15.8103.02000

Sixty-fourth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1132

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

A BILL for an Act to create and enact sections 26.1-10-06.1, 26.1-10-06.2, and 26.1-10-13 of the North Dakota Century Code, relating to insurance holding company systems; to amend and reenact sections 26.1-10-01, 26.1-10-02, 26.1-10-03, 26.1-10-03.1, 26.1-10-04, 26.1-10-05, 26.1-10-05.1, 26.1-10-06, 26.1-10-07, 26.1-10-08, 26.1-10-09, 26.1-10-10, 26.1-10-10.1, and 26.1-10-11 of the North Dakota Century Code, relating to insurance holding company systems; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-10-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
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.

3. ~~"Insurance company" means an insurer as described in section 26.1-29-02, except that it does not include:~~

   ~~a. Agencies, authorities, or instrumentalities of the United States and its possessions, Commonwealth of Puerto Rico, or a state or political subdivision of a state.~~

   ~~b. Fraternal benefit societies.~~

   ~~c. Nonprofit health service corporations~~"Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or the insurer's insurance holding company system as a whole including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 26.1-03.1-03 or would cause the insurer to be in hazardous financial condition as set forth in North Dakota Administrative Code section 45-03-13-01.

4. "Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.

5. "Insurance holding company system" means two or more affiliated persons, one or more of which is an ~~insurance company~~insurer.

6. "Insurer" has the same definition as provided in section 26.1-29-02, except the term does not include an agency, authority, or instrumentality of the United States or its possessions or a state or political subdivision of a state.

~~5.~~7. "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:

   a. Premiums written in at least three countries;

b. The percentage of gross premiums written outside Untied States is at least ten percent of the insurance holding company system's total gross written premiums; and

c. Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars.

8. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, or an unincorporated organization or any similar entity or any combination of the foregoing acting in concert. The term does not include any ~~securities broker performing no more than the usual and customary broker's function~~joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

~~6.~~9. "Securityholder" of a specified person means the owner of any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~7.~~10. "Subsidiary" of a specified person means an affiliate under the control of the person directly, or indirectly through one or more intermediaries.

~~8.~~11. "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 2. AMENDMENT. Section 26.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-02. Subsidiaries ~~- Additional investment authority - Exception from investment restrictions~~of insurers.

1. Any domestic ~~insurance company~~insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. A subsidiary may conduct any kind of business and its authority to do so is not limited because it is a subsidiary of a domestic insurer.

2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this chapter, a domestic ~~insurance company~~insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the ~~insurance company's admitted~~insurer's assets or fifty percent of the ~~company's~~insurer's surplus as regards policyholders; provided, that after the investments the ~~company's~~insurer's surplus as regards policyholders will be reasonable in relation to the ~~company's~~insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there must be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities~~.~~; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus~~,~~ of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries~~;~~ engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided~~,~~ that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the ~~insurance company~~insurer to exceed any of the investment limitations specified in subdivision a. "The total investment of the ~~insurance company~~insurer" includes:

(1) Any direct investment by the ~~company~~insurer in an asset~~.~~; and

(2) The ~~company's~~insurer's proportionate share of any investment in an asset by any subsidiary of the ~~company,~~insurer which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ~~company's~~ ownership of ~~such~~the subsidiary.

c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after ~~such~~the investment the ~~insurance company's~~insurer's surplus as regards policyholders will be reasonable in relation to the ~~company's~~insurer's outstanding liabilities and adequate to its financial needs.

3. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of ~~insurance companies~~an insurer.

4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined before ~~such~~the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.

5. If an ~~insurance company~~insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner prescribes, unless at any time after the investment has been made, the investment has met the requirements for investment under any other section, and the ~~company~~insurer has so notified the commissioner.

SECTION 3. AMENDMENT. Section 26.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-03. Acquisition of control of or merger with domestic ~~company - Filing requirements - Hearings - Exceptions - Violations - Jurisdiction - Consent to service of process~~insurer - Penalties.

1. a. A person other than the issuer may not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic ~~insurance company~~insurer if, after consummation, the person

would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the ~~company~~insurer, and a person may not enter ~~into~~ an agreement to merge with or otherwise to acquire control of a domestic ~~insurance company~~insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the ~~company~~insurer, ~~and the company has sent to its shareholders,~~ a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner ~~hereinafter~~ prescribed in this chapter.

b. For purposes of this section, any controlling person of a domestic insurer seeking to divest the person's controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of the person's proposed divestiture at least thirty days before the cessation of control. The commissioner shall determine those instances in which a party seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the commissioner determines confidential treatment will interfere with enforcement of this section. If the statement referred to in subdivision a is otherwise filed, this subdivision does not apply.

c. With respect to a transaction subject to this section, the acquiring person shall file a preacquisition notification with the commissioner which must contain the information set forth in subdivision a of subsection 3 of section 26.1-10-03.1. Failure to file the notification may result in penalties specified in subdivision e of subsection 5 of section 26.1-10-03.1.

d. For purposes of this section, a domestic ~~insurance company~~insurer includes any other person in control of a domestic ~~insurance company~~insurer unless the other person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For

purposes of this section, the term "person" does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurer or of any person that controls an insurer.

2. The statement to be filed with the commissioner must be made under oath or affirmation and must contain the following ~~information~~:

a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 is to be effected, hereinafter called the "acquiring party":

(1) If the person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(2) If the person is not an individual, a report of the nature of its business operations during the past five years or for any lesser period as the person and any predecessors thereof have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries~~,~~; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these positions. The list must include for each individual the information required by this subsection.

b. The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction ~~wherein~~that funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; provided, however, that ~~when~~if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests.

c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for any lesser period as the acquiring party and any predecessors thereof have

been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

d. Any plans or proposals which each acquiring party may have to liquidate the ~~insurance company~~insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

e. The number of shares of any security referred to in subsection 1 which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1, and a statement as to the method used to arrive at the fairness of the proposal.

f. The amount of each class of any security referred to in subsection 1 which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

g. A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection 1 in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons who have entered into the contracts, arrangements, or understandings.

h. A description of the purchase of any security referred to in subsection 1 during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid ~~therefor~~.

i. A description of any recommendations to purchase any security referred to in subsection 1 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1, and, if distributed, of additional soliciting material relating thereto.

k. The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection 1 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

l. An agreement by the person required to file the statement referred to in subsection 1 to provide the annual report, specified in subsection 12 of section 26.1-10-04, for so long as control exists.

m. An acknowledgment by the person required to file the statement referred to in subsection 1, that the person and all subsidiaries within the person's control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

n. Any additional information the commissioner by rule prescribes as necessary or appropriate for the protection of policyholders ~~and securityholders~~ of the ~~insurance company~~insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions a through ~~l~~n must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection 1 is a corporation, the commissioner may require that the information called for by subdivisions a through ~~l~~n must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If any material change occurs in the facts ~~combined~~set forth in the statement filed with the commissioner and sent to the ~~insurance company~~insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and

sent to the ~~insurance company~~insurer within two business days after the person learns of the change. ~~The insurance company shall send the amendment to its shareholders.~~

3. If any offer, request, invitation, agreement, or acquisition referred to in subsection 1 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection 1 may utilize those documents in furnishing the information called for by that statement.

4. a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:

~~a.~~ (1) After the change of control, the domestic ~~insurance company~~insurer referred to in subsection 1 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.

~~b.~~ (2) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly ~~therein~~. In applying the competitive standard in this subdivision:

(a) The information requirements of subdivision a of subsection 3 of section 26.1-10-03.1 and the standards of subdivision b of subsection 4 of section 26.1-10-03.1;

(b) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by subdivision c of subsection 4 of section 26.1-10-03.1 exist; and

(c) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

~~c.~~ (3) The financial condition of any acquiring party might jeopardize the financial stability of the ~~insurance company~~insurer or prejudice the interest of its policyholders.

~~d.~~ (4) The plans or proposals which the acquiring party has to liquidate the ~~insurance company~~insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the ~~company~~insurer and not in the public interest.

~~e.~~ (5) The competence, experience, and integrity of those persons who would control the operation of the ~~insurance company~~insurer are such that it would not be in the interest of policyholders of the ~~company~~insurer and of the public to permit the merger or other acquisition of control.

~~f.~~ (6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

b. The ~~commissioner shall hold the~~ public hearing referred to in ~~this subsection~~subdivision a must be held within thirty days after the statement required by subsection 1 is filed and ~~shall give~~ at least twenty days' notice must be given by the commissioner to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the ~~insurance company~~insurer and to other persons designated by the commissioner. The commissioner shall make a determination within ~~thirty days after the conclusion of the hearing~~the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the ~~insurance company~~insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing.

c. If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in subdivision b may be held on a consolidated basis upon request of the person filing the statement referred to in subsection 1. Within five days of making the request for a public hearing, the

person shall file the statement referred to in subsection 1 with the national association of insurance commissioners. A commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within ten days of the receipt of the statement referred to in subsection 1. A hearing conducted on a consolidated basis is public and must be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend the hearing in person or by telecommunication.

d. In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer must be required to maintain or restore the capital of the insurer to the level required by the laws and rules of this state must be made not later than sixty days after the date of notification of the change in control submitted pursuant to subdivision a of subsection 1.

e. The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. ~~The commissioner may waive the hearing if the companies involved and all the policyholders of the domestic companies involved consent to waiving the hearing.~~

5. This section does not apply to:

a. Any transaction which is subject to the provisions of chapter 26.1-07, dealing with the merger or consolidation of two or more ~~insurance companies~~insurers.

b. Any offer, request, invitation, agreement, or acquisition which the commissioner by order ~~has excepted~~exempts as~~:~~

~~(1)~~ ~~Not~~ not having been made or entered ~~into~~ for the purpose and not having the effect of changing or influencing the control of a domestic ~~insurance company;~~insurer or

~~(2)~~ ~~As~~ as otherwise not comprehended within the purposes of this section.

6. The following is a violation of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2.

b. The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic ~~insurance company~~insurer without the approval of the commissioner.

7. The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving the person arising out of violations of this section, and each person is deemed to have performed acts equivalent to and constituting appointment of the commissioner as the person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process must be served on the commissioner and transmitted by registered mail by the commissioner to the person at the person's last-known address.

SECTION 4. AMENDMENT. Section 26.1-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-03.1. Acquisitions involving ~~insurance companies~~insurers not otherwise covered ~~- Penalty~~.

1. For the purpose of this section:

a. "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

b. An "involved ~~insurance company~~insurer" includes an ~~insurance company~~insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

2. a. Except as exempted in subdivision b, this section applies to any acquisition in which there is a change in control of an ~~insurance company~~insurer authorized to do business in this state.

b. This section does not apply to ~~the following~~:

(1) ~~An acquisition subject to approval or disapproval by the commissioner pursuant to section 26.1-10-03.~~

~~(2)~~ A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under subsection 2 of section 26.1-10-01, it is not solely for investment purposes unless the commissioner of the ~~insurance company's~~insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and ~~such~~the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state.

~~(3)~~(2) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subdivision a of subsection 3 thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subdivision.

~~(4)~~(3) The acquisition of already affiliated persons.

~~(5)~~(4) An acquisition if, as an immediate result of the acquisition:

(a) In no market would the combined market share of the involved ~~insurance companies~~insurers exceed five percent of the total market;

(b) There would be no increase in any market share; or

(c) In no market would the combined market share of the involved ~~insurance companies~~insurers exceed twelve percent of the total market, and in no market would the market share increase by more than two percent of the total market.

For the purpose of this paragraph, a "market" means direct written insurance premium in this state for a line of business as contained in the

annual statement required to be filed by ~~insurance companies~~insurers licensed to do business in this state.

~~(6)~~(5) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business.

~~(7)~~(6) An acquisition of an ~~insurance company~~insurer whose domiciliary commissioner affirmatively finds that the ~~insurance company~~insurer is in failing condition, there is a lack of feasible alternative to improving the ~~insurance company's~~insurer's condition, the public benefits of improving the ~~insurance company's~~insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and ~~such~~the findings are communicated by the domiciliary commissioner to the commissioner of this state.

3. An acquisition covered by subsection 2 may be subject to an order pursuant to subsection 5 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 26.1-10-07.

a. The preacquisition notification must be in the form and contain the information prescribed by the national association of insurance commissioners relating to those markets which, under paragraph ~~5~~4 of subdivision b of subsection 2, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection 4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating that person's ability to render an informed opinion.

b. The waiting period required begins on the date of receipt of the commissioner of a preacquisition notification and ends on the earlier of the thirtieth day after the

date of its receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in ~~which~~the event the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

4. a. The commissioner may enter an order under subdivision a of subsection 5 with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the ~~insurance company~~insurer fails to file adequate information in compliance with subsection 3.

b. In determining whether a proposed acquisition would violate the competitive standard of subdivision a, the commissioner shall consider the following:

(1) Any acquisition covered under subsection 2 involving two or more ~~insurance companies~~insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(a) If the market is highly concentrated and the involved ~~insurance companies~~insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

(b) Or, if the market is not highly concentrated and the involved ~~insurance companies~~insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest ~~insurance companies~~insurers is seventy-five percent or more

of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two ~~insurance companies~~insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in subdivision a. For the purpose of this paragraph, the ~~insurance company~~insurer with the largest share of the market must be deemed to be insurer A.

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest ~~insurance companies~~insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection 2 involving two or more ~~insurance companies~~insurers competing in the same market is prima facie evidence of violation of the competitive standard in subdivision a if:

(a) There is a significant trend toward increased concentration in the market;

(b) One of the ~~insurance companies~~insurers involved is one of the insurance companies in a grouping of large ~~insurance companies~~insurers showing the requisite increase in the market share; and

(c) Another involved ~~insurance company's~~insurer's market is two percent or more.

(3) For the purposes of this subdivision:

(a) The term "~~insurance company~~insurer" includes any company or group of companies under common management, ownership, or control.

(b) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the

national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by ~~insurance companies~~insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(c) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(4) Even though an acquisition is not prima facie violative of the competitive standard under paragraphs 1 and 2, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraphs 1 and 2, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.

c. An order may not be entered under subdivision a of subsection 5 if:

(1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(2) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

5. a. If an acquisition violates the standards of this section, the commissioner may enter an order:

(1) Requiring an involved ~~insurance company~~insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(2) Denying the application of an acquired or acquiring ~~insurance company~~insurer for a license to do business in this state.

b. The order may not be entered unless ~~there~~ :

(1) There is a hearing~~, notice~~;

(2) Notice of ~~such~~the hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the hearing~~,~~; and ~~the~~

(3) The hearing is concluded and the order is issued no later than sixty days after the ~~end~~date of the ~~waiting period~~filing of the preacquisition notification with the commissioner. Every order must be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

c. ~~An order entered under this subsection may not become final sooner than thirty days after it is issued, during which time the involved insurance company may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.~~

~~d.~~ An order pursuant to this subsection does not apply if the acquisition is not consummated.

~~e.~~d. Any person who violates a cease and desist order of the commissioner under this subsection and while the order is in effect, after notice and hearing and upon order of the commissioner, may be subject at the discretion of the commissioner to any one or both of the following:

(1) A monetary penalty of not more than ten thousand dollars for every day of violation.

(2) Suspension or revocation of ~~such~~the person's license.

~~f.~~e. Any ~~insurance company~~insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good-faith effort to comply with any such filing requirement is subject to a fine of not more than fifty thousand dollars.

~~g.~~f. Subsections 2 and 3 of section ~~26.1-10-08~~26.1-10-10 and section ~~26.1-10-10~~26.1-10-12 do not apply to acquisitions covered under subsection 2.

SECTION 5. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-04. Registration ~~- Amendments - Termination - Alternative registration - Exceptions - Disclaimer - Violation~~of insurers.

1. Every ~~insurance company which~~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 ~~insurance company~~insurer subject to ~~disclosure~~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 ~~insurance company~~insurer subject to registration under this section shall register ~~before August 31, 1981, or~~within fifteen days after it becomes subject to registration, ~~whichever is later,~~ 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 ~~authorized insurance company which~~insurer authorized to do business in the state which is a member of ~~a~~an insurance holding company system not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection 10 of section 26.1-10-04, or other information filed by the ~~insurance company~~insurer with the insurance regulatory authority of the domiciliary jurisdiction.

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

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

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

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

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

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

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

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

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

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

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

e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. A financial statement may include an annual audited financial statement filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial

statement pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United Sates securities and exchange commission.

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

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

h. Any other information required by the commissioner by rule.

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

4. In addition to the annual filing requirement under subsection 1, each registered ~~insurance company~~insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms approved by the commissioner within fifteen days after the end of the month in which it learns of each change or addition; provided, however, that subject to subsections 7, 8, and 9 of section 26.1-10-05, each registered ~~insurance company~~insurer shall report all dividends and other distributions to shareholders within five business days following the declaration and no less than ten business days prior to payment thereof.

5. The commissioner shall terminate the registration of any ~~insurance company which~~insurer that demonstrates ~~that~~ it no longer is a member of an insurance holding company system.

6. The commissioner may require or allow two or more affiliated ~~insurance companies~~insurers subject to registration ~~hereunder~~ to file a consolidated registration

statement ~~or consolidated reports amending their consolidated registration statement or their individual registration statements~~.

7. The commissioner may allow an ~~insurance company~~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 ~~insurance company~~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 ~~insurance company~~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 ~~insurance company~~insurer or a disclaimer may be filed by the ~~insurance company~~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 ~~insurance company~~insurer as well as the basis for disclaiming the affiliation. ~~After a disclaimer has been filed, the insurance company is relieved of any duty to register or report under this section which arises out of the insurance company's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance~~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 ~~insurance company~~insurer, when the

information is reasonably necessary to enable the ~~insurance company~~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 ~~thereto~~or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

SECTION 6. AMENDMENT. Section 26.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-05. Standards ~~- Transactions with affiliates - Adequacy of surplus - Dividends and other distributions~~and management of an insurer with an insurance holding company system.

1. Transactions within ~~a~~an insurance holding company system to which an ~~insurance company~~insurer subject to registration is a party are subject to the following standards:
   a. The terms must be fair and reasonable.
   b. Agreements for cost-sharing services and management must include provisions as required by rules adopted by the commissioner.
   c. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including that accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.
   ~~c.~~d. The ~~insurance company's~~insurer's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the ~~insurance company's~~insurer's outstanding liabilities and adequate to its financial needs.
   ~~d.~~e. Charges or fees for services performed must be reasonable.

~~e.~~f. Expenses incurred and payment received must be allocated to the ~~insurance company~~insurer in conformity with statutory accounting practices consistently applied.

2. The following transactions involving a domestic ~~insurance company~~insurer and any person in its insurance holding company system, including an amendment or modification of an affiliate agreement previously filed pursuant to this section, which is subject to any materiality standards contained in subdivisions a through g, may not be entered ~~into~~ unless the ~~insurance company~~insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for an amendment or modification must include the reason for the change and the financial impact on the domestic insurer. Within thirty days after a termination of a previously filed agreement, informal notice must be reported to the commissioner for determination of the type of filing required, if any.

a. Sales, purchases, exchanges, loans, or extensions of credit, ~~guarantees,~~ or investments provided the transactions are equal to or exceed:

(1) With respect to nonlife ~~insurance companies~~insurers, the lesser of three percent of the ~~insurance company's~~insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

(2) With respect to life ~~insurance companies~~insurers, three percent of the ~~insurance company's~~insurer's admitted assets as of December thirty-first next preceding.

b. Loans or extensions of credit to any person ~~who~~that is not an affiliate, ~~when~~if the ~~insurance company~~insurer makes ~~the~~ loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the ~~insurance company~~insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(1) With respect to nonlife ~~insurance companies~~insurers, the lesser of three percent of the ~~insurance company's~~insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

(2) With respect to life ~~insurance companies~~insurers, three percent of the ~~insurance company's~~insurer's admitted assets as of December thirty-first next preceding.

c. Reinsurance agreements or modifications thereto, including:

(1) All reinsurance pooling agreements.

(2) Agreements in which the reinsurance premium or a change in the ~~insurance company's~~insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the ~~insurance company's~~insurer's surplus as regards policyholders, as of December thirty-first next preceding, including those agreements which may require as consideration the transfer of assets from an ~~insurance company~~insurer to a nonaffiliate, if an agreement or understanding exists between the ~~insurance company~~insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the ~~insurance company~~insurer.

d. All management agreements, service contracts, tax allocation agreements, guarantees, and ~~all~~ cost-sharing arrangements.

e. Any guarantee made by a domestic insurer; however, a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of December thirty-first next preceding. Additionally, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection.

f. Any direct or indirect acquisition or investment in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's

surplus to policyholders. A direct or indirect acquisition or investment in a subsidiary acquired pursuant to section 26.1-10-02, or authorized under any other section of this chapter, or in a nonsubsidiary insurance affiliate that is subject to this chapter, is exempt from this requirement.

g. Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the ~~insurance company's~~insurer's policyholders.

Nothing ~~herein contained~~in this subsection may be deemed to authorize or permit any transactions which, in the case of an ~~insurance company~~insurer which is not a member of the same insurance holding company system, would be otherwise contrary to law.

3. A domestic ~~insurance company~~insurer may not enter ~~into~~ transactions ~~which~~that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered ~~into~~ over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under the penalty sections of this chapter.

4. The commissioner, in reviewing transactions pursuant to subsection 2, shall consider whether the transactions comply with the standards set forth in subsection 1 and whether they may adversely affect the interests of the policyholders.

5. The commissioner must be notified within thirty days of any investment of the domestic ~~insurance company~~insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

6. For purposes of this chapter, in determining whether an ~~insurance company's~~insurer's surplus as regards policyholders is reasonable in relation to the ~~insurance company's~~insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, must be considered:

a. The size of the ~~insurance company~~insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

b. The extent to which the ~~insurance company's~~insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the ~~insurance company's~~insurer's insured risks.

e. The nature and extent of the ~~insurance company's~~insurer's reinsurance program.

f. The quality, diversification, and liquidity of the ~~insurance company's~~insurer's investment portfolio.

g. The recent past and projected future trend in the size of the ~~insurance company's~~insurer's investment portfolio.

h. The surplus as regards policyholders maintained by other comparable ~~insurance companies~~insurers.

i. The adequacy of the ~~insurance company's~~insurer's reserves.

j. The quality and liquidity of investments in affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

~~k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.~~

7. ~~An insurance company subject to registration under section 26.1-10-04 may not~~A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until~~:~~

~~a. Thirty~~ thirty days after the commissioner has received notice of the declaration thereof and has not within ~~such~~that period disapproved the payment~~;~~, or

~~b. The~~ until the commissioner has approved the payment within the thirty-day period.

8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, when the fair market value together

with that of other dividends or distributions made within the preceding twelve months exceeds the ~~greater~~lesser of:

a. Ten percent of the ~~insurance company's~~insurer's surplus as regards policyholders as of December thirty-first next preceding; or

b. The net gain from operations of the ~~insurance company~~insurer, if the ~~company~~insurer is a life ~~insurance company~~insurer, or the net income, if the company is not a life ~~insurance company~~insurer, not including realized capital gains, for the twelve-month period ending December thirty-first next preceding, but shall not include pro rata distributions of any class of the ~~insurance company's~~insurer's own securities.

9. In determining whether a dividend or distribution is extraordinary under subsection 8, an insurer other than a life insurer may carry forward net income from the previous two calendar years which has not already been paid out as dividends. This carry-forward must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

10. Notwithstanding any other provision of law, an ~~insurance company~~insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval ~~thereof~~, and the declaration confers no rights upon shareholders until:

a. The commissioner has approved the payment of the dividend or distribution; or

b. The commissioner has not disapproved the payment within the thirty-day period referred to in subsection 7.

SECTION 7. AMENDMENT. Section 26.1-10-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-05.1. Dividends and other distribution.

1. The board of directors of any company subject to this chapter may declare and the company may pay dividends and other distributions on its outstanding shares and cash, property, or its own shares and on its treasury stock in its own shares, subject to the following provisions:

a. No dividend or other distribution may be declared or paid at any time except out of earned, as distinguished from contributed, surplus, nor when the surplus of the

company is less than the surplus required by law for the kind or kinds of business authorized to be transacted by ~~such company~~the insurer, nor when the payment of a dividend or other distribution would reduce its surplus to less than such amount.

b. Except in the case of share dividends, surplus for determining whether dividends or other distributions may be declared may not include surplus arising from unrealized appreciation in value, or revaluation of assets, or from unrealized profits upon investments.

c. No dividend or other distribution may be declared or paid contrary to any restriction contained in the articles of incorporation.

d. No dividend or other distribution may be declared or paid contrary to section 26.1-10-05.

2. No payment may be made to policyholders by way of dividends unless the ~~company~~insurer possesses admitted assets in the amount of such payment in excess of its capital, minimum required surplus, and all liabilities.

SECTION 8. AMENDMENT. Section 26.1-10-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-06. Examination ~~- Consultants - Expenses~~.

1. Subject to the limitations contained in this section and in addition to the powers which the commissioner has relating to the examination of ~~insurance companies~~insurers, the commissioner may examine any insurer registered under section 26.1-10-04 and the insurer's affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

2. The commissioner may order any ~~insurance company~~insurer registered under section 26.1-10-04 to produce any record, book, or other information paper in the possession of the ~~insurance company~~insurer or its affiliates necessary to ~~ascertain the financial condition or legality of conduct of the insurance company. If the insurance company fails to comply with the order, the commissioner may examine the affiliates to obtain the information~~determine compliance with this chapter.

~~2.~~3. ~~The commissioner may exercise the power under subsection 1 only if the examination of the insurance company, under other provisions of the law, is inadequate or the interests of the policyholders of the insurance company may be adversely affected~~To determine compliance with this chapter, the commissioner may order any insurer registered under section 26.1-10-04 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to a contractual relationship, statutory obligation, or other method. If the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason the insurer cannot obtain the information and the identity of the holder of the information. If the commissioner determines the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of one thousand dollars for each day's delay, or may suspend or revoke the insurer's license.

~~3.~~4. The commissioner may retain at the registered ~~insurance company's~~insurer's expense any attorneys, actuaries, accountants, and other experts, not otherwise a part of the commissioner's staff, as are reasonably necessary to assist in the conduct of the examination under subsection 1. Any persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

~~4.~~5. Each registered ~~insurance company~~insurer producing any record, book, or other information paper for examination pursuant to subsection 1 is liable for and shall pay the expense of the examination.

6. If the insurer fails to comply with an order, the commissioner may examine the affiliates to obtain the information. The commissioner may issue a subpoena, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. When subpoenaed, a person shall attend as a witness at the place specified in the subpoena, anywhere within the state. The witness is entitled to receive the same fees and mileage as a witness in an administrative hearing or in

district court, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, must be itemized and charged against, and be paid by, the insurer being examined.

SECTION 9. Section 26.1-10-06.1 of the North Dakota Century Code is created and enacted as follows:

26.1-10-06.1. Supervisory colleges.

1. With respect to any insurer registered under section 26.1-10-04, and in accordance with subsection 3, the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to a supervisory college include:
   a. Initiating the establishment of a supervisory college;
   b. Clarifying the membership and participation of other supervisors in the supervisory college;
   c. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor;
   d. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and establishing processes for information sharing; and
   e. Establishing a crisis management plan.
2. Each registered insurer subject to this section shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection 3, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or the insurer's affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of expenses.
3. To assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of an individual insurer in accordance with section 26.1-10-06, the commissioner may participate in a supervisory college with other regulators charged

with supervision of the insurer or the insurer's affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter an agreement in accordance with subsection 3 of section 26.1-10-07 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. This section does not delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or the insurer's affiliates within the commissioner's jurisdiction.

SECTION 10. Section 26.1-10-06.2 of the North Dakota Century Code is created and enacted as follows:

26.1-10-06.2. Groupwide supervision of internationally active insurance groups.

1. a. The commissioner may act as the groupwide supervisor for any internationally active insurance group in accordance with this section. However, the commissioner may otherwise acknowledge another regulatory official as the groupwide supervisor if the internationally active insurance group:
   (1) Does not have substantial insurance operations in the United States;
   (2) Has substantial insurance operations in the United States but not in this state; or
   (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined under the factors set forth in subsections 2 and 6 the other regulatory official is the appropriate groupwide supervisor.
   b. An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request the commissioner make a determination or acknowledgment as to a groupwide supervisor under this section.
2. In cooperation with other state, federal, and international regulatory agencies, the commissioner shall identify a single groupwide supervisor for an internationally active insurance group and may determine the commissioner is the appropriate groupwide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge a regulatory official from another jurisdiction is the appropriate

1 groupwide supervisor for the internationally active insurance group. The commissioner
2 shall consider the following factors when making a determination or acknowledgment
3 under this subsection:
4 a. The place of domicile of the insurers within the internationally active insurance
5 group which hold the largest share of the group's premiums, assets, or liabilities;
6 b. The place of domicile of the top-tiered insurers in the insurance holding company
7 system of the internationally active insurance group;
8 c. The location of the executive offices or largest operational offices of the
9 internationally active insurance group;
10 d. Whether another regulatory official is acting or is seeking to act as the groupwide
11 supervisor under a regulatory system the commissioner determines to be:
12 (1) Substantially similar to the system of regulation provided under the laws of
13 this state; or
14 (2) Otherwise sufficient in terms of providing for groupwide supervision,
15 enterprise risk analysis, and cooperation with other regulatory officials; and
16 e. Whether another regulatory official acting or seeking to act as the groupwide
17 supervisor provides the commissioner with reasonably reciprocal recognition and
18 cooperation. However, a commissioner identified under this section as the
19 groupwide supervisor may determine it is appropriate to acknowledge another
20 supervisor to serve as the groupwide supervisor. The acknowledgment of the
21 groupwide supervisor must be made after the consideration of the factors listed in
22 subdivisions a through e, and must be made in cooperation with and subject to
23 the acknowledgment of other regulatory officials involved with supervision of
24 members of the internationally active insurance group, and in consultation with
25 the internationally active insurance group.
26 3. a. Notwithstanding any other provision of law, when another regulatory official is
27 acting as the groupwide supervisor of an internationally active insurance group,
28 the commissioner shall acknowledge that regulatory official as the groupwide
29 supervisor unless the commissioner determines there has been a significant
30 material change in the internationally active insurance group that results in:

(1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(2) This state being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.

b. If such a material change has occurred, the commissioner shall make a determination or acknowledgment as to the appropriate groupwide supervisor under subsection 2.

4. Under section 26.1-10-06, the commissioner may collect from any insurer registered under section 26.1-10-04 all information necessary to determine whether the commissioner may act as the groupwide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the groupwide supervisor. Before issuing a determination that an internationally active insurance group is subject to groupwide supervision by the commissioner, the commissioner shall notify the insurer registered under section 26.1-10-04 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group must be provided not less than thirty days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on the commissioner's internet website the identity of internationally active insurance groups the commissioner has determined are subject to groupwide supervision by the commissioner.

5. If the commissioner is the groupwide supervisor for an internationally active insurance group, the commissioner may engage in any of the following groupwide supervision activities:

a. Assess the enterprise risks within the internationally active insurance group to ensure:

(1) The material financial condition and liquidity risks to the members of the internationally active insurance group which are engaged in the business of insurance are identified by management; and

(2) Reasonable and effective mitigation measures are in place.

b. Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:

(1) Governance, risk assessment, and management;

(2) Capital adequacy; and

(3) Material intercompany transactions.

c. Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of that internationally active insurance groups which are engaged in the business of insurance.

d. Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section 26.1-10-07 through supervisory colleges as set forth in section 26.1-10-06.1 or otherwise.

e. Enter agreements with or obtain documentation from any insurer registered under section 26.1-10-04; any member of the internationally active insurance group; and any other state, federal, and international regulatory agency for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as groupwide supervisor, including provisions for resolving disputes with other regulatory officials. The agreement or documentation may not serve as evidence in any proceeding any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state.

f. Other groupwide supervision activities, consistent with the authorities and purposes enumerated in this section, as considered necessary by the commissioner.

6. If the commissioner acknowledges another regulatory official from a jurisdiction that is not accredited by the national association of insurance commissioners is the groupwide supervisor, the commissioner may cooperate reasonably, through supervisory colleges or otherwise, with groupwide supervision undertaken by the groupwide supervisor, provided:
   a. The commissioner's cooperation is in compliance with the laws of this state; and
   b. The regulatory official acknowledged as the groupwide supervisor also recognizes and cooperates with the commissioner's activities as a groupwide supervisor for other internationally active insurance groups as applicable. If such recognition and cooperation is not reasonably reciprocal, the commissioner may refuse recognition and cooperation.
7. The commissioner may enter an agreement with or obtain documentation from any insurer registered under section 26.1-10-04; any affiliate of the insurer; and other state, federal, and international regulatory agency for members of the internationally active insurance group which provide the basis for or otherwise clarify a regulatory official's role as groupwide supervisor.
8. The commissioner may adopt rules necessary for the administration of this section.
9. A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of an attorney, actuary, and any other professional and all reasonable travel expenses.

SECTION 11. AMENDMENT. Section 26.1-10-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-07. ~~Information confidential~~Confidential treatment.

1. Any document, material, or other information in the possession or control of the North Dakota insurance department which is obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 26.1-10-06 and all information reported pursuant to subdivisions l and m of subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 ~~must be given~~is confidential ~~treatment and is~~and privileged, not subject to section 44-04-18, not subject to subpoena ~~and may not be made public by the commissioner or any other~~

~~person, except to insurance departments of other states~~, and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the ~~insurance company~~insurer to which it pertains unless the commissioner, after giving the ~~insurance company~~insurer and its affiliates ~~who~~that would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in any manner the commissioner deems appropriate.

2. Neither the commissioner nor any person that received any document, material, or other information while acting under the authority of the commissioner or with whom such document, material, or other information is shared under this chapter is permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.

3. To assist in the performance of the commissioner's duties:

   a. If the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality, the commissioner may share any document, material, or other information, including the confidential and privileged document, material, or information subject to subsection 1, with any other state, federal, and international regulatory agency, the national association of insurance commissioners and its affiliates and subsidiaries, and any state, federal, or international law enforcement authority, including members of any supervisory college described in section 26.1-10-06.1;

   b. Notwithstanding subdivision a, the commissioner may share a confidential and privileged document, material, or information reported under subsection 12 of section 26.1-10-04 only with a commissioner of a state having statutes or regulations substantially similar to subsection 1 and who has agreed in writing not to disclose the information;

c. The commissioner may receive any document, material, or information, including any otherwise confidential and privileged document, material, or information from the national association of insurance commissioners and its affiliates and subsidiaries and from any regulatory and law enforcement official of other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

d. The commissioner shall enter a written agreement with the national association of insurance commissioners governing sharing and use of information provided under this chapter consistent with this subsection and which must:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with any other state, federal, or international regulator;

(2) Specify ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter remains with the commissioner, and the national association of insurance commissioner's use of the information is subject to the direction of the commissioner;

(3) Require prompt notice to be given to an insurer if the insurer's confidential information in the possession of the national association of insurance commissioners under this chapter is subject to a request or subpoena to the national association of insurance commissioners for disclosure or production; and

(4) Require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners and its affiliates and subsidiaries may be required

to disclose confidential information about the insurer shared with the national association of insurance commissioners and its affiliates and subsidiaries under this chapter.

4. The sharing of information by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

5. Waiver of any applicable privilege or claim of confidentiality in any document, material, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

6. Any document, material, or other information in the possession or control of the national association of insurance commissioners under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action.

SECTION 12. AMENDMENT. Section 26.1-10-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-08. Injunctions - Prohibitions against voting securities - Sequestration of voting securities.

1. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner under this chapter, the commissioner may apply to the district court for the county in which the principal office of the ~~insurance company~~insurer is located or if the ~~insurance company~~insurer has no principal office in this state then to the district court of Burleigh County for an order enjoining the ~~insurance company~~insurer or the director, officer, employee, or agent thereof from violating or continuing to violate this chapter or any rule or order, and for any other equitable relief as the nature of the case and the interests of the ~~insurance company's~~insurer's policyholders, creditors, and shareholders or the public may require.

2. A security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of this chapter or any rule or order issued by the commissioner hereunder may not be voted at any shareholders'

meeting~~,~~ or ~~may be~~ counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but any action taken at the meeting is not invalidated by the voting of those securities, unless the action would materially affect control of the ~~insurance company~~insurer or unless the courts of this state have so ordered. If an ~~insurance company~~insurer or the commissioner has reason to believe that any security of the ~~insurance company~~insurer has been or is about to be acquired in contravention of this chapter or any rule or order issued by the commissioner hereunder, the ~~insurance company~~insurer or the commissioner may apply to the district court of Burleigh County or to the district court of the county in which the ~~insurance company~~insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 26.1-10-03 or any rule or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as the nature of the case and the interests of the ~~insurance company's~~insurer's policyholders, creditors, and shareholders or the public may require.

3. When a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule or order issued by the commissioner hereunder, the district court of Burleigh County or the district court of the county in which the ~~insurance company~~insurer has its principal place of business may, on the notice the court deems appropriate and upon the application of the ~~insurance company~~insurer or the commissioner, seize or sequester any voting securities of the ~~insurance company~~insurer owned directly or indirectly by the person and issue any orders with respect ~~thereto~~ as may be appropriate to effectuate this chapter.

4. Notwithstanding any other provision of law, for the purpose of this chapter the site of the ownership of the securities of domestic ~~insurance companies~~insurers is deemed to be in this state.

SECTION 13. AMENDMENT. Section 26.1-10-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-09. Revocation, suspension, and nonrenewal of license.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an ~~insurance company~~insurer contrary to the interests of policyholders or the public, the commissioner, after giving notice and an opportunity to be heard, may suspend, revoke, or refuse to renew the ~~insurance company's~~insurer's license or authority to do business in this state for any period the commissioner finds is required for the protection of policyholders or the public. Any determination must be accompanied by specific findings of fact and conclusions of law.

SECTION 14. AMENDMENT. Section 26.1-10-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-10. Receivership.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic ~~insurance company~~insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in chapter 26.1-06.1 to take possession of the property of the ~~insurance company~~insurer and to carry on its business.

SECTION 15. AMENDMENT. Section 26.1-10-10.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-10.1. Recovery.

1. ~~Subject to other limitations of this section, if~~If an order for liquidation~~, conservation,~~ or rehabilitation of a domestic ~~insurance company~~insurer has been entered, ~~and if distribution of payment identified in subdivision a or b is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation,~~ the receiver appointed under the order may recover on behalf of the ~~insurance company~~insurer:
   a. From any parent corporation~~, limited liability company,~~ or holding company or person or affiliate ~~who~~that otherwise controlled the ~~insurance company~~insurer, the amount of distributions other than distributions of shares of the same class of stock, paid by the ~~insurance company~~insurer on its capital stock; or

b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the ~~insurance company~~insurer or its subsidiaries to a director, officer, or employee, if the distribution or payment under this subsection is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation subject to the limitations of subsections 2, 3, and 4.

2. A distribution may not be recovered if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable, and that the ~~insurance company~~insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the ~~insurance company~~insurer to fulfill its contractual obligations.

3. Any person ~~who~~that was a parent corporation~~, limited liability company,~~ or holding company or a person ~~who~~that otherwise controlled the ~~insurance company~~insurer or affiliate at the time the distributions were paid is liable up to the amount of distributions or payments under subsection 1 the person received. Any person ~~who~~that otherwise controlled the ~~insurance company~~insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

4. The maximum amount recoverable under this ~~subsection~~section is the amount needed in excess of all other available assets of the impaired or insolvent ~~insurance company~~insurer to pay the contractual obligations of the impaired or insolvent ~~insurance company~~insurer and to reimburse any guaranty funds.

5. To the extent that any person liable under subsection 3 is insolvent or otherwise fails to pay claims due from it ~~pursuant to subsection 3~~, its parent corporation~~, limited liability company,~~ or holding company or person ~~who~~that otherwise controlled it at the time the distribution was paid must be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation~~, limited liability company,~~ or holding company or person ~~who~~that otherwise controlled it.

SECTION 16. AMENDMENT. Section 26.1-10-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-11. ~~Criminal proceedings -~~ Penalty.

1. Any ~~insurance company~~insurer failing, without just cause, to file any registration statement as required in this chapter must be required, after notice and hearing, to pay a penalty of one hundred dollars for each day's delay. The commissioner may reduce the penalty if the ~~insurance company~~insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the ~~insurance company~~insurer.
2. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the ~~insurance company~~insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to sections 26.1-10-04 and 26.1-10-05, or which violate this chapter, shall pay, in their individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
3. Whenever it appears to the commissioner that any ~~insurance company~~insurer subject to this chapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered ~~into~~ a contract which is subject to section 26.1-10-05 and which would not have been approved had ~~such~~the approval been requested, the commissioner may order the ~~insurance company~~insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the ~~insurance company~~insurer to void ~~the~~any contracts and restore the status quo if it is in the best interest of the policyholders, creditors, or the public.
4. Whenever it appears to the commissioner that any ~~insurance company~~insurer or any director, officer, employee, or agent thereof has committed a willful violation of this chapter, the commissioner may institute criminal proceedings in the district court of the county in which the principal office of the ~~insurance company~~insurer is located or if the ~~insurance company~~insurer has no principal office in the state, then in the district court

of Burleigh County against the ~~insurance company~~insurer or the responsible director, officer, employee, or agent of the company. Any ~~insurance company~~insurer that willfully violates this chapter ~~is guilty of a class B misdemeanor~~may be fined not more than fifty thousand dollars. Any individual who willfully violates this chapter ~~is guilty of a class A misdemeanor~~may be fined in the individual's capacity not more than ten thousand dollars.

5. Any officer, director, or employee of an insurance holding company system, who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter~~, may have criminal proceedings instituted against them. Any individual who violates this chapter is guilty of a class A misdemeanor~~ may be fined not more than fifty thousand dollars. Any fines imposed must be paid by the officer, director, or employee in the person's individual capacity.

6. If it appears to the commissioner any person has committed a violation of section 26.1-10-03 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with chapter 26.1-06.2.

SECTION 17. Section 26.1-10-13 of the North Dakota Century Code is created and enacted as follows:

26.1-10-13. Judicial review - Mandamus.

1. Any person aggrieved by any act, determination, rule, order, or any other action of the commissioner under this chapter may appeal to the district court for Burleigh County. The court shall conduct the review without a jury and by trial de novo, except if all parties, including the commissioner, so stipulate, the review must be confined to the record. Portions of the record may be introduced into evidence by stipulation in a trial de novo as to those parties so stipulating.

2. The filing of an appeal under this section stays the application of any rule, order, or other action of the commissioner to the appealing party unless the court, after giving

1 the party notice and an opportunity to be heard, determines a stay would be
2 detrimental to the interest of policyholders, shareholders, creditors, or the public.
3 3. Any person aggrieved by any failure of the commissioner to act or make a
4 determination required by this chapter may petition the district court for Burleigh
5 County for a writ in the nature of a mandamus or a peremptory mandamus directing
6 the commissioner to act or make a determination.