accounts.

To give you some background on anti-rebating statutes, forty-eight states and the District of Columbia all prohibit insurers and agents from giving an insured or prospective insured anything of value not specified in the policy as an inducement to the purchase of insurance. There are two important public policy reasons for the anti-rebating statutes: (1) to prevent the creation of a competitive disadvantage or non-level playing field for other agents, brokers and agencies in the market and (2) to protect consumers and others from unfair and deceptive trade practices, discriminatory rates, etc. These statutes ensure that a policy's written terms are applied consistently to all policy holders who have been issued similar or identical policies and that some policy holders are not given preferential treatment. The basic premise of insurance is that the premium amount that an insured pays is based on actuarially sound rates for the exposures that they have covered. When rebates are given to certain clients in order to get or keep their business that insured is no longer paying their fair share of premiums while those that don't get the rebate pay the full amount. Agents don't have the

financial ability to give rebates to everyone if they would be allowed so in reality the large accounts would get a rebate and the smaller account would not. Anti-rebating statutes in insurance are a consumer protection to make sure that everyone pays the appropriate premium for the risks that they have.

SB 2374 on page 13, lines 5 and 6 make it so that subsections 1 & 2 of the current rebating statutes would not apply to large commercial risks. Subsection 1 says that an insurance producer may not give an insured a rebate, discount, credit, etc or anything of valuable consideration in any amount that is not specified in the insurance policy. Subsection 2 was added a few sessions ago as an exception to the rebating statute to give agents the ability to promote their business through promotional items, gifts, meals, or entertainment activity as long as it wasn't cash and the amount could be no more than \$100 annually per insured. This allowed agents to build a relationship with their clients, but not have the dollar amount be such that it would be an inducement to write or keep a policy with them. This bill strikes those 2 subsections of law for any large commercial risk and basically allows rebating in any amount to these clients. This is totally against the reasons why we have anti-rebating statutes and consumer protections in place to make sure all consumers are getting fair treatment. We would no longer oppose the bill if lines 5 and 6 on page 13 were removed from the bill as well as some fee language dealing with rebating.

The definition that we have concerns about is the definition of "large commercial risk" found on page 8. The bill defines large commercial risk as \$5 million in total property value OR \$10 million in gross revenue OR \$25,000 in property premium or liability

premium OR \$50,000 for multiline policies. These values or premiums would not be considered a large commercial risk for most agents and would be just looked at as a nice commercial account. I talked to my board President and asked him how many clients he currently has that would be considered a large commercial risk under this bill and he stated probably 50-60 and that was just his own clients not clients that were handled by the other agents that work in his office. That is just one agent in one agency so the number of clients that would be carved out as large commercial risks under this bill would be a large number. The other issue we have with the definition is whether or not it is meant to include farm accounts and/or crop insurance. If it does, most every decent size farm would probably be considered a large commercial risk and would be carved out as well. We would definitely not want farm and crop insurance considered a large commercial risk as crop insurance is the number one problem area for rebating even with the laws that are currently written. You may have seen where the Insurance Department recently issued their largest agent fine ever against a farm/crop agent that was giving rebates to some of his customers. We have heard of crop agents giving insurance clients trips to Las Vegas, giving farmers a large check to "buy" an old 3 wheeler that doesn't even run anymore, and even giving their clients lake lots as an inducement to write or keep their crop insurance. This bill as written would make all of those practices legal as long as the rebates were given to large commercial clients.

For these reasons we would oppose **SB 2374** as written and would recommend a Do Not Pass recommendation from this committee. As I stated earlier in my testimony, we

would no longer oppose the bill if lines 5 and 6 on page 13 and some fee language were removed from the bill and if the definition of large commercial risk was clarified and the values raised. I have two amendments that I would like to propose that would take care of the issues we have with this bill. Amendment #1 would raise the values of a large commercial risk to be more in line with the current insurance market and would clarify that farm and ranch (which would include crop insurance) are not considered a large commercial risk. Amendment #2 is the more crucial of the amendments to us as it would remove the bill language that exempts large commercial risks from the rebating statutes as well as the section regarding rebating of fees. Thank you for your consideration and I would be happy to answer any questions that you may have.

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee

Fort Union Room, State Capitol

SB 2374
2/11/2025

A bill relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; and relating to exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

10:51 a.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Primary Insurance Account (PIA), thresholds, and large commercial risk
- Rebating concerns
- Surplus lines industry clarification

10:51 a.m. John Arnold, Deputy Insurance Commissioner for the ND Insurance Department, testified in neutral.

10:56 a.m. Chairman Barta adjourned the meeting.

Audrey Oswald, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2374
2/12/2025

A bill relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; and relating to exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; and relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

10:01 a.m. Chairman Barta called the meeting to order.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Stakeholders
- NAIC credential standards
- Definition of large commercial risk
- Rebating
- Surplus lines
- Arbitration

10:01 a.m. John Arnold, Deputy Insurance Commissioner for the ND Insurance Department, testified in neutral.

10:05 a.m. John Ward, lobbyist representing the Association of ND Insurance, testified in neutral.

10:05 a.m. Levi Andrist, ND Attorney, testified in neutral.

10:07 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2374
2/17/2025

A bill relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property claims, and surplus lines insurance policies; and relating to the presumption and delegation of control in insurance holding company systems, exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; and relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

9:53 a.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- ND Association of Insurance Commissioners (NAIC) Accreditation concerns
- Crop insurance rebating
- Consequences and penalties
- Nonprogram crops and federally subsidized
- Limitation on reopening claims and supplemental claims
- Preemption of federal laws

9:53 a.m. Johnny Palsgraaf, General Counsel & Legal Division Director, ND Insurance Department, testified in neutral, explained amendment and submitted testimony #44634.

10:19 a.m. Jon Godfread, Insurance Commissioner, ND Department of Insurance, testified in neutral.

10:31 a.m. Steve Becher, Executive Director, Professional Insurance Agents of ND, testified in neutral.

10:38 a.m. Jon Godfread, Insurance Commissioner, ND Department of Insurance, testified in neutral.

10:41 a.m. Senator Klein moved to adopt amendment LC# 25.1236.01001.

10:42 a.m. Senator Kessel seconded the motion.

10:43 a.m. Johnny Palsgraaf, General Counsel & Legal Division Director, ND Insurance Department, testified in neutral.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

10:46 a.m. Senator Klein moved a Do Pass As Amended.

10:46 a.m. Senator Boehm seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0

Senator Barta will carry the bill.

10:46 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

February 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2374

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

2-17-25

JB 10/25

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

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

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

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

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

1. The lawful transaction of surplus lines insurance.
2. The lawful transaction of reinsurance by insurers.
3. Transactions involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
4. Transactions involving life insurance, health insurance, or annuities provided to educational or religious or charitable institutions organized and operated without profit to any private shareholder or individual, for the benefit of the institutions and individuals engaged in the service of the institutions.
5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
6. Transactions involving group life, accident, and health, or blanket accident and health insurance, or group annuities if the master policy of the group was lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.
7. Transactions involving any insurance policy or annuity contract issued before July 1, 1973.
8. Transactions relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
9. Transactions involving insurance contracts issued to one or more industrial insureds; provided, that this does not relieve an industrial insured from taxation imposed upon independently procured insurance. An industrial insured is an insured:

- 1 a. Which procures the insurance of any risk or risks other than life and annuity
- 2 contracts by use of the services of a full-time employee acting as an insurance
- 3 manager or buyer or the services of a regularly and continuously retained
- 4 qualified insurance consultant;
- 5 b. Whose aggregate annual premiums for insurance on all risks total at least
- 6 twenty-five thousand dollars; and
- 7 c. Which has at least twenty-five full-time employees.

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

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

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

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

28 ~~26.1-10-04. Registration of insurers.~~

29 ~~1. Every insurer that is authorized to do business in this state and which is a member of~~
30 ~~an insurance holding company system shall register with the commissioner, except a~~
31 ~~foreign insurer subject to registration requirements and standards adopted by statute~~

4 of 25

1 ~~or rule in the jurisdiction of its domicile which are substantially similar to those~~
2 ~~contained in this section and section 26.1-10-05. Any insurer subject to registration~~
3 ~~under this section shall register within fifteen days after it becomes subject to~~
4 ~~registration, and annually thereafter by March first of each year for the previous~~
5 ~~calendar year unless the commissioner for good cause shown extends the time for~~
6 ~~registration, and then within the extended time. The commissioner may require any~~
7 ~~insurer authorized to do business in the state which is a member of an insurance~~
8 ~~holding company system not subject to registration under this section to furnish a copy~~
9 ~~of the registration statement, the summary specified in subsection 10 of section~~
10 ~~26.1-10-04, or other information filed by the insurer with the insurance regulatory~~
11 ~~authority of the domiciliary jurisdiction.~~

12 ~~2. Every insurer subject to registration shall file a registration statement with the~~
13 ~~commissioner on a form approved by the commissioner, which must contain current~~
14 ~~information about:~~

15 ~~a. The capital structure, general financial condition, ownership, and management of~~
16 ~~the insurer and any person in control of the insurer.~~

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

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

22 ~~(1) Loans, other investments, or purchases, sales, or exchanges of securities of~~
23 ~~the affiliates by the insurer or of the insurer by its affiliates.~~

24 ~~(2) Purchases, sales, or exchange of assets.~~

25 ~~(3) Transactions not in the ordinary course of business.~~

26 ~~(4) Guarantees or undertakings for the benefit of an affiliate which result in an~~
27 ~~actual contingent exposure of the insurer's assets to liability, other than~~
28 ~~insurance contracts entered into in the ordinary course of the insurer's~~
29 ~~business.~~

30 ~~(5) All management agreements, service contracts, and all cost sharing~~
31 ~~arrangements.~~

1 ~~_____ (6) Reinsurance agreements.~~

2 ~~_____ (7) Dividends and other distributions to shareholders.~~

3 ~~_____ (8) Consolidated tax allocation agreements.~~

4 ~~_____ d. Any pledge of the insurer's stock, including stock of any subsidiary or controlling~~
5 ~~affiliate, for a loan made to any member of the insurance holding company~~
6 ~~system.~~

7 ~~_____ e. If requested by the commissioner, the insurer shall include financial statements of~~
8 ~~or within an insurance holding company system, including all affiliates. A financial~~
9 ~~statement may include an annual audited financial statement filed with the United~~
10 ~~States securities and exchange commission pursuant to the federal Securities~~
11 ~~Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities~~
12 ~~Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial~~
13 ~~statement pursuant to this subdivision may satisfy the request by providing the~~
14 ~~commissioner with the most recently filed parent corporation financial statements~~
15 ~~that have been filed with the United States securities and exchange commission.~~

16 ~~_____ f. Other matters concerning transactions between registered insurers and any~~
17 ~~affiliates as may be included from time to time in any registration forms adopted~~
18 ~~or approved by the commissioner.~~

19 ~~_____ g. Statements that the insurer's board of directors is responsible for and supervises,~~
20 ~~relating to corporate governance and internal controls that the insurer's officers or~~
21 ~~senior management have approved, implemented, and continue to maintain and~~
22 ~~monitor.~~

23 ~~_____ h. Any other information required by the commissioner by rule.~~

24 ~~_____ 3. No information Information does not need to be disclosed on the registration statement~~
25 ~~filed pursuant to subsection 2 if the information is not material for the purposes of this~~
26 ~~section. Unless the commissioner by rule or order provides otherwise, sales,~~
27 ~~purchases, exchanges, loans or extensions of credit, or investments, or guarantees~~
28 ~~involving one-half of one percent or less of an insurer's admitted assets as of~~
29 ~~December thirty first next preceding are not material for purposes of this section.~~

30 ~~_____ 4. In addition to the annual filing requirement under subsection 1, each registered insurer~~
31 ~~shall keep current the information required to be disclosed in its registration statement~~

- 1 ~~by reporting all material changes or additions on amendment forms approved by the~~
2 ~~commissioner within fifteen days after the end of the month in which it learns of each~~
3 ~~change or addition; provided, however, that subject to subsections 7, 8, and 9 of~~
4 ~~section 26.1-10-05, each registered insurer shall report all dividends and other~~
5 ~~distributions to shareholders within five business days following the declaration and no~~
6 ~~less than ten business days prior to payment thereof.~~
- 7 ~~5. The commissioner shall terminate the registration of any insurer that demonstrates it~~
8 ~~no longer is a member of an insurance holding company system.~~
- 9 ~~6. The commissioner may require or allow two or more affiliated insurers subject to~~
10 ~~registration to file a consolidated registration statement.~~
- 11 ~~7. The commissioner may allow an insurer which is authorized to do business in this~~
12 ~~state and which is part of an insurance holding company system to register on behalf~~
13 ~~of any affiliated insurer which is required to register under subsection 1 to file all~~
14 ~~information and material required to be filed under this section.~~
- 15 ~~8. This section does not apply to any insurer, information, or transaction if and to the~~
16 ~~extent excepted by the commissioner by rule or order.~~
- 17 ~~9. Any person may file with the commissioner a disclaimer of affiliation with any~~
18 ~~authorized insurer or a disclaimer may be filed by the insurer or any member of an~~
19 ~~insurance holding company system. The disclaimer must fully disclose all material~~
20 ~~relationships and bases for affiliation between the person and the insurer as well as~~
21 ~~the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have~~
22 ~~been granted unless the commissioner, within thirty days following receipt of a~~
23 ~~complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of~~
24 ~~disallowance, the disclaiming party may request an administrative hearing, which must~~
25 ~~be granted. The disclaiming party is relieved of its duty to register under this section if~~
26 ~~approval of the disclaimer has been granted by the commissioner or if the disclaimer is~~
27 ~~deemed to have been approved.~~
- 28 ~~10. All registration statements must contain a summary outlining all items in the current~~
29 ~~registration statement representing changes from the prior registration statement.~~
- 30 ~~11. Any person within an insurance holding company system subject to registration must~~
31 ~~provide complete and accurate information to an insurer, when the information is~~

1 ~~reasonably necessary to enable the insurer to comply with the provisions of this~~
2 ~~chapter.~~

3 ~~12. The ultimate controlling person of every insurer subject to registration shall file an~~
4 ~~annual enterprise risk report. To the best of the ultimate controlling person's~~
5 ~~knowledge and belief, the report must identify the material risks within the insurance~~
6 ~~holding company system which could pose enterprise risk to the insurer. The report~~
7 ~~must be filed with the lead state commissioner of the insurance holding company~~
8 ~~system as determined by the procedures within the financial analysis handbook~~
9 ~~adopted by the national association of insurance commissioners.~~

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

13 ~~14. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds~~
14 ~~with the power to vote, or holds proxies representing ten percent or more of the voting~~
15 ~~securities of any other person. This presumption may be rebutted by a showing made~~
16 ~~in accordance with subsection 9 that control does not exist in fact. The commissioner~~
17 ~~may determine, after providing all interested persons notice and opportunity to be~~
18 ~~heard and making specific findings of fact to support the determination, that control~~
19 ~~exists in fact, notwithstanding the absence of a presumption to that effect.~~

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

24 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-25-02.1. Definitions.**

27 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
28 either has two or more member insurers or is controlled either directly or indirectly by
29 two or more insurers, and which assists insurers in ratemaking-related activities as
30 enumerated in this chapter. Two or more insurers having a common ownership or

1 operating in this state under common management or control constitute a single
2 insurer for purposes of this definition.

3 2. "Commercial risk" means any kind of risk which is not a personal risk.

4 3. "Competitive market" means a commercial risk market that has not been found to be
5 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
6 except crop hail, farmowners, and medical malpractice insurance are presumed to be
7 competitive.

8 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
9 standard actuarial techniques, to eliminate the effect of differences between current
10 payment or reserve estimates and those needed to provide actual ultimate loss
11 including loss adjustment expense payments.

12 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
13 collection expenses, general expenses, taxes, licenses, and fees.

14 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
15 coverage for a commercial risk pursuant to which two or more insurers jointly contract
16 with the insured at a price and under policy terms agreed upon between the insurers.

17 7. "Large commercial risk" means an insured that has:

18 a. Total insured property values of ~~five million dollars~~ twenty-five million dollars or
19 more;

20 b. Total annual gross revenue of ~~ten million dollars~~ fifty million dollars or more; or

21 c. A total premium of ~~twenty-five thousand dollars~~ one hundred thousand dollars or
22 more for property insurance, ~~twenty-five thousand dollars~~ one hundred thousand
23 dollars or more for general liability insurance, or ~~fifty thousand dollars~~ two hundred
24 thousand dollars or more for multiperil insurance.

25 d. The term does not include farming or ranching.

26 8. "Loss trending" means any procedure for projecting developed losses to the average
27 date of loss for the period during which the policies are to be effective.

28 8-9. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
29 insurance markets together with any other line of commercial risk insurance that has
30 not been found by the commissioner to have a reasonable degree of competitiveness
31 within the market considering:

- 1 a. Market concentration and changes in market concentration determined through
- 2 the use of the Herfindahl-Hirschman index and the United States department of
- 3 justice merger guidelines for an unconcentrated market;
- 4 b. The existence of financial and other barriers that prevent a company from
- 5 entering the market;
- 6 c. The number of insurers or groups of affiliated insurers providing coverage in the
- 7 market;
- 8 d. The extent to which any insurer or group of affiliated insurers controls the market;
- 9 e. Whether the total number of companies writing the line of insurance in this state
- 10 is sufficient to provide multiple insurance options in the market;
- 11 f. The availability of insurance coverage to consumers in the markets by specific
- 12 geographic area, by line of insurance, and by class of risk; and
- 13 g. The opportunities available in the market to acquire pricing and other consumer
- 14 information.

15 A determination that a market is noncompetitive may not be based solely on the
16 consideration of any one factor.

17 9-10. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
18 mobile homes, and other property and casualty insurance for personal, family, or
19 household needs.

20 ~~10-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
21 which two or more insurers participate in the sharing of risks on a predetermined
22 basis. The pool may operate through an association, syndicate, or other pooling
23 agreement.

24 ~~11-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
25 for expenses other than loss adjustment expenses, or profit, and are based on
26 historical aggregate losses and loss adjustment expenses adjusted through
27 development to their ultimate value and projected through trending to a future point in
28 time.

29 ~~12-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
30 member or as a prospective loss cost with an adjustment to account for the treatment
31 of expenses, profit, and individual insurer variation in loss experience, prior to any

1 application of individual risk variations based on loss or expense considerations, and
2 does not include minimum premium.

3 ~~13.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
4 by law, involving participation by insurers in the equitable apportionment among them
5 of insurance which may be afforded applicants who are unable to obtain insurance
6 through ordinary methods.

7 ~~14.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
8 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
9 plan, and any other similar information needed to determine the applicable rate in
10 effect or to be in effect.

11 ~~15.16.~~ "Supporting information" means:

- 12 a. The experience and judgment of the filer and the experience or date of other
13 insurers or advisory organizations relied upon by the filer;
14 b. The interpretation of any other data relied upon by the filer; and
15 c. Descriptions of methods used in making the rates and any other information
16 required by the commissioner to be filed.

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

19 **26.1-25-16. Rebates prohibited - Exception.**

- 20 1. ~~No insurance producer.~~ An insurance producer may not knowingly charge, demand, or
21 receive a premium for any insurance policy except in accordance with this chapter. No
22 insurer or employee of an insurer, and no insurance producer, broker or agent may
23 pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an
24 inducement to insurance, or after insurance has been effected, any rebate, discount,
25 abatement, credit, or reduction of the premium named in an insurance policy, or any
26 special favor or advantage in the dividends or other benefits to accrue on the policy, or
27 any valuable consideration or inducement whatever, not specified in the insurance
28 policy, except to the extent provided for in applicable filing. No insured named in an
29 insurance policy, nor any employee of the insured, may knowingly receive or accept,
30 directly or indirectly, any such rebate, discount, abatement, credit, or reduction of
31 premium, or any such special favor or advantage or valuable consideration or

1 inducement. This section does not prohibit the payment of commissions or other
2 compensation to licensed insurance producers, nor any insurer from allowing or
3 returning to its participating policyholders, members, or subscribers dividends,
4 savings, or unabsorbed premium deposits. As used in this section, "insurance"
5 includes suretyship and "policy" includes bond.

- 6 2. Notwithstanding any other provision in this section, if the cost does not exceed an
7 aggregate retail value of one hundred dollars per person per year, an insurance
8 producer may give a gift, prize, promotional article, logo merchandise, meal, or
9 entertainment activity directly or indirectly to a person in connection with marketing,
10 promoting, or advertising the business. As used in this subsection, "person" means the
11 named insured, policy owner, or prospective client or the spouse of any of these
12 individuals, but the term does not include a certificate holder, child, or employee of the
13 named insured, policy owner, or prospective client. Subject to the limits of this
14 subsection, an insurance producer may give a gift card for specific merchandise or
15 services such as a meal, gasoline, or car wash but may not give cash, a cash card,
16 any form of currency, or any refund or discount in premium. An insurance producer
17 may not condition the giving of a gift, prize, promotional article, logo merchandise,
18 meal, or entertainment activity on obtaining a quote or a contract of insurance. A
19 person insured by a federal crop insurance policy is not eligible to receive the items of
20 value permitted under this section. It is a violation of subsection 1 for an insurance
21 producer to knowingly give an item of value to a person insured by a federal crop
22 insurance policy. Notwithstanding the limitation in this subsection, an insurance
23 producer may conduct raffles or drawings, if there is no financial cost to an entrant to
24 participate, the drawing or raffle does not obligate a participant to purchase insurance,
25 the prizes are not valued in excess of a reasonable amount determined by the
26 commissioner, and the drawing or raffle is open to the public. The raffle or drawing
27 must be offered in a manner that is not unfairly discriminatory and may not be
28 contingent on the purchase, continued purchase, or renewal of a policy.
29 Notwithstanding the limitation in this subsection, an insurance producer may make a
30 donation to a nonprofit organization that is exempt from federal taxation under Internal

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- 1 Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the
2 donation is not given as an inducement to obtain a contract of insurance.
- 3 3. The provisions in this section may not be construed as including within the definition of
4 discrimination or rebates any of the following practices:
- 5 a. The offer or provision by an insurer or producer, by or through an employee, an
6 affiliate, or a third-party representative, of value-added products or services at no
7 or reduced cost if the products or services are not specified in the policy of
8 insurance if the product or service:
- 9 (1) Relates to the insurance coverage and is designed to satisfy one or more of
10 the following:
- 11 (a) Provide loss mitigation or loss control;
- 12 (b) Reduce claims costs or claim settlement costs;
- 13 (c) Provide education about liability risk or risk of loss to persons or
14 property;
- 15 (d) Monitor or assess risk, identify sources of risk, or develop strategies
16 for eliminating or reducing risk;
- 17 (e) Enhance health;
- 18 (f) Enhance financial wellness through items such as education of
19 financial planning services;
- 20 (g) Provide post-loss services;
- 21 (h) Incent behavioral changes to improve the health or reduce the risk of
22 death or disability of an individual defined as policyholder, potential
23 policyholder, certificate holder, potential certificate holder, insured,
24 potential insured, or applicant; or
- 25 (i) Assist in the administration of the employee or retiree benefit
26 insurance coverage.
- 27 (2) If offered by the insurer or producer, the insurer or producer, upon request,
28 shall ensure the person is provided with contact information to assist the
29 person with questions regarding the product or service.

- 1 (3) Is based on fair documented criteria and offered in a manner not unfairly
2 discriminatory. The documented criteria must be maintained by the insurer
3 or producer and produced at the request of the commissioner.
4 (4) Is reasonable in comparison to that person's premiums or insurance
5 coverage for the policy class.
6 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
7 belief the product or service meets the criteria in subdivision a, the provision by
8 the insurer or producer of a product or service in a manner that is not unfairly
9 discriminatory as part of a pilot or testing program no longer than one year. An
10 insurer or producer shall notify the department of the pilot or testing program
11 offered to consumers in this state before launching and may proceed with the
12 program unless the department objects within twenty-one days of notice.
13 4. An insurer, producer, or representative of an insurer or producer may not offer or
14 provide insurance as an inducement to the purchase of another policy or otherwise
15 use of the words "free" or "no cost" or words of similar import in an advertisement.
16 5. The commissioner may adopt regulations when implementing the permitted practices
17 set forth in this regulation to ensure consumer protection. Consistent with applicable
18 law, the topics addressed by the regulations may include consumer data protections
19 and privacy, consumer disclosure, and unfair discrimination.
20 ~~6. Subsections 1 and 2 do not apply to a large commercial risk as defined in section~~
21 ~~26.1-25-02.1.~~

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

24 **26.1-26-04.1. Fees for services - Rules.**

- 25 1. Notwithstanding any other provision of this title, an insurance producer may charge a
26 fee for any services rendered in connection with the sale, solicitation, negotiation,
27 placement, or servicing of an insurance contract, if the following conditions are met:
28 a. The fees may not be charged on a personal lines account, such as personal
29 homeowners and automobile, personal life, and health insurance.

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- 1 b. Before rendering the services and accepting any payment, a written disclosure
2 must be provided to the party to be charged on a form approved by the
3 commissioner disclosing:
 - 4 (1) The nature of the services for which the fees will be charged along with a
5 separate itemization of the amount of the fees;
 - 6 (2) That the fees are charged in addition to any premiums paid;
 - 7 (3) That if the insurance producer is also an appointed agent of an insurer with
8 which coverage is being considered for placement, a statement that the
9 insurance producer also represents the insurer in the transaction and owes
10 a duty of loyalty to the insurer; and
 - 11 (4) That if the insurance producer is to receive a commission from the sale of
12 an insurance policy related to the services rendered, a statement clearly
13 and completely disclosing that the:
 - 14 (a) Insurance producer will receive a commission from the insurer which
15 is paid from the premiums owed for the insurance; and
 - 16 (b) Amount of commission received by the insurance producer may differ
17 depending on the product sold and the insurer.
- 18 c. The disclosure required by this section must be signed and dated by both the
19 producer and the party to be charged.
- 20 d. The producer shall retain the signed disclosure required by this section for not
21 less than five years following the completion of the service. A copy of the signed
22 disclosure must be available to the commissioner for inspection upon request.
- 23 e. The insurance producer may not pay or return, or offer to pay or return, all or part
24 of a fee charged as an inducement to purchase a specific policy, or coverage
25 within a policy, or coverage from a particular insurer.
- 26 f. Any fee charged under this section must bear a reasonable relationship to the
27 services provided and may not be discriminatory.
- 28 2. An insurance producer charging a fee for services rendered for risk management
29 services under this section owes the person to be charged a higher standard of care
30 than the ordinary standard of care otherwise owed by an insurance producer to fully
31 advise the party to be charged as to the party's insurance needs, including the duty to

1 inform the person to be charged as to a potential source of risk and to recommend, if
2 available, insurance coverage for that risk.

3 3. An insurance producer may charge an individual, for personal or commercial lines, a
4 fee for paying agency-billed premiums and fees by credit card or other electronic
5 means, if the fee is disclosed to the client in writing and agreed to by the client in
6 writing.

7 4. Subdivisions ab through ed of subsection 1 do not apply to a large commercial risk as
8 defined in section 26.1-25-02.1.

9 5. The commissioner may adopt rules determined necessary by the commissioner for the
10 administration of this section.

11 **SECTION 5.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Mandatory arbitration endorsements for property insurance - Written acceptance -**
14 **Penalty.**

15 1. A property insurance policy may be issued or delivered in this state with mandatory
16 binding arbitration provisions if the:

17 a. Mandatory binding arbitration provisions are contained in a separate
18 endorsement;

19 b. Named insured accepts the mandatory binding arbitration endorsement in writing
20 in accordance with subsection 2; and

21 c. Property insurance policy does not require mandatory binding arbitration upon
22 request.

23 2. The written acceptance of the insured required under subsection 1 must:

24 a. Be on a form separate from the policy application and other policy forms;

25 b. Clearly state the rights being waived in exchange for the premium discount,
26 including the right to a trial by jury; and

27 c. Include the following statement in at least twelve-point bold font:

28 "By signing this form, I agree to resolve all covered property insurance claims
29 through mandatory binding arbitration. I understand that by agreeing to
30 mandatory binding arbitration:

31 I am giving up my right to have disputes resolved in court.

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- 1 I am giving up my right to a jury trial.
- 2 I am accepting these terms in exchange for a premium discount of [dollar amount
- 3 or percentage of premium amount].
- 4 This agreement is binding on all insureds under the policy and remains effective
- 5 upon policy renewal, replacement, or reinstatement unless I request removal of
- 6 the mandatory binding arbitration endorsement in writing".
- 7 3. All arbitration proceedings under this section must:
- 8 a. Be conducted in this state if involving a resident of this state;
- 9 b. Be governed by state law; and
- 10 c. Not require arbitration in another state.
- 11 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
- 12 insureds under the policy and remains effective upon policy renewal, replacement, or
- 13 reinstatement unless the named insured requests a change in writing.
- 14 5. This section applies to all property and casualty insurance policies issued or renewed
- 15 after the effective date of this Act.
- 16 6. This section does not apply to a:
- 17 a. Voluntary arbitration agreement entered after a dispute has arisen; ~~or~~
- 18 b. Large commercial risk as defined in section 26.1-25-02.1; or
- 19 c. Commercial surplus line insurance policy, unless this state is the home state as
- 20 defined in chapter 26.1-44, and one hundred percent of the risk insured is located
- 21 in this state.
- 22 7. The commissioner shall enforce this section.
- 23 8. The commissioner may assess a penalty on an insurer in violation of this section, as
- 24 determined by the commissioner.

25 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Managed repair programs - Penalty.**

- 28 1. A property insurance policy may be issued or delivered in this state with a managed
- 29 repair program provision and offer premium incentives for managed repair program
- 30 participation. As used in this section, "managed repair program" means any program

1 in which an insurer restricts an insured's choice of repair vendors or contractors for
2 covered repairs.

3 2. An insurer offering a managed repair program shall:

- 4 a. Prominently disclose on the policy declarations page the policy restricts the
5 insured's right to choose repair vendors;
6 b. Specify any premium benefits for program participation;
7 c. Include a separate disclosure form, written in at least twelve-point font, which
8 explains the restrictions on vendor selection, including:
9 (1) The process for repairs under the program;
10 (2) The insured's rights and responsibilities; and
11 (3) Any warranty or guarantee provided for repairs.

12 3. An insured retains the option to select the insured's own contractor, subject to
13 standard policy terms, and request an alternate program contractor.

14 4. This section applies to all property and casualty insurance policies issued or renewed
15 after the effective date of this Act.

16 5. The commissioner shall enforce this section.

17 6. The commissioner may assess a penalty on an insurer in violation of this section, as
18 determined by the commissioner.

19 **SECTION 7.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
20 and enacted as follows:

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

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

26 **SECTION 8.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Notice of property insurance claim.**

29 1. As used in this section:

- 30 a. "Reopened claim" means a claim an insurer closed and reopened upon an
31 insured's request for additional ~~costs for loss or~~ reimbursement of damage arising

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1 out of the original occurrence, and not previously identified or disclosed to the
2 insurer.

3 b. "Supplemental claim" means a claim for additional loss or damage costs from the
4 same peril occurrence the insurer previously adjusted or for which costs have
5 been incurred while completing repairs or replacement under an open claim for
6 which timely notice was previously provided to the insurer compensated the
7 insured.

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

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

19 **SECTION 9. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **26.1-44-03. Surplus lines insurance.**

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

- 24 1. Each insurer is an eligible surplus lines insurer;
- 25 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
- 26 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
27 ~~admitted to do business in this state. The full amount or type of insurance may be~~
28 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
29 ~~among the insurers who are admitted to transact and are actually writing the particular~~
30 ~~type of insurance in this state if any are writing it;~~

4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:

a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(1) (a) The minimum capital and surplus requirements under the law of this state; or

(b) Fifteen million dollars.

(2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or

b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and

5.4. All other requirements of this chapter are met.

SECTION 10. A new section to chapter 26.1-44 of the North Dakota Century Code is created and enacted as follows:

Surplus lines insurance policies.

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

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

26.1-46-01. Definitions.

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

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

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

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

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

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

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

17 c. Pro forma financial statements and projections.

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

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

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

27 g. Information sufficient to verify that its members are engaged in businesses or
28 activities similar or related with respect to the liability to which such members are
29 exposed by virtue of any related, similar, or common business, trade, product,
30 services, premises, or operations.

- 1 h. Identification of each state in which the risk retention group has obtained, or
2 sought to obtain, a charter and license, and a description of its status in each
3 such state.
- 4 9. "Product liability" means liability for damages because of any personal injury, death,
5 emotional harm, consequential economic damage, or property damage, including
6 damages resulting from the loss of use of property, arising out of the manufacture,
7 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
8 does not include the liability of any person for those damages if the product involved
9 was in the possession of such a person when the incident giving rise to the claim
10 occurred.
- 11 10. "Purchasing group" means any group which meets all of the following:
- 12 a. The group has as one of its purposes the purchase of liability insurance on a
13 group basis.
- 14 b. The group purchases such insurance only for its group members and only to
15 cover their similar or related liability exposure, as described in subdivision c₁
16 ~~except a nonmaterial amount of commercial property coverage incidental to the~~
17 ~~liability exposure of its group members also may be insured.~~
- 18 c. The group is composed of members whose business or activities are similar or
19 related with respect to the liability to which members are exposed by virtue of any
20 related, similar, or common business, trade, product, services, premises, or
21 operations.
- 22 d. The group is domiciled in any state.
- 23 11. "Risk retention group" means any corporation or other limited liability association:
- 24 a. Whose primary activity consists of assuming and spreading all, or any portion, of
25 the liability exposure of its group members.
- 26 b. Which is organized for the primary purpose of conducting the activity described
27 under subdivision a.
- 28 c. Which is chartered and licensed as a liability insurance company and authorized
29 to engage in the business of insurance under the laws of any state; or, before
30 January 1, 1985, was chartered or licensed and authorized to engage in the
31 business of insurance under the laws of Bermuda or the Cayman Islands and,

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- 1 before such date, had certified to the insurance commissioner of at least one
2 state that it satisfied the capitalization requirements of such state, except that any
3 such group shall be considered to be a risk retention group only if it has been
4 engaged in business continuously since that date and only for the purpose of
5 continuing to provide insurance to cover product liability or completed operations
6 liability as such terms were defined in the Product Liability Risk Retention Act of
7 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.
- 8 d. Which does not exclude any person from membership in the group solely to
9 provide for members of such a group a competitive advantage over such a
10 person.
- 11 e. Which has as its owners only persons who comprise the membership of the risk
12 retention group and who are provided insurance by such group, or has as its sole
13 owner an organization which has as its members only persons who comprise the
14 membership of the risk retention group and its owners only persons who
15 comprise the membership of the risk retention group and who are provided
16 insurance by such group.
- 17 f. Whose members are engaged in businesses or activities similar or related with
18 respect to the liability of which such members are exposed by virtue of any
19 related, similar, or common business trade, product, services, premises, or
20 operations.
- 21 g. Whose activities do not include the provision of insurance other than:
- 22 (1) Liability insurance for assuming and spreading all or any portion of the
23 liability of its group members, except a nonmaterial amount of commercial
24 property coverage incidental to the liability exposure of its group members
25 also may be insured.
- 26 (2) Reinsurance with respect to the liability of any other risk retention group or
27 any members of such other group which is engaged in business or activities
28 so that the group or member meets the requirement described in
29 subdivision f from membership in the risk retention group which provides
30 such reinsurance.
- 31 h. The name of which includes the phrase "risk retention group".

24 08 25

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

2 **SECTION 12.** A new subsection to section 26.1-46-03 of the North Dakota Century Code is
3 created and enacted as follows:

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

7 **SECTION 13. AMENDMENT.** Section 26.1-46-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

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

10 1. A purchasing group may not purchase insurance from a risk retention group that is not
11 chartered in a state or from an insurer not admitted in the state in which the
12 purchasing group is located, unless the purchase is effected through a licensed
13 insurance producer acting pursuant to the surplus lines laws and regulations of such
14 state.

15 2. A purchasing group which obtains liability insurance from an insurer not admitted in
16 this state or a risk retention group shall inform each of the members of the group
17 which have a risk resident or located in this state that the risk is not protected by an
18 insurance insolvency guaranty fund in this state, and that the risk retention group or
19 insurer may not be subject to all insurance laws and rules of this state.

20 3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or
21 self-insured retention applicable to the group as a whole; ~~however, coverage may~~
22 ~~provide for a deductible or self-insured retention applicable to individual members~~
23 unless the purchasing group uses a policyholder's disclosure statement approved by
24 the commissioner which clearly explains in simplified language the policy is subject to
25 a group deductible or self-insured retention and provides a detailed explanation of the
26 process of the satisfaction of the deductible or self-insured retention among members.

27 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
28 ~~regarding aggregate limits which are applicable to all purchases of group insurance.~~
29 A purchasing group may not purchase insurance providing for a shared aggregate limit
30 applicable to the group as a whole unless the purchasing group uses a policyholder's
31 disclosure statement approved by the commissioner which clearly explains in

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1 simplified language the policy is subject to a group aggregate limit and coverage for
2 each individual member could be exhausted by claims from other members. The
3 insurance must allow for an individual member to purchase additional limits in the
4 event of exhaustion and this option must be described in the disclosure statement.

5 **SECTION 14. AMENDMENT.** Section 26.1-46-08.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-46-08.1. Purchasing group taxation - Fees.**

- 8 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
9 located in this state by a purchasing group or any members of the purchasing
10 group must be:
- 11 1. (1) Imposed at the same rate and subject to the same interest, fines, and
12 penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid
13 for similar coverage from a similar insurance source by other insureds; and
14 2. (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
15 insurance producer for the purchasing group, and if not by ~~such~~the
16 insurance producer, then by the purchasing group, ~~and if not by such~~
17 ~~purchasing group, then by each of its members.~~
- 18 b. To the extent any administrative fee is charged under subsection 2, the fee may
19 not be considered a premium and is not subject to premium tax.
- 20 2. A purchasing group's administrator, manager, or other related party may charge
21 reasonable fees provided the fees are:
- 22 a. For reimbursement of expenses incurred by the administrator, manager, or other
23 related party in performing its administrative duties for the purchasing group; and
24 b. Disclosed to all members of the risk purchasing group on a form approved by the
25 commissioner which states the nature of the administrative duties for which the
26 fees will be charged along with separate itemization of the amount of fees to be
27 paid by each member.

28 **SECTION 15. REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
29 repealed.

**REPORT OF STANDING COMMITTEE
SB 2374**

Industry and Business Committee (Sen. Barta, Chairman) recommends **AMENDMENTS** ([25.1236.01001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2374 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

INSURANCE DEPT. PROPOSED AMENDMENT TO SENATE BILL NO. 2374

Legislative Assembly
of North Dakota

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 of the registration statement, the summary specified in subsection 10 of section
2 26.1-10-04, or other information filed by the insurer with the insurance regulatory
3 authority of the domiciliary jurisdiction.

4 ~~2. Every insurer subject to registration shall file a registration statement with the~~
5 ~~commissioner on a form approved by the commissioner, which must contain current~~
6 ~~information about:~~

7 ~~a. The capital structure, general financial condition, ownership, and management of~~
8 ~~the insurer and any person in control of the insurer.~~

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

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

14 ~~(1) Loans, other investments, or purchases, sales, or exchanges of securities of~~
15 ~~the affiliates by the insurer or of the insurer by its affiliates.~~

16 ~~(2) Purchases, sales, or exchange of assets.~~

17 ~~(3) Transactions not in the ordinary course of business.~~

18 ~~(4) Guarantees or undertakings for the benefit of an affiliate which result in an~~
19 ~~actual contingent exposure of the insurer's assets to liability, other than~~
20 ~~insurance contracts entered into in the ordinary course of the insurer's~~
21 ~~business.~~

22 ~~(5) All management agreements, service contracts, and all cost-sharing~~
23 ~~arrangements.~~

24 ~~(6) Reinsurance agreements.~~

25 ~~(7) Dividends and other distributions to shareholders.~~

26 ~~(8) Consolidated tax allocation agreements.~~

27 ~~d. Any pledge of the insurer's stock, including stock of any subsidiary or controlling~~
28 ~~affiliate, for a loan made to any member of the insurance holding company~~
29 ~~system.~~

30 ~~e. If requested by the commissioner, the insurer shall include financial statements of~~
31 ~~or within an insurance holding company system, including all affiliates. A financial~~
32 ~~statement may include an annual audited financial statement filed with the United~~

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

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~~7. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 to file all information and material required to be filed under this section.~~

~~8. This section does not apply to any insurer, information, or transaction if and to the extent excepted by the commissioner by rule or order.~~

~~9. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which must be granted. The disclaiming party is relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner or if the disclaimer is deemed to have been approved.~~

~~10. All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.~~

~~11. Any person within an insurance holding company system subject to registration must provide complete and accurate information to an insurer, when the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.~~

~~12. The ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. To the best of the ultimate controlling person's knowledge and belief, the report must identify the material risks within the insurance holding company system which could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.~~

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

~~14. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in accordance with subsection 9 that control does not exist in fact. The commissioner may determine, after providing all interested persons notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.~~

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

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

26.1-25-02.1. Definitions.

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

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- 1 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
2 collection expenses, general expenses, taxes, licenses, and fees.
- 3 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
4 coverage for a commercial risk pursuant to which two or more insurers jointly contract
5 with the insured at a price and under policy terms agreed upon between the insurers.
- 6 7. "Large commercial risk" means an insured that has:
 - 7 a. Total insured property values of five ²⁵ million dollars or more;
 - 8 b. Total annual gross revenue of ten ⁵⁰ million dollars or more; or
 - 9 c. A total premium of twenty-five thousand ¹⁰⁰ dollars or more for property insurance,
10 twenty-five thousand ¹⁰⁰ dollars or more for general liability insurance, or fifty
11 ²⁰⁰ thousand dollars or more for multiperil insurance.
- 12 8. ^d "Loss trending" means any procedure for projecting developed losses to the average
13 date of loss for the period during which the policies are to be effective.
- 14 ~~8.9.~~ "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
15 insurance markets together with any other line of commercial risk insurance that has
16 not been found by the commissioner to have a reasonable degree of competitiveness
17 within the market considering:
 - 18 a. Market concentration and changes in market concentration determined through
19 the use of the Herfindahl-Hirschman index and the United States department of
20 justice merger guidelines for an unconcentrated market;
 - 21 b. The existence of financial and other barriers that prevent a company from
22 entering the market;
 - 23 c. The number of insurers or groups of affiliated insurers providing coverage in the
24 market;
 - 25 d. The extent to which any insurer or group of affiliated insurers controls the market;
 - 26 e. Whether the total number of companies writing the line of insurance in this state
27 is sufficient to provide multiple insurance options in the market;
 - 28 f. The availability of insurance coverage to consumers in the markets by specific
29 geographic area, by line of insurance, and by class of risk; and
 - 30 g. The opportunities available in the market to acquire pricing and other consumer
31 information.

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1 A determination that a market is noncompetitive may not be based solely on the
2 consideration of any one factor.

3 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
4 mobile homes, and other property and casualty insurance for personal, family, or
5 household needs.

6 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
7 which two or more insurers participate in the sharing of risks on a predetermined
8 basis. The pool may operate through an association, syndicate, or other pooling
9 agreement.

10 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
11 for expenses other than loss adjustment expenses, or profit, and are based on
12 historical aggregate losses and loss adjustment expenses adjusted through
13 development to their ultimate value and projected through trending to a future point in
14 time.

15 ~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
16 member or as a prospective loss cost with an adjustment to account for the treatment
17 of expenses, profit, and individual insurer variation in loss experience, prior to any
18 application of individual risk variations based on loss or expense considerations, and
19 does not include minimum premium.

20 ~~43-14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
21 by law, involving participation by insurers in the equitable apportionment among them
22 of insurance which may be afforded applicants who are unable to obtain insurance
23 through ordinary methods.

24 ~~44-15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
25 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
26 plan, and any other similar information needed to determine the applicable rate in
27 effect or to be in effect.

28 ~~45-16.~~ "Supporting information" means:

- 29 a. The experience and judgment of the filer and the experience or date of other
30 insurers or advisory organizations relied upon by the filer;
31 b. The interpretation of any other data relied upon by the filer; and

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

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

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

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

any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. No person insured by a federal crop insurance policy is eligible to receive any of the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give any item of value to a person insured by a federal crop insurance policy. Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be contingent on the purchase, continued purchase, or renewal of a policy. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a contract of insurance.

3. The provisions in this section may not be construed as including within the definition of discrimination or rebates any of the following practices:
- a. The offer or provision by an insurer or producer, by or through an employee, an affiliate, or a third-party representative, of value-added products or services at no or reduced cost if the products or services are not specified in the policy of insurance if the product or service:
 - (1) Relates to the insurance coverage and is designed to satisfy one or more of the following:
 - (a) Provide loss mitigation or loss control;
 - (b) Reduce claims costs or claim settlement costs;
 - (c) Provide education about liability risk or risk of loss to persons or property;
 - (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
 - (e) Enhance health;

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

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

26.1-25-02.1.

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

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

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

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

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

Mandatory arbitration endorsements for property insurance - Written acceptance - Penalty.

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

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

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

3 **Managed repair programs - Penalty.**

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

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

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

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

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

3 **Notice of property insurance claim.**

4 1. As used in this section:

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

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

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

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

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

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

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

30 1. Each insurer is an eligible surplus lines insurer;

31 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;

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

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

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

29 **Surplus lines insurance policies.**

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

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

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

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

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

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

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

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

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

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

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

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

c. Pro forma financial statements and projections.

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

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

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

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

Legislative Assembly

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

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

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

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

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

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

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

24 d. The group is domiciled in any state.

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

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

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

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

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

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

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

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

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

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

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

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

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each individual member could be exhausted by claims from other members. The insurance must allow for an individual member to purchase additional limits in the event of exhaustion and this option must be described in the disclosure statement.

SECTION ~~16~~14. AMENDMENT. Section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08.1. Purchasing group taxation - Fees.

1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:
 - ~~4.~~ (1) Imposed at the same rate and subject to the same interest, fines, and penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and
 - ~~2.~~ (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the insurance producer for the purchasing group, and if not by ~~such~~the insurance producer, then by the purchasing group, ~~and if not by such purchasing group, then by each of its members.~~
- b. To the extent any administrative fee is charged under subsection 2, the fee may not be considered a premium and is not subject to premium tax.
2. A purchasing group's administrator, manager, or other related party may charge reasonable fees provided the fees are:
 - a. For reimbursement of expenses incurred by the administrator, manager, or other related party in performing its administrative duties for the purchasing group; and
 - b. Disclosed to all members of the risk purchasing group on a form approved by the commissioner which states the nature of the administrative duties for which the fees will be charged along with separate itemization of the amount of fees to be paid by each member.

SECTION ~~17~~15. REPEAL. Section 26.1-44-03.3 of the North Dakota Century Code is repealed.

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2374

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2374
3/18/2025

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

2:29 p. m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, C. Brown, T. Brown, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Modernization of laws
- Insurance premiums
- Increase competition
- Collaborative effort
- Insurance reform

2:30 p.m. John Arnold, Deputy Commissioner, ND Insurance Department, testified in favor and submitted testimony #42856.

3:14 p.m. John Ward, Lobbyist, Association of ND Insurers, testified in favor.

3:16 p.m. Chris Oen, Senior Vice President and Chief Claims Officer, Nodak Insurance Company, testified in favor and submitted testimony #42891 and #42905.

3:35 p.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk



NORTH DAKOTA
Insurance Department

TESTIMONY

John Arnold, Deputy Commissioner

House Industry, Business and Labor Committee

March 18, 2025

Chairman Warrey and members of the committee, thank you for the opportunity to testify today. I am here today in support of Senate Bill 2374, a bill that represents a targeted, expert-driven modernization of our state's insurance laws. This legislative proposal resulting from a study that was conducted during the interim. For background, Commissioner Godfread requested and received funding from the Emergency Commission and Budget Section to proactively address unsustainable upward pressure on insurance premiums being felt in the property and casualty market. The Commissioner firmly believes that the best solution is to take steps to increase competition in this sector and tells industry that North Dakota is both a good risk and a good state in which to conduct business.

This legislation is based on the recommendations of industry experts who were specifically tasked with identifying ways to make North Dakota's property insurance market more competitive, resilient, and flexible in the face of rapidly changing economic and environmental risks. Additionally, both while SB 2374 was being considered by your sister committee on in the weeks since it was passed in the Senate, we have worked with stakeholders to make this bill as strong as possible. Today, in addition to testifying on the first engrossment of the bill, I will also be speaking to the compromises that have been made with stakeholders and can be seen in the attached proposed amendment.

The North Dakota property insurance market is facing increasing pressures. Rising costs due to inflation, higher reinsurance rates, more frequent catastrophic weather events, and supply chain disruptions are all contributing to a tightening commercial insurance market. These challenges make it essential for our state to remain attractive to insurers while also providing commercial buyers with more tools to negotiate and secure the coverage they need.

Senate Bill 2374 seeks to achieve this by introducing reasonable, targeted regulatory flexibility—particularly for large commercial policyholders—while maintaining strong oversight where it is truly needed.

Key Provisions of Senate Bill 2374:

Sections 1 - 4: Recognizing Large Commercial Risks as Sophisticated Buyers

One of the key components of SB 2374 is recognizing that large commercial policyholders are fundamentally different from individual consumers or small businesses in their insurance needs, risk management expertise, and bargaining power. These policyholders typically:

- Have total insured property values of at least \$25 million or annual gross revenues of at least \$50 million, but does not include farming and ranching.
- Employ dedicated risk managers or external insurance consultants to negotiate policies.
- Engage in highly customized insurance transactions that are not standardized like personal or small-business policies.

Because of these factors, overregulating their insurance transactions does not provide consumer protection—it creates unnecessary barriers and costs.

To address this, SB 2374:

- Section 1: Allows access to unauthorized (non-admitted) insurers, ensuring North Dakota businesses can obtain the customized coverage they need, especially in a hardening market.
- Section 2: Defines "large commercial risks" and provides these policyholders with greater flexibility in structuring their insurance coverage.
- Section 3: Clarifies that producers cannot rebate and carves out crop insurance customers from receiving items of value that are exceptions to the rebating laws.
- Section 4: Exempts large commercial risks from notice requirements related to additional policy fees.

Sections 5 - 8: Strengthening Legal Clarity & Efficiency in Claims Handling

SB 2374 also introduces important legal clarity around arbitration, claims reopening, and bad faith litigation. These changes will help reduce costs and uncertainty for insurers, which in turn leads to more affordable coverage options for businesses and consumers alike.

Specifically, the bill:

- Section 5: Allows commercial policyholders to opt into arbitration agreements, helping reduce costly litigation and streamline dispute resolution.
 - Proposed Amendment: In subsection 6, remove surplus lines from these requirements
- Section 6: Creates a managed repair program framework, ensuring insurers can efficiently coordinate repairs while still allowing policyholders to select their own contractors.
 - Proposed Amendments: Requiring policyholders that receive an incentive, such as premium reduction, is required to use the managed repair program.
- Sections 7 & 8: New language that clarifies the timeline for filing supplemental and reopened claims, preventing abuse of the system while still ensuring legitimate claims are paid.

These provisions help balance fairness for policyholders with stability for insurers, creating a more predictable and efficient market.

Sections 9 – 10 and 15: Enhancing the Surplus Lines Market to Provide More Coverage Options

Another critical component of SB 2374 is modernizing North Dakota's surplus lines laws to ensure that businesses can quickly and efficiently access the specialized insurance coverage they need.

Currently, surplus line brokers must perform a diligent search—meaning they must first attempt to obtain coverage from a licensed North Dakota insurer before turning to an unlicensed (but still regulated) surplus lines insurer. This requirement adds time and cost to securing coverage, even when it is clear that no North Dakota-licensed insurer is willing to underwrite the risk.

SB 2374 removes this outdated barrier, following the lead of at least four other states (Louisiana, Mississippi, Virginia, and Wisconsin) that have already done so. This will:

- Reduce delays in placing coverage, ensuring businesses are not left exposed while brokers search for coverage that isn't available.
- Make North Dakota a more attractive insurance market, increasing competition and improving pricing.
- Ensure protections remain in place, as surplus lines insurers will still be required to meet solvency and financial responsibility standards.

Section 11 - 14: Providing Clarity for Risk Retention Groups & Purchasing Groups

Senate Bill 2374 provides important regulatory clarity for Risk Retention Groups and Purchasing Groups—two alternative risk-financing mechanisms designed to help businesses manage liability coverage more effectively. While these concepts may not be familiar to everyone, they play an essential

role in providing coverage for certain industries and professions, particularly when traditional insurance options are limited or cost-prohibitive.

Risk Retention Group (RRGs):

A RRG is a specialized type of insurance company, formed under the federal Liability Risk Retention Act of 1986. It allows businesses with similar liability risks to pool together and self-insure against those risks. Unlike traditional insurers, RRGs are regulated primarily by the state in which they are domiciled and can operate in multiple states without needing a separate license in each one.

- RRGs are often used by industries where liability insurance is expensive or difficult to obtain, such as healthcare providers, trucking companies, and construction firms.
- Members of an RRG own and control the group, meaning the risk is shared exclusively among them.

SB 2374 clarifies that compliant RRGs are recognized as authorized insurers, ensuring that businesses using these groups can meet legal insurance requirements without unnecessary barriers. This update provides certainty to policyholders, regulators, and insurers alike while ensuring that RRGs continue to function effectively in North Dakota.

Purchasing Group (PG):

A PG is different from an RRG in that it does not self-insure but instead buys insurance as a group from a traditional insurer. Also established under the federal Liability Risk Retention Act, a PG consists of businesses or individuals with similar liability risks who join together to negotiate better insurance terms than they could obtain individually.

- PGs provide greater bargaining power, allowing members to reduce costs and secure more tailored coverage.
- Unlike RRGs, a PG does not form its own insurance company; rather, it buys policies from licensed insurers on behalf of its members.

Proposed Amendment: At the top of page 18, we are proposing removal of language that we are told is not in compliance with federal law.

These sections clarify and strengthen the regulation of risk retention groups and purchasing groups, ensuring that businesses using these alternative risk-financing mechanisms have clear guidelines. The bill:

- Clarifies that compliant risk retention groups are treated as authorized insurers, allowing them to meet statutory coverage requirements.
- Allows purchasing groups to buy a shared aggregate limit, enabling members to pool risk efficiently.
- Ensures transparency in fees charged by purchasing groups, protecting policyholders while maintaining operational flexibility.

Chairman Warrey and members of the committee, in summary SB 2374 is about:

- Recognizing the sophistication of large commercial policyholders and allowing them the flexibility to secure coverage in an increasingly complex market.
- Removing unnecessary barriers that make it harder for businesses to obtain the insurance they need.

- Keeping North Dakota competitive by ensuring our insurance laws reflect modern market realities.
- Balancing regulatory oversight with market efficiency, ensuring that consumer protections remain in place where they are needed but do not unnecessarily stifle competition.

At a time when commercial insurance rates are rising, when businesses are struggling to find adequate coverage, and when North Dakota must compete for insurance capital, this bill provides practical, expert-driven solutions to strengthen our market and protect our policyholders.

For these reasons, I respectfully ask for your discussion of the proposed amendments and then ultimately for your support of Senate Bill 2374.

Thank you for your time, and I am happy to take any questions.

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2374**

FIRST ENGROSSMENT

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

4 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-25-02.1. Definitions.**

- 7 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
8 either has two or more member insurers or is controlled either directly or indirectly by
9 two or more insurers, and which assists insurers in ratemaking-related activities as
10 enumerated in this chapter. Two or more insurers having a common ownership or
11 operating in this state under common management or control constitute a single
12 insurer for purposes of this definition.
- 13 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 14 3. "Competitive market" means a commercial risk market that has not been found to be
15 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
16 except crop hail, farmowners, and medical malpractice insurance are presumed to be
17 competitive.
- 18 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
19 standard actuarial techniques, to eliminate the effect of differences between current
20 payment or reserve estimates and those needed to provide actual ultimate loss
21 including loss adjustment expense payments.
- 22 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
23 collection expenses, general expenses, taxes, licenses, and fees.
- 24 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
25 coverage for a commercial risk pursuant to which two or more insurers jointly contract
26 with the insured at a price and under policy terms agreed upon between the insurers.
- 27 7. "Large commercial risk" means an insured that has:
28 a. Total insured property values of twenty-five million dollars or more;
29 b. Total annual gross revenue of fifty million dollars or more; or
30 c. A total premium of one hundred thousand dollars or more for property insurance,
31 one hundred thousand dollars or more for general liability insurance, or
32 two hundred thousand dollars or more for multiperil insurance.

1 d. The term does not include farming or ranching.

2 8. "Loss trending" means any procedure for projecting developed losses to the average
3 date of loss for the period during which the policies are to be effective.

4 ~~8-9.~~ "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
5 insurance markets together with any other line of commercial risk insurance that has
6 not been found by the commissioner to have a reasonable degree of competitiveness
7 within the market considering:

8 a. Market concentration and changes in market concentration determined through
9 the use of the Herfindahl-Hirschman index and the United States department of
10 justice merger guidelines for an unconcentrated market;

11 b. The existence of financial and other barriers that prevent a company from
12 entering the market;

13 c. The number of insurers or groups of affiliated insurers providing coverage in the
14 market;

15 d. The extent to which any insurer or group of affiliated insurers controls the market;

16 e. Whether the total number of companies writing the line of insurance in this state
17 is sufficient to provide multiple insurance options in the market;

18 f. The availability of insurance coverage to consumers in the markets by specific
19 geographic area, by line of insurance, and by class of risk; and

20 g. The opportunities available in the market to acquire pricing and other consumer
21 information.

22 A determination that a market is noncompetitive may not be based solely on the
23 consideration of any one factor.

24 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
25 mobile homes, and other property and casualty insurance for personal, family, or
26 household needs.

27 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
28 which two or more insurers participate in the sharing of risks on a predetermined
29 basis. The pool may operate through an association, syndicate, or other pooling
30 agreement.

31 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
32 for expenses other than loss adjustment expenses, or profit, and are based on

historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single member or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

~~43-14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

~~44-15.~~ "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

~~45-16.~~ "Supporting information" means:

- a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;
- b. The interpretation of any other data relied upon by the filer; and
- c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

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

26.1-25-16. Rebates prohibited - Exception.

1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no insurance producer, broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or

any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. A person insured by a federal crop insurance policy is not eligible to receive the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give an item of value to a person insured by a federal crop insurance policy. Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be

contingent on the purchase, continued purchase, or renewal of a policy.

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

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

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

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

(a) Provide loss mitigation or loss control;

(b) Reduce claims costs or claim settlement costs;

(c) Provide education about liability risk or risk of loss to persons or property;

(d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(e) Enhance health;

(f) Enhance financial wellness through items such as education of financial planning services;

(g) Provide post-loss services;

(h) Incent behavioral changes to improve the health or reduce the risk of death or disability of an individual defined as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant; or

(i) Assist in the administration of the employee or retiree benefit insurance coverage.

(2) If offered by the insurer or producer, the insurer or producer, upon request, shall ensure the person is provided with contact information to assist the person with questions regarding the product or service.

1 (3) Is based on fair documented criteria and offered in a manner not unfairly
2 discriminatory. The documented criteria must be maintained by the insurer
3 or producer and produced at the request of the commissioner.

4 (4) Is reasonable in comparison to that person's premiums or insurance
5 coverage for the policy class.

6 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
7 belief the product or service meets the criteria in subdivision a, the provision by
8 the insurer or producer of a product or service in a manner that is not unfairly
9 discriminatory as part of a pilot or testing program no longer than one year. An
10 insurer or producer shall notify the department of the pilot or testing program
11 offered to consumers in this state before launching and may proceed with the
12 program unless the department objects within twenty-one days of notice.

13 4. An insurer, producer, or representative of an insurer or producer may not offer or
14 provide insurance as an inducement to the purchase of another policy or otherwise
15 use of the words "free" or "no cost" or words of similar import in an advertisement.

16 5. The commissioner may adopt regulations when implementing the permitted practices
17 set forth in this regulation to ensure consumer protection. Consistent with applicable
18 law, the topics addressed by the regulations may include consumer data protections
19 and privacy, consumer disclosure, and unfair discrimination.

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

22 **26.1-26-04.1. Fees for services - Rules.**

23 1. Notwithstanding any other provision of this title, an insurance producer may charge a
24 fee for any services rendered in connection with the sale, solicitation, negotiation,
25 placement, or servicing of an insurance contract, if the following conditions are met:

26 a. The fees may not be charged on a personal lines account, such as personal
27 homeowners and automobile, personal life, and health insurance.

28 b. Before rendering the services and accepting any payment, a written disclosure
29 must be provided to the party to be charged on a form approved by the
30 commissioner disclosing:

31 (1) The nature of the services for which the fees will be charged along with a
32 separate itemization of the amount of the fees;

- 1 (2) That the fees are charged in addition to any premiums paid;
- 2 (3) That if the insurance producer is also an appointed agent of an insurer with
- 3 which coverage is being considered for placement, a statement that the
- 4 insurance producer also represents the insurer in the transaction and owes
- 5 a duty of loyalty to the insurer; and
- 6 (4) That if the insurance producer is to receive a commission from the sale of
- 7 an insurance policy related to the services rendered, a statement clearly
- 8 and completely disclosing that the:
- 9 (a) Insurance producer will receive a commission from the insurer which
- 10 is paid from the premiums owed for the insurance; and
- 11 (b) Amount of commission received by the insurance producer may differ
- 12 depending on the product sold and the insurer.
- 13 c. The disclosure required by this section must be signed and dated by both the
- 14 producer and the party to be charged.
- 15 d. The producer shall retain the signed disclosure required by this section for not
- 16 less than five years following the completion of the service. A copy of the signed
- 17 disclosure must be available to the commissioner for inspection upon request.
- 18 e. The insurance producer may not pay or return, or offer to pay or return, all or part
- 19 of a fee charged as an inducement to purchase a specific policy, or coverage
- 20 within a policy, or coverage from a particular insurer.
- 21 f. Any fee charged under this section must bear a reasonable relationship to the
- 22 services provided and may not be discriminatory.
- 23 2. An insurance producer charging a fee for services rendered for risk management
- 24 services under this section owes the person to be charged a higher standard of care
- 25 than the ordinary standard of care otherwise owed by an insurance producer to fully
- 26 advise the party to be charged as to the party's insurance needs, including the duty to
- 27 inform the person to be charged as to a potential source of risk and to recommend, if
- 28 available, insurance coverage for that risk.
- 29 3. An insurance producer may charge an individual, for personal or commercial lines, a
- 30 fee for paying agency-billed premiums and fees by credit card or other electronic
- 31 means, if the fee is disclosed to the client in writing and agreed to by the client in
- 32 writing.

4. Subdivisions b through d of subsection 1 do not apply to a large commercial risk as defined in section 26.1-25-02.1.

5. The commissioner may adopt rules determined necessary by the commissioner for the administration of this section.

SECTION 5. A new section to chapter 26.1-30 of the North Dakota Century Code is created and enacted as follows:

Mandatory arbitration endorsements for property insurance - Written acceptance - Penalty.

1. A property insurance policy may be issued or delivered in this state with mandatory binding arbitration provisions if the:

- a. Mandatory binding arbitration provisions are contained in a separate endorsement;
- b. Named insured accepts the mandatory binding arbitration endorsement in writing in accordance with subsection 2; and
- c. Property insurance policy does not require mandatory binding arbitration upon request.

2. The written acceptance of the insured required under subsection 1 must:

- a. Be on a form separate from the policy application and other policy forms;
- b. Clearly state the rights being waived in exchange for the premium discount, including the right to a trial by jury; and
- c. Include the following statement in at least twelve-point bold font:
"By signing this form, I agree to resolve all covered property insurance claims through mandatory binding arbitration. I understand that by agreeing to mandatory binding arbitration:
I am giving up my right to have disputes resolved in court.
I am giving up my right to a jury trial.
I am accepting these terms in exchange for a premium discount of [dollar amount or percentage of premium amount].
This agreement is binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless I request removal of the mandatory binding arbitration endorsement in writing".

3. All arbitration proceedings under this section must:

- 1 a. Be conducted in this state if involving a resident of this state;
- 2 b. Be governed by state law; and
- 3 c. Not require arbitration in another state.
- 4 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
5 insureds under the policy and remains effective upon policy renewal, replacement, or
6 reinstatement unless the named insured requests a change in writing.
- 7 5. This section applies to all property and casualty insurance policies issued or renewed
8 after the effective date of this Act.
- 9 6. This section does not apply to a:
 - 10 a. Voluntary arbitration agreement entered after a dispute has arisen;
 - 11 b. Large commercial risk as defined in section 26.1-25-02.1; or
 - 12 c. Commercial surplus line insurance policy; ~~unless this state is the home state as~~
13 ~~defined in chapter 26.1-44, and one hundred percent of the risk insured is located~~
14 ~~in this state~~ placed in accordance with section 26.1-44-03.
- 15 7. The commissioner shall enforce this section.
- 16 8. The commissioner may assess a penalty on an insurer in violation of this section, as
17 determined by the commissioner.

18 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Managed repair programs - Penalty.**

- 21 1. A property insurance policy may be issued or delivered in this state with a managed
22 repair program provision ~~and offer~~ offering premium incentives for managed repair
23 program participation. As used in this section, "managed repair program" means ~~any~~
24 ~~an insurance policy providing a program with a specified reduction in premium or other~~
25 ~~specified incentive for participation in a program in which an insurer restricts~~ restricting
26 an insured's choice of repair vendors or contractors for covered repairs.
- 27 2. An insurer offering a managed repair program shall:
 - 28 a. Prominently disclose on the policy declarations page the policy restricts the
29 insured's right to choose repair vendors;
 - 30 b. Specify any premium benefits for program participation;
 - 31 c. Include a separate disclosure form, written in at least twelve-point font, which
32 explains the restrictions on vendor selection, including:

- (1) The process for repairs under the program;
- (2) The insured's rights and responsibilities; and
- (3) Any warranty or guarantee provided for repairs.

3. ~~An insured retains the option to select the insured's own contractor, subject to standard policy terms, and request an alternate program contractor~~ This section shall not apply to contractor referral, managed or direct repair programs that do not provide a specified reduction in premium or other incentive.

4. This section ~~applies~~ applies to ~~all property and casualty~~ insurance policies issued or renewed after the effective date of this Act.

5. The commissioner shall enforce this section.

6. The commissioner may assess a penalty on an insurer in violation of this section, as determined by the commissioner.

SECTION 7. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Civil remedy actions against property insurers.

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

SECTION 8. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of property insurance claim.

1. As used in this section:

- a. "Reopened claim" means a claim an insurer closed and reopened upon an insured's request for additional reimbursement of damage arising out of the original occurrence, and not previously identified or disclosed to the insurer.
- b. "Supplemental claim" means a claim for additional loss or costs from the same occurrence the insurer previously compensated the insured.

2. A reopened claim under an insurance policy that provides property insurance, including a policy issued by an eligible surplus lines insurer, for loss or damage is barred unless notice of the claim was given to the insurer within one year after the date of loss. A supplemental claim is barred unless notice of the supplemental claim

1 was given to the insurer of the policy within twelve months after the date of the last
2 payment issued by the insurer for that element of the loss.

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

7 SECTION 9. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-44-03. Surplus lines insurance.**

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

- 12 1. Each insurer is an eligible surplus lines insurer;
- 13 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
- 14 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
15 ~~admitted to do business in this state. The full amount or type of insurance may be~~
16 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
17 ~~among the insurers who are admitted to transact and are actually writing the particular~~
18 ~~type of insurance in this state if any are writing it;~~
- 19 4. At the time of placement the surplus lines producer has determined that the
20 nonadmitted insurer:
- 21 a. Has established satisfactory evidence of good repute and financial integrity and
22 has capital and surplus or its equivalent under the laws of its domiciliary
23 jurisdiction which equals the greater of:
- 24 (1) (a) The minimum capital and surplus requirements under the law of this
25 state; or
- 26 (b) Fifteen million dollars.
- 27 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
28 less than the minimum capital and surplus upon an affirmative finding of
29 acceptability by the commissioner. The finding must be based upon such
30 factors as quality of management, capital and surplus of any parent
31 company, company underwriting profit and investment income trends,
32 market availability, and company record and reputation within the industry.

1 The commissioner may not make an affirmative finding of acceptability
2 when the nonadmitted insurer's capital and surplus is less than four million
3 five hundred thousand dollars; or

4 b. For an insurer not domiciled in the United States or its territories, the insurer is
5 listed on the quarterly listing of alien insurers maintained by the national
6 association of insurance commissioners international insurers department; and

7 5.4. All other requirements of this chapter are met.

8 **SECTION 10.** A new section to chapter 26.1-44 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Surplus lines insurance policies.**

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

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

15 **26.1-46-01. Definitions.**

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

- 17 1. "Commissioner" means the North Dakota insurance commissioner or the
18 commissioner, director, or superintendent of insurance in any other state.
- 19 2. "Completed operations liability" means liability arising out of the installation,
20 maintenance, or repair of any product at a site which is not owned or controlled by any
21 person who performs that work or any person who hires an independent contractor to
22 perform that work, but includes liability for activities which are completed or
23 abandoned before the date of the occurrence giving rise to the liability.
- 24 3. "Domicile", for purposes of determining the state in which a purchasing group is
25 domiciled, means:
- 26 a. For a corporation or limited liability company, the state in which the purchasing
27 group is incorporated or organized.
- 28 b. For an entity which is not a corporation or limited liability company, the state of its
29 principal place of business.
- 30 4. "Hazardous financial condition" means that, based on its present or reasonably
31 anticipated financial condition, a risk retention group, although not yet financially
32 impaired or insolvent, is unlikely to be able to do either of the following:

- 1 a. To meet obligations to policyholders with respect to known claims and reasonably
2 anticipated claims.
- 3 b. To pay other obligations in the normal course of business.
- 4 5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
5 insurance, and any other arrangement for shifting and distributing risk which is
6 determined to be insurance under the laws of this state.
- 7 6. a. "Liability" means legal liability for damages, including costs of defense, legal
8 costs and fees, and other claims expenses because of injuries to other persons,
9 damage to their property, or other damage or loss, including contractual claims
10 and expenses, to such other persons resulting from or arising out of either of the
11 following:
 - 12 a- (1) Any business whether profit or nonprofit, trade, product, services including
13 professional services, premises, or operations.
 - 14 b- (2) Any activity of any state or local government, or any agency or political
15 subdivision thereof.
 - 16 b. The term does not include personal risk liability and an employer's liability with
17 respect to its employees other than legal liability under the federal Employer's
18 Liability Act [45 U.S.C. 51 et seq.].
- 19 7. "Personal risk liability" means liability for damages because of injury to any person,
20 damage to property, or other loss or damage resulting from any personal, familial, or
21 household responsibilities or activities, rather than from responsibilities or activities
22 referred to in subsection ~~56~~.
- 23 8. "Plan of operation or a feasibility study" means an analysis which presents the
24 expected activities and results of a risk retention group, including, at a minimum, all of
25 the following:
 - 26 a. For each state in which it intends to operate, the coverages, deductibles,
27 coverage limits, rates, and rating classification systems for each line of insurance
28 the group intends to offer.
 - 29 b. Historical and expected loss experience of the proposed members and national
30 experience of similar exposures to the extent that this experience is reasonably
31 available.
 - 32 c. Pro forma financial statements and projections.

- 1 d. Appropriate opinions by a qualified independent casualty actuary, including a
- 2 determination of minimum premium or participation levels required to commence
- 3 operations and to prevent a hazardous financial condition.
- 4 e. Identification of management, underwriting and claims procedures, marketing
- 5 methods, managerial oversight methods, reinsurance agreements, and
- 6 investment policies.
- 7 f. Such other matters as may be prescribed by the commissioner for liability
- 8 insurance companies authorized by the insurance laws of the state in which the
- 9 risk retention group is chartered.
- 10 g. Information sufficient to verify that its members are engaged in businesses or
- 11 activities similar or related with respect to the liability to which such members are
- 12 exposed by virtue of any related, similar, or common business, trade, product,
- 13 services, premises, or operations.
- 14 h. Identification of each state in which the risk retention group has obtained, or
- 15 sought to obtain, a charter and license, and a description of its status in each
- 16 such state.
- 17 9. "Product liability" means liability for damages because of any personal injury, death,
- 18 emotional harm, consequential economic damage, or property damage, including
- 19 damages resulting from the loss of use of property, arising out of the manufacture,
- 20 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
- 21 does not include the liability of any person for those damages if the product involved
- 22 was in the possession of such a person when the incident giving rise to the claim
- 23 occurred.
- 24 10. "Purchasing group" means any group which meets all of the following:
- 25 a. The group has as one of its purposes the purchase of liability insurance on a
- 26 group basis.
- 27 b. The group purchases ~~such~~ insurance only for its group members and only to
- 28 cover their similar or related liability exposure, as described in subdivision c.
- 29 c. The group is composed of members whose business or activities are similar or
- 30 related with respect to the liability to which members are exposed by virtue of any
- 31 related, similar, or common business, trade, product, services, premises, or
- 32 operations.

1 d. The group is domiciled in any state.

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

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

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

7 c. Which is chartered and licensed as a liability insurance company and authorized
8 to engage in the business of insurance under the laws of any state; or, before
9 January 1, 1985, was chartered or licensed and authorized to engage in the
10 business of insurance under the laws of Bermuda or the Cayman Islands and,
11 before such date, had certified to the insurance commissioner of at least one
12 state that it satisfied the capitalization requirements of such state, except that any
13 such group shall be considered to be a risk retention group only if it has been
14 engaged in business continuously since that date and only for the purpose of
15 continuing to provide insurance to cover product liability or completed operations
16 liability as such terms were defined in the Product Liability Risk Retention Act of
17 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

18 d. Which does not exclude any person from membership in the group solely to
19 provide for members of such a group a competitive advantage over such a
20 person.

21 e. Which has as its owners only persons who comprise the membership of the risk
22 retention group and who are provided insurance by such group, or has as its sole
23 owner an organization which has as its members only persons who comprise the
24 membership of the risk retention group and its owners only persons who
25 comprise the membership of the risk retention group and who are provided
26 insurance by such group.

27 f. Whose members are engaged in businesses or activities similar or related with
28 respect to the liability of which such members are exposed by virtue of any
29 related, similar, or common business trade, product, services, premises, or
30 operations.

31 g. Whose activities do not include the provision of insurance other than:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members; ~~except a nonmaterial amount of commercial property coverage incidental to the liability exposure of its group members also may be insured.~~

(2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.

h. The name of which includes the phrase "risk retention group".

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

SECTION 12. A new subsection to section 26.1-46-03 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 13. AMENDMENT. Section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; ~~however, coverage may provide for a deductible or self-insured retention applicable to individual members~~

1 unless the purchasing group uses a policyholder's disclosure statement approved by
2 the commissioner which clearly explains in simplified language the policy is subject to
3 a group deductible or self-insured retention and provides a detailed explanation of the
4 process of the satisfaction of the deductible or self-insured retention among members.

5 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
6 ~~regarding aggregate limits which are applicable to all purchases of group insurance. A~~
7 purchasing group may not purchase insurance providing for a shared aggregate limit
8 applicable to the group as a whole unless the purchasing group uses a policyholder's
9 disclosure statement approved by the commissioner which clearly explains in
10 simplified language the policy is subject to a group aggregate limit and coverage for
11 each individual member could be exhausted by claims from other members. The
12 insurance must allow for an individual member to purchase additional limits in the
13 event of exhaustion and this option must be described in the disclosure statement.

14 SECTION 14. AMENDMENT. Section 26.1-46-08.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **26.1-46-08.1. Purchasing group taxation - Fees.**

17 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
18 located in this state by a purchasing group or any members of the purchasing
19 group must be:

- 20 4- (1) Imposed at the same rate and subject to the same interest, fines, and
21 penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid
22 for similar coverage from a similar insurance source by other insureds; and
23 2- (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
24 insurance producer for the purchasing group, and if not by ~~such~~the
25 insurance producer, then by the purchasing group, ~~and if not by such~~
26 ~~purchasing group, then by each of its members.~~

27 b. To the extent any administrative fee is charged under subsection 2, the fee may
28 not be considered a premium and is not subject to premium tax.

29 2. A purchasing group's administrator, manager, or other related party may charge
30 reasonable fees provided the fees are:

31 a. For reimbursement of expenses incurred by the administrator, manager, or other
32 related party in performing its administrative duties for the purchasing group; and

- 1 b. Disclosed to all members of the risk purchasing group on a form approved by the
2 commissioner which states the nature of the administrative duties for which the
3 fees will be charged along with separate itemization of the amount of fees to be
4 paid by each member.

5 SECTION 15. **REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
6 repealed.



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Senate bill 2374

Chairman Warrey and members of this committee, good morning. My name is Chris Oen. I work as the Senior Vice President & Chief Claims Officer for Nodak Insurance Company, a domestic company serving North Dakotans for over 78 years. I am also a member of ANDI, the Association of North Dakota Insurers. I come before you today in support of SB 2374.

I commend the Commissioner's office for the design of this bill, and appreciate their willingness to work with the industry on the bill's language. This bill and the language contained is a first for me and my involvement in property insurance for over 25 years. This bill contains property insurance reform that will allow North Dakota to remain a competitive marketplace for property insurers to do business.

While the bill contains a number of changes within its sections, I would like to outline a few key sections that the industry as worked with the Commissioner's office and why they are good for North Dakota insurance customers.

On page 10 under Section 5, this allows for mandatory arbitration language to be placed into property policy language. Arbitration simplifies the process involving disagreements in property claims. Without arbitration clauses in insurance policies, a policyholder has no choice but to hire an attorney and go through the courts. This is not only expensive, but takes typically a very long time. (in my experience, court cases take at least 18 months to 2 years for some sort of resolution)

How arbitration typically works is that each side selects an arbitrator, and those 2 arbitrators then select a neutral 3rd. Each side presents their case on paper, and sometimes in an informal hearing to the panel. That panel of three then adjudicate the disagreement and the ruling becomes final.

This process is beneficial to both the insurance company and policyholder because:

- Costs are MUCH lower due to the informal nature of the process. Court filing fees, extended discovery periods, depositions, and all the standard court cost and legal fees are avoided.
- By holding down legal costs, this lessens the expenses for an insurance company which would presumably be reflected in premium costs.
- Disagreements are decided usually in a matter of a few months. This is important as property claims need to be resolved quickly so repairs can be done and damages be finalized.

I would also note that this section is not mandatory for property insurers to adopt. With the requirements of up-front disclosure, a customer can decide if they are willing to accept mandatory arbitration or shop elsewhere.

On page 12, Section 6 allows for insurers to offer managed repair programs to their customers. I recognize there was discussions earlier in this session regarding programs within the insurance industry. I would like to be clear with the committee and go back to the basis of an insurance policy. We sell a promise that if a claim is covered, the company will pay what is needed to get their insured as close back to pre-loss conditions as possible.

Property claims can be complicated. As an insurance claims executive with Nodak, my job is to find ways to make the claims process as simple, clear, and quick as possible. Giving the insurance industry the option of partnering with North Dakota repair businesses and giving that option to our customers is a win for both sides.

- Insurance companies would have less cost in adjusting expenses as we can go to managed repair program partners knowing the parameters of what the loss likely will cost.
- Insurance customers in North Dakota would have a clear path on getting their property repaired or restored, saving them time & confusion dealing with finding a contractor or repair facility.

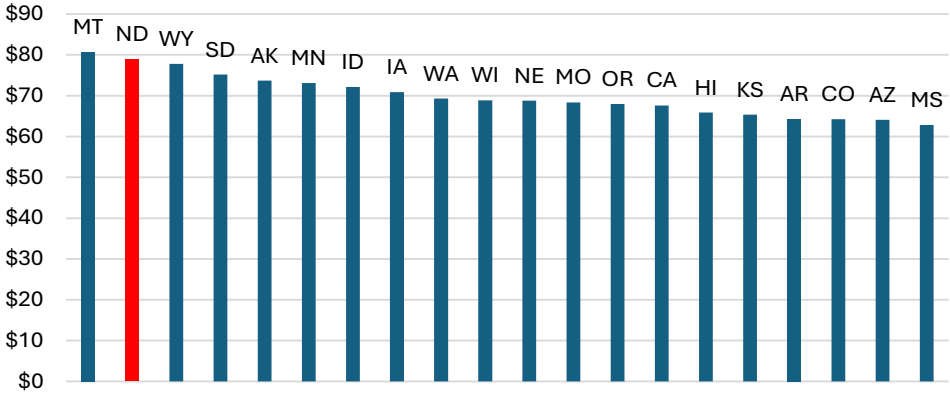
A couple final thoughts on section 6. 1) The design of this language is to pass on the savings to the customer through a premium credit off the policy, and 2) this language is OPTIONAL, both for the Insurance company to provide or more importantly to the customer when they purchase the policy. We are not mandating, companies are not trying to price fix or control the repair industry. Managed Repair Programs give an option to a customer up front on how they would like the claims process to work, and that is a win/win for both sides.

Section 7 sets the correct path and parameters for actions against insurance companies. Bad Faith is a legal term that is outlined in the Unfair Claims Practices Act 26.1-04-03. This language puts in the proper order of how a lawsuit against an insurance company should proceed. If the Company is found by a court that the insurance contract was breeched, then the issue of bad faith is decided. We often see litigation that is jumbled and confusing, having accusations of bad faith when it hasn't even been determined if the claim is covered. This does not bar any individual from making claims for bad faith against their insurer, it only requires that the coverage or damages issue is decided first.

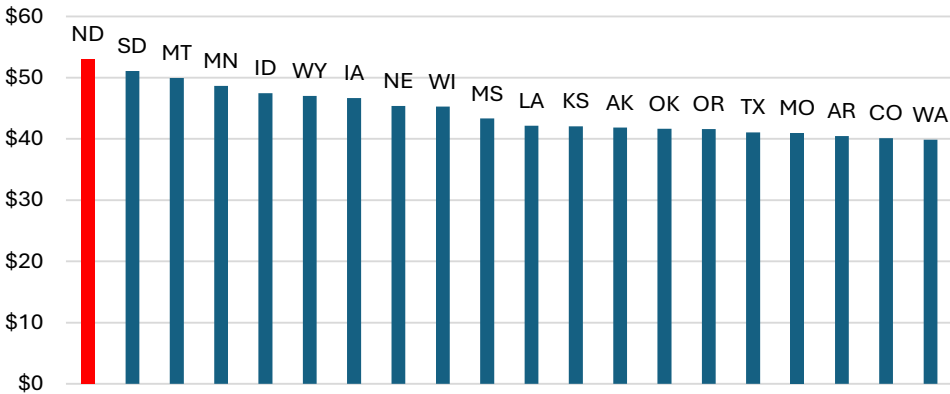
Finally, in regards to Section 8, I worked directly with the Commissioner's office on this language. Currently, there are no guardrails or definitive statute that defines how long a claim can be open. This language defines the different situations. And frankly, the issue of reopened or supplemental claims is not a huge one as 99.9% of all property claims are resolved quickly.

Why this law is important to insurers is if an insured fails to make repairs timely, there are increased costs in potential further damage or labor & material pricing changes. This section allows insurers to price premium accurately and fairly, fostering a competitive marketplace.

Average Sheet Metal Labor Rate
Top 20 States



Average Paint Supply Rate
Top 20 States



Source: CCC Intelligent Solutions 2024 data

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2374
4/1/2025

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

9:32 a. m. Vice Chairman Ostlie opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives T. Brown, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Members Absent: Representatives Bahl, C. Brown

Discussion Topics:

- Direct consumer relief
- Repair rates
- Consumer choice
- Crop insurance

9:33 a.m. Jon Godfread, Commissioner, ND Insurance Department, available for questions.

9:39 a.m. John Arnold, Deputy Commissioner, ND Insurance Department, available for questions.

10:30 a.m. Vice Chairman Ostlie closed the meeting.

Diane Lillis, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2374
4/2/2025

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

10:17 a.m. Vice Chairman Ostlie opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives C. Brown, T. Brown, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Members Absent: Representatives Bahl, Finley-DeVille

Discussion Topics:

- Large commercial risk
- Customer choices
- Preferred programs
- Monopolistic vs negotiation

10:17 a.m. John Arnold, Deputy Commissioner, ND Insurance Department, to discuss amendment language.

10:46 a.m. Representative Koppelman moved to amend by removing section 6.

10:46 a.m. Representative Kasper seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	N
Representative Mitch Ostlie	N
Representative Jorin Johnson	N
Representative Landon Bahl	AB
Representative Collette Brown	Y

Representative Timothy Brown	N
Representative Lisa Finley-DeVille	AB
Representative Karen Grindberg	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	N
Representative Mike Schatz	Y
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	N

Motion failed 5-7-2.

11:24 a.m. Representative Koppelman moved the amendment, except for the changes on Page 12, lines 9-12, #44576.

11: 24 a.m. Representative Kasper seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	N
Representative Mitch Ostlie	N
Representative Jorin Johnson	N
Representative Landon Bahl	AB
Representative Collette Brown	N
Representative Timothy Brown	AB
Representative Lisa Finley-DeVille	AB
Representative Karen Grindberg	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	N
Representative Mike Schatz	Y
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	N

Motion failed 4-7-3.

11:39 a.m. Representative D. Ruby moved to adopt the amendment #44576.

11:39 a.m. Representative Johnson seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Jorin Johnson	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Timothy Brown	AB
Representative Lisa Finley-DeVille	AB

Representative Karen Grindberg	Y
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	Y
Representative Mike Schatz	N
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 8-3-3.

11:39 a.m. Representative Ostlie moved Do Pass as amended #44576.

11:39 a.m. Representative D. Ruby seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Jorin Johnson	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Timothy Brown	AB
Representative Lisa Finley-DeVille	AB
Representative Karen Grindberg	Y
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	Y
Representative Mike Schatz	N
Representative Austin Schauer	n
Representative Daniel R. Vollmer	Y

Motion passed 7-4-3.

11:40 a.m. Representative Johnson will carry the bill.

11:40 a.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 4/2/25
1 of 21

ENGROSSED SENATE BILL NO. 2374

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

1. The lawful transaction of surplus lines insurance.

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

1 b. Whose aggregate annual premiums for insurance on all risks total at least
2 twenty-five thousand dollars; and

3 c. Which has at least twenty-five full-time employees.

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

7 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-25-02.1. Definitions.**

- 10 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
11 either has two or more member insurers or is controlled either directly or indirectly by
12 two or more insurers, and which assists insurers in ratemaking-related activities as
13 enumerated in this chapter. Two or more insurers having a common ownership or
14 operating in this state under common management or control constitute a single
15 insurer for purposes of this definition.
- 16 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 17 3. "Competitive market" means a commercial risk market that has not been found to be
18 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
19 except crop hail, farmowners, and medical malpractice insurance are presumed to be
20 competitive.
- 21 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
22 standard actuarial techniques, to eliminate the effect of differences between current
23 payment or reserve estimates and those needed to provide actual ultimate loss
24 including loss adjustment expense payments.
- 25 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
26 collection expenses, general expenses, taxes, licenses, and fees.
- 27 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
28 coverage for a commercial risk pursuant to which two or more insurers jointly contract
29 with the insured at a price and under policy terms agreed upon between the insurers.
- 30 7. "Large commercial risk" means an insured that has:
31 a. Total insured property values of twenty-five million dollars or more;

- 1 b. Total annual gross revenue of fifty million dollars or more; or
- 2 c. A total premium of one hundred thousand dollars or more for property insurance,
- 3 one hundred thousand dollars or more for general liability insurance, or
- 4 two hundred thousand dollars or more for multiperil insurance.
- 5 d. The term does not include farming or ranching.
- 6 8. "Loss trending" means any procedure for projecting developed losses to the average
- 7 date of loss for the period during which the policies are to be effective.
- 8 8-9. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
- 9 insurance markets together with any other line of commercial risk insurance that has
- 10 not been found by the commissioner to have a reasonable degree of competitiveness
- 11 within the market considering:
- 12 a. Market concentration and changes in market concentration determined through
- 13 the use of the Herfindahl-Hirschman index and the United States department of
- 14 justice merger guidelines for an unconcentrated market;
- 15 b. The existence of financial and other barriers that prevent a company from
- 16 entering the market;
- 17 c. The number of insurers or groups of affiliated insurers providing coverage in the
- 18 market;
- 19 d. The extent to which any insurer or group of affiliated insurers controls the market;
- 20 e. Whether the total number of companies writing the line of insurance in this state
- 21 is sufficient to provide multiple insurance options in the market;
- 22 f. The availability of insurance coverage to consumers in the markets by specific
- 23 geographic area, by line of insurance, and by class of risk; and
- 24 g. The opportunities available in the market to acquire pricing and other consumer
- 25 information.
- 26 A determination that a market is noncompetitive may not be based solely on the
- 27 consideration of any one factor.
- 28 9-10. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
- 29 mobile homes, and other property and casualty insurance for personal, family, or
- 30 household needs.

1 ~~40.11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
2 which two or more insurers participate in the sharing of risks on a predetermined
3 basis. The pool may operate through an association, syndicate, or other pooling
4 agreement.

5 ~~41.12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
6 for expenses other than loss adjustment expenses, or profit, and are based on
7 historical aggregate losses and loss adjustment expenses adjusted through
8 development to their ultimate value and projected through trending to a future point in
9 time.

10 ~~42.13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
11 member or as a prospective loss cost with an adjustment to account for the treatment
12 of expenses, profit, and individual insurer variation in loss experience, prior to any
13 application of individual risk variations based on loss or expense considerations, and
14 does not include minimum premium.

15 ~~43.14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
16 by law, involving participation by insurers in the equitable apportionment among them
17 of insurance which may be afforded applicants who are unable to obtain insurance
18 through ordinary methods.

19 ~~44.15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
20 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
21 plan, and any other similar information needed to determine the applicable rate in
22 effect or to be in effect.

23 ~~45.16.~~ "Supporting information" means:

- 24 a. The experience and judgment of the filer and the experience or date of other
25 insurers or advisory organizations relied upon by the filer;
26 b. The interpretation of any other data relied upon by the filer; and
27 c. Descriptions of methods used in making the rates and any other information
28 required by the commissioner to be filed.

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

26.1-25-16. Rebates prohibited - Exception.

1. ~~No insurance producer~~ An insurance producer may not knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no insurance producer, broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.
2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. A

~~person insured by a federal crop insurance policy is not eligible to receive the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give an item of value to a person insured by a federal crop insurance policy.~~ Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be contingent on the purchase, continued purchase, or renewal of a policy. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a contract of insurance.

3. The provisions in this section may not be construed as including within the definition of discrimination or rebates any of the following practices:
 - a. The offer or provision by an insurer or producer, by or through an employee, an affiliate, or a third-party representative, of value-added products or services at no or reduced cost if the products or services are not specified in the policy of insurance if the product or service:
 - (1) Relates to the insurance coverage and is designed to satisfy one or more of the following:
 - (a) Provide loss mitigation or loss control;
 - (b) Reduce claims costs or claim settlement costs;
 - (c) Provide education about liability risk or risk of loss to persons or property;
 - (d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
 - (e) Enhance health;
 - (f) Enhance financial wellness through items such as education of financial planning services;

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

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

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

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

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

SECTION 5. A new section to chapter 26.1-30 of the North Dakota Century Code is created and enacted as follows:

Mandatory arbitration endorsements for property insurance - Written acceptance -

Penalty.

1. A property insurance policy may be issued or delivered in this state with mandatory binding arbitration provisions if the:
 - a. Mandatory binding arbitration provisions are contained in a separate endorsement;
 - b. Named insured accepts the mandatory binding arbitration endorsement in writing in accordance with subsection 2; and
 - c. Property insurance policy does not require mandatory binding arbitration upon request.

2. The written acceptance of the insured required under subsection 1 must:
 - a. Be on a form separate from the policy application and other policy forms;
 - b. Clearly state the rights being waived in exchange for the premium discount, including the right to a trial by jury; and
 - c. Include the following statement in at least twelve-point bold font:

"By signing this form, I agree to resolve all covered property insurance claims through mandatory binding arbitration. I understand that by agreeing to mandatory binding arbitration:
I am giving up my right to have disputes resolved in court.
I am giving up my right to a jury trial.
I am accepting these terms in exchange for a premium discount of [dollar amount or percentage of premium amount].
This agreement is binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless I request removal of the mandatory binding arbitration endorsement in writing".
3. All arbitration proceedings under this section must:
 - a. Be conducted in this state if involving a resident of this state;
 - b. Be governed by state law; and
 - c. Not require arbitration in another state.
4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless the named insured requests a change in writing.
5. This section applies to all property and casualty insurance policies issued or renewed after the effective date of this Act.
6. This section does not apply to a:
 - a. Voluntary arbitration agreement entered after a dispute has arisen;
 - b. Large commercial risk as defined in section 26.1-25-02.1; or
 - c. Commercial surplus line insurance policy, unless this state is the home state as defined in chapter 26.1-44, and one hundred percent of the risk insured is located in this state placed in accordance with section 26.1-44-03.
7. The commissioner shall enforce this section.

- 1 8. The commissioner may assess a penalty on an insurer in violation of this section, as
2 determined by the commissioner.

3 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Managed repair programs - Penalty.**

- 6 1. A property insurance policy may be issued or delivered in this state with a managed
7 repair program provision and offer offering premium incentives for managed repair
8 program participation. As used in this section, "managed repair program" means
9 anyan insurance policy providing a program with a specified reduction in premium or
10 other specified incentive for participation in a program in which an insurer restricts
11 restricting an insured's choice of repair vendors or contractors for covered repairs.
- 12 2. An insurer offering a managed repair program shall:
- 13 a. Prominently disclose on the policy declarations page the policy restricts the
14 insured's right to choose repair vendors;
- 15 b. Specify any premium benefits for program participation;
- 16 c. Include a separate disclosure form, written in at least twelve-point font, which
17 explains the restrictions on vendor selection, including:
- 18 (1) The process for repairs under the program;
19 (2) The insured's rights and responsibilities; and
20 (3) Any warranty or guarantee provided for repairs.
- 21 3. An insured retains the option to select the insured's own contractor, subject to
22 standard policy terms, and request an alternate program contractor~~This section does~~
23 not apply to contractor referral or managed or direct repair programs that do not
24 provide a specified reduction in premium or other incentive.
- 25 4. This section applesapplies to all property and casualty insurance policies issued or
26 renewed after the effective date of this Act.
- 27 5. The commissioner shall enforce this section.
- 28 6. The commissioner may assess a penalty on an insurer in violation of this section, as
29 determined by the commissioner.

30 **SECTION 7.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
31 and enacted as follows:

Civil remedy actions against property insurers.

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

SECTION 8. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of property insurance claim.

1. As used in this section:

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

b. "Supplemental claim" means a claim for additional loss or costs from the same occurrence the insurer previously compensated the insured.

2. A reopened claim under an insurance policy that provides property insurance, including a policy issued by an eligible surplus lines insurer, for loss or damage is barred unless notice of the claim was given to the insurer within one year after the date of loss. A supplemental claim is barred unless notice of the supplemental claim was given to the insurer of the policy within twelve months after the date of the last payment issued by the insurer for that element of the loss.

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

SECTION 9. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines insurance.

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

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

- 1 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
2 ~~admitted to do business in this state. The full amount or type of insurance may be~~
3 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
4 ~~among~~ The surplus lines producer is aware that:
5 a. The full amount and type of insurance is not available from the insurers who are
6 admitted to transact and are actually writing the particular type of insurance in
7 this state if any are writing it; or
8 b. The risk was referred to the surplus lines producer by an insurance producer
9 licensed in this state.
10 4. At the time of placement the surplus lines producer has determined that the
11 nonadmitted insurer:
12 a. Has established satisfactory evidence of good repute and financial integrity and
13 has capital and surplus or its equivalent under the laws of its domiciliary
14 jurisdiction which equals the greater of:
15 (1) (a) The minimum capital and surplus requirements under the law of this
16 state; or
17 (b) Fifteen million dollars.
18 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
19 less than the minimum capital and surplus upon an affirmative finding of
20 acceptability by the commissioner. The finding must be based upon such
21 factors as quality of management, capital and surplus of any parent
22 company, company underwriting profit and investment income trends,
23 market availability, and company record and reputation within the industry.
24 The commissioner may not make an affirmative finding of acceptability
25 when the nonadmitted insurer's capital and surplus is less than four million
26 five hundred thousand dollars; or
27 b. For an insurer not domiciled in the United States or its territories, the insurer is
28 listed on the quarterly listing of alien insurers maintained by the national
29 association of insurance commissioners international insurers department; and
30 5.4. All other requirements of this chapter are met.

1 **SECTION 10.** A new section to chapter 26.1-44 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Surplus lines insurance policies.**

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

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

8 **26.1-46-01. Definitions.**

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

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

- 1 6. a. "Liability" means legal liability for damages, including costs of defense, legal
2 costs and fees, and other claims expenses because of injuries to other persons,
3 damage to their property, or other damage or loss, including contractual claims
4 and expenses, to such other persons resulting from or arising out of either of the
5 following:
- 6 a. (1) Any business whether profit or nonprofit, trade, product, services including
7 professional services, premises, or operations.
- 8 ~~b.~~ (2) Any activity of any state or local government, or any agency or political
9 subdivision thereof.
- 10 b. The term does not include personal risk liability and an employer's liability with
11 respect to its employees other than legal liability under the federal Employer's
12 Liability Act [45 U.S.C. 51 et seq.].
- 13 7. "Personal risk liability" means liability for damages because of injury to any person,
14 damage to property, or other loss or damage resulting from any personal, familial, or
15 household responsibilities or activities, rather than from responsibilities or activities
16 referred to in subsection 56.
- 17 8. "Plan of operation or a feasibility study" means an analysis which presents the
18 expected activities and results of a risk retention group, including, at a minimum, all of
19 the following:
- 20 a. For each state in which it intends to operate, the coverages, deductibles,
21 coverage limits, rates, and rating classification systems for each line of insurance
22 the group intends to offer.
- 23 b. Historical and expected loss experience of the proposed members and national
24 experience of similar exposures to the extent that this experience is reasonably
25 available.
- 26 c. Pro forma financial statements and projections.
- 27 d. Appropriate opinions by a qualified independent casualty actuary, including a
28 determination of minimum premium or participation levels required to commence
29 operations and to prevent a hazardous financial condition.

- e. Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies.
 - f. Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.
 - g. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.
 - h. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state.
9. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.
10. "Purchasing group" means any group which meets all of the following:
- a. The group has as one of its purposes the purchase of liability insurance on a group basis.
 - b. The group purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.
 - c. The group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.
 - d. The group is domiciled in any state.
11. "Risk retention group" means any corporation or other limited liability association:

- a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.
- b. Which is organized for the primary purpose of conducting the activity described under subdivision a.
- c. Which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.
- d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.
- e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.
- f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.
- g. Whose activities do not include the provision of insurance other than:
 - (1) Liability insurance for assuming and spreading all or any portion of the liability of its group members, except a nonmaterial amount of commercial

property coverage incidental to the liability exposure of its group members
also may be insured.

- (2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.

h. The name of which includes the phrase "risk retention group".

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

SECTION 12. A new subsection to section 26.1-46-03 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 13. AMENDMENT. Section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.
2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.
3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; ~~however, coverage may provide for a deductible or self-insured retention applicable to individual members unless the purchasing group uses a policyholder's disclosure statement approved by~~

20 of 21

the commissioner which clearly explains in simplified language the policy is subject to a group deductible or self-insured retention and provides a detailed explanation of the process of the satisfaction of the deductible or self-insured retention among members.

~~4. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance. A purchasing group may not purchase insurance providing for a shared aggregate limit applicable to the group as a whole unless the purchasing group uses a policyholder's disclosure statement approved by the commissioner which clearly explains in simplified language the policy is subject to a group aggregate limit and coverage for each individual member could be exhausted by claims from other members. The insurance must allow for an individual member to purchase additional limits in the event of exhaustion and this option must be described in the disclosure statement.~~

SECTION 14. AMENDMENT. Section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08.1. Purchasing group taxation - Fees.

1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

~~4.~~ (1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

~~2.~~ (2) Paid first by such the insurance source, and if not by such the source, by the insurance producer for the purchasing group, and if not by such the insurance producer, then by the purchasing group, and if not by such purchasing group, then by each of its members.

b. To the extent any administrative fee is charged under subsection 2, the fee may not be considered a premium and is not subject to premium tax.

2. A purchasing group's administrator, manager, or other related party may charge reasonable fees provided the fees are:

a. For reimbursement of expenses incurred by the administrator, manager, or other related party in performing its administrative duties for the purchasing group; and

- 1 b. Disclosed to all members of the risk purchasing group on a form approved by the
2 commissioner which states the nature of the administrative duties for which the
3 fees will be charged along with separate itemization of the amount of fees to be
4 paid by each member.

5 **SECTION 15. REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
6 repealed.

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2374**

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **AMENDMENTS** ([25.1236.02001](#)) and when so amended, recommends **DO PASS** (7 YEAS, 4 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). Engrossed SB 2374 was placed on the Sixth order on the calendar.

25.1236.02000

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2374**

FIRST ENGROSSMENT

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

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

4 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-25-02.1. Definitions.**

- 7 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
8 either has two or more member insurers or is controlled either directly or indirectly by
9 two or more insurers, and which assists insurers in ratemaking-related activities as
10 enumerated in this chapter. Two or more insurers having a common ownership or
11 operating in this state under common management or control constitute a single
12 insurer for purposes of this definition.
- 13 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 14 3. "Competitive market" means a commercial risk market that has not been found to be
15 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
16 except crop hail, farmowners, and medical malpractice insurance are presumed to be
17 competitive.
- 18 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
19 standard actuarial techniques, to eliminate the effect of differences between current
20 payment or reserve estimates and those needed to provide actual ultimate loss
21 including loss adjustment expense payments.
- 22 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
23 collection expenses, general expenses, taxes, licenses, and fees.
- 24 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
25 coverage for a commercial risk pursuant to which two or more insurers jointly contract
26 with the insured at a price and under policy terms agreed upon between the insurers.
- 27 7. "Large commercial risk" means an insured that has:
28 a. Total insured property values of twenty-five million dollars or more;
29 b. Total annual gross revenue of fifty million dollars or more; or
30 c. A total premium of one hundred thousand dollars or more for property insurance,
31 one hundred thousand dollars or more for general liability insurance, or
32 two hundred thousand dollars or more for multiperil insurance.

1 d. The term does not include farming or ranching.

2 8. "Loss trending" means any procedure for projecting developed losses to the average
3 date of loss for the period during which the policies are to be effective.

4 ~~8-9.~~ "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
5 insurance markets together with any other line of commercial risk insurance that has
6 not been found by the commissioner to have a reasonable degree of competitiveness
7 within the market considering:

8 a. Market concentration and changes in market concentration determined through
9 the use of the Herfindahl-Hirschman index and the United States department of
10 justice merger guidelines for an unconcentrated market;

11 b. The existence of financial and other barriers that prevent a company from
12 entering the market;

13 c. The number of insurers or groups of affiliated insurers providing coverage in the
14 market;

15 d. The extent to which any insurer or group of affiliated insurers controls the market;

16 e. Whether the total number of companies writing the line of insurance in this state
17 is sufficient to provide multiple insurance options in the market;

18 f. The availability of insurance coverage to consumers in the markets by specific
19 geographic area, by line of insurance, and by class of risk; and

20 g. The opportunities available in the market to acquire pricing and other consumer
21 information.

22 A determination that a market is noncompetitive may not be based solely on the
23 consideration of any one factor.

24 ~~9-10.~~ "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
25 mobile homes, and other property and casualty insurance for personal, family, or
26 household needs.

27 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
28 which two or more insurers participate in the sharing of risks on a predetermined
29 basis. The pool may operate through an association, syndicate, or other pooling
30 agreement.

31 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
32 for expenses other than loss adjustment expenses, or profit, and are based on

historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single member or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

~~43-14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

~~44-15.~~ "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

~~45-16.~~ "Supporting information" means:

- a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;
- b. The interpretation of any other data relied upon by the filer; and
- c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

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

26.1-25-16. Rebates prohibited - Exception.

1. ~~No insurance producer~~An insurance producer may not knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no insurance producer, broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or

any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. ~~A person insured by a federal crop insurance policy is not eligible to receive the items of value permitted under this section. It is a violation of subsection 1 for an insurance producer to knowingly give an item of value to a person insured by a federal crop insurance policy.~~ Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be

contingent on the purchase, continued purchase, or renewal of a policy.

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

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

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

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

(a) Provide loss mitigation or loss control;

(b) Reduce claims costs or claim settlement costs;

(c) Provide education about liability risk or risk of loss to persons or property;

(d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(e) Enhance health;

(f) Enhance financial wellness through items such as education of financial planning services;

(g) Provide post-loss services;

(h) Incent behavioral changes to improve the health or reduce the risk of death or disability of an individual defined as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant; or

(i) Assist in the administration of the employee or retiree benefit insurance coverage.

(2) If offered by the insurer or producer, the insurer or producer, upon request, shall ensure the person is provided with contact information to assist the person with questions regarding the product or service.

1 (3) Is based on fair documented criteria and offered in a manner not unfairly
2 discriminatory. The documented criteria must be maintained by the insurer
3 or producer and produced at the request of the commissioner.

4 (4) Is reasonable in comparison to that person's premiums or insurance
5 coverage for the policy class.

6 b. If an insurer or producer does not have sufficient evidence, but has a good-faith
7 belief the product or service meets the criteria in subdivision a, the provision by
8 the insurer or producer of a product or service in a manner that is not unfairly
9 discriminatory as part of a pilot or testing program no longer than one year. An
10 insurer or producer shall notify the department of the pilot or testing program
11 offered to consumers in this state before launching and may proceed with the
12 program unless the department objects within twenty-one days of notice.

13 4. An insurer, producer, or representative of an insurer or producer may not offer or
14 provide insurance as an inducement to the purchase of another policy or otherwise
15 use of the words "free" or "no cost" or words of similar import in an advertisement.

16 5. The commissioner may adopt regulations when implementing the permitted practices
17 set forth in this regulation to ensure consumer protection. Consistent with applicable
18 law, the topics addressed by the regulations may include consumer data protections
19 and privacy, consumer disclosure, and unfair discrimination.

20 6. Subsections 1 and 2 do not apply to a large commercial risk as defined in section
21 26.1-25-02.1.

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

24 **26.1-26-04.1. Fees for services - Rules.**

25 1. Notwithstanding any other provision of this title, an insurance producer may charge a
26 fee for any services rendered in connection with the sale, solicitation, negotiation,
27 placement, or servicing of an insurance contract, if the following conditions are met:

28 a. The fees may not be charged on a personal lines account, such as personal
29 homeowners and automobile, personal life, and health insurance.

30 b. Before rendering the services and accepting any payment, a written disclosure
31 must be provided to the party to be charged on a form approved by the
32 commissioner disclosing:

- 1 (1) The nature of the services for which the fees will be charged along with a
- 2 separate itemization of the amount of the fees;
- 3 (2) That the fees are charged in addition to any premiums paid;
- 4 (3) That if the insurance producer is also an appointed agent of an insurer with
- 5 which coverage is being considered for placement, a statement that the
- 6 insurance producer also represents the insurer in the transaction and owes
- 7 a duty of loyalty to the insurer; and
- 8 (4) That if the insurance producer is to receive a commission from the sale of
- 9 an insurance policy related to the services rendered, a statement clearly
- 10 and completely disclosing that the:
- 11 (a) Insurance producer will receive a commission from the insurer which
- 12 is paid from the premiums owed for the insurance; and
- 13 (b) Amount of commission received by the insurance producer may differ
- 14 depending on the product sold and the insurer.
- 15 c. The disclosure required by this section must be signed and dated by both the
- 16 producer and the party to be charged.
- 17 d. The producer shall retain the signed disclosure required by this section for not
- 18 less than five years following the completion of the service. A copy of the signed
- 19 disclosure must be available to the commissioner for inspection upon request.
- 20 e. The insurance producer may not pay or return, or offer to pay or return, all or part
- 21 of a fee charged as an inducement to purchase a specific policy, or coverage
- 22 within a policy, or coverage from a particular insurer.
- 23 f. Any fee charged under this section must bear a reasonable relationship to the
- 24 services provided and may not be discriminatory.
- 25 2. An insurance producer charging a fee for services rendered for risk management
- 26 services under this section owes the person to be charged a higher standard of care
- 27 than the ordinary standard of care otherwise owed by an insurance producer to fully
- 28 advise the party to be charged as to the party's insurance needs, including the duty to
- 29 inform the person to be charged as to a potential source of risk and to recommend, if
- 30 available, insurance coverage for that risk.
- 31 3. An insurance producer may charge an individual, for personal or commercial lines, a
- 32 fee for paying agency-billed premiums and fees by credit card or other electronic

means, if the fee is disclosed to the client in writing and agreed to by the client in writing.

4. Subdivisions b through d of subsection 1 do not apply to a large commercial risk as defined in section 26.1-25-02.1.

5. The commissioner may adopt rules determined necessary by the commissioner for the administration of this section.

SECTION 5. A new section to chapter 26.1-30 of the North Dakota Century Code is created and enacted as follows:

Mandatory arbitration endorsements for property insurance - Written acceptance - Penalty.

1. A property insurance policy may be issued or delivered in this state with mandatory binding arbitration provisions if the:

a. Mandatory binding arbitration provisions are contained in a separate endorsement;

b. Named insured accepts the mandatory binding arbitration endorsement in writing in accordance with subsection 2; and

c. Property insurance policy does not require mandatory binding arbitration upon request.

2. The written acceptance of the insured required under subsection 1 must:

a. Be on a form separate from the policy application and other policy forms;

b. Clearly state the rights being waived in exchange for the premium discount, including the right to a trial by jury; and

c. Include the following statement in at least twelve-point bold font:

"By signing this form, I agree to resolve all covered property insurance claims through mandatory binding arbitration. I understand that by agreeing to mandatory binding arbitration:

I am giving up my right to have disputes resolved in court.

I am giving up my right to a jury trial.

I am accepting these terms in exchange for a premium discount of [dollar amount or percentage of premium amount].

This agreement is binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless I request removal of the mandatory binding arbitration endorsement in writing".

3. All arbitration proceedings under this section must:

- a. Be conducted in this state if involving a resident of this state;
- b. Be governed by state law; and
- c. Not require arbitration in another state.

4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all insureds under the policy and remains effective upon policy renewal, replacement, or reinstatement unless the named insured requests a change in writing.

5. This section applies to all property and casualty insurance policies issued or renewed after the effective date of this Act.

6. This section does not apply to a:

- a. Voluntary arbitration agreement entered after a dispute has arisen;
- b. Large commercial risk as defined in section 26.1-25-02.1; or
- c. Commercial surplus line insurance policy; ~~unless this state is the home state as defined in chapter 26.1-44, and one hundred percent of the risk insured is located in this state~~ placed in accordance with section 26.1-44-03.

7. The commissioner shall enforce this section.

8. The commissioner may assess a penalty on an insurer in violation of this section, as determined by the commissioner.

SECTION 6. A new section to chapter 26.1-30 of the North Dakota Century Code is created and enacted as follows:

Managed repair programs - Penalty.

1. A property insurance policy may be issued or delivered in this state with a managed repair program provision ~~and offer~~ offering premium incentives for managed repair program participation. As used in this section, "managed repair program" means ~~any~~ an insurance policy providing a program with a specified reduction in premium or other specified incentive for participation in a program ~~in which an insurer restricts~~ restricting an insured's choice of repair vendors or contractors for covered repairs.

2. An insurer offering a managed repair program shall:

- a. Prominently disclose on the policy declarations page the policy restricts the insured's right to choose repair vendors;
- b. Specify any premium benefits for program participation;
- c. Include a separate disclosure form, written in at least twelve-point font, which explains the restrictions on vendor selection, including:
 - (1) The process for repairs under the program;
 - (2) The insured's rights and responsibilities; and
 - (3) Any warranty or guarantee provided for repairs.

3. ~~An insured retains the option to select the insured's own contractor, subject to standard policy terms, and request an alternate program contractor~~ This section shall not apply to contractor referral, managed or direct repair programs that do not provide a specified reduction in premium or other incentive.

4. This section ~~applies~~ applies to ~~all property and casualty~~ insurance policies issued or renewed after the effective date of this Act.

5. The commissioner shall enforce this section.

6. The commissioner may assess a penalty on an insurer in violation of this section, as determined by the commissioner.

SECTION 7. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Civil remedy actions against property insurers.

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

SECTION 8. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of property insurance claim.

1. As used in this section:

- a. "Reopened claim" means a claim an insurer closed and reopened upon an insured's request for additional reimbursement of damage arising out of the original occurrence, and not previously identified or disclosed to the insurer.

b. "Supplemental claim" means a claim for additional loss or costs from the same occurrence the insurer previously compensated the insured.

2. A reopened claim under an insurance policy that provides property insurance, including a policy issued by an eligible surplus lines insurer, for loss or damage is barred unless notice of the claim was given to the insurer within one year after the date of loss. A supplemental claim is barred unless notice of the supplemental claim was given to the insurer of the policy within twelve months after the date of the last payment issued by the insurer for that element of the loss.
3. The time limitations under subsection 2 are tolled during any term of deployment for a named insured service member to a combat zone or combat support posting that materially affects the ability of the named insured to file a claim, supplemental claim, or reopened claim.

SECTION 9. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines insurance.

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

1. Each insurer is an eligible surplus lines insurer;
2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
3. ~~The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers provided that a diligent search is made~~The surplus lines producer is aware that the full amount and type of insurance is not available among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it; or the risk was referred to a surplus lines producer by an insurance producer licensed in this state;
4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:
 - a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(1) (a) The minimum capital and surplus requirements under the law of this state; or

(b) Fifteen million dollars.

(2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or

b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and

5.4. All other requirements of this chapter are met.

SECTION 10. A new section to chapter 26.1-44 of the North Dakota Century Code is created and enacted as follows:

Surplus lines insurance policies.

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

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

26.1-46-01. Definitions.

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

1. "Commissioner" means the North Dakota insurance commissioner or the commissioner, director, or superintendent of insurance in any other state.
2. "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by any person who performs that work or any person who hires an independent contractor to perform that work, but includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

- 1 3. "Domicile", for purposes of determining the state in which a purchasing group is
2 domiciled, means:
- 3 a. For a corporation or limited liability company, the state in which the purchasing
4 group is incorporated or organized.
- 5 b. For an entity which is not a corporation or limited liability company, the state of its
6 principal place of business.
- 7 4. "Hazardous financial condition" means that, based on its present or reasonably
8 anticipated financial condition, a risk retention group, although not yet financially
9 impaired or insolvent, is unlikely to be able to do either of the following:
- 10 a. To meet obligations to policyholders with respect to known claims and reasonably
11 anticipated claims.
- 12 b. To pay other obligations in the normal course of business.
- 13 5. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
14 insurance, and any other arrangement for shifting and distributing risk which is
15 determined to be insurance under the laws of this state.
- 16 6. a. "Liability" means legal liability for damages, including costs of defense, legal
17 costs and fees, and other claims expenses because of injuries to other persons,
18 damage to their property, or other damage or loss, including contractual claims
19 and expenses, to such other persons resulting from or arising out of either of the
20 following:
- 21 ~~a.~~ (1) Any business whether profit or nonprofit, trade, product, services including
22 professional services, premises, or operations.
- 23 ~~b.~~ (2) Any activity of any state or local government, or any agency or political
24 subdivision thereof.
- 25 b. The term does not include personal risk liability and an employer's liability with
26 respect to its employees other than legal liability under the federal Employer's
27 Liability Act [45 U.S.C. 51 et seq.].
- 28 7. "Personal risk liability" means liability for damages because of injury to any person,
29 damage to property, or other loss or damage resulting from any personal, familial, or
30 household responsibilities or activities, rather than from responsibilities or activities
31 referred to in subsection ~~56~~.

- 1 8. "Plan of operation or a feasibility study" means an analysis which presents the
2 expected activities and results of a risk retention group, including, at a minimum, all of
3 the following:
- 4 a. For each state in which it intends to operate, the coverages, deductibles,
5 coverage limits, rates, and rating classification systems for each line of insurance
6 the group intends to offer.
 - 7 b. Historical and expected loss experience of the proposed members and national
8 experience of similar exposures to the extent that this experience is reasonably
9 available.
 - 10 c. Pro forma financial statements and projections.
 - 11 d. Appropriate opinions by a qualified independent casualty actuary, including a
12 determination of minimum premium or participation levels required to commence
13 operations and to prevent a hazardous financial condition.
 - 14 e. Identification of management, underwriting and claims procedures, marketing
15 methods, managerial oversight methods, reinsurance agreements, and
16 investment policies.
 - 17 f. Such other matters as may be prescribed by the commissioner for liability
18 insurance companies authorized by the insurance laws of the state in which the
19 risk retention group is chartered.
 - 20 g. Information sufficient to verify that its members are engaged in businesses or
21 activities similar or related with respect to the liability to which such members are
22 exposed by virtue of any related, similar, or common business, trade, product,
23 services, premises, or operations.
 - 24 h. Identification of each state in which the risk retention group has obtained, or
25 sought to obtain, a charter and license, and a description of its status in each
26 such state.
- 27 9. "Product liability" means liability for damages because of any personal injury, death,
28 emotional harm, consequential economic damage, or property damage, including
29 damages resulting from the loss of use of property, arising out of the manufacture,
30 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
31 does not include the liability of any person for those damages if the product involved

was in the possession of such a person when the incident giving rise to the claim occurred.

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

- a. The group has as one of its purposes the purchase of liability insurance on a group basis.
- b. The group purchases ~~such~~ insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.
- c. The group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.
- d. The group is domiciled in any state.

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

- a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.
- b. Which is organized for the primary purpose of conducting the activity described under subdivision a.
- c. Which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.
- d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

- 1 e. Which has as its owners only persons who comprise the membership of the risk
2 retention group and who are provided insurance by such group, or has as its sole
3 owner an organization which has as its members only persons who comprise the
4 membership of the risk retention group and its owners only persons who
5 comprise the membership of the risk retention group and who are provided
6 insurance by such group.
- 7 f. Whose members are engaged in businesses or activities similar or related with
8 respect to the liability of which such members are exposed by virtue of any
9 related, similar, or common business trade, product, services, premises, or
10 operations.
- 11 g. Whose activities do not include the provision of insurance other than:
- 12 (1) Liability insurance for assuming and spreading all or any portion of the
13 liability of its group members. ~~except a nonmaterial amount of commercial~~
14 ~~property coverage incidental to the liability exposure of its group members~~
15 ~~also may be insured.~~
- 16 (2) Reinsurance with respect to the liability of any other risk retention group or
17 any members of such other group which is engaged in business or activities
18 so that the group or member meets the requirement described in
19 subdivision f from membership in the risk retention group which provides
20 such reinsurance.
- 21 h. The name of which includes the phrase "risk retention group".

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

23 **SECTION 12.** A new subsection to section 26.1-46-03 of the North Dakota Century Code is
24 created and enacted as follows:

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

28 **SECTION 13. AMENDMENT.** Section 26.1-46-08 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **26.1-46-08. Restrictions on insurance purchased by purchasing groups.**

- 31 1. A purchasing group may not purchase insurance from a risk retention group that is not
32 chartered in a state or from an insurer not admitted in the state in which the

purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of such state.

2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; ~~however, coverage may provide for a deductible or self-insured retention applicable to individual members unless the purchasing group uses a policyholder's disclosure statement approved by the commissioner which clearly explains in simplified language the policy is subject to a group deductible or self-insured retention and provides a detailed explanation of the process of the satisfaction of the deductible or self-insured retention among members.~~

4. ~~Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance. A purchasing group may not purchase insurance providing for a shared aggregate limit applicable to the group as a whole unless the purchasing group uses a policyholder's disclosure statement approved by the commissioner which clearly explains in simplified language the policy is subject to a group aggregate limit and coverage for each individual member could be exhausted by claims from other members. The insurance must allow for an individual member to purchase additional limits in the event of exhaustion and this option must be described in the disclosure statement.~~

SECTION 14. AMENDMENT. Section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08.1. Purchasing group taxation - Fees.

1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

- 1 4- (1) Imposed at the same rate and subject to the same interest, fines, and
2 penalties as ~~that~~ applicable to premium taxes and taxes on premiums paid
3 for similar coverage from a similar insurance source by other insureds; and
4 2- (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
5 insurance producer for the purchasing group, and if not by ~~such~~the
6 insurance producer, then by the purchasing group, ~~and if not by such~~
7 ~~purchasing group, then by each of its members.~~
8 b. To the extent any administrative fee is charged under subsection 2, the fee may
9 not be considered a premium and is not subject to premium tax.
10 2. A purchasing group's administrator, manager, or other related party may charge
11 reasonable fees provided the fees are:
12 a. For reimbursement of expenses incurred by the administrator, manager, or other
13 related party in performing its administrative duties for the purchasing group; and
14 b. Disclosed to all members of the risk purchasing group on a form approved by the
15 commissioner which states the nature of the administrative duties for which the
16 fees will be charged along with separate itemization of the amount of fees to be
17 paid by each member.
18 SECTION 15. **REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
19 repealed.

2025 CONFERENCE COMMITTEE

SB 2374

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee

Fort Union Room, State Capitol

SB 2374

4/16/2025

Conference Committee

A bill relating to mandatory arbitration endorsements for property insurance, managed repair programs, civil remedy actions against property insurers, notice of property insurance claims, and surplus lines insurance policies; relating to exceptions to unauthorized insurance transactions, exceptions for large commercial risks in fire, property, and casualty insurance rates, surplus lines insurance, risk retention groups and purchasing groups, restrictions on insurance purchased by purchasing groups, and purchasing group taxation and fees; and relating to an exemption from search requirements for licensed surplus line producers; and to provide a penalty.

8:02 a.m. Chairman Barta called the meeting to order.

Members present: Chairman Barta, Senator Klein, Senator Kessel, Representative Brown, Representative Vollmer, Representative Johnson

Discussion Topics:

- Large commercial rebating section removal
- Exemptions for farm policies
- Definition of a large commercial insurance consumer
- Abandoned vehicles, liability only coverage, towing services, and the Highway Patrol
- Daily rate caps of towing services
- Towing shall study addition
- Ability to negotiate for best deals
- Clarity of existing rebate laws
- Federal crop insurance addition
- Non-resident producers and law compliance

8:02 a.m. Chairman Barta led the discussion on proposed amendments.

8:03 a.m. John Arnold, Deputy Commissioner, ND Insurance Department, answered the committee's questions.

8:29 a.m. John Arnold, Deputy Commissioner, ND Insurance Department, answered the committee's questions.

8:30 a.m. Representative Johnson moved to further amend by adopting the existing house amendments with the inclusion of a shall study on towing.

8:30 a.m. Senator Klein seconded the motion.

8:31 a.m. Roll Call Vote - Motion Passed - 6-0-0.

8:32 a.m. Senator Kessel moved amendment LC# 25.1236.02002 in place of House amendments LC # 25.1236.02001.

8:32 a.m. Representative Johnson seconded the motion.

8:32 a.m. Roll Call Vote - Motion Passed - 6-0-0.

8:34 a.m. Representative Johnson will carry the bill.

8:34 a.m. Chairman Barta will carry the bill.

8:34 a.m. Chairman Barta adjourned the meeting.

Audrey Oswald, Committee Clerk

April 16, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

CO
4/16/25
10422

ENGROSSED SENATE BILL NO. 2374

Introduced by

Senators Barta, Hogue, Klein

Representatives Lefor, Warrey, J. Johnson

In place of amendment (25.1236.02001) adopted by the House, Engrossed Senate Bill No. 2374 is amended by amendment (25.1236.02002) as follows:

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

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

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

17 **26.1-02-05. Unauthorized insurance prohibited - Exceptions.**

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

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

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1 b. Whose aggregate annual premiums for insurance on all risks total at least
2 twenty-five thousand dollars; and

3 c. Which has at least twenty-five full-time employees.

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

7 **SECTION 2. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **26.1-25-02.1. Definitions.**

- 10 1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which
11 either has two or more member insurers or is controlled either directly or indirectly by
12 two or more insurers, and which assists insurers in ratemaking-related activities as
13 enumerated in this chapter. Two or more insurers having a common ownership or
14 operating in this state under common management or control constitute a single
15 insurer for purposes of this definition.
- 16 2. "Commercial risk" means any kind of risk which is not a personal risk.
- 17 3. "Competitive market" means a commercial risk market that has not been found to be
18 noncompetitive as provided for in section 26.1-25-04. All commercial risk markets
19 except crop hail, farmowners, and medical malpractice insurance are presumed to be
20 competitive.
- 21 4. "Developed losses" means losses including loss adjustment expenses, adjusted, using
22 standard actuarial techniques, to eliminate the effect of differences between current
23 payment or reserve estimates and those needed to provide actual ultimate loss
24 including loss adjustment expense payments.
- 25 5. "Expenses" means that portion of a rate attributable to acquisition, field supervision,
26 collection expenses, general expenses, taxes, licenses, and fees.
- 27 6. "Joint underwriting" means a voluntary arrangement established to provide insurance
28 coverage for a commercial risk pursuant to which two or more insurers jointly contract
29 with the insured at a price and under policy terms agreed upon between the insurers.
- 30 7. "Large commercial risk" means an insured that has:
31 a. Total insured property values of twenty-five million dollars or more;

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- 1 **b.** Total annual gross revenue of fifty million dollars or more; or
2 **c.** A total premium of one hundred thousand dollars or more for property insurance,
3 one hundred thousand dollars or more for general liability insurance, or
4 two hundred thousand dollars or more for multiperil insurance.
5 **d.** The term does not include farming or ranching.

6 **8.** "Loss trending" means any procedure for projecting developed losses to the average
7 date of loss for the period during which the policies are to be effective.

8 **8-9.** "Noncompetitive market" means the crop hail, farmowners, and medical malpractice
9 insurance markets together with any other line of commercial risk insurance that has
10 not been found by the commissioner to have a reasonable degree of competitiveness
11 within the market considering:

- 12 a. Market concentration and changes in market concentration determined through
13 the use of the Herfindahl-Hirschman index and the United States department of
14 justice merger guidelines for an unconcentrated market;
15 b. The existence of financial and other barriers that prevent a company from
16 entering the market;
17 c. The number of insurers or groups of affiliated insurers providing coverage in the
18 market;
19 d. The extent to which any insurer or group of affiliated insurers controls the market;
20 e. Whether the total number of companies writing the line of insurance in this state
21 is sufficient to provide multiple insurance options in the market;
22 f. The availability of insurance coverage to consumers in the markets by specific
23 geographic area, by line of insurance, and by class of risk; and
24 g. The opportunities available in the market to acquire pricing and other consumer
25 information.

26 A determination that a market is noncompetitive may not be based solely on the
27 consideration of any one factor.

28 **9-10.** "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles,
29 mobile homes, and other property and casualty insurance for personal, family, or
30 household needs.

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- 1 ~~40-11.~~ "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to
2 which two or more insurers participate in the sharing of risks on a predetermined
3 basis. The pool may operate through an association, syndicate, or other pooling
4 agreement.
- 5 ~~44-12.~~ "Prospective loss costs" means that portion of a rate that does not include provisions
6 for expenses other than loss adjustment expenses, or profit, and are based on
7 historical aggregate losses and loss adjustment expenses adjusted through
8 development to their ultimate value and projected through trending to a future point in
9 time.
- 10 ~~42-13.~~ "Rate" means that cost of insurance per exposure unit whether expressed as a single
11 member or as a prospective loss cost with an adjustment to account for the treatment
12 of expenses, profit, and individual insurer variation in loss experience, prior to any
13 application of individual risk variations based on loss or expense considerations, and
14 does not include minimum premium.
- 15 ~~43-14.~~ "Residual market mechanism" means an arrangement, either voluntary or mandated
16 by law, involving participation by insurers in the equitable apportionment among them
17 of insurance which may be afforded applicants who are unable to obtain insurance
18 through ordinary methods.
- 19 ~~44-15.~~ "Supplementary rating information" includes any manual or plan of rates, classification,
20 rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical
21 plan, and any other similar information needed to determine the applicable rate in
22 effect or to be in effect.
- 23 ~~45-16.~~ "Supporting information" means:
24 a. The experience and judgment of the filer and the experience or date of other
25 insurers or advisory organizations relied upon by the filer;
26 b. The interpretation of any other data relied upon by the filer; and
27 c. Descriptions of methods used in making the rates and any other information
28 required by the commissioner to be filed.
- 29 **SECTION 3. AMENDMENT.** Section 26.1-25-16 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **26.1-25-16. Rebates prohibited - Exception.**

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

- 1 ~~person insured by a federal crop insurance policy is not eligible to receive the items of~~
2 ~~value permitted under this section. It is a violation of subsection 1 for an insurance~~
3 ~~producer to knowingly give an item of value to a person insured by a federal crop~~
4 ~~insurance policy.~~ Notwithstanding the limitation in this subsection, an insurance
5 producer may conduct raffles or drawings, if there is no financial cost to an entrant to
6 participate, the drawing or raffle does not obligate a participant to purchase insurance,
7 the prizes are not valued in excess of a reasonable amount determined by the
8 commissioner, and the drawing or raffle is open to the public. The raffle or drawing
9 must be offered in a manner that is not unfairly discriminatory and may not be
10 contingent on the purchase, continued purchase, or renewal of a policy.
11 Notwithstanding the limitation in this subsection, an insurance producer may make a
12 donation to a nonprofit organization that is exempt from federal taxation under Internal
13 Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the
14 donation is not given as an inducement to obtain a contract of insurance.
- 15 3. The provisions in this section may not be construed as including within the definition of
16 discrimination or rebates any of the following practices:
- 17 a. The offer or provision by an insurer or producer, by or through an employee, an
18 affiliate, or a third-party representative, of value-added products or services at no
19 or reduced cost if the products or services are not specified in the policy of
20 insurance if the product or service:
- 21 (1) Relates to the insurance coverage and is designed to satisfy one or more of
22 the following:
- 23 (a) Provide loss mitigation or loss control;
24 (b) Reduce claims costs or claim settlement costs;
25 (c) Provide education about liability risk or risk of loss to persons or
26 property;
27 (d) Monitor or assess risk, identify sources of risk, or develop strategies
28 for eliminating or reducing risk;
29 (e) Enhance health;
30 (f) Enhance financial wellness through items such as education of
31 financial planning services;

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

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

1 **26.1-26-04.1. Fees for services - Rules.**

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

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

17 **SECTION 5.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
18 and enacted as follows:

19 **Mandatory arbitration endorsements for property insurance - Written acceptance -**
20 **Penalty.**

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

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- 1 b. Clearly state the rights being waived in exchange for the premium discount,
2 including the right to a trial by jury; and
3 c. Include the following statement in at least twelve-point bold font:
4 "By signing this form, I agree to resolve all covered property insurance claims
5 through mandatory binding arbitration. I understand that by agreeing to
6 mandatory binding arbitration:
7 I am giving up my right to have disputes resolved in court.
8 I am giving up my right to a jury trial.
9 I am accepting these terms in exchange for a premium discount of [dollar amount
10 or percentage of premium amount].
11 This agreement is binding on all insureds under the policy and remains effective
12 upon policy renewal, replacement, or reinstatement unless I request removal of
13 the mandatory binding arbitration endorsement in writing".
14 3. All arbitration proceedings under this section must:
15 a. Be conducted in this state if involving a resident of this state;
16 b. Be governed by state law; and
17 c. Not require arbitration in another state.
18 4. The acceptance or rejection of mandatory binding arbitration is valid and binding on all
19 insureds under the policy and remains effective upon policy renewal, replacement, or
20 reinstatement unless the named insured requests a change in writing.
21 5. This section applies to all property and casualty insurance policies issued or renewed
22 after the effective date of this Act.
23 6. This section does not apply to a:
24 a. Voluntary arbitration agreement entered after a dispute has arisen;
25 b. Large commercial risk as defined in section 26.1-25-02.1; or
26 c. Commercial surplus line insurance policy, unless this state is the home state as
27 defined in chapter 26.1-44, and one hundred percent of the risk insured is located
28 in this state placed in accordance with section 26.1-44-03.
29 7. The commissioner shall enforce this section.
30 8. The commissioner may assess a penalty on an insurer in violation of this section, as
31 determined by the commissioner.

1 **SECTION 6.** A new section to chapter 26.1-30 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Managed repair programs - Penalty.**

- 4 1. A property insurance policy may be issued or delivered in this state with a managed
5 repair program provision ~~and offer~~ offering premium incentives for managed repair
6 program participation. As used in this section, "managed repair program" means
7 ~~any an insurance policy providing a program with a specified reduction in premium or~~
8 ~~other specified incentive for participation in a program in which an insurer restricts~~
9 ~~restricting~~ an insured's choice of repair vendors or contractors for covered repairs.
- 10 2. An insurer offering a managed repair program shall:
- 11 a. Prominently disclose on the policy declarations page the policy restricts the
12 insured's right to choose repair vendors;
- 13 b. Specify any premium benefits for program participation;
- 14 c. Include a separate disclosure form, written in at least twelve-point font, which
15 explains the restrictions on vendor selection, including:
- 16 (1) The process for repairs under the program;
- 17 (2) The insured's rights and responsibilities; and
- 18 (3) Any warranty or guarantee provided for repairs.
- 19 3. ~~An insured retains the option to select the insured's own contractor, subject to~~
20 ~~standard policy terms, and request an alternate program contractor~~ This section does
21 not apply to contractor referral or managed or direct repair programs that do not
22 provide a specified reduction in premium or other incentive.
- 23 4. This section ~~apples~~ applies to all property and casualty insurance policies issued or
24 renewed after the effective date of this Act.
- 25 5. The commissioner shall enforce this section.
- 26 6. The commissioner may assess a penalty on an insurer in violation of this section, as
27 determined by the commissioner.

28 **SECTION 7.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
29 and enacted as follows:

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

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

6 **SECTION 8.** A new section to chapter 26.1-39 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Notice of property insurance claim.**

9 **1. As used in this section:**

10 **a. "Reopened claim" means a claim an insurer closed and reopened upon an**
11 **insured's request for additional reimbursement of damage arising out of the**
12 **original occurrence, and not previously identified or disclosed to the insurer.**

13 **b. "Supplemental claim" means a claim for additional loss or costs from the same**
14 **occurrence the insurer previously compensated the insured.**

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

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

25 **SECTION 9. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is
26 amended and reenacted as follows:

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

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

30 1. Each insurer is an eligible surplus lines insurer;

31 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;

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- 1 3. ~~The full amount or type of insurance cannot be obtained from insurers who are~~
2 ~~admitted to do business in this state. The full amount or type of insurance may be~~
3 ~~procured from eligible surplus lines insurers provided that a diligent search is made~~
4 ~~among~~ The surplus lines producer is aware that:
5 a. The full amount and type of insurance is not available from the insurers who are
6 admitted to transact and are actually writing the particular type of insurance in
7 this state if any are writing it; or
8 b. The risk was referred to the surplus lines producer by an insurance producer
9 licensed in this state.
- 10 4. At the time of placement the surplus lines producer has determined that the
11 nonadmitted insurer:
12 a. Has established satisfactory evidence of good repute and financial integrity and
13 has capital and surplus or its equivalent under the laws of its domiciliary
14 jurisdiction which equals the greater of:
15 (1) (a) The minimum capital and surplus requirements under the law of this
16 state; or
17 (b) Fifteen million dollars.
18 (2) The requirements of paragraph 1 may be satisfied by an insurer possessing
19 less than the minimum capital and surplus upon an affirmative finding of
20 acceptability by the commissioner. The finding must be based upon such
21 factors as quality of management, capital and surplus of any parent
22 company, company underwriting profit and investment income trends,
23 market availability, and company record and reputation within the industry.
24 The commissioner may not make an affirmative finding of acceptability
25 when the nonadmitted insurer's capital and surplus is less than four million
26 five hundred thousand dollars; or
27 b. For an insurer not domiciled in the United States or its territories, the insurer is
28 listed on the quarterly listing of alien insurers maintained by the national
29 association of insurance commissioners international insurers department; and
30 5-4. All other requirements of this chapter are met.

1 **SECTION 10.** A new section to chapter 26.1-44 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Surplus lines insurance policies.**

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

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

8 **26.1-46-01. Definitions.**

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

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

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- 1 6. a. "Liability" means legal liability for damages, including costs of defense, legal
2 costs and fees, and other claims expenses because of injuries to other persons,
3 damage to their property, or other damage or loss, including contractual claims
4 and expenses, to such other persons resulting from or arising out of either of the
5 following:
- 6 a. (1) Any business whether profit or nonprofit, trade, product, services including
7 professional services, premises, or operations.
- 8 b. (2) Any activity of any state or local government, or any agency or political
9 subdivision thereof.
- 10 b. The term does not include personal risk liability and an employer's liability with
11 respect to its employees other than legal liability under the federal Employer's
12 Liability Act [45 U.S.C. 51 et seq.].
- 13 7. "Personal risk liability" means liability for damages because of injury to any person,
14 damage to property, or other loss or damage resulting from any personal, familial, or
15 household responsibilities or activities, rather than from responsibilities or activities
16 referred to in subsection 56.
- 17 8. "Plan of operation or a feasibility study" means an analysis which presents the
18 expected activities and results of a risk retention group, including, at a minimum, all of
19 the following:
- 20 a. For each state in which it intends to operate, the coverages, deductibles,
21 coverage limits, rates, and rating classification systems for each line of insurance
22 the group intends to offer.
- 23 b. Historical and expected loss experience of the proposed members and national
24 experience of similar exposures to the extent that this experience is reasonably
25 available.
- 26 c. Pro forma financial statements and projections.
- 27 d. Appropriate opinions by a qualified independent casualty actuary, including a
28 determination of minimum premium or participation levels required to commence
29 operations and to prevent a hazardous financial condition.

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- 1 e. Identification of management, underwriting and claims procedures, marketing
- 2 methods, managerial oversight methods, reinsurance agreements, and
- 3 investment policies.
- 4 f. Such other matters as may be prescribed by the commissioner for liability
- 5 insurance companies authorized by the insurance laws of the state in which the
- 6 risk retention group is chartered.
- 7 g. Information sufficient to verify that its members are engaged in businesses or
- 8 activities similar or related with respect to the liability to which such members are
- 9 exposed by virtue of any related, similar, or common business, trade, product,
- 10 services, premises, or operations.
- 11 h. Identification of each state in which the risk retention group has obtained, or
- 12 sought to obtain, a charter and license, and a description of its status in each
- 13 such state.
- 14 9. "Product liability" means liability for damages because of any personal injury, death,
- 15 emotional harm, consequential economic damage, or property damage, including
- 16 damages resulting from the loss of use of property, arising out of the manufacture,
- 17 design, importation, distribution, packaging, labeling, lease, or sale of a product, but
- 18 does not include the liability of any person for those damages if the product involved
- 19 was in the possession of such a person when the incident giving rise to the claim
- 20 occurred.
- 21 10. "Purchasing group" means any group which meets all of the following:
- 22 a. The group has as one of its purposes the purchase of liability insurance on a
- 23 group basis.
- 24 b. The group purchases ~~such~~ insurance only for its group members and only to
- 25 cover their similar or related liability exposure, as described in subdivision c.
- 26 c. The group is composed of members whose business or activities are similar or
- 27 related with respect to the liability to which members are exposed by virtue of any
- 28 related, similar, or common business, trade, product, services, premises, or
- 29 operations.
- 30 d. The group is domiciled in any state.
- 31 11. "Risk retention group" means any corporation or other limited liability association:

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- 1 a. Whose primary activity consists of assuming and spreading all, or any portion, of
- 2 the liability exposure of its group members.
- 3 b. Which is organized for the primary purpose of conducting the activity described
- 4 under subdivision a.
- 5 c. Which is chartered and licensed as a liability insurance company and authorized
- 6 to engage in the business of insurance under the laws of any state; or, before
- 7 January 1, 1985, was chartered or licensed and authorized to engage in the
- 8 business of insurance under the laws of Bermuda or the Cayman Islands and,
- 9 before such date, had certified to the insurance commissioner of at least one
- 10 state that it satisfied the capitalization requirements of such state, except that any
- 11 such group shall be considered to be a risk retention group only if it has been
- 12 engaged in business continuously since that date and only for the purpose of
- 13 continuing to provide insurance to cover product liability or completed operations
- 14 liability as such terms were defined in the Product Liability Risk Retention Act of
- 15 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.
- 16 d. Which does not exclude any person from membership in the group solely to
- 17 provide for members of such a group a competitive advantage over such a
- 18 person.
- 19 e. Which has as its owners only persons who comprise the membership of the risk
- 20 retention group and who are provided insurance by such group, or has as its sole
- 21 owner an organization which has as its members only persons who comprise the
- 22 membership of the risk retention group and its owners only persons who
- 23 comprise the membership of the risk retention group and who are provided
- 24 insurance by such group.
- 25 f. Whose members are engaged in businesses or activities similar or related with
- 26 respect to the liability of which such members are exposed by virtue of any
- 27 related, similar, or common business trade, product, services, premises, or
- 28 operations.
- 29 g. Whose activities do not include the provision of insurance other than:
- 30 (1) Liability insurance for assuming and spreading all or any portion of the
- 31 liability of its group members, ~~except a nonmaterial amount of commercial~~

1 ~~property coverage incidental to the liability exposure of its group members~~
2 ~~also may be insured.~~

3 (2) Reinsurance with respect to the liability of any other risk retention group or
4 any members of such other group which is engaged in business or activities
5 so that the group or member meets the requirement described in
6 subdivision f from membership in the risk retention group which provides
7 such reinsurance.

8 h. The name of which includes the phrase "risk retention group".

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

10 **SECTION 12.** A new subsection to section 26.1-46-03 of the North Dakota Century Code is
11 created and enacted as follows:

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

15 **SECTION 13. AMENDMENT.** Section 26.1-46-08 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **26.1-46-08. Restrictions on insurance purchased by purchasing groups.**

18 1. A purchasing group may not purchase insurance from a risk retention group that is not
19 chartered in a state or from an insurer not admitted in the state in which the
20 purchasing group is located, unless the purchase is effected through a licensed
21 insurance producer acting pursuant to the surplus lines laws and regulations of such
22 state.

23 2. A purchasing group which obtains liability insurance from an insurer not admitted in
24 this state or a risk retention group shall inform each of the members of the group
25 which have a risk resident or located in this state that the risk is not protected by an
26 insurance insolvency guaranty fund in this state, and that the risk retention group or
27 insurer may not be subject to all insurance laws and rules of this state.

28 3. ~~No~~A purchasing group may not purchase insurance providing for a deductible or
29 self-insured retention applicable to the group as a whole; ~~however, coverage may~~
30 ~~provide for a deductible or self-insured retention applicable to individual members~~
31 unless the purchasing group uses a policyholder's disclosure statement approved by

1 the commissioner which clearly explains in simplified language the policy is subject to
 2 a group deductible or self-insured retention and provides a detailed explanation of the
 3 process of the satisfaction of the deductible or self-insured retention among members.
 4 4. ~~Purchases of insurance by purchasing groups are subject to the same standards~~
 5 ~~regarding aggregate limits which are applicable to all purchases of group insurance.~~ A
 6 purchasing group may not purchase insurance providing for a shared aggregate limit
 7 applicable to the group as a whole unless the purchasing group uses a policyholder's
 8 disclosure statement approved by the commissioner which clearly explains in
 9 simplified language the policy is subject to a group aggregate limit and coverage for
 10 each individual member could be exhausted by claims from other members. The
 11 insurance must allow for an individual member to purchase additional limits in the
 12 event of exhaustion and this option must be described in the disclosure statement.

13 **SECTION 14. AMENDMENT.** Section 26.1-46-08.1 of the North Dakota Century Code is
 14 amended and reenacted as follows:

15 **26.1-46-08.1. Purchasing group taxation - Fees.**

- 16 1. a. Premium taxes and taxes on premiums paid for coverage of risks resident or
 17 located in this state by a purchasing group or any members of the purchasing
 18 group must be:
 19 4. (1) Imposed at the same rate and subject to the same interest, fines, and
 20 penalties as that applicable to premium taxes and taxes on premiums paid
 21 for similar coverage from a similar insurance source by other insureds; and
 22 2. (2) Paid first by ~~such~~the insurance source, and if not by ~~such~~the source, by the
 23 insurance producer for the purchasing group, and if not by ~~such~~the
 24 insurance producer, then by the purchasing group, ~~and if not by such~~
 25 ~~purchasing group, then by each of its members.~~
 26 b. To the extent any administrative fee is charged under subsection 2, the fee may
 27 not be considered a premium and is not subject to premium tax.
 28 2. A purchasing group's administrator, manager, or other related party may charge
 29 reasonable fees provided the fees are:
 30 a. For reimbursement of expenses incurred by the administrator, manager, or other
 31 related party in performing its administrative duties for the purchasing group; and

- 1 b. Disclosed to all members of the risk purchasing group on a form approved by the
2 commissioner which states the nature of the administrative duties for which the
3 fees will be charged along with separate itemization of the amount of fees to be
4 paid by each member.

5 **SECTION 15. REPEAL.** Section 26.1-44-03.3 of the North Dakota Century Code is
6 repealed.

7 **SECTION 16. INSURANCE COMMISSIONER STUDY - TOWING AND RECOVERY**
8 **COVERAGE FOR VEHICLES WITH LIABILITY-ONLY INSURANCE - REPORT TO**
9 **LEGISLATIVE MANAGEMENT.**

- 10 1. During the 2025-26 interim, the insurance commissioner may study the feasibility,
11 benefits, and challenges of providing towing and recovery costs associated with
12 vehicle liability-only insurance for towing operations. The study must be conducted
13 with stakeholders from both the insurance industry and the towing industry. The study
14 must include:
- 15 a. An evaluation of the frequency and financial impact of the towing and recovery
16 costs of vehicles without applicable insurance coverage.
 - 17 b. A review of the cost structures, fee practices, and reimbursement models
18 associated with standard towing and recovery operations across this state.
 - 19 c. Consideration of the financial and operational implications of expanding coverage
20 to include towing and recovery cost coverage for the at-fault vehicle with only
21 liability coverage.
 - 22 d. An analysis of the regulatory, administrative, and consumer impacts resulting
23 from the coverage expansion, including anticipated efficiencies or burdens.
 - 24 e. A review of approaches taken by other states regarding similar coverage options,
25 including statutory or regulatory frameworks, and how those states balance the
26 needs of insurers, towing providers, and consumers.
 - 27 f. An analysis of insurance protocols and preferred procedures regarding towing
28 operations. For the purpose of establishing agreements and contracts between
29 insurance companies and towing companies, preventing misunderstandings, and
30 ensuring a seamless claims process.

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- 1 2. Before September 1, 2026, the insurance commissioner shall report its findings and
- 2 recommendations, and any legislation required to implement the recommendations, to
- 3 the legislative management.

SB 2374 041625 0833 AM Roll Call Vote

Final Recommendation

SB 2374**Date Submitted:** April 16, 2025, 8:33 a.m.**Recommendation:** In Place Of**Amendment LC #:** 25.1236.02002**Engrossed LC #:** N/A**Description:****Motioned By:** Kessel, Greg**Seconded By:** Johnson, Jorin**House Carrier:** Johnson, Jorin**Senate Carrier:** Barta, Jeff**Emergency Clause:** None**Vote Results:** 6 - 0 - 0

Sen. Barta, Jeff	Yea
Sen. Kessel, Greg	Yea
Sen. Klein, Jerry	Yea
Rep. Johnson, Jorin	Yea
Rep. Brown, Collette	Yea
Rep. Vollmer, Daniel	Yea

**REPORT OF CONFERENCE COMMITTEE
ENGROSSED SB 2374**

Your conference committee (Sens. Barta, Kessel, Klein and Reps. J. Johnson, C. Brown, Vollmer) recommends that in place of amendment [25.1236.02001](#) adopted by the House, Engrossed SB 2374 is amended by amendment [25.1236.02002](#).

Engrossed SB 2374 was placed on the Seventh order of business on the calendar.