

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2263

Introduced by

Senators Klein, Tallackson

Representatives Mahoney, Monson

1 A BILL for an Act to create and enact chapter 26.1-42.1 of the North Dakota Century Code,  
2 relating to an insurance guaranty association for property and casualty insurance; to amend  
3 and reenact subsection 9 of section 26.1-06.1-03, section 26.1-14-15, subdivision b of  
4 subsection 3 of section 26.1-40-15.1, subsection 3 of section 26.1-40-15.5, subsection 1 of  
5 section 26.1-41-18, and subsection 3 of section 26.1-46-04 of the North Dakota Century Code;  
6 and to repeal chapter 26.1-42 of the North Dakota Century Code, relating to the insurance  
7 guaranty association.

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

9 **SECTION 1. AMENDMENT.** Subsection 9 of section 26.1-06.1-03 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11 9. "Guaranty association" means the North Dakota insurance guaranty association  
12 created by chapter ~~26.1-42~~ 26.1-42.1 or the North Dakota life and health insurance  
13 guaranty association created by chapter 26.1-38.1, and any other similar entity  
14 now or hereafter created by the legislative assembly for the payment of claims of  
15 insolvent insurers. "Foreign guaranty association" means any similar entity now in  
16 existence in or hereafter created by the legislature of any other state.

17 **SECTION 2. AMENDMENT.** Section 26.1-14-15 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **26.1-14-15. Optional membership in insurance guaranty association.** The  
20 company may not be a member insurer under chapter ~~26.1-42~~ 26.1-42.1 unless the board of  
21 directors by appropriate resolution, certified to and filed with the commissioner on or before  
22 December thirty-first following the issuance of its certificate of authority, elects to become a  
23 member. If there is an affirmative election, the company becomes a member of the insurance  
24 guaranty association effective July first of the following year. The election is irrevocable. In

1 absence of a timely election, no policyholder, claimant, or creditor of the company may receive  
2 any payment by the insurance guaranty association.

3 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 26.1-40-15.1 of  
4 the North Dakota Century Code is amended and reenacted as follows:

5 b. There is an applicable policy or bond, but the insurer or issuer thereof refuses  
6 to provide coverage, denies coverage, or is or becomes insolvent as defined  
7 in ~~subsection 4 of section 26.1-42-02~~ 26.1-42.1-02.

8 **SECTION 4. AMENDMENT.** Subsection 3 of section 26.1-40-15.5 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10 3. ~~Whenever~~ If an insurer makes payment under uninsured or underinsured motorist  
11 coverages because of an insurer insolvency, as defined in ~~subsection 4 of section~~  
12 ~~26.1-42-03~~ 26.1-42.1-02, the paying insurer's rights of reimbursement and  
13 subrogation do not include any rights of recovery against the insured of the  
14 insolvent insurer, ~~nor~~ or against the North Dakota guaranty fund, except for the  
15 amount ~~which~~ that is in excess of the limits of liability of the policy of the insolvent  
16 insurer.

17 **SECTION 5. AMENDMENT.** Subsection 1 of section 26.1-41-18 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19 1. Basic no-fault insurers authorized to provide basic no-fault benefits in this state  
20 shall organize, participate in, and maintain an assigned claims plan to provide that  
21 an injured person who suffers economic loss and is eligible for basic no-fault  
22 benefits under section 26.1-41-06, other than a person not entitled to benefits  
23 under section 26.1-41-07, may obtain basic no-fault benefits through the plan if:  
24 a. Basic no-fault benefits are not applicable to the injury for some reason other  
25 than those specified in section 26.1-41-07; or  
26 b. Basic no-fault benefits applicable to the injury are inadequate to provide the  
27 contracted-for benefits because of financial inability of a basic no-fault insurer  
28 to fulfill its obligations.  
29 Payments made by the assigned claims plan pursuant to this subsection constitute  
30 covered claims under chapter ~~26.1-42~~ 26.1-42.1.

1           **SECTION 6.** Chapter 26.1-42.1 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **26.1-42.1-01. Scope.** This chapter applies to every kind of direct insurance, except:

- 4           1. Life, annuity, health, or disability insurance;
- 5           2. Mortgage guaranty, financial guaranty, or other forms of insurance offering  
6           protection against investment risks;
- 7           3. Fidelity or surety bonds or any other bonding obligations;
- 8           4. Credit insurance, vendors' single interest insurance, collateral protection  
9           insurance, or any similar insurance protecting the interests of a creditor arising out  
10           of a creditor-debtor transaction;
- 11          5. Insurance of warranties or service contracts, including insurance that provides for  
12           the repair, replacement, or service of goods or property; for indemnification for  
13           repair, replacement, or service; for the operational or structural failure of the goods  
14           or property due to a defect in materials, workmanship, or normal wear and tear; or  
15           for reimbursement for the liability incurred by the issuer of agreements or service  
16           contracts that provide these benefits;
- 17          6. Title insurance;
- 18          7. Ocean marine insurance;
- 19          8. Any transaction or combination of transactions between a person, including  
20           affiliates of such person, and an insurer, including affiliates of that insurer, which  
21           involves the transfer of investment or credit risk unaccompanied by transfer of  
22           insurance risk; or
- 23          9. Any insurance provided by or guaranteed by government.

24           **26.1-42.1-02. Definitions.** As used in this chapter:

- 25           1. "Affiliate" means a person who directly, or indirectly, through one or more  
26           intermediaries, controls, is controlled by, or is under common control with an  
27           insolvent insurer on December thirty-first of the year immediately following the date  
28           the insurer becomes an insolvent insurer.
- 29           2. "Association" means the North Dakota insurance guaranty association created  
30           under section 26.1-42.1-03.

- 1           3. "Claimant" means any insured making a first party claim or any person instituting a  
2           liability claim, provided that no person who is an affiliate of the insolvent insurer  
3           may be a claimant.
- 4           4. "Control" means the direct or indirect possession of the power to direct or cause  
5           the direction of the management and policies of a person, whether through the  
6           ownership of voting securities, by contract other than a commercial contract for  
7           goods or nonmanagement services, or otherwise, unless the power is the result of  
8           an official position with or corporate office held by the person. Control is presumed  
9           to exist if any person directly or indirectly owns, controls, holds with the power to  
10           vote, or holds proxies representing at least ten percent of the voting securities of  
11           any other person. This presumption may be rebutted by a showing that control  
12           does not exist in fact.
- 13          5. "Covered claim" means an unpaid claim, including an unpaid claim for unearned  
14           premiums, submitted by a claimant, that arises out of and is within the coverage  
15           and is subject to the applicable limits of an insurance policy to which this chapter  
16           applies, issued by an insurer, if this insurer becomes an insolvent insurer after the  
17           effective date of this chapter and the claimant or insured is a resident of this state  
18           at the time of the insured event; provided that for entities other than an individual,  
19           the residence of a claimant, insured, or policyholder is the state in which the  
20           entity's principal place of business is located at the time of the insured event; or the  
21           claim is a first-party claim for damage to property with a permanent location in this  
22           state. The term does not include:
- 23           a. Any amount awarded as punitive or exemplary damages;  
24           b. Any amount sought as a return of premium under any retrospective rating  
25           plan;  
26           c. Any amount due any reinsurer, insurer, insurance pool, or underwriting  
27           association as subrogation recoveries, as reinsurance recoveries, as  
28           contribution, as indemnification, or otherwise. A claim under this subdivision  
29           for any amount due any reinsurer, insurer, insurance pool, or underwriting  
30           association may not be asserted against a person insured under a policy

- 1                   issued by an insolvent insurer other than to the extent the claim exceeds the  
2                   association obligation limitations set forth in section 26.1-42.1-05;
- 3           d. Workers' compensation insurance, including any contract indemnifying an  
4           employer who pays compensation directly to employees;
- 5           e. Any first-party claim by an insured whose net worth exceeds ten million  
6           dollars on December thirty-first of the year immediately following the date the  
7           insurer becomes an insolvent insurer; provided that an insured's net worth on  
8           that date is deemed to include the aggregate net worth of the insured and all  
9           of the insured's subsidiaries as calculated on a consolidated basis; and
- 10          f. Any first-party claim by an insured that is an affiliate of the insolvent insurer.
- 11          6. "Insolvent insurer" means an insurer licensed to transact insurance in this state at  
12          the time the policy was issued or when the insured event occurred, and against  
13          whom a final order of liquidation was entered after the effective date of this Act  
14          with a finding of insolvency by a court of competent jurisdiction in the insurer's  
15          state of domicile.
- 16          7. "Member insurer" means any person, except a county mutual insurance company,  
17          that writes any kind of insurance to which this chapter applies under section  
18          26.1-42.1-01, including the exchange of reciprocal or interinsurance contracts and  
19          that is licensed to transact insurance in this state. An insurer shall cease to be a  
20          member insurer on the day following the termination or expiration of the insurer's  
21          license to transact the kinds of insurance to which this chapter applies, however  
22          the insurer remains liable as a member insurer for every obligation, including an  
23          obligation for assessments levied before the termination or expiration of the  
24          insurer's license and assessments levied after the termination or expiration, which  
25          relate to any insurer that became an insolvent insurer before the termination or  
26          expiration of that insurer's license.
- 27          8. "Net direct written premiums" means direct gross premiums written in this state on  
28          insurance policies to which this chapter applies, less return premiums on these  
29          policies and dividends paid or credited to policyholders on this direct business.  
30          The term does not include premiums on contracts between insurers or reinsurers.

1           **26.1-42.1-03. Creation of the association.** A nonprofit unincorporated legal entity  
2 known as the North Dakota insurance guaranty association is created. Every insurer defined  
3 as a member insurer in section 26.1-42.1-02 shall be and remain a member of the association  
4 as a condition of that insurer's authority to transact insurance in this state. The association  
5 shall perform association functions under a plan of operation established and approved under  
6 section 26.1-42.1-05 and shall exercise association powers through a board of directors  
7 established under section 26.1-42.1-04.

8           **26.1-42.1-04. Board of directors.**

- 9           1. The board of directors of the association consists of a minimum of five and a  
10 maximum of nine persons serving terms as established in the plan of operation.  
11 The members of the board must be selected by member insurers, subject to the  
12 approval of the commissioner. A vacancy on the board must be filled for the  
13 remaining period of the unexpired term by a majority vote of the remaining board  
14 members, subject to the approval of the commissioner. If the initial board  
15 members are not selected within sixty days after the effective date of this Act, the  
16 commissioner may appoint the initial members of the board.  
17           2. In approving selections to the board, the commissioner shall consider at least  
18 whether all member insurers are fairly represented.  
19           3. Every member of the board may be reimbursed from the assets of the association  
20 for expenses incurred by the member in the course of the member's official duties.

21           **26.1-42.1-05. Powers and duties of the association.**

- 22           1. The association:  
23           a. Shall pay covered claims existing before the order of liquidation and arising  
24 within thirty days after the order of liquidation or before the policy expiration  
25 date if less than thirty days after the order of liquidation, or before the insured  
26 replaces the policy or causes the policy's cancellation, if the insured does so  
27 within thirty days of the order of liquidation. The obligation must be satisfied  
28 by paying to the claimant an amount as follows:  
29           (1) An amount not exceeding ten thousand dollars per policy for a covered  
30 claim for the return of unearned premium.

1                   (2) An amount not exceeding three hundred thousand dollars per claim for  
2                   all other covered claims.

3                   b. Is not obligated to pay a claimant an amount in excess of the obligation of the  
4                   insolvent insurer under the policy or coverage from which the claim arises.  
5                   Notwithstanding any other provision of this chapter, a covered claim does not  
6                   include a claim filed with the association after the earlier of eighteen months  
7                   after the date of the order of liquidation or the final date set by the court for  
8                   the filing of claims against the liquidator or receiver of an insolvent insurer and  
9                   a claim does not include any claim filed with the association or a liquidator for  
10                   protection afforded under the insured's policy for incurred, but not reported,  
11                   losses.

12                   Any obligation of the association to defend an insured on a covered  
13                   claim ceases upon the association's payment, by settlement releasing the  
14                   insured or on a judgment, of an amount equal to the lesser of the  
15                   association's covered claim obligation limit or the applicable policy limit or  
16                   upon the association's tender of that amount.

17                   Notwithstanding any other provision of this chapter, an obligation of the  
18                   association to any person ceases when ten million dollars is paid in the  
19                   aggregate by the association and any one or more associations similar to the  
20                   association of any other state or states or any property and casualty security  
21                   fund that obtains contributions from insurers on a preinsolvency basis, to or  
22                   on behalf of any insured and the insured's affiliates on covered claims or  
23                   allowed claims arising under the policy or policies of any one insolvent  
24                   insurer. For purposes of this section, the term "affiliate" means a person who,  
25                   directly or indirectly, through one or more intermediaries, controls, is  
26                   controlled by, or is under common control with another person. If the  
27                   association determines that there may be more than one claimant having a  
28                   covered claim or allowed claim against the association or any associations  
29                   similar to the association or any property and casualty insurance security fund  
30                   in other states, under the policy or policies of any one insolvent insurer, the

1                   association may establish a plan to allocate amounts payable by the  
2                   association in any manner the association deems equitable.

3                   c. Is deemed the insurer only to the extent of the association's obligation on the  
4                   covered claims and to that extent, subject to the limitations provided in this  
5                   chapter, has all rights, duties, and obligations of the insolvent insurer as if the  
6                   insurer had not become insolvent, including the right to pursue and retain  
7                   salvage and subrogation recoverable on paid covered claim obligations. The  
8                   association may not be deemed the insolvent insurer for any purpose relating  
9                   to the issue of whether the association is amenable to the personal  
10                   jurisdiction of the courts of any state.

11                   d. Shall assess member insurer's amounts necessary to pay the obligations of  
12                   the association under subdivision a following an insolvency, the expenses of  
13                   handling covered claims following an insolvency and other expenses  
14                   authorized by this chapter. The assessments of each member insurer must  
15                   be in the proportion that the net direct written premiums of the member  
16                   insurer for the calendar year preceding the assessment bears to the net direct  
17                   written premiums of all members insurers for the calendar year preceding the  
18                   assessment. Each member insurer must be notified of the assessment at  
19                   least thirty days before the assessment is due. A member insurer may not be  
20                   assessed in any one year an amount greater than two percent of that member  
21                   insurer's net direct written premiums for the calendar year preceding the  
22                   assessment. If the maximum assessment, together with the other assets of  
23                   the association, does not provide in any one year an amount sufficient to  
24                   make all necessary payments, the funds available must be prorated and the  
25                   unpaid portion must be paid as soon as funds become available. The  
26                   association shall pay claims in any order the association determines  
27                   reasonable, including the payment of claims as the claims are received from  
28                   the claimants or in groups or categories of claims. The association may  
29                   exempt or defer, in whole or in part, the assessment of any member insurer, if  
30                   the assessment would cause the member insurer's financial statement to  
31                   reflect amounts of capital or surplus less than the minimum amounts required



- 1                   for a certificate of authority by any jurisdiction in which the member insurer is  
2                   authorized to transact insurance; provided, however, that during the period of  
3                   deferment, dividends may not be paid to shareholders or policyholders.  
4                   Deferred assessments must be paid when payment will not reduce capital or  
5                   surplus below required minimums. Deferred assessment payments must be  
6                   refunded to those companies receiving larger assessments by virtue of this  
7                   deferment, or at the election of any such company, credited against future  
8                   assessments. Each member insurer may set off against any assessment,  
9                   authorized payments made on covered claims and expenses incurred in the  
10                  payment of these claims by the member insurer.
- 11                  e. Shall investigate claims brought against the association and adjust,  
12                  compromise, settle, and pay covered claims to the extent of the association's  
13                  obligation and deny all other claims. The association may review settlements,  
14                  releases, and judgments to which the insolvent insurer or the insolvent  
15                  insurer's insureds were parties to determine the extent to which these  
16                  settlements, releases, and judgments may be properly contested. The  
17                  association may appoint and direct legal counsel retained under liability  
18                  insurance policies for the defense of covered claims.
- 19                  f. Shall handle claims through the association's employees or through one or  
20                  more insurers or other persons designated as servicing facilities. Designation  
21                  of a servicing facility is subject to the approval of the commissioner, but this  
22                  designation may be declined by a member insurer.
- 23                  g. Shall reimburse each servicing facility for obligations of the association paid  
24                  by the facility and for expenses incurred by the facility while handling claims  
25                  on behalf of the association and shall pay the other expenses of the  
26                  association authorized by this chapter.
- 27                  2. The association may:
- 28                    a. Employ or retain persons necessary to handle claims and perform other  
29                    duties of the association;
- 30                    b. Borrow funds necessary to effect the purposes of this chapter in accord with  
31                    the plan of operation;

- 1           c. Sue or be sued, and this power to sue includes the power and right to  
2           intervene as a party before any court in this state which has jurisdiction over  
3           an insolvent insurer;
- 4           d. Negotiate and become a party to contracts that are necessary to carry out the  
5           purposes of this chapter;
- 6           e. Perform acts that are necessary or proper to effectuate the purpose of this  
7           chapter; and
- 8           f. Refund to the member insurers in proportion to the contribution of each  
9           member insurer that amount by which the assets of the association exceed  
10          the liabilities, if at the end of any calendar year, the board of directors finds  
11          that the assets of the association exceed the liabilities for the coming year as  
12          estimated by the board.
- 13          3. Except for actions by member insurers aggrieved by final actions or decisions by  
14          the association pursuant to subdivision h of subsection 3 of section 26.1-42.1-06,  
15          all claims for relief relating to this chapter against the association must be brought  
16          in the courts of this state. These courts have exclusive jurisdiction over all actions  
17          relating to this chapter against the association. Exclusive venue in any action by  
18          or against the association is in the district courts of this state. The association, at  
19          its option, may waive this exclusive venue as to specific actions.

20          **26.1-42.1-06. Plan of operation.**

- 21          1. The association shall submit to the commissioner a plan of operation and any  
22          amendments to this plan necessary or suitable to assure the fair, reasonable, and  
23          equitable administration of the association. The plan of operation and any  
24          amendments become effective upon written approval by the commissioner. If the  
25          association fails to submit a suitable plan of operation within ninety days following  
26          the effective date of this Act, or if at any time after the effective date of this Act the  
27          association fails to submit suitable amendments to the plan, the commissioner,  
28          after notice and hearing, shall adopt rules as necessary or advisable to implement  
29          this chapter. These rules continue in force until modified by the commissioner or  
30          superseded by a plan submitted by the association and approved by the  
31          commissioner.

- 1           2. All member insurers shall comply with the plan of operation.
- 2           3. The plan of operation must:
- 3           a. Establish procedures by which all the powers and duties of the association
- 4                 under section 26.1-42.1-05 will be performed.
- 5           b. Establish procedures for handling assets of the association.
- 6           c. Establish procedures for the disposition of liquidating dividends or other
- 7                 moneys received from the estate of the insolvent insurer.
- 8           d. Establish the amount and method of reimbursing members of the board of
- 9                 directors under section 26.1-42.1-04.
- 10          e. Establish procedures by which claims may be filed with the association, if
- 11                 necessary, and establish acceptable forms of proof of covered claims. Notice
- 12                 of claims to the receiver or liquidator of the insolvent insurer are deemed
- 13                 notice to the association of the association's agent and periodically a list of
- 14                 claims must be submitted to the association or similar organization in another
- 15                 state by the receiver or liquidator.
- 16          f. Establish regular places and times for meetings of the board of directors.
- 17          g. Establish procedures for records to be kept of all financial transactions of the
- 18                 association, the association's agents and the board of directors.
- 19          h. Provide that any member insurer aggrieved by any final action or decision of
- 20                 the association may appeal to the commissioner within thirty days after the
- 21                 action or decision.
- 22          i. Establish procedures by which selections for the board of directors will be
- 23                 submitted to the commissioner.
- 24          j. Contain provisions necessary or proper for the execution of the powers and
- 25                 duties of the association.
- 26          4. The plan of operation may provide that powers and duties of the association,
- 27                 except those under subdivision d of subsection 1 of section 26.1-42.1-05 and
- 28                 subdivision b of subsection 2 of section 26.1-42.1-05, are delegated to a
- 29                 corporation, association, or other organization that performs or will perform
- 30                 functions similar to those of this association or this association's equivalent in two
- 31                 or more states. This corporation, association, or organization must be reimbursed

1           as a servicing facility would be reimbursed and must be paid for performance of  
2           any other functions of the association. A delegation under this subsection takes  
3           effect only with the approval of the board of directors and the commissioner, and  
4           may be made only to a corporation, association, or organization that extends  
5           protection not substantially less favorable and less effective than that provided by  
6           this chapter.

7           **26.1-42.1-07. Duties and powers of the commissioner.**

8           1. The commissioner shall:

- 9           a. Notify the association of the existence of an insolvent insurer within three  
10           days after the commissioner receives notice of the determination of the  
11           insolvency. The association is entitled to a copy of any complaint seeking an  
12           order of liquidation with a finding of insolvency against a member company at  
13           the same time that this complaint is filed with a court of competent jurisdiction.  
14           b. Upon request of the board of directors, provide the association with a  
15           statement of the net direct written premiums of each member insurer.

16          2. The commissioner may:

- 17          a. Suspend or revoke, after notice and hearing, the certificate of authority to  
18          transact insurance in this state of any member insurer that fails to pay an  
19          assessment when due or fails to comply with the plan of operation. In the  
20          alternative, the commissioner may levy a fine on any member insurer that  
21          fails to pay an assessment when due. A fine under this subdivision may not  
22          exceed five percent of the unpaid assessment per month, except that a fine  
23          may not be less than one hundred dollars per month.  
24          b. Revoke the designation of any servicing facility if the commissioner finds  
25          claims are being handled unsatisfactorily.

26          **26.1-42.1-08. Effect of paid claims.**

- 27          1. Any person recovering under this chapter is deemed to have assigned that  
28          person's rights under the policy to the association to the extent of recovery from  
29          the association. Every insured or claimant seeking the protection of this chapter  
30          shall cooperate with the association to the same extent as that insured or claimant  
31          would have been required to cooperate with the insolvent insurer. The association

1           does not have a claim for relief against the insured of the insolvent insurer for any  
2           sums the association paid out except for claims for relief the insolvent insurer  
3           would have had if the sums had been paid by the insolvent insurer and except as  
4           provided in subsection 2. In the case of an insolvent insurer operating on a plan  
5           with assessment liability, payments of claims of the association do not reduce the  
6           liability of the insureds to the receiver, liquidator, or statutory successor for unpaid  
7           assessments.

8           2. The association may recover from the following persons the amount of any  
9           covered claim paid on behalf of that person pursuant to this chapter:  
10          a. Any insured whose net worth on December thirty-first of the year immediately  
11           preceding the date the insurer becomes an insolvent insurer exceeds  
12           twenty-five million dollars and whose liability obligations to other persons are  
13           satisfied in whole or in part by payments made under this chapter;  
14          b. Any person who is an affiliate of the insolvent insurer and whose liability  
15           obligations to other persons are satisfied in whole or in part by payments  
16           made under this chapter; and  
17          c. Any insured who is not a resident of this state at the time of the insured event,  
18           except for first-party covered claims for property damage to an insured's  
19           property that is permanently located in this state.

20          3. The association any any similar organization in another state are recognized as  
21           claimants in the liquidation of an insolvent insurer for any amounts paid by the  
22           association or similar organization on covered claims obligations as determined  
23           under this chapter or similar laws in other states and receive dividends and any  
24           other distributions at the priority set forth in section 26.1-06.1-41. The receiver,  
25           liquidator, or statutory successor of an insolvent insurer is bound by determinations  
26           of covered claim eligibility under this chapter and by settlements of claims made by  
27           the association or a similar organization in another state. The court with  
28           jurisdiction shall grant these claims priority equal to that which the claimant would  
29           have been entitled in the absence of this chapter against the assets of the  
30           insolvent insurer.

1           4.   The association shall periodically file with the receiver or liquidator of the insolvent  
2                    insurer statements of the covered claims paid by the association and estimates of  
3                    anticipated claims on the association which preserve the rights of the association  
4                    against the assets of the insolvent insurer.

5           **26.1-42.1-09. Exhaustion of other coverage.**

6           1.   Any person with a claim against an insurer, regardless of whether that insurer is a  
7                    member insurer under any provision in an insurance policy other than a policy of  
8                    an insolvent insurer which is also a covered claim, is required to exhaust first that  
9                    person's right under that policy. Any amount payable on a covered claim under  
10                  this chapter must be reduced by the amount of any recovery under the insurance  
11                  policy.

12          2.   Any person with a claim that may be recovered under more than one insurance  
13                  guaranty association or equivalent shall seek recovery first from the association of  
14                  the place of residence of the insured except that if the claim is a first-party claim for  
15                  damage to property with a permanent location, the person shall seek recovery first  
16                  from the association of the location of the property. Any recovery under this  
17                  chapter must be reduced by the amount of recovery from any other insurance  
18                  guaranty association or equivalent.

19          **26.1-42.1-10. Prevention of insolvencies.** To aid in the detection and prevention of  
20 insurer insolvencies:

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

23          2.   The board of directors, upon majority vote, may make recommendations to the  
24                  commissioner on matters generally related to improving or enhancing regulation  
25                  for solvency.

26          3.   The board of directors, at the conclusion of any domestic insurer insolvency in  
27                  which the association was obligated to pay covered claims, may prepare a report  
28                  on the history and causes of the insolvency, based on the information available to  
29                  the association and submit this report to the commissioner.

30          **26.1-42.1-11. Examination of the association.** The association is subject to  
31 examination and regulation by the commissioner. The board of directors shall submit, by

1 March thirty-first of each year, a financial report for the preceding calendar year in a form  
2 approved by the commissioner.

3 **26.1-42.1-12. Tax exemption.** The association is exempt from payment of all fees and  
4 all taxes levied by this state or any political subdivision except taxes levied on property.

5 **26.1-42.1-13. Recognition of assessments in rates.** The rate and premiums  
6 charged for insurance policies to which this chapter applies must include amounts sufficient to  
7 recoup a sum equal to the amounts paid to the association by the member insurer less any  
8 amounts returned to the member insurer by the association. These rates may not be  
9 determined to be excessive because they contain an amount reasonably calculated to recoup  
10 assessments paid by the member insurer.

11 **26.1-42.1-14. Immunity.** There is no liability on the part of and no claim for relief may  
12 arise against any member insurer, the association or the association's agents or employees,  
13 the board of directors, or any person serving as a representative of any director, or the  
14 commissioner or the commissioner's representatives for any action taken or any failure to act  
15 by these entities in the performance of their powers and duties under this chapter.

16 **26.1-42.1-15. Stay of proceedings.** All proceedings in which the insolvent insurer is a  
17 party or is obligated to defend a party in any court in this state, subject to waiver by the  
18 association in specific cases involving covered claims, must be stayed until the last day fixed by  
19 the court for the filing of claims and additional time after this as may be determined by the court  
20 from the date the insolvency is determined or an ancillary proceeding is instituted in the state,  
21 whichever is later, to permit proper defense by the association of all pending causes of action.  
22 As to any covered claims arising from a judgment under any decision, verdict, or finding based  
23 on the default of the insolvent insurer or the insolvent insurer's failure to defend an insured, the  
24 association on its own behalf or on behalf of such insured may apply to have the judgment,  
25 order, decision, verdict, or finding set aside by the same court or administrator that made the  
26 judgment, order, decision, verdict, or finding and may defend the claim on the merits. The  
27 liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall  
28 permit access by the board or the board's authorized representative to the insolvent insurer's  
29 records that are necessary for the board in carrying out the board's functions under this chapter  
30 with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall

1 provide the board or the board's representative with copies of these records upon the request  
2 by the board and at the expense of the board.

3           **SECTION 7. AMENDMENT.** Subsection 3 of section 26.1-46-04 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5           3. When a purchasing group obtains insurance covering its members' risks from an  
6 authorized insurer, only risks resident or located in this state may be covered by  
7 the state guaranty fund subject to chapter ~~26.1-42~~ 26.1-42.1.

8           **SECTION 8. REPEAL.** Chapter 26.1-42 of the North Dakota Century Code is  
9 repealed.