

CHAPTER 45-03-07.1 CREDIT FOR REINSURANCE MODEL REGULATION

Section

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45-03-07.1-01. Credit for reinsurance - Reinsurer licensed in this state.

Pursuant to subsection 24 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-02. Credit for reinsurance - Accredited reinsurers.

1. Pursuant to subsection 32 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:
 - a. File a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
 - b. File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - c. File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
 - d. Maintain a surplus as regards policyholders in an amount not less than twenty million dollars, or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing,

suspend or revoke the accreditation. Credit may not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-03. Credit for reinsurance - Reinsurer domiciled in another state.

1. Pursuant to subsection ~~43~~ of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:
 - a. Is domiciled in, or, in the case of a United States branch of an alien assuming insurer, is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under North Dakota Century Code chapter 26.1-31.2 and this chapter;
 - b. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - c. Files a properly executed form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.
2. The provisions of this section relating to surplus as regards policyholders do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of North Dakota Century Code chapter 26.1-31.2 and this chapter.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-04. Credit for reinsurance - Reinsurers maintaining trust funds.

1. Pursuant to subsection ~~54~~ of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03, for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.
2. The following requirements apply to the following categories of assuming insurer:
 - a. The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars, except as provided in subdivision b.

- b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
- c. (1) The trust fund for a group, including incorporated and individual unincorporated underwriters, must consist of:
- (a) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the United States domiciled ceding insurers to any underwriter of the group;
 - (b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
 - (c) In addition to these trusts, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.
- (2) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:
- (a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
 - (b) If a certification is unavailable, a financial statement prepared by independent public accountants, of each underwriter member of the group.
- d. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the national association of insurance commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

- (a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group;
 - (b) Maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
 - (c) File a properly executed form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any examination.
 - (2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.
3. a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that:
 - (1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
 - (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;
 - (3) The trust shall be subject to examination as determined by the commissioner;
 - (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
 - (5) No later than February twenty-eighth of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December thirty-first.
- b. (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

- (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
 - (3) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
 - (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
4. For purposes of this section, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and includes:
 - a. For business ceded by domestic insurers authorized to write accident and health and property and casualty insurance:
 - (1) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - (2) Reserves for losses reported and outstanding;
 - (3) Reserves for losses incurred but not reported;
 - (4) Reserves for allocated loss expenses; and
 - (5) Unearned premiums.
 - b. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:
 - (1) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - (2) Aggregate reserves for accident and health policies;
 - (3) Deposit funds and other liabilities without life or disability contingencies; and
 - (4) Liabilities for policy and contract claims.
5. Assets deposited in trusts established pursuant to North Dakota Century Code section 26.1-31.2-01 and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, and subdivision g, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For

purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of North Dakota Century Code section 26.1-31.2-01 shall be invested only as follows:

- a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:
 - (1) The United States or by any agency or instrumentality of the United States;
 - (2) A state of the United States;
 - (3) A territory, possession, or other governmental unit of the United States;
 - (4) An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 if the obligations shall be by law, statutory or otherwise, payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
 - (5) The government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- b. Obligations that are issued in the United States, or that are dollar-denominated and issued in a non-United States market, by a solvent United States institution other than an insurance company or that are assumed or guaranteed by a solvent United States institution other than an insurance company and that are not in default as to principal or interest if the obligations:
 - (1) Are rated A or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
 - (2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners; or
 - (3) Have been designated as class one or class two by the securities valuation office of the national association of insurance commissioners.
- c. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- d. An investment made pursuant to the provisions of subdivisions a, b, or c shall be subject to the following additional limitations:

- (1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;
 - (2) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;
 - (3) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and
 - (4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs 1 and 3 of subdivision b, but shall not exceed two percent of the assets of the trust.
- e. As used in this section:
- (1) "Mortgage-related security" means an obligation that is rated AA or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners and that either:
 - (a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:
 - [1] Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
 - [2] Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, when the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. section 1703; or
 - (b) Is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparagraph a.
 - (2) "Promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.
- f. Equity interests.

- (1) Investments in common shares or partnership interests of a solvent United States institution are permissible if:
 - (a) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
 - (b) The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.
 - (2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development, if:
 - (a) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners; and
 - (b) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the organization for economic cooperation and development.
 - (3) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.
- g. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- h. Investment companies.
- (1) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. section 80a, are permissible investments if the investment company:
 - (a) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under subdivision a, b, or c or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivision a, b, or c; or
 - (b) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under paragraph 1 of subdivision f.
 - (2) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

- (a) An investment in an investment company qualifying under subparagraph a of paragraph 1 shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and
- (b) Investments in an investment company qualifying under subparagraph b of paragraph 1 shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1 of subdivision f.

i. Letters of credit.

- (1) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- (2) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which a draw would be required shall be deemed to be negligence or willful misconduct.

6. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 45-03-07.1-076 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-04.1. Credit for reinsurance - Certified reinsurers.

1. Pursuant to subsection 65 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection 65 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-087, 45-03-07.1-098, or 45-03-07.1-1009. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%

Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

- b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
- d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
 - (1) Line 1: Fire.
 - (2) Line 2: Allied lines.
 - (3) Line 3: Farmowners multiple peril.
 - (4) Line 4: Homeowners multiple peril.
 - (5) Line 5: Commercial multiple peril.
 - (6) Line 9: Inland marine.
 - (7) Line 12: Earthquake.
 - (8) Line 21: Auto physical damage.
- e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

- a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on

the application until at least thirty days after posting the notice required by this subdivision.

- b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.
- c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.
 - (2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.
 - (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
 - (a) Standard & Poor's;
 - (b) Moody's Investors Service;
 - (c) Fitch Ratings;
 - (d) A.M. Best Company; or
 - (e) Any other nationally recognized statistical rating organization.
 - (4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:
 - (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
- (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
- (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute. with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- (6) Regulatory actions against the certified reinsurer;
- (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
- (8) For certified reinsurers not domiciled in the United States. audited financial statements. regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor, with a translation into English. ~~Acceptable audited financial statements are those performed using:~~
 - ~~(a) United States generally accepted accounting principles;~~
 - ~~(b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or~~
 - ~~(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~

Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~two~~^{three} years filed with its non-United States jurisdiction supervisor;

- (9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - (11) Any other information deemed relevant by the commissioner.
- e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:
- (1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or
 - (2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.
- f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;
 - (2) Annually, form CR-F or CR-S, as applicable;
 - (3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;

- (4) Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor, with a translation to English.
~~Acceptable audited financial statements are those performed using:~~

~~(a) United States generally accepted accounting principles;~~

~~(b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included;~~
~~or~~

~~(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~

Upon the initial certification, audited financial statements for the last ~~two~~three years filed with the certified reinsurer's supervisor;

- (5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
- (6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
- (7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

- (1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.
- (2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-07~~6~~ in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer

may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

3. Qualified jurisdictions.

- a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include the following:
 - (1) The framework under which the assuming insurer is regulated.
 - (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.
 - (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
 - (9) Any other matters deemed relevant by the commissioner.
- c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in

determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.

- d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.

- a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
- b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.
- c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.
- d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

5. Mandatory funding clause. In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

History: Effective January 1, 2016; amended effective April 1, 2017; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-05. Credit for reinsurance – Reciprocal Jurisdictions.

1. Pursuant to subsection 7 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this rule.
2. A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the commissioner pursuant to Subsection D, that meets one of the following:
 - a. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union.

- b. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
 - c. A United States jurisdiction that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program; or
 - d. A qualified jurisdiction, as determined by the commissioner pursuant to subdivision C of subsection 6 of North Dakota Century Code section 26.1-31.2-01 and subsection 3 of North Dakota Administrative Code section 45-03-07.1-04.1, which is not otherwise described in subdivision a or b above and which the commissioner determines meets all of the following additional requirements:
 - (1) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
 - (2) Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
 - (3) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the national association of insurance commissioners shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
 - (4) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the national association of insurance commissioners.
3. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

- a. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a Reciprocal Jurisdiction.
- b. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in subdivision g according to the methodology of its domiciliary jurisdiction, in the following amounts:
 - (1) No less than \$250,000,000; or
 - (2) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
 - (a) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and
 - (b) A central fund containing a balance of the equivalent of at least \$250,000,000
- c. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:
 - (1) If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in subdivision a of subsection 2, the ratio specified in the applicable covered agreement;
 - (2) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in subdivision b of subsection 2, a risk-based capital ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the national association of insurance commissioners; or
 - (3) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in subdivision c of subsection 2, after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the national association of insurance commissioners committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.
- d. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this regulation), of its agreement to the following:
 - (1) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subdivisions b or c, or if any regulatory action is taken against it for serious noncompliance with applicable law.
 - (2) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

- (a) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.
 - (b) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
 - (3) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
 - (4) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.
 - (5) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subsection 6 of North Dakota Century Code section 26.1-31.2-01 and North Dakota Century Code section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-08, 45-03-07.1-09 and 45-03-07.1-10. For purposes of this Regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction
 - (6) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subdivision e.
- e. The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:
- (1) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
 - (2) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

- (3) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
 - (4) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subdivision f.
 - f. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
 - (1) More than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;
 - (2) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or
 - (3) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.
 - g. The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in subdivisions a and b.
 - h. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.
- 4. The commissioner shall timely create and publish a list of Reciprocal Jurisdictions.
 - a. A list of Reciprocal Jurisdictions is published through the national association of insurance commissioners committee process. The commissioner's list shall include any Reciprocal Jurisdiction as defined under subdivision a and subdivision b of subsection 2, and shall consider any other Reciprocal Jurisdiction included on the national association of insurance commissioners list. The commissioner may approve a jurisdiction that does not appear on the national association of insurance commissioners list of Reciprocal Jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the national association of insurance commissioners committee process.
 - b. The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the national association of insurance commissioners committee process, except that the commissioner shall not remove from

the list a Reciprocal Jurisdiction as defined under subdivision a and subdivision b of subsection 2. Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to North Dakota Century Code chapter 26.1-31.2 or North Dakota Administrative Code 45-03-07.1.

5. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.
 - a. If a national association of insurance commissioners accredited jurisdiction has determined that the conditions set forth in subsection 3 have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another national association of insurance commissioners accredited jurisdiction or with the national association of insurance commissioners in satisfaction of the requirements of subsection 3.
 - b. When requesting that the commissioner defer to another national association of insurance commissioners accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the national association of insurance commissioners committee process and provide relevant information with respect to the determination of eligibility.

6. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.
 - a. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with North Dakota Administrative Code 45-03-07.1-07.
 - b. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of North Dakota Administrative Code 45-03-07.1-07.

7. Before denying statement credit or imposing a requirement to post security under subsection 6 or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:
 - a. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection 3;
 - b. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

- c. After the expiration of 90 days or less, as set out in subdivision b of subsection 7 if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and
 - d. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.
8. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

History: Effective January 1, 2016; amended effective April 1, 2017; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-065. Credit for reinsurance required by law.

Pursuant to subsection 76 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsections 24, 32, 43, 54, and 65 of North Dakota Century Code section 26.1-31.2-01, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-076. Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of sections 45-03-07.1-01 through 45-03-07.1-065.

1. Pursuant to North Dakota Century Code section 26.1-31.2-02, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of North Dakota Century Code section 26.1-31.2-01 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03. This security may be in the form of any of the following:
 - a. Cash;
 - b. Securities listed by the securities valuation office of the national association of insurance commissioners, including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, and qualifying as admitted assets;
 - c. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03, effective no later than December thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or
 - d. Any other form of security acceptable to the commissioner.
2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of section 45-03-07.1-~~1140~~ and the applicable portions of sections 45-03-07.1-~~087~~, 45-03-07.1-~~098~~, or 45-03-07.1-~~1009~~ have been satisfied.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-087. Trust agreements qualified under section 45-03-07.1-076.

1. As used in this section:
 - a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and

is limited to the court-appointed domiciliary receiver, conservator, rehabilitator, or liquidator.

b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

c. "Obligations", as used in subdivision k of subsection 2 means:

(1) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(2) Reserves for reinsured losses reported and outstanding;

(3) Reserves for reinsured losses incurred but not reported; and

(4) Reserves for allocated reinsured loss expenses and unearned premiums.

2. Required conditions:

a. The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03.

b. The trust agreement must create a trust account into which assets must be deposited.

c. All assets in the trust account must be held by the trustee at the trustee's office in the United States.

d. The trust agreement must provide that:

(1) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) It is not subject to any conditions or qualifications outside of the trust agreement; and

(4) It shall not contain references to any other agreements or documents except as provided for in subdivisions k and l.

e. The trust agreement must be established for the sole benefit of the beneficiary.

f. The trust agreement must require the trustee to:

(1) Receive assets and hold all assets in a safe place;

(2) Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any assets, without consent or signature from the grantor or any other person or entity;

(3) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

- (4) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;
 - (5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - (6) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.
- g. The trust agreement must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.
 - h. The trust agreement must be made subject to and governed by the laws of the state in which the trust is domiciled.
 - i. The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
 - j. The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which the draw would be required shall be deemed to be negligence or willful misconduct.
 - k. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, when it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
 - (1) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
 - (2) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
 - (3) If the ceding insurer has received notification of termination of the trust account and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States

financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03 apart from its general assets, in trust for the uses and purposes specified in paragraphs 1 and 2 as may remain executory after the withdrawal and for any period after the termination date.

i. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of section 45-03-07.1-076 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, if it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(b) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(2) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(3) If the ceding insurer has received notification of termination of the trust and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 1 and 2 as may remain executory after withdrawal and for any period after the termination date.

m. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subdivision must be included in the reinsurance agreement.

3. Permitted conditions:

a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety

days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

- b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
 - c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in paragraph 2 of subdivision a of subsection 4.
 - d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
 - e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary, with written approval by the beneficiary, must be delivered over to the grantor.
4. Additional conditions applicable to reinsurance agreements:
- a. A reinsurance agreement may contain provisions that:
 - (1) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
 - (2) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or a signature from the assuming insurer or any other entity;
 - (3) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
 - (4) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:
 - (a) To pay or reimburse the ceding insurer for:

- [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;
 - [2] The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
- (b) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
- b. The reinsurance agreement may also contain provisions that:
- (1) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - (a) At the time of withdrawal, the assuming insurer shall replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
 - (b) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent of the required amount.
 - (2) Provide for the return of any amount withdrawn in excess of the actual amounts required for paragraph 5 of subdivision a and interest payments, at a rate not in excess of the prime rate of interest, on those amounts.
 - (3) Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (a) Interest at a rate different from that provided in paragraph 2;
 - (b) Court or arbitration costs;
 - (c) Attorney's fees; and
 - (d) Any other reasonable expenses.
- c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
- d. Existing agreements. Any trust agreement or underlying reinsurance agreement in existence prior to October 1, 1995, will continue to be acceptable until January 1, 1996,

at which time the agreements will have to fully comply with this chapter for the trust agreement to be acceptable.

- e. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection 1 may not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-098. Letters of credit qualified under section 45-03-07.1-076.

1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.
3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.
5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article 36 of publication 600 or any other successor publication occur.

7. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 1, then the following additional requirements must be met:
 - a. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.
8. Reinsurance agreement provisions.
 - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (a) To pay or reimburse the ceding insurer for:
 - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
 - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
 - (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.
 - (3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
 - b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:

- (1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or
- (2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; April 1, 2017; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-1009. Other security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

History: Effective October 1, 1995; amended effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-1140. Reinsurance contract.

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of section 45-03-07.1-01, 45-03-07.1-02, 45-03-07.1-03, 45-03-07.1-04, 45-03-07.1-04.1, ~~or 45-03-07.1-05~~, or 45-03-07.1-07 or otherwise in compliance with North Dakota Century Code section 26.1-31.2-01 after October 1, 1995, unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to North Dakota Century Code section 26.1-06.1-31; and
2. Includes a provision pursuant to North Dakota Century Code section 26.1-31.2-01 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

History: Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016; April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-1244. Contracts affected.

All new and renewal reinsurance transactions entered into after October 1, 1995, must conform to the requirements of the Act and this chapter if credit is to be given to the ceding insurer for such reinsurance.

History: Effective October 1, 1995; amended effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

FORM RJ-1
CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in
_____, in order to
(name of state)

be considered for approval in this state, hereby certify that
_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in North Dakota for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Insurance Commissioner of North Dakota as its lawful attorney in and for upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in [Name of State]. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with paragraph e of subdivision 3 of North Dakota Administrative Code section 45-03-07.1-05 if requested by the commissioner.

Dated: _____

(name of assuming insurer)

BY:

(name of officer)

(title of officer)

CHAPTER 45-03-26

TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING MODEL REGULATION

Section

<u>45-03-26-01</u>	<u>Authority</u>
<u>45-03-26-02</u>	<u>Purpose</u>
<u>45-03-26-03</u>	<u>Applicability</u>
<u>45-03-26-04</u>	<u>Exemptions from this Chapter</u>
<u>45-03-26-05</u>	<u>Definitions</u>
<u>45-03-26-06</u>	<u>The Actuarial Method</u>
<u>45-03-26-07</u>	<u>Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation</u>
<u>45-03-26-08</u>	<u>Severability</u>
<u>45-03-25-09</u>	<u>Prohibition against Avoidance</u>

45-03-26-01. Authority.

This chapter is adopted pursuant to the authority granted by North Dakota Century Code chapter 26.1-31.2.

History: Effective April 1, 2022

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-02. Purpose.

The purpose and intent of this chapter is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, as defined in North Dakota Administrative Code 45-03-26-05, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-03. Applicability.

This chapter shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in subsection 2 of North Dakota Administrative Code 45-03-26-05, issued by any life insurance company domiciled in this state. This chapter and North Dakota Century Code chapter 26.1-31.2 shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this chapter and North Dakota Century Code chapter 26.1-31.2, the provisions of this chapter shall apply, but only to the extent of the conflict.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-04. Exemptions from this Chapter.

This chapter does not apply to the situations described in Subsections 1 through 6.

1. Reinsurance of:
 - a. Policies that satisfy the criteria for exemption set forth in subsection 6 of North Dakota Administrative Code 45-04-12-04 or subsection 7 of North Dakota Administrative Code 45-04-12-04 and which are issued before the later of:
 - (1) The effective date of this chapter, and
 - (2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan 1, 2020;
 - b. Portions of policies that satisfy the criteria for exemption set forth in subsection 5 of North Dakota Administrative Code 45-04-12-04 and which are issued before the later of:
 - (1) The effective date of this chapter, and
 - (2) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan 1, 2020;
 - c. Any universal life policy that meets all of the following requirements:
 - (1) Secondary guarantee period, if any, is five years or less;
 - (2) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary valuation tables and valuation interest rate applicable to the issue year of the policy; and
 - (3) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period;
 - d. Credit life insurance;
 - e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; nor
 - f. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 5 of North Dakota Century Code chapter 26.1-31.2-01 or
3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 2, 3 or 4 of North Dakota Century Code chapter 26.1-31.2-01 and that, in addition:
 - a. Prepares statutory financial statements in compliance with the national association of insurance commissioners Accounting Practices and Procedures Manual, without any departures from national association of insurance commissioners statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough

that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1; and

- b. Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in North Dakota Century Code chapter 26.1-03.1 when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation; or
4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of subsection 2, 3 or 4 of North Dakota Century Code chapter 26.1-31.2-01 and that, in addition:
 - a. Is not an affiliate, as that term is defined in subsection 1 of North Dakota Century Code chapter 26.1-10-01 of:
 - (1) The insurer ceding the business to the assuming insurer; or
 - (2) Any insurer that directly or indirectly ceded the business to that ceding insurer;
 - b. Prepares statutory financial statements in compliance with the national association of insurance commissioners Accounting Practices and Procedures Manual;
 - c. Is both:
 - (1) Licensed or accredited in at least 10 states, including its state of domicile; or
 - (2) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
 - d. Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in North Dakota Century Code chapter 26.1-03.1 when its Risk-Based Capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the national association of insurance commissioners from time to time, without deviation, and without recognition of any departures from national association of insurance commissioners statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or
5. Cessions to an assuming insurer that:
 - a. Meets the conditions set forth in subsection 7 of North Dakota Century Code chapter 26.1-31.2-01 or is operating in accordance with provisions substantially equivalent of subsection 7 of North Dakota Century Code chapter 26.1-31.2-01 in a minimum of five other states; or
 - b. Is certified in this state as set forth in subsection 6 of North Dakota Century Code chapter 26.1-31.2-01 or certified in accordance with provisions substantially equivalent of subsection 6 of North Dakota Century Code chapter 26.1-31.2-01 in a minimum of five other states; or
 - c. Maintains at least \$250 million in capital and surplus when determined in accordance with national association of insurance commissioners Accounting Practices and Procedures Manual, including all amendments thereto adopted by the national association of insurance commissioners, excluding the impact of any permitted or prescribed practices; and is

- (1) Licensed in at least twenty-six states; or
 - (2) Licensed in at least ten states, and licensed or accredited in a total of at least thirty-five states.
6. Reinsurance not otherwise exempt under Subsections 1 through 5 if the commissioner, after consulting with the national association of insurance commissioners Financial Analysis Working Group or other group of regulators designated by the national association of insurance commissioners, as applicable, determines under all the facts and circumstances that all of the following apply:
- a. The risks are clearly outside of the intent and purpose of this chapter as described in North Dakota Administrative Code 45-03-26-02;
 - b. The risks are included within the scope of this chapter only as a technicality; and
 - c. The application of this chapter to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this subsection to exempt a reinsurance treaty from this chapter, as well as the general basis therefor, including a summary description of the treaty.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-05. Definitions.

1. "Actuarial Method" means the methodology used to determine the Required Level of Primary Security, as described in North Dakota Administrative Code 45-03-26-06.
2. "Covered Policies" means the following: Subject to the exemptions described in North Dakota Administrative Code 45-03-26-04, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:
 - a. Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,
 - b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.
3. "Grandfathered Policies" means policies of the types described in subdivisions a and b that were:
 - a. Issued prior to January 1, 2015; and
 - b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in North Dakota Administrative Code 45-03-26-04 had that section then been in effect.
4. "Non-Covered Policies" means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.
5. "Required Level of Primary Security" means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.
6. "Primary Security" means the following forms of security:

- a. Cash meeting the requirements of subsection 1 of North Dakota Century Code 26.1-31.2-02.
 - b. Securities listed by the securities valuation office of the national association of insurance commissioners meeting the requirements of subsection 2 North Dakota Century Code 26.1-31.2-02 but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and
 - c. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
 - (1) Commercial loans in good standing of CM3 quality and higher;
 - (2) Policy loans; and
 - (3) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
7. “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.
8. “Valuation Manual” means the valuation manual adopted by the national association of insurance commissioners as described in subdivision a of subsection 1 of North Dakota Century Code chapter 26.1-35-00.2, with all amendments adopted by the national association of insurance commissioners as that are effective for the financial statement date on which credit for reinsurance is claimed.
9. “VM-20” means “Requirements for Principle-Based Reserves for Life Products,” including all relevant definitions, from the Valuation Manual.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-06. The Actuarial Method.

1. The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this chapter shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:
 - a. For Covered Policies described in subdivision a of subsection 2 of North Dakota Administrative code 45-03-26-05, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in subdivision b of subsection 2 of North Dakota Administrative code 45-03-26-05, the ceding insurer may elect to instead use subdivision b as the Actuarial Method for the entire reinsurance agreement. Whether subdivision a or subdivision b are used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.
 - b. For Covered Policies described in subdivision b of subsection 2 of North Dakota Administrative code 45-03-26-05, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the net premium reserve regardless of whether the criteria for exemption testing can be met.

- c. Except as provided in subdivision d, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.
- d. If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:
- (1) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under Subparagraph 3, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;
 - (2) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;
 - (3) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to Jan 1, 2017, this adjustment is not to exceed $[cx / (2 * \text{number of reinsurance premiums per year})]$ where cx is calculated using the same mortality table used in calculating the Net Premium Reserve; and
 - (4) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.
 - (5) It is possible for any combination of paragraphs 1, 2, 3, and 4 to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent of the risk. The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.
- e. In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.
- f. If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Regulation, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this chapter;
- g. If a reinsurance treaty subject to this chapter cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:

- (1) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and North Dakota Administrative Code 45-03-26-07 shall be used to determine the reinsurance credit for the Covered Policy reserves; and
 - (2) Credit for the Non-Covered Policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of paragraph 1, is held by or on behalf of the ceding insurer in accordance with North Dakota Century Code chapter 26.1-31.2-01 and 26.1-31.2-02 Any Primary Security used to meet the requirements of this Subparagraph may not be used to satisfy the Required Level of Primary Security for the Covered Policies.
2. For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:
- a. For assets, including any such assets held in trust, that would be admitted under the national association of insurance commissioners Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
 - b. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the national association of insurance commissioners' s Life Actuarial Task Force no later than the December 31st on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-07. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.

1. Subject to the exemptions described in North Dakota Administrative Code 45-03-26-04 and the provisions of subsection 2, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to North Dakota Century Code chapter 26.1-31.2-01 and 26.1-31.2-02 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:
 - a. The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of North Dakota Century Code chapter 26.1-35 and related chapters and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this chapter does not exceed the proportionate share of those reserves ceded under the contract; and
 - b. The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner; and
 - c. Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of North Dakota Century Code chapter 26.1-31.2-02 on a funds withheld, trust, or modified coinsurance basis; and
 - d. Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to subdivision C

above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of North Dakota Century Code chapter 26.1-31.2-02 and

- e. Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of North Dakota Administrative Code 45-03-07.1-08 except that:
 - (1) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in subsection 2 of North Dakota Administrative Code 45-03-07.1-08, be valued according to the valuation rules set forth in subsection 2 of North Dakota Administrative Code 45-03-07.1-08, as applicable; and
 - (2) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of subdivision c; and
 - (3) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision c below 102% of the level required by subdivision c at the time of the withdrawal or substitution; and
 - (4) The determination of reserve credit under subdivision c of subsection 4 of North Dakota Administrative Code 45-03-07.1-08 shall be determined according to the valuation rules set forth in subsection 2 of North Dakota Administrative Code 45-03-26-06, as applicable; and
 - f. The reinsurance treaty has been approved by the commissioner.
2. Requirements at Inception Date and on an On-going Basis; Remediation
- a. The requirements of subsection 1 must be satisfied as of the date that risks under Covered Policies are ceded, if such date is on or after the effective date of this chapter, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivision c of subsection 1 or subdivision d of subsection 1 with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.
 - b. Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of North Dakota Administrative Code 45-03-26-03 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter, the valuation date, the requirements of subdivision c of subsection 1 and subdivision d of subsection 1 were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to subdivision c of subsection 1, unless either:
 - (1) The requirements of subdivision c of subsection 1 and subdivision d of subsection 1 were fully satisfied as of the valuation date as to such reinsurance treaty; or
 - (2) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of subdivision c of subsection 1 and subdivision d of subsection 1 to be fully satisfied as of the valuation date.
 - c. Nothing in subsection 2 shall be construed to allow a ceding company to maintain any deficiency under subdivision c of subsection 1 or subdivision d of subsection 1 for any period of time longer than is reasonably necessary to eliminate it.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-08. Severability.

If any provision of this chapter is held invalid, the remainder shall not be affected.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-26-09. Prohibition against Avoidance.

No insurer that has Covered Policies as to which this chapter applies as set forth in North Dakota Administrative Code 45-03-26-03 shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this chapter, or to circumvent its purpose and intent, as set forth in North Dakota Administrative Code 45-03-26-02.

History: Effective April 1, 2022.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

CHAPTER 45-05-09
DEFENSE EXPENSES WITHIN THE LIMIT OF LIABILITY PROVISIONS

Section

- 45-05-09-01 Defense Expenses Within Limit of Liability Prohibited - Exceptions
- 45-05-09-02 Policies Within Which Defense Expenses Within Limit of Liability Permitted
- 45-05-09-03 Notice Required
- 45-05-09-04 Acknowledgment
- 45-05-09-05 Defense-Only Policies Excepted

45-05-09-01. Defense expenses within limit of liability provisions - Exceptions.

1. No admitted insurer shall issue or renew a policy of liability insurance in this state that includes defense expenses within the limit of liability unless the policy's minimum limit per occurrence or the aggregate liability limit for all liability risks and coverages under the policy is at least:

- a. One million dollars for primary coverages; and
- b. One hundred thousand dollars for secondary coverages.

2. No admitted insurer shall issue or renew a policy of liability insurance in this state that includes defense expense allowance provision unless the policy's minimum limit per occurrence or the aggregate liability limit for all liability risks and coverages under the policy is at least:

- a. Three hundred thousand dollars for damages and one hundred thousand dollars for defense for primary coverages except medical malpractice and legal malpractice;
 - (1) Three hundred thousand dollars for damages and fifty thousand dollars for defense for primary coverages for legal malpractice only;
 - (2) One million dollars for defense for primary coverages for medical malpractice; and
- b. One hundred thousand dollars for either damages or defense for secondary coverages.

"Primary coverages" means the main or intended coverage of the policy.

"Secondary coverages" means coverage which is in addition to the main policy by endorsement, rider, or additional coverages.

History: Effective April 1, 2015; amended effective October 1, 2019.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-02. Policies within which defense expenses within limit of liability permitted.

Defense expenses within the limit of liability provisions are allowed only within the following types of policies or coverages within a policy with the limits of liability as required in section 45-05-09-01:

- 1. Cyber liability;
- 2. Fiduciary liability;
- 3. Directors and officers liability;
- 4. Errors and omissions liability;
- 5. Employer practices liability;
- 6. Medical malpractice liability;

7. Pollution liability;
8. Liquor liability;
9. Nuclear liability;
10. Fidelity bond;
11. Umbrella and excess policies; and
12. Other policies permitted within the discretion of the insurance commissioner.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-03. Notice required.

The fact that defense expenses are within the limit of liability or defense costs are limited by an allowance must be disclosed on the declaration page in at least twelve-point bold print.

History: Effective April 1, 2015; amended effective October 1, 2019.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-04. Acknowledgment.

The applicant or insured must sign a disclosure form as part of the application or renewal process wherein the applicant or insured acknowledges that the subject policy has limits of liability which may be reduced or completely eliminated by payments for legal defense costs or claims expenses. Only one signed disclosure is required regardless of whether the disclosure is attached to an application or a renewal.

History: Effective April 1, 2015; amended effective October 1, 2019; April 1, 2022.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

45-05-09-05. Defense-only policies excepted.

Defense-only policies are excepted from the requirements of chapter 45-05-09. A defense-only policy is a policy which is purchased solely to provide a legal defense and is not meant to provide indemnification or to be a source of payment for damages to a third party.

History: Effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-04-02

CHAPTER 45-06-16
SHORT-TERM LIMITED-DURATION INSURANCE

Section

45-06-16-01	Definitions
45-06-16-02	Application Requirements
45-06-16-03	Disclosure Requirements
45-06-16-04	Standards of Marketing

45-06-16-01. Definitions.

1. "Application" includes an application for individual coverage or a group enrollment form.
2. "Short-term limited-duration health insurance plan" means health insurance coverage provided pursuant to an insurance policy or group certificate of insurance that has an expiration date specified in the policy that is no longer than six months after the original effective date of the policy and, taking into account any renewals or extensions, has a duration of not more than twelve months in total.

History: Effective October 1, 2019; Amended Effective April 1, 2022.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36.8-49

45-06-16-02. Application requirements.

All applications for short-term limited-duration insurance policies must contain clear and unambiguous questions designed to ascertain the reason for the health condition of the applicant as follows:

1. Do you have comprehensive major medical coverage in force as of the date of this application?
2. Are you aware that this insurance coverage is not comprehensive major medical coverage?
3. Why are you purchasing a short-term limited-duration plan? (Please check all that apply)
 - a. I am not eligible for Affordable Care Act marketplace tax subsidies.
 - b. I cannot afford an Affordable Care Act marketplace plan.
 - c. I do not use a lot of health care; therefore, I do not feel I need a comprehensive major medical plan.
 - d. Other.
4. Do you understand this policy may not have network doctors and therefore may result in a bill for additional charges not covered by a doctor that is out-of-network with this plan?

History: Effective October 1, 2019; Amended Effective April, 2022.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36.8-49

45-06-16-03. Disclosure requirements.

1. Disclosure statement. All short-term limited-duration policies as defined under North Dakota Century Code section 26.1-36-49 must contain the following disclosure on the front cover page of the policy, the certificate of coverage, and the application in large print:

THIS IS NOT A COMPREHENSIVE MAJOR MEDICAL INSURANCE POLICY.

THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH CERTAIN FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE PATIENT PROTECTION AND AFFORDABLE CARE ACT. PLEASE CAREFULLY REVIEW THE TERMS OF YOUR POLICY TO MAKE SURE YOU ARE AWARE OF ANY EXCLUSIONS OR LIMITATIONS REGARDING COVERAGE OF PRE-EXISTING CONDITIONS OR HEALTH BENEFITS (SUCH AS HOPITALIZATION, EMERGENCY SERVICES, MATERNITY CARE, PREVENTATIVE CARE, PRESCRIPTION DRUGS, HABILITATIVE AND REHABILITATIVE CARE, AND MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES). YOUR POLICY MIGHT ALSO HAVE LIFETIME AND/OR ANNUAL DOLLAR LIMITS ON HEALTH BENEFITS. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MAY HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO OBTAIN OTHER HEALTH INSURANCE COVERAGE.

2. Outline of coverage. The outline of coverage must provide the following information:
 - a. Types of benefits provided.
 - b. Cost-sharing provisions and maximum limits.
 - c. Describe how benefit payments are determined.
 - d. Exclusions and limitations.
 - e. Renewability provisions.

History: Effective October 1, 2019; Amended Effective April 1, 2022.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36.8-49

45-06-16-04. Standards of marketing.

An issuer through its producers, shall:

1. Provide an outline of coverage to applicants at the time application is presented to the prospective applicant and shall obtain an acknowledgment of receipt of the outline from the applicant.
2. Establish marketing procedures to assure any comparison of policies by its agents or other producers will be fair and accurate.
3. Establish marketing procedures to assure full disclosure is given to the insured.
4. Establish auditable procedures for verifying compliance with this section.

History: Effective October 1, 2019; Amended Effective April 1, 2022.

General Authority: NDCC 26.1-36-38

Law Implemented: NDCC 26.1-36.8-49.