

INSURANCE

CHAPTER 211

HOUSE BILL NO. 1125

(Representative Keiser)
(At the request of the Insurance Commissioner)

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to compliance with federal law by health insurers; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

Compliance with federal law.

The commissioner shall administer and enforce the provisions of the Patient Protection and Affordable Care Act [Pub. L. 111-148] and the provisions of the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to the extent that the provisions apply to insurance companies subject to the commissioner's jurisdiction and to the extent that the provisions are not under the exclusive jurisdiction of any federal agency.

SECTION 2. APPLICATION. In carrying out the requirements of section 1 of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 212

HOUSE BILL NO. 1121

(Judiciary Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact subsection 3 to section 26.1-03-11.1 of the North Dakota Century Code, relating to the confidentiality of actuarial opinion support documents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 3 to section 26.1-03-11.1 of the North Dakota Century Code is created and enacted as follows:

3.
 - a. Documents, materials, or other information in the possession or control of the commissioner which are an actuarial report, workpapers, or actuarial opinion summary provided in support of the actuarial certification commonly known as the statement of actuarial opinion, and any other material provided by the insurance company to the commissioner in connection with the actuarial report, workpapers, or actuarial opinion summary, is confidential and privileged and is not subject to section 44-04-18. This subsection may not be construed to limit the authority to subpoena or otherwise discover the documents, materials, or other information or to limit use of the documents, materials, or other information in criminal investigations or proceedings.
 - b. This subsection may not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. This section may not be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
 - c. This subsection does not apply to actuarial opinions required under chapter 26.1-35.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 213

HOUSE BILL NO. 1083

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact subsection 1 of section 26.1-03.1-03 and subsection 1 of section 26.1-03.2-03 of the North Dakota Century Code, relating to the risk-based capital reports of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 26.1-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Company action level event" means any of the following events:
 - a. The filing of a risk-based capital report by an insurer which indicates that:
 - (1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; ~~or~~
 - (2) If a life or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and two and one-half and has a negative trend; or
 - (3) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions;
 - b. The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in subdivision a, provided the insurer does not challenge the adjusted risk-based capital report under section 26.1-03.1-07; or
 - c. If, under section 26.1-03.1-07, an insurer challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-03.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Company action level event" means any of the following events:
 - a. The filing of a risk-based capital report by a health organization which indicates that ~~the~~;

- (1) The health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
- (2) If a health organization has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;
- b. Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates an event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07; or
- c. If, pursuant to section 26.1-03.2-07, a health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 214

SENATE BILL NO. 2237

(Senators Schneider, Dever, Larsen)
(Representatives Keiser, L. Meier, S. Meyer)

AN ACT to amend and reenact subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to prohibited practices in the insurance business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁷ **SECTION 1. AMENDMENT.** Subsection 7 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.
 - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
 - b. Making or permitting any unfair discrimination, including consideration of an individual's history or status as a subject of domestic abuse, between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.
 - c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
 - d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of

⁸⁷ Section 26.1-04-03 was also amended by section 1 of House Bill No. 1175, chapter 215.

the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 215

HOUSE BILL NO. 1175

(Representatives Keiser, Ruby, Vigesaa)
(Senators Andrist, Klein, Laffen)

AN ACT to create and enact a new subdivision to subsection 8 of section 26.1-04-03 of the North Dakota Century Code, relating to limitations on insurance rebates; and to amend and reenact sections 26.1-04-06 and 26.1-25-16 of the North Dakota Century Code, relating to limitations on insurance rebates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁸ **SECTION 1.** A new subdivision to subsection 8 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision in this subsection, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subdivision, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subdivision, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subdivision, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

SECTION 2. AMENDMENT. Section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates - Exception.

1. An insurance producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any insurance producer's commission

⁸⁸ Section 26.1-04-03 was also amended by section 1 of Senate Bill No. 2237, chapter 214.

thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates or except as provided under subsection 2.

2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

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

26.1-25-16. Rebates prohibited - Exception.

1. No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.
2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of fifty dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection,

"person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotion article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a quote or a contract of insurance.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 216

SENATE BILL NO. 2064

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-22.1-01, 26.1-22.1-09, and 26.1-22.1-10 of the North Dakota Century Code, relating to inspection and certificate fees and certificates of inspection of boilers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-01. Definition.

As used in this chapter, unless the context otherwise requires, "boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for heating or vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.

SECTION 2. AMENDMENT. Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-09. Inspection and certificate fees.

Upon completion of inspection, the owner or user of a boiler shall pay to the commissioner fees or a combination of inspection and certificate fees. Inspection fees must be determined by the commissioner. Certificate fees are determined by section 26.1-22.1-10. The commissioner must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than ~~one~~two hundred ~~forty~~ dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. ~~Not more than seventy-five dollars may be charged or collected for any one inspection of a steam traction engine except for special inspections made upon request.~~ All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed ~~three~~five hundred ~~forty~~ dollars per day or ~~two~~three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the commissioner. The annual fee for the issuance of a reciprocal commission card for a special inspector is ~~twenty-five~~forty dollars and the annual fee for the issuance of a welder-qualified card is ~~ten~~twenty dollars. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler

operating license is twenty-five dollars. A hobby boiler operating license issued under this section is valid for six years.

SECTION 3. AMENDMENT. Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-10. Certificate of inspection - Certificate to be posted.

The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 217

HOUSE BILL NO. 1160

(Representative Keiser)

AN ACT to create and enact two new sections to chapter 26.1-34.2 of the North Dakota Century Code, relating to annuity transaction practices; and to amend and reenact sections 26.1-34.2-02, 26.1-34.2-03, and 26.1-34.2-04 of the North Dakota Century Code, relating to annuity transaction practices; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

Scope.

This chapter applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer when no producer is involved, that results in the purchase, exchange, or replacement recommended.

SECTION 2. AMENDMENT. Section 26.1-34.2-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-34.2-02. Definitions.

1. "Annuity" means ~~a fixed annuity or variable~~ an annuity that is an insurance product under state law which is individually solicited, whether the product is classified as an individual or group annuity.
2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.
3. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
4. "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer ~~that~~ which results in a purchase, replacement, or exchange of an annuity in accordance with that advice.
5. "Replacement" means a transaction in which ~~a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:~~
 - a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

- b. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - c. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 - d. Reissued with any reduction in cash value; or
 - e. Used in a financed purchase.
6. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
- a. Age;
 - b. Annual income;
 - c. Financial situation and needs, including the financial resources used for the funding of the annuity;
 - d. Financial experience;
 - e. Financial objectives;
 - f. Intended use of the annuity;
 - g. Financial time horizon;
 - h. Existing assets, including investment and life insurance holdings;
 - i. Liquidity needs;
 - j. Liquid net worth;
 - k. Risk tolerance; and
 - l. Tax status.

SECTION 3. AMENDMENT. Section 26.1-34.2-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-34.2-03. Duties of insurers and insurance producers.

1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

- a. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;
 - b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;
 - c. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and
 - d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:
 - (1) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;
 - (2) The consumer would benefit from product enhancements and improvements; and
 - (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.
2. Before the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information concerning:
- a. The consumer's financial status;
 - b. The consumer's tax status;
 - c. The consumer's investment objectives; and
 - d. Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.
3. a. Except as provided under subdivision b, neither an insurance producer nor an insurer when no producer is involved has an obligation to a consumer under subsection 1 related to a recommendation if a consumer:
- (1) Refuses to provide relevant information requested by the insurer or insurance producer;

- e. ~~An insurer that contracts with a third party pursuant to subdivision c and that complies with the requirements to supervise in subdivision d has fulfilled its responsibilities under subdivision a.~~
- f. ~~An insurer, general agent, or independent agency is not required by subdivision a or b to:~~
- ~~(1) Review, or provide for review of, all insurance producer solicited transactions; or~~
 - ~~(2) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.~~
- g. ~~A general agent or independent agency contracting with an insurer pursuant to subdivision c shall promptly, when requested by the insurer pursuant to subdivision d, give a certification as described in subdivision d or give a clear statement that it is unable to meet the certification criteria.~~
- h. ~~A person may not provide a certification under paragraph 1 of subdivision d unless:~~
- ~~(1) The person is a senior manager with responsibility for the delegated functions; and~~
 - ~~(2) The person has a reasonable basis for making the certification.~~
5. ~~Compliance with the financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of annuities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules or regulations adopted under that act. However, nothing in this subsection limits the insurance commissioner's ability to enforce the provisions of this chapter.~~
6. ~~This chapter does not preempt, supersede, or limit any provision of any securities law of this state or any rule, order, or notice issued thereunder. Except as permitted under subsection 4, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~
4. a. Except as provided under subdivision b, neither an insurance producer, nor an insurer, has any obligation to a consumer under subsection 1 or 3 related to any annuity transaction if:
- (1) A recommendation was not made;
 - (2) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - (3) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
 - (4) A consumer decides to enter an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

- b. An insurer's issuance of an annuity subject to subdivision a must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
5. An insurance producer or, when no insurance producer is involved, the responsible insurer representative, at the time of sale shall:
- a. Make a record of any recommendation subject to subsection 1;
 - b. Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
 - c. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
6. a. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and the insurer's insurance producers' compliance with this chapter, including the following:
- (1) The insurer shall maintain reasonable procedures to inform the insurer's insurance producers of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant insurance producer training manuals.
 - (2) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require the insurer's insurance producers to comply with the requirements of section 4 of this Act.
 - (3) The insurer shall provide product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's insurance producers.
 - (4) The insurer shall maintain procedures for review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.
 - (5) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. This paragraph does not prevent an insurer from complying with this paragraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

- (6) Annually, the insurer shall provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- b. (1) This subsection does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision a. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 26.1-34.2-04, regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph 2.
- (2) An insurer's supervision system under subdivision a must include supervision of contractual performance under this subsection. This includes the following:
- (a) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
- (b) Annually, obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- c. An insurer is not required to include in the insurer's system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
7. An insurance producer may not dissuade, or attempt to dissuade, a consumer from:
- a. Responding truthfully to an insurer's request for confirmation of suitability information;
- b. Filing a complaint; or
- c. Cooperating with the investigation of a complaint.
8. a. Sales made in compliance with the financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions must satisfy the requirements under this chapter. This subsection applies to financial industry regulatory authority broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this subsection does not limit the insurance commissioner's ability to enforce, including investigate, this chapter.
- b. For subdivision a to apply, an insurer shall:
- (1) Monitor the financial industry regulatory authority member broker-dealer using information collected in the normal course of an insurer's business; and

- (2) Provide to the financial industry regulatory authority member broker-dealer information and reports that are reasonably appropriate to assist the financial industry regulatory authority member broker-dealer to maintain its supervision system.

SECTION 4. A new section to chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

Insurance producer training.

1. An insurance producer may not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
2.
 - a.
 - (1) An insurance producer who engages in the sale of annuity products shall complete a one-time, four-hour training course.
 - (2) An insurance producer who holds a life insurance line of authority on the effective date of this Act and who desires to sell annuities shall complete the requirements of this subsection within twelve months after the effective date of this Act. An individual who obtains a life insurance line of authority on or after the effective date of this Act may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
 - b. The training required under this subsection must include information on the following topics:
 - (1) The types of annuities and various classifications of annuities;
 - (2) Identification of the parties to an annuity;
 - (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
 - (4) The application of income taxation of qualified and nonqualified annuities;
 - (5) The primary uses of annuities; and
 - (6) Appropriate sales practices, replacement, and disclosure requirements.
 - c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
 - d. Providers of annuity training shall issue certificates of completion.

- e. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.
- f. An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy the insurer's responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports from a reasonably reliable commercial database vendor that has a reporting arrangement with insurance education providers.

SECTION 5. AMENDMENT. Section 26.1-34.2-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-34.2-04. Mitigation of responsibility - Penalty.

1. ~~The commissioner may order:~~
 - a. ~~An insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's, or by its insurance producer's, violation of this chapter;~~
 - b. ~~An insurance producer to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter; and~~
 - e. ~~A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably appropriate corrective action for a consumer harmed by the insurance producer's violation of this chapter.~~An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or the insurer's insurance producer, the commissioner may order:
 - a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or by the insurer's insurance producer's violation of this chapter;
 - b. A general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this chapter; and
 - c. Appropriate penalties and sanctions.
2. Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered.

CHAPTER 218

HOUSE BILL NO. 1127

(Representative Keiser)
(At the request of the Insurance Commissioner)

AN ACT to create and enact two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to health carrier external appeals and internal claims and appeals procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and 26.1-36-44 of the North Dakota Century Code, relating to limitation on health insurance company risks, utilization review, and independent external reviews; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-01. Limitation on risks acceptable by company.

An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured. An insurance company offering group or individual insurance that is subject to the lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], is not subject to this section.

SECTION 2. AMENDMENT. Section 26.1-26.4-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-01. Purpose and scope.

This chapter applies to grandfathered health plans unless a health care insurer or utilization review agent determines to extend the protections of section 5 of this Act to a grandfathered plan. "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. The purpose of this chapter is to:

1. Promote the delivery of quality health care in a cost-effective manner;
2. Assure that utilization review agents adhere to reasonable standards for conducting utilization review;
3. Foster greater coordination and cooperation between health care providers and utilization review agents;
4. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and

5. Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

SECTION 3. AMENDMENT. Section 26.1-36-44 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-44. Independent external review.

This section applies to grandfathered health plans. "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. Every insurance company, nonprofit health service corporation, and health maintenance organization that offers an accident and health line of insurance shall establish and implement an independent external review mechanism to review and determine whether medical care rendered under the line of insurance was medically necessary and appropriate to the claim as submitted by the provider. For purposes of this section, "independent external review" means a review conducted by the North Dakota health care review, inc., another peer review organization meeting the requirements of section 1152 of the Social Security Act, or any person designated by the commissioner to conduct an independent external review. A determination made by the independent external reviewer is binding on the parties. Costs associated with the independent external review are the responsibility of the nonprevailing party. A provider may not use an independent external review under this section unless the provider first has exhausted all internal appeal processes offered by the insurance company, nonprofit health service corporation, or health maintenance organization. The insurance commissioner shall take steps necessary to ensure compliance with this section. If federal laws or rules relating to independent external review are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the independent external review procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 4. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

External appeals procedures.

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to external appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the external appeals procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 5. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Internal claims and appeals procedures.

An insurance company, nonprofit health services corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage meets the minimum requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1; 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to ensure compliance with this section. If federal laws or rules relating to internal claims and appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the internal claims and appeals procedure is in compliance with and substantively equivalent to the federal requirements.

SECTION 6. APPLICATION. The citations to federal laws and rules in this Act refer to the versions in effect on the effective date of this Act. In carrying out the requirements of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on July 1, 2011.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2011

Filed April 27, 2011

CHAPTER 219

HOUSE BILL NO. 1165

(Representatives Kreidt, Pollert, Porter, Weisz)
(Senators Fischer, Kilzer)

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to individual accident and health insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Health insurance coverage not required.

1. Regardless of whether a resident of this state has or is eligible for health insurance coverage under a health insurance policy, health service contract, or evidence of coverage by or through an employer or under a plan sponsored by the state or federal government, the resident is not required to obtain or maintain a policy of individual health coverage except as may be required by a court or by the department of human services through a court or administrative proceeding.
2. This section does not render a resident of this state liable for any penalty, assessment, fee, or fine as a result of the resident's failure to procure or obtain health insurance coverage.
3. This section does not apply to:
 - a. An individual who voluntarily applies for coverage under a state-administered program pursuant to the medical assistance program under title XIX of the federal Social Security Act [42 U.S.C. 1396 et seq.] or the state's children's health insurance program under title XXI of the federal Social Security Act [42 U.S.C. 1397aa et seq.].
 - b. A student who is required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.
 - c. An individual who is required by a religious institution to obtain and maintain health insurance.
4. This section does not impair the rights of an individual to contract privately for health insurance coverage for family members or former family members.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 220

SENATE BILL NO. 2111

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-38.1-17 of the North Dakota Century Code, relating to the application of effective dates of amendments to member insurers of the North Dakota life and health insurance guaranty association; and to amend and reenact section 26.1-38.1-01, subsections 12, 20, and 23 of section 26.1-38.1-02, subdivision b of subsection 1 of section 26.1-38.1-05, paragraph 4 of subdivision b of subsection 2 of section 26.1-38.1-05, subsection 3 of section 26.1-38.1-06, subdivision e of subsection 14 of section 26.1-38.1-06, subsection 4 of section 26.1-38.1-07, subsection 4 of section 26.1-38.1-08, and sections 26.1-38.1-11 and 26.1-38.1-15 of the North Dakota Century Code, relating to coverage limits, powers and duties, and assessments of the North Dakota life and health insurance guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-01. Scope.

1. This section provides coverage for the policies and contracts specified in subsection 2:
 - a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees of the persons covered under subdivision b.
 - b. To persons who are owners of or certificate holders under such policies or contracts other than unallocated annuity contracts and structured settlement annuities, and in each case who:
 - (1) Are residents; or
 - (2) Are not residents, but only under all of the following conditions:
 - (a) The insurer that issued such policies or contracts is domiciled in this state;
 - (b) The states in which the persons reside have associations similar to the association created under this chapter; and
 - (c) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

- c. For any unallocated annuity contract specified in subsection 2, subdivisions a and b do not apply, and this chapter, except as provided in subdivisions e and f, provides coverage to:
 - (1) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan, the sponsor of which has its principal place of business in this state; and
 - (2) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.
 - d. For structured settlement annuities specified in subsection 2, subdivisions a and b do not apply, and this chapter, except as provided in subdivisions e and f, provides coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if the payee:
 - (1) Is a resident, regardless of where the contract owner resides; or
 - (2) Is not a resident, and:
 - (a) The contract owner of the structured settlement annuity is a resident, or the contract owner of the structured settlement annuity is not a resident but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created under this chapter; and
 - (b) Neither the payee or beneficiary nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.
 - e. This chapter does not provide coverage to:
 - (1) A person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or
 - (2) A person covered under subdivision b, if any coverage is provided by the association of another state to the person.
 - f. This chapter provides coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person may not be provided coverage under this chapter. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.
2. This chapter provides coverage to the persons specified in subsection 1 for direct, nongroup life, health, or annuity policies or contracts, and supplemental contracts to any of these, for certificates under direct group policies and

contracts, and supplemental contracts to any of these and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.

3. This chapter does not provide coverage for:
 - a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy owner or contract owner;
 - b. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;
 - c. Any portion of a policy or contract to the extent that the rate of interest on which the portion of the policy or contract is based or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value:
 - (1) Averaged over the period of four years prior to the date on which the association member insurer becomes ~~obligated with respect to such policy or contract~~ an impaired or insolvent insurer under this chapter, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years ~~before the association became obligated prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter~~; and
 - (2) On and after the date on which the association member insurer becomes ~~obligated with respect to such policy or contract~~ an impaired or insolvent insurer under this chapter, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;
 - d. A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that such plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:
 - (1) A multiple employer welfare arrangement as defined in 29 U.S.C. 1144;
 - (2) A minimum premium group insurance plan;
 - (3) A stop-loss group insurance plan; or
 - (4) An administrative services only contract;
 - e. Any portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any

- fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;
- f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
 - g. Any unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;
 - h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association of natural persons benefit plan or a government lottery;
 - i. A portion of a policy or contract to the extent that the assessments required by section 26.1-38.1-06 with respect to the policy or contract are preempted or otherwise not permitted by federal or state law;
 - j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:
 - (1) Claims based on marketing materials;
 - (2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - (3) Misrepresentations of or regarding policy benefits;
 - (4) Extracontractual claims; or
 - (5) A claim for penalties or consequential or incidental damages;
 - k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; ~~and~~
 - l. A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or changes in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of

impairment or insolvency, whichever is earlier, and is not subject to forfeiture; and

m. A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to part C or part D of subchapter XVIII, chapter 7 of title 42 of the United States Code (commonly known as medicare part C and part D) or any regulations issued pursuant thereto.

4. The benefits that the association may become obligated to cover may in no event exceed the lesser of:

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

b. (1) With any respect to one life, regardless of the number of policies, or contracts:

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

~~(2)~~ (b) In health insurance benefits:

~~[1] One hundred thousand dollars in health insurance benefits for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance or major medical insurance or long-term care insurance, including any net cash surrender and net cash withdrawal values; or~~

~~(2)~~ [2] Three hundred thousand dollars for disability insurance, and three hundred thousand dollars for long-term care insurance.

~~[3] Five hundred thousand dollars for basic hospital, medical, and surgical insurance or major medical insurance.~~

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

~~(2)~~ With respect to each individual participating in a government retirement benefit plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, ~~one~~ two hundred ~~fifty~~ thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values;

~~(3)~~ With respect to each payee of a structured settlement annuity or beneficiary, or beneficiaries of the payee if deceased, ~~one~~ two hundred ~~fifty~~ thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, ~~if any;~~ or

(4) However, in no event shall the association be obligated to cover more than:

(a) An aggregate of three hundred thousand dollars in benefits with respect to any one life under paragraphs 1, 2, and 3 of subdivision b except with respect to the benefits for basic hospital, medical, and surgical insurance and major medical insurance under subparagraph b of paragraph 1 of subdivision b, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(b) With respect to one owner of multiple nongroup policies of life insurance, whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner.

~~e-~~(5) With respect to either one contract owner provided coverage under subparagraph c of paragraph 2 of subdivision b of subsection 1; or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in paragraph 2 of subdivision e, five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case in which one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event is the association obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts.

~~5.~~ However, under subsection 4 in no event shall the association be obligated to cover more than an aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivision b of subsection 4, or with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner.

~~6.~~ (6) The limitations set forth in this subsection-4 are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

~~7-5.~~ In performing its obligations to provide coverage under this chapter, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

SECTION 2. AMENDMENT. Subsections 12, 20, and 23 of section 26.1-38.1-02 of the North Dakota Century Code are amended and reenacted as follows:

12. "Member insurer" means any insurer, including a nonprofit health service corporation, licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 26.1-38.1-01, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:
 - a. A health maintenance organization;
 - b. A fraternal benefit society;
 - c. A mandatory state pooling plan;
 - d. A mutual assessment company or other person that operates on an assessment basis;
 - e. A nonprofit health service corporation that is participating in a reinsurance plan that has been approved by the commissioner as an alternative to participation in the state guaranty association;
 - f. An insurance exchange; ~~or~~
 - g. An organization that has a certificate or license limited to the issuance of charitable gift annuities under sections 26.1-34.1-01 through 26.1-34.1-07; or
 - h. Any entity similar to any of the above.
20. "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, ~~whichever occurs first~~. A person may be a resident of only one state, which in the case of a person other than a natural person must be its principal place of business. Citizens of the United States who are residents of foreign countries, or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created under this chapter, are deemed residents of the state of domicile of the insurer that issued the policies or contracts.
23. "Supplemental contract" means any written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or a life, health, or annuity contract.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 4. AMENDMENT. Paragraph 4 of subdivision b of subsection 2 of section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

- (4) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types ~~effor~~ future issuance without regard to any particular impairment or insolvency.

SECTION 5. AMENDMENT. Subsection 3 of section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. The amount of any class A assessment must be determined ~~byat the discretion of the board of directors and may~~ must be authorized and called on a pro rata or non-pro rata basis. ~~If pro rata, the board may provide that it be credited against future class B assessments. The total of all non-pro rata assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year.~~

SECTION 6. AMENDMENT. Subdivision e of subsection 14 of section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- e. If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member insurer. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

SECTION 7. AMENDMENT. Subsection 4 of section 26.1-38.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The plan of operation must, in addition to requirements enumerated elsewhere in this chapter:
 - a. Establish procedures for handling the assets of the association;
 - b. Establish the amount and method of reimbursing members of the board of directors under section 26.1-38.1-04;
 - c. Establish regular places and times for meetings, including telephone conference calls of the board of directors;
 - d. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - e. Establish the procedures whereby ~~elections~~ selections for the board of directors will be made and submitted to the commissioner;
 - f. Establish any additional procedures for assessments under section 26.1-38.1-06; ~~and~~
 - g. Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

- h. Establish procedures whereby a director may be removed for cause, including if a member insurer director becomes an impaired or insolvent insurer; and
- i. Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

SECTION 8. AMENDMENT. Subsection 4 of section 26.1-38.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Section 26.1-38.1-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-11. Miscellaneous provisions.

1. This chapter does not reduce the liability for unpaid assessments of the insured of an impaired or insolvent insurer operating under a plan with assessment liability.
2. Records must be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. The records of the association with respect to an impaired or insolvent insurer may not be disclosed before the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, ~~upon the termination of the impairment or insolvency of the insurer, or~~ except upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 26.1-38.1-12.
3. For the purpose of carrying out its obligations under this chapter, the association must be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsections 12, 13, and 14 of section 26.1-38.1-05. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue as covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
4. As a creditor of the impaired or insolvent insurer as established in subsection 3 and consistent with chapter 26.1-06, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, does not apply to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association is entitled to apply to the receivership court for approval of its own proposal to disburse these assets.

5. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, any policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration must be given to the welfare of the policy owners of the continuing or successor insurer.
6. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 26.1-38.1-05 with respect to such insurer have been fully recovered by the association.
7. a. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has the right to recover on behalf of the insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of ~~this subsection and subsections 8 and 9~~ subdivisions b, c, and d.
- ~~8.~~ b. No such distribution is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- ~~9.~~ c. Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if payment had been made immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.
- ~~10.~~ d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
- ~~14.~~ e. If any person liable under ~~subsection 8~~ subdivision c is insolvent, all its affiliates that controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

SECTION 10. AMENDMENT. Section 26.1-38.1-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-15. Stay of proceedings - Reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this state must be stayed ~~sixtyone hundred eighty~~ days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such

judgment set aside by the same court that made such judgment and must be permitted to defend against such suit on the merits.

SECTION 11. Section 26.1-38.1-17 of the North Dakota Century Code is created and enacted as follows:

26.1-38.1-17. Prospective application.

This Act applies to cases involving an insolvent insurer which is placed under an order of liquidation with a finding of insolvency on or after the effective date of this Act. For cases involving an insolvent insurer which was placed under an order of liquidation with a finding of insolvency prior to the effective date of this Act, the provisions of this chapter in effect at the time of the order of liquidation shall apply.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 221

SENATE BILL NO. 2062

(Senators Lyson, Oehlke, Olafson, O'Connell)
(Representative Sukut)

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to property and casualty certificates of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Certificate holder" means a person, other than a policyholder, to which a certificate of insurance has been issued.
2. "Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance producer as a statement of property or casualty insurance coverage. The term does not include a policy of insurance or insurance binder.
3. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance.
4. "Insurer" means any organization that issues property or casualty insurance.
5. "Policyholder" means a person that contracted with an insurer for property or casualty insurance coverage.

Limitations on issuance of certificates of insurance.

A person may not prepare, issue, or require the issuance of a certificate of insurance on property, operations, or risks located in this state unless the certificate of insurance form has been filed with the commissioner by or on behalf of the insurer and has been approved by the commissioner. The commissioner may designate as meeting the requirements of this section and not requiring further approval a standard certificate of insurance form, which may include a form promulgated and filed by a national insurance advisory organization, such as the association for cooperative research and development, the American association of insurance services, and the insurance services office.

Certificate of insurance limitations.

A person may not alter or modify a certificate of insurance form approved by the commissioner; may not demand, require, or issue a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance makes reference; and may not knowingly prepare or

issue a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by the policy. A certificate of insurance may not contain a reference to a construction contract, service contract, or insurance requirement for the purpose of amending coverage afforded by the policy to which the certificate makes reference.

Notice requirements.

The only circumstance under which a certificate holder is entitled to the legal right to notice of cancellation, nonrenewal, or any material change or any similar notice concerning a policy of insurance is if the certificate holder has such notice rights under the terms of the policy or under any endorsement to the policy. The terms and conditions of the notice, including the required timing of the notice, are governed by the policy of insurance and may not be altered by a certificate of insurance.

Approved April 19, 2011
Filed April 20, 2011

CHAPTER 222

HOUSE BILL NO. 1308

(Representatives Vigesaa, Frantsvog, Monson, Delmore)
(Senators Hogue, Klein, Wanzek)

AN ACT to amend and reenact section 26.1-40-17 of the North Dakota Century Code, relating to establishment of primary and excess automobile liability coverages for rental vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-40-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances.

When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, renting, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

Any policy provisions at variance with this section must be interpreted so as to comply with this section.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 223

HOUSE BILL NO. 1123

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact sections 26.1-44-01.1, 26.1-44-03.1, 26.1-44-06.1, 26.1-44-10, and 26.1-44-11 of the North Dakota Century Code, relating to surplus lines insurance and enactment of the surplus lines insurance multistate compliance compact; to amend and reenact sections 26.1-44-01, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06, and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-44-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-01. Surplus lines insurance valid.

Insurance contracts procured as surplus lines coverage from ~~unauthorized nonadmitted~~ insurers in accordance with this chapter are valid and enforceable as to all parties and must be given recognition in all matters and respects to the same effect as like contracts issued by ~~authorized admitted~~ insurers.

SECTION 2. Section 26.1-44-01.1 of the North Dakota Century Code is created and enacted as follows:

26.1-44-01.1. Definitions.

1. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.
2. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines producer may place surplus lines insurance pursuant to section 26.1-44-03.
3. "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
 - a. The person employs or retains a qualified risk manager to negotiate insurance coverage.
 - b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.
 - c. (1) The person meets at least one of the following criteria:
 - (a) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to paragraph 2.

as defined in paragraph 4 of subdivision a of section 2 of the Liability Risk Retention Act of 1986 [15 U.S.C. 3901(a)(4)].

9. "Reciprocal state" means a state that has:
 - a. Entered into a nonadmitted insurance compact; or
 - b. Otherwise adopted the allocation schedule and reporting forms prescribed by a multistate agreement for nonadmitted insurance.
10. "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, permitted to be placed through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
11. "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.
12. "Type of insurance" means coverage afforded under the particular policy that is being placed.

SECTION 3. AMENDMENT. Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-02. Affidavit as prerequisite of insurance — ContentsDuty to file evidence of insurance and affidavits.

~~Each surplus lines insurance producer licensed under chapter 26.1-26, within sixty days after the placing of any surplus lines insurance where the insured's home state is this state, shall in every case execute and file with a written report regarding the insurance which must be kept confidential by the commissioner within sixty days of the effective date of any surplus lines insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state. The report must include:~~

1. The name and address of the insured;
2. The identity of the insurer or insurers;
3. A description of the subject and location of the risk;
4. The amount of premium charged for the insurance;
5. A tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;

6. Any other pertinent information as the commissioner may reasonably require; and
7. An affidavit on a form prescribed by the commissioner as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The affidavit must be open to public inspection. The affidavit must affirm that the insured was expressly advised in writing prior to placement of the insurance that:
 - a. The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and
 - b. In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search or to file the affidavit in subsection 7 if the surplus lines producer has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight and the exempt commercial purchaser has subsequently requested in writing the surplus lines producer to procure or place such insurance from a nonadmitted insurer.

SECTION 4. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines in solvent insurers insurance.

~~A surplus lines insurance producer may not knowingly place surplus lines insurance with an insurer that is financially unsound. The surplus lines insurance producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance producer may not so insure with:~~

1. ~~Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.~~
2. ~~Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States. The placement of nonadmitted insurance is subject to this section only if the insured's home state is this state. Surplus lines insurance may be placed by a surplus lines producer if:~~
 1. Each insurer is an eligible surplus lines insurer;
 2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
 3. The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it;

4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:
 - a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
 - (1) (a) The minimum capital and surplus requirements under the law of this state; or
 - (b) Fifteen million dollars.
 - (2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or
 - b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and
5. All other requirements of this chapter are met.

SECTION 5. Section 26.1-44-03.1 of the North Dakota Century Code is created and enacted as follows:

26.1-44-03.1. Surplus lines tax.

1. If the insured's home state is this state, in addition to the full amount of gross premiums charged by the insurer for the insurance, every surplus lines producer shall collect and pay to the commissioner a sum equal to one and three-fourths percent of the gross premiums charged, assessments, membership fees, subscriber fees, policy fees, and service fees, less any return premiums, for surplus lines insurance provided by the surplus lines producer. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable must be computed based on:
 - a. An amount equal to one and three-fourths percent on that portion of the gross premiums allocated to this state plus;
 - b. An amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to other properties, risks, or exposures located or to be performed outside of this state less;
 - c. The amount of gross premiums allocated to this state and returned to the insured.

2. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.
3. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact for the purpose of collecting, allocating, and disbursing to reciprocal states any funds collected pursuant to subdivision b of subsection 1 applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this state, the net premium tax collected must be retained by this state.
4. At the time of filing the verified report as set forth in section 26.1-44-06.1, each surplus lines producer shall pay the premium tax due for the policies written during the period covered by the report.
5. If the insured's home state is this state, in determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state must be considered written on properties, risks, or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state.

SECTION 6. AMENDMENT. Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-04. Service of process.

Any insurer desiring to transact any business under this chapter, by any surplus lines insurance producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

SECTION 7. AMENDMENT. Section 26.1-44-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-05. Endorsement of policyConsumer notice.

~~Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES PRODUCER'S LICENSE OF _____ THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION."~~
The surplus lines insurance producer shall properly complete the endorsement by

typing or printing the producer's full name in the space provided and shall sign and date the endorsement. If the insured's home state is this state, the surplus lines producer shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer shall maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer shall tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line."

SECTION 8. AMENDMENT. Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-06. Record of business— Filing of statement— ContentRecords of surplus lines producer.

Every~~if the insured's home state is this state, each~~ surplus lines insurance producer shall keep a separate account of the business under the producer's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of authorized insurance companies. If a surplus lines policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state. in this state a full and true record of each surplus lines insurance contract placed by or through the producer, including a copy of the policy, certificate, cover note, or other evidence of insurance showing each of the following applicable items:

1. Amount of the insurance, risks, and perils insured;
2. Brief description of the property insured and its location;
3. Gross premium charged;
4. Any return premium paid;

5. Rate of premium charged upon the several items of property;
6. Effective date and terms of the contract;
7. Name and address of the insured;
8. Name and address of the insurer;
9. Amount of tax and other sums to be collected from the insured;
10. Allocation of taxes by state;
11. Identity of the producer of record;
12. Any confirming correspondence from the insurer or its representative; and
13. The application.

The surplus lines producer shall keep open the record of each contract at all reasonable times to examination by the commissioner without notice for a period not less than five years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines producer shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

SECTION 9. Section 26.1-44-06.1 of the North Dakota Century Code is created and enacted as follows:

26.1-44-06.1. Reports - Summary of exported business.

If the insured's home state is this state, on or before April first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar year, including:

1. Aggregate gross premiums written;
2. Aggregate return premiums;
3. Amount of aggregate tax remitted to this state; and
4. Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to section 26.1-44-03.1.

A verified report is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

SECTION 10. AMENDMENT. Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.

Every ~~such~~ surplus lines insurance producer who fails or refuses to make and file the ~~annual statement~~ verified report required by section 26.1-44-06.1, and to pay the

taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of ~~delinquency~~delinquency. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the ~~annual statement~~verified report and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines ~~insurance~~insurance producer's license ~~of the producer~~ if any surplus lines ~~insurance~~insurance producer fails to make and file the ~~annual statement~~verified report and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines ~~insurance~~insurance producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines ~~insurance~~insurance producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

SECTION 11. Section 26.1-44-10 of the North Dakota Century Code is created and enacted as follows:

26.1-44-10. Independently procured insurance - Duty to report and pay tax.

If the insured's home state is this state, in accordance with subsection 9 of section 26.1-02-05, each insured in this state who independently procures or continues or renews insurance with a nonadmitted insurer on properties, risks, or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines producer, is subject to the same requirements under this chapter as apply to a surplus lines producer.

SECTION 12. Section 26.1-44-11 of the North Dakota Century Code is created and enacted as follows:

26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.

The surplus lines insurance multistate compliance compact is enacted into law and entered by this state with all other states legally joining therein in the form substantially as follows:

ARTICLE I - PURPOSE

The purposes of this compact are:

1. To implement the express provisions of the Nonadmitted and Reinsurance Reform Act.
2. To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on nonadmitted insurance; and to protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for nonadmitted insurance of multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission.

3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers.
4. To streamline regulatory compliance with respect to nonadmitted insurance placements by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.
5. To establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission.
6. To improve coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to nonadmitted insurance.
7. To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for nonadmitted insurance of multistate risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the nonadmitted insurance market.
8. To adopt uniform mandatory rules with respect to regulatory compliance requirements for:
 - a. Foreign insurer eligibility requirements.
 - b. Surplus lines policyholder notices.
9. To establish the surplus lines insurance multistate compliance compact commission.
10. To coordinate reporting of clearinghouse transaction data on nonadmitted insurance of multistate risks among compacting states and contracting states.
11. To perform these and such other related functions as may be consistent with the purposes of the surplus lines insurance multistate compliance compact.

ARTICLE II - DEFINITIONS

For purposes of this compact, the following definitions apply:

1. "Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state; for purposes of this compact, "admitted insurer" does not include a domestic surplus lines insurer as may be defined by applicable state law.
2. "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

3. "Allocation formula" means the uniform methods promulgated by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.
4. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
5. "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for nonadmitted insurance of multistate risks, in accordance with this compact and rules to be adopted by the commission.
6. "Clearinghouse transaction data" means the information regarding nonadmitted insurance of multistate risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules to be adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.
7. "Commission" means the surplus lines insurance multistate compliance compact commission established by this compact.
8. "Commissioner" means the chief insurance regulatory official of a state, including commissioner, superintendent, director, or administrator or their designees.
9. "Compacting state" means any state that has enacted this compact legislation and which has not withdrawn pursuant to article XIV, subsection 1, or been terminated pursuant to article XIV, subsection 2.
10. "Contracting state" means any state that has not enacted this compact legislation but has entered a written contract with the commission to utilize the services of and fully participate in the clearinghouse.
11. "Control", an entity has "control" over another entity if:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.
12. "Home state":
 - a. Except as provided in subdivision b, the term "home state" means, with respect to an insured:
 - (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

- (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
13. "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other nonadmitted insurer as permitted by the laws of the home state.
14. "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of the Nonadmitted and Reinsurance Reform Act on and after July 21, 2011.
15. "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state is limited to one vote.
16. "Multistate risk" means a risk with insured exposures in more than one state.
17. "Nonadmitted insurance" means surplus lines insurance and independently procured insurance.
18. "Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.
19. "Nonadmitted and Reinsurance Reform Act" means the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203; 124 Stat.1589; 15 U.S.C. 8201 et seq.] which is subtitle B of title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
20. "Noncompacting state" means any state that has not adopted this compact.
21. "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.
22. "Premium tax" means with respect to nonadmitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.
23. "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

24. "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations and is domiciled in any state.
25. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.
26. "Single-state risk" means a risk with insured exposures in only one state.
27. "State" means any state, district, or territory of the United States of America.
28. "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.
29. "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the home state; for purposes of this compact, "surplus lines insurance" also means excess lines insurance as may be defined by applicable state law.
30. "Surplus lines insurer" means a nonadmitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this compact, "surplus lines insurer" also means an insurer that is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.
31. "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multistate compliance compact commission.
2. Pursuant to article IV, the commission may adopt mandatory rules that establish exclusive home state authority regarding nonadmitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.
3. Pursuant to article IV, the commission may adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

4. The commission is a body corporate and politic, and an instrumentality of the compacting states.
5. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.
6. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

ARTICLE IV - AUTHORITY TO ESTABLISH MANDATORY RULES

The commission shall adopt mandatory rules that establish:

1. Allocation formulas for each type of nonadmitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus lines licensee as a material consideration.
2. Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.
3. Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state-designated agencies or entities.
4. That nonadmitted insurance of multistate risks must be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance must include persons required to be licensed to sell, solicit, or negotiate surplus lines insurance; insurer eligibility requirements or other approved nonadmitted insurer requirements; diligent search; and state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission. Home state regulatory compliance requirements applicable to independently procured insurance placements must include providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.
5. That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all nonadmitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

6. That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than ninety days' advance notice to the compact commission.
7. That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly utilizing one or more of the following dates only: March first, June first, September first, and December first.
8. That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.
9. The obligation of the home state by itself, through a designated agent, surplus lines stamping, or service office, to collect clearinghouse transaction data from surplus lines licensees and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.
10. A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees, and insureds who independently procure insurance all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due, and a method to pay them through the clearinghouse.
11. That each surplus lines licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.
12. That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state must be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.
13. Uniform foreign insurer eligibility requirements as authorized by the Nonadmitted and Reinsurance Reform Act.
14. A uniform policyholder notice.
15. Uniform treatment of purchasing group surplus lines insurance placements.

ARTICLE V - POWERS OF THE COMMISSION

The commission may:

1. Promulgate rules and operating procedures, pursuant to article VIII of this compact, which must have the force and effect of law and must be binding in the compacting states to the extent and in the manner provided in this compact;
2. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law may not be affected;
3. Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided, however, the commission is not empowered to demand or subpoena records or data from nonadmitted insurers;
4. Establish and maintain offices, including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding nonadmitted insurance of multistate risks, single-state risks for states that elect to require surplus lines licensees to pay premium tax on single-state risks through the clearinghouse, and tax reporting forms;
5. Purchase and maintain insurance and bonds;
6. Borrow, accept, or contract for services of personnel, including employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;
7. Hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel, and other related personnel matters;
8. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
9. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
10. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
11. Provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:
 - a. Minimum audit standards, including sampling methods;

- b. Review of internal controls;
 - c. Cooperation and sharing of audit responsibilities between compacting states;
 - d. Handling of refunds or credits due to overpayments or improper allocation of premium taxes;
 - e. Taxpayer records to be reviewed, including a minimum retention period; and
 - f. Authority of compacting states to review, challenge, or reaudit taxpayer records;
- 12. Enforce compliance by compacting states and contracting states with rules and bylaws pursuant to the authority set forth in article XIV;
 - 13. Provide for dispute resolution among compacting states and contracting states;
 - 14. Advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents, or brokers domiciled or doing business in noncompacting states, consistent with the purposes of this compact;
 - 15. Make available advice and training to those personnel in state stamping offices, state insurance departments, or other state departments for recordkeeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;
 - 16. Establish a budget and make expenditures;
 - 17. Borrow money;
 - 18. Appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
 - 19. Establish an executive committee of not less than seven nor more than fifteen representatives, which must include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one-year term. Representatives of the executive committee must be entitled to one vote each. The executive committee must have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including the activities of the operations committee created under this article and compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such other duties as provided herein and as deemed necessary;
 - 20. Establish an operations committee of not less than seven and not more than fifteen representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to

be acquired by the commission and to provide analysis, advice, determinations, and recommendations regarding the establishment of mandatory rules to be adopted by the commission;

21. Enter contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;
22. Adopt and use a corporate seal; and
23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

ARTICLE VI - ORGANIZATION OF THE COMMISSION

1. a. Each compacting state must have and is limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member must be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which that member must be appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state wherein the vacancy exists.
- b. Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws.
- c. The commission, by a majority vote of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
 - (1) Establishing the fiscal year of the commission;
 - (2) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
 - (3) Providing reasonable standards and procedures for the establishment and meetings of committees, and governing any general or specific delegation of any authority or function of the commission;
 - (4) Providing reasonable procedures for calling and conducting meetings of the commission which consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting;

director shall hire and supervise such other persons as may be authorized by the commission.

3. a. An operations committee is established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee must accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee must be resolved by the majority vote of the commission.

The operations committee may not have more than fifteen representatives or one for each state if there are fewer than fifteen compacting states, who shall serve for a term and must be established as set forth in the bylaws.

The operations committee must have responsibility for:

- (1) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms, and to minimize costs to the states, state stamping offices, and the clearinghouse.
 - (2) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
 - (3) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations.
 - (4) Such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.
- b. All representatives of the operations committee must be individuals who have extensive experience or employment or both in the surplus lines insurance business, including executives and attorneys employed by surplus lines insurers, surplus lines licensees, law firms, state insurance departments or state stamping offices or any combination of these entities. Operations committee representatives from compacting states, which utilize the services of a state stamping office, shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.
4. a. A legislative committee composed of state legislators or their designees is established to monitor the operations of and make recommendations to, the commission, including the executive committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of

- any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.
- b. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.
5. The commission shall maintain its corporate books and records in accordance with the bylaws.
6. a. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision may be construed to protect any such person from suit or liability or both for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VII - MEETINGS AND ACTS OF THE COMMISSION

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
2. Each member of the commission may cast a vote to which that compacting state is entitled and may participate in the business and affairs of the commission. A member shall vote in person or by such other means as

- provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
3. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
 4. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or otherwise provided in the compact.
 5. The commission shall promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act [5 U.S.C. 552b], as may be amended.
 6. The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:
 - a. Relate solely to the commission's internal personnel practices and procedures;
 - b. Disclose matters specifically exempted from disclosure by federal and state statute;
 - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
 - d. Involve accusing a person of a crime, or formally censuring a person;
 - e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - f. Disclose investigative records compiled for law enforcement purposes; or
 - g. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
 7. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

ARTICLE VIII - RULES AND OPERATING PROCEDURES - RULEMAKING FUNCTIONS OF THE COMMISSION

1. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.

2. Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the commission.
3. All rules and amendments, thereto, must become effective as of the date specified in each rule, operating procedure, or amendment.
4. Not later than thirty days after a rule is adopted, any person may file a petition for judicial review of the rule, provided that the filing of such a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

ARTICLE IX - COMMISSION RECORDS AND ENFORCEMENT

1. The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse must be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this section, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission must remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.
3. The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state must be deemed to be in default as set forth in article XIV.

ARTICLE X - DISPUTE RESOLUTION

1. Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states, or noncompacting states, and the commission shall promulgate a rule providing alternative dispute resolution procedures for such disputes.
2. The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.
3. Any alternative dispute resolution procedures must be utilized in circumstances where a dispute arises as to which state constitutes the home state.

ARTICLE XI - REVIEW OF COMMISSION DECISIONS

1. Except as necessary for adopting rules to fulfill the purposes of this compact, the commission may not otherwise regulate insurance in the compacting states.
2. Not later than thirty days after the commission has given notice of any rule or allocation formula, any third-party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 6 of article III.
3. The commission may monitor, review, and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection 2.

ARTICLE XII - FINANCE

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.
2. The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in article VIII.
4. The commission must be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and may not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.
5. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission must be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts may not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request, provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, must remain confidential.
6. A compacting state may not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.
7. The commission may not make any political contributions to candidates for elected office, elected officials, political parties, or political action committees. The commission may not engage in lobbying except with respect to changes to this compact.

ARTICLE XIII - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

1. Any state is eligible to become a compacting state.
2. The compact must become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission must become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in subsection 4. Thereafter, it must become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data must begin on the first January first or July first following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting

clearinghouse transaction data must be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety days' advance notice.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment may not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.
4. Surplus lines insurance premiums by state:

<u>Premiums Based State</u>	<u>Share of Total on Taxes Paid</u>	<u>Premiums</u>
<u>Alabama</u>	<u>\$445,746,000</u>	<u>1.47%</u>
<u>Alaska</u>	<u>89,453,519</u>	<u>0.29%</u>
<u>Arizona</u>	<u>663,703,267</u>	<u>2.18%</u>
<u>Arkansas</u>	<u>201,859,750</u>	<u>0.66%</u>
<u>California</u>	<u>5,622,450,467</u>	<u>18.49%</u>
<u>Colorado</u>	<u>543,781,333</u>	<u>1.79%</u>
<u>Connecticut</u>	<u>329,358,800</u>	<u>1.08%</u>
<u>Delaware</u>	<u>92,835,950</u>	<u>0.31%</u>
<u>Florida</u>	<u>2,660,908,760</u>	<u>8.75%</u>
<u>Georgia</u>	<u>895,643,150</u>	<u>2.95%</u>
<u>Hawaii</u>	<u>232,951,489</u>	<u>0.77%</u>
<u>Idaho</u>	<u>74,202,255</u>	<u>0.24%</u>
<u>Illinois</u>	<u>1,016,504,629</u>	<u>3.34%</u>
<u>Indiana</u>	<u>412,265,320</u>	<u>1.36%</u>
<u>Iowa</u>	<u>135,130,933</u>	<u>0.44%</u>
<u>Kansas</u>	<u>160,279,300</u>	<u>0.53%</u>
<u>Kentucky</u>	<u>167,996,133</u>	<u>0.55%</u>
<u>Louisiana</u>	<u>853,173,280</u>	<u>2.81%</u>
<u>Maine</u>	<u>60,111,200</u>	<u>0.20%</u>
<u>Maryland</u>	<u>434,887,600</u>	<u>1.43%</u>
<u>Massachusetts</u>	<u>708,640,225</u>	<u>2.33%</u>
<u>Michigan</u>	<u>703,357,040</u>	<u>2.31%</u>
<u>Minnesota</u>	<u>393,128,400</u>	<u>1.29%</u>
<u>Mississippi</u>	<u>263,313,175</u>	<u>0.87%</u>
<u>Missouri</u>	<u>404,489,860</u>	<u>1.33%</u>
<u>Montana</u>	<u>64,692,873</u>	<u>0.21%</u>
<u>Nebraska</u>	<u>92,141,167</u>	<u>0.30%</u>
<u>Nevada</u>	<u>354,271,514</u>	<u>1.17%</u>
<u>New Hampshire</u>	<u>102,946,250</u>	<u>0.34%</u>
<u>New Jersey</u>	<u>1,087,994,033</u>	<u>3.58%</u>
<u>New Mexico</u>	<u>67,608,458</u>	<u>0.22%</u>
<u>New York</u>	<u>2,768,618,083</u>	<u>9.11%</u>
<u>North Carolina</u>	<u>514,965,060</u>	<u>1.69%</u>
<u>North Dakota</u>	<u>36,223,943</u>	<u>0.12%</u>
<u>Ohio</u>	<u>342,000,000</u>	<u>1.12%</u>
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05%</u>
<u>Oregon</u>	<u>312,702,150</u>	<u>1.03%</u>
<u>Pennsylvania</u>	<u>780,666,667</u>	<u>2.57%</u>
<u>Rhode Island</u>	<u>71,794,067</u>	<u>0.24%</u>
<u>South Carolina</u>	<u>412,489,825</u>	<u>1.36%</u>
<u>South Dakota</u>	<u>38,702,120</u>	<u>0.13%</u>

<u>Tennessee</u>	<u>451,775,240</u>	<u>1.49%</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06%</u>
<u>Utah</u>	<u>142,593,412</u>	<u>0.47%</u>
<u>Vermont</u>	<u>41,919,433</u>	<u>0.14%</u>
<u>Virginia</u>	<u>611,530,667</u>	<u>2.01%</u>
<u>Washington</u>	<u>739,932,050</u>	<u>2.43%</u>
<u>West Virginia</u>	<u>130,476,250</u>	<u>0.43%</u>
<u>Wisconsin</u>	<u>248,758,333</u>	<u>0.82%</u>
<u>Wyoming</u>	<u>40,526,967</u>	<u>0.13%</u>
<u>Total</u>	<u>\$30,400,197,251</u>	<u>100.00%</u>

This data is 2005 calendar year data excerpted from a study dated February 27, 2007, by Mackin & Company.

ARTICLE XIV - WITHDRAWAL, DEFAULT, AND TERMINATION

1.
 - a. Once effective, the compact must continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact, "withdrawing state", by enacting a statute specifically repealing the statute which enacted the compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal may not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.
 - c. The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.
 - d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
 - e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal must continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.
 - f. Reinstatement following withdrawal of any compacting state must occur upon the effective date of the withdrawing state reenacting the compact.
2.
 - a. If the commission determines that any compacting state has at any time defaulted, "defaulting state", in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify

- (3) Clearinghouse transaction data collection requirements;
 - (4) Premium tax payment timeframes and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single-state risks;
 - (5) Exclusive compliance with surplus lines law of the home state of the insured;
 - (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks;
 - (7) Uniform foreign insurers eligibility requirements;
 - (8) Uniform policyholder notice; and
 - (9) Uniform treatment of purchasing groups procuring nonadmitted insurance.
- c. Except as stated in subdivision b, any rule, uniform standard, or other requirement of the commission must constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under article X; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the attorney general of the state, including maintaining any actions or proceedings, as authorized by law.
2. a. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.
- b. All agreements between the commission and the compacting states are binding in accordance with their terms.
- c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.
- d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission must be ineffective as to that state and those obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

CHAPTER 224

HOUSE BILL NO. 1183

(Representatives Keiser, N. Johnson, Gruchalla)
(Senators Flakoll, Wardner, Warner)

AN ACT to create and enact a new section to chapter 26.1-47 of the North Dakota Century Code, relating to preferred provider arrangements with dental service providers; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-47 of the North Dakota Century Code is created and enacted as follows:

Fees for dental services - Prohibition.

1. As used in this section, "covered services" means dental care services for which a reimbursement is available under an enrollee's plan or for which a reimbursement would be available but for the application of a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, or frequency limitation.
2. Except for fees for covered services, a preferred provider arrangement for a dental plan may not directly or indirectly set or otherwise regulate the fees charged by the preferred provider for dental care services.

SECTION 2. APPLICATION. Section 1 of this Act applies to all preferred provider arrangements issued on or after the effective date of this Act.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 225

HOUSE BILL NO. 1126

(Representative Keiser)
(At the request of the Insurance Commissioner)

AN ACT to create and enact chapter 26.1-54 of the North Dakota Century Code, relating to the creation of an American health benefit exchange; to provide reports to the legislative management; to provide an appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-54 of the North Dakota Century Code is created and enacted as follows:

26.1-54-01. American health benefit exchange.

To ensure that an American health benefit exchange is created in the state, the commissioner and the department of human services shall:

1. Plan for the implementation of an American health benefit exchange for the state that facilitates the purchase of qualified health benefit plans; provides for the establishment of a small business health options program that is designed to assist qualified small employers in facilitating the enrollment of their employees in qualified health benefit plans offered in the small group market; implements eligibility determination and enrollment of individuals in the state's medical assistance program and the state's children's health insurance program; provides simplification; provides coordination among medical assistance, the children's health insurance program, and the state health insurance exchange; and meets the requirements of the Patient Protection and Affordable Care Act of 2010 [Pub. L. 111-148] as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. The legislative assembly may consider establishing one exchange that will provide services to both qualified individuals and qualified small employers;
2. Subject to section 3 of this Act, take all actions necessary to ensure that the exchange is determined, not later than January 1, 2013, by the federal government to be ready to operate not later than January 1, 2014, and that the exchange is operating on or after January 1, 2014;
3. Subject to section 3 of this Act, consider whether to seek federal grant funds for the planning and implementation of the exchange and administer all funds appropriated or made available for the purpose of carrying out the provisions of this chapter;
4. Subject to section 3 of this Act, contract with outside entities as necessary to provide services necessary to implement the exchange; and
5. Collaborate with the information technology department as necessary and appropriate in completing the responsibilities set forth in this section.

26.1-54-02. Rules.

The commissioner and the department of human services may adopt rules necessary or desirable to carry out the provisions of this chapter.

26.1-54-03. Cooperation of state agencies.

State agencies shall cooperate with the commissioner and the department of human services to ensure the success of the exchange.

26.1-54-04. Records.

Notwithstanding any provision of this code making records confidential, the commissioner or the commissioner's designee and the department of human services may receive from and provide to federal and state agencies information gathered in the administration of the exchange, including social security numbers, if the disclosure is necessary for the commissioner, the department of human services, or the receiving entity to perform its duties and responsibilities.

SECTION 2. APPROPRIATION - FEDERAL FUNDS. There is appropriated the sum of \$1,000,000, or so much of the sum as may be necessary, out of federal funds available under the Patient Protection and Affordable Care Act of 2010 [Pub. L. 111-148] as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] to the insurance commissioner for the purpose of planning for implementation of an American health benefit exchange for the state, for the period beginning with the effective date of this Act and ending June 30, 2013.

SECTION 3. APPLICATION. In carrying out the requirements of this Act, the insurance commissioner and the department of human services shall provide regular updates to the legislative management during the 2011-12 interim. In determining, planning, and implementing an American health benefit exchange for the state, collectively the commissioner and the department of human services shall submit proposed legislation to the legislative management for consideration at a special legislative session if the state is required by federal law to take any action by January 1, 2013. For any plan, program, or requirement that must be implemented between January 1, 2013, and January 1, 2014, collectively the commissioner and the department of human services shall submit proposed legislation to the legislative management before October 15, 2012.

Approved May 9, 2011
Filed May 10, 2011