

**HOUSE BILL NO. 1177**

Introduced by

Industry, Business and Labor Committee

(At the request of the Commissioner of Insurance)

1 A BILL for an Act to create and enact a new subdivision to subsection 1 of section 26.1-25-02 of  
2 the North Dakota Century Code, relating to property and casualty insurance rates; and to  
3 amend and reenact sections 26.1-02-05, 26.1-25-02.1, and 26.1-25-04, subsection 4 of section  
4 26.1-30-19, and sections 26.1-30.1-01 and 26.1-44-02 of the North Dakota Century Code,  
5 relating to insurance contracts issued to industrial concerns, exempt commercial policyholders,  
6 rate filings, filing of policy forms, cancellation and nonrenewal of commercial insurance, and  
7 surplus lines insurance.

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

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

11 **26.1-02-05. Unauthorized insurance prohibited - Exceptions.** An insurance  
12 company may not transact insurance business in this state, as set forth in section 26.1-02-06,  
13 without a certificate of authority from the commissioner. This section does not apply to:

- 14 1. The lawful transaction of surplus lines insurance.
- 15 2. The lawful transaction of reinsurance by insurers.
- 16 3. Transactions involving a policy lawfully solicited, written, and delivered outside of  
17 this state covering only subjects of insurance not resident, located, or expressly to  
18 be performed in this state at the time of issuance, and which transactions are  
19 subsequent to the issuance of such policy.
- 20 4. Transactions involving life insurance, health insurance, or annuities provided to  
21 educational or religious or charitable institutions organized and operated without  
22 profit to any private shareholder or individual, for the benefit of the institutions and  
23 individuals engaged in the service of the institutions.

- 1           5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of  
2           claims or losses.
- 3           6. Transactions involving group life, accident, and health, or blanket accident and  
4           health insurance, or group annuities where the master policy of the group was  
5           lawfully issued and delivered in and pursuant to the laws of a state in which the  
6           insurance company was authorized to do an insurance business, to a group  
7           organized for purposes other than the procurement of insurance, and where the  
8           policyholder is domiciled or otherwise has a bona fide situs.
- 9           7. Transactions involving any insurance policy or annuity contract issued before  
10          July 1, 1973.
- 11          8. Transactions relative to a policy issued or to be issued outside this state involving  
12          insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine  
13          protection and indemnity or other risk, including strikes and war risks commonly  
14          insured under ocean or wet marine forms of policy.
- 15          9. ~~Transactions involving insurance contracts issued to one or more industrial~~  
16          ~~insureds; provided, that this does not relieve an industrial insured from taxation~~  
17          ~~imposed upon independently procured insurance. An industrial insured is an~~  
18          ~~insured:~~
- 19           a. ~~Which procures the insurance of any risk or risks other than life and annuity~~  
20           ~~contracts by use of the services of a full time employee acting as an~~  
21           ~~insurance manager or buyer or the services of a regularly and continuously~~  
22           ~~retained qualified insurance consultant;~~
- 23           b. ~~Whose aggregate annual premiums for insurance on all risks total at least~~  
24           ~~twenty five thousand dollars; and~~
- 25           e. ~~Which has at least twenty five full time employees.~~

26           **SECTION 2.** A new subdivision to subsection 1 of section 26.1-25-02 of the North  
27   Dakota Century Code is created and enacted as follows:

28                   Insurance issued to "exempt commercial policyholders".

29           **SECTION 3. AMENDMENT.** Section 26.1-25-02.1 of the North Dakota Century Code  
30   is amended and reenacted as follows:

31           **26.1-25-02.1. Definitions.**

- 1           1. "Advisory organization" means any entity, including its affiliates or subsidiaries,  
2           which either has two or more member insurers or is controlled either directly or  
3           indirectly by two or more insurers, and which assists insurers in ratemaking-related  
4           activities as enumerated in this chapter. Two or more insurers having a common  
5           ownership or operating in this state under common management or control  
6           constitute a single insurer for purposes of this definition.
- 7           2. "Commercial risk" means any kind of risk which is not a personal risk.
- 8           3. "Developed losses" means losses including loss adjustment expenses, adjusted,  
9           using standard actuarial techniques, to eliminate the effect of differences between  
10          current payment or reserve estimates and those needed to provide actual ultimate  
11          loss including loss adjustment expense payments.
- 12          4. "Exempt commercial policyholder" means a large commercial risk who has certified  
13          to the commissioner that it meets two of the following seven criteria and requests  
14          exemption from policy, form, and rate regulatory oversight:
- 15           a. Has net worth of over fifty million dollars;  
16           b. Has net revenue or sales of over one hundred million dollars;  
17           c. Has more than five hundred employees per individual company or one  
18           thousand employees per holding company aggregate;  
19           d. Procures its insurance through use of a risk manager, employed or retained;  
20           e. Generates aggregate annual insurance premiums of over five hundred  
21           thousand dollars;  
22           f. Is a not-for-profit or public entity with an annual budget or assets of at least  
23           forty-five million dollars; or  
24           g. Is a municipality with a population of over fifty thousand.
- 25          5. "Expenses" means that portion of a rate attributable to acquisition, field  
26          supervision, collection expenses, general expenses, taxes, licenses, and fees.
- 27          6. "Joint underwriting" means a voluntary arrangement established to provide  
28          insurance coverage for a commercial risk pursuant to which two or more insurers  
29          jointly contract with the insured at a price and under policy terms agreed upon  
30          between the insurers.

- 1        ~~6-~~ 7. "Loss trending" means any procedure for projecting developed losses to the  
2                                average date of loss for the period during which the policies are to be effective.
- 3        ~~7-~~ 8. "Personal risk" means homeowners, tenants, private passenger nonfleet  
4                                automobiles, mobile homes, and other property and casualty insurance for  
5                                personal, family, or household needs.
- 6        ~~8-~~ 9. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant  
7                                to which two or more insurers participate in the sharing of risks on a predetermined  
8                                basis. The pool may operate through an association, syndicate, or other pooling  
9                                agreement.
- 10       ~~9-~~ 10. "Prospective loss costs" means that portion of a rate that does not include  
11                                provisions for expenses other than loss adjustment expenses, or profit, and are  
12                                based on historical aggregate losses and loss adjustment expenses adjusted  
13                                through development to their ultimate value and projected through trending to a  
14                                future point in time.
- 15       ~~40-~~ 11. "Rate" means that cost of insurance per exposure unit whether expressed as a  
16                                single member or as a prospective loss cost with an adjustment to account for the  
17                                treatment of expenses, profit, and individual insurer variation in loss experience,  
18                                prior to any application of individual risk variations based on loss or expense  
19                                considerations, and does not include minimum premium.
- 20       ~~44-~~ 12. "Residual market mechanism" means an arrangement, either voluntary or  
21                                mandated by law, involving participation by insurers in the equitable apportionment  
22                                among them of insurance which may be afforded applicants who are unable to  
23                                obtain insurance through ordinary methods.
- 24       ~~42-~~ 13. "Supplementary rating information" includes any manual or plan of rates,  
25                                classification, rating schedule, minimum premium, policy fee, rating rule,  
26                                underwriting rule, statistical plan, and any other similar information needed to  
27                                determine the applicable rate in effect or to be in effect.
- 28       ~~43-~~ 14. "Supporting information" means:  
29                                a.     The experience and judgment of the filer and the experience or ~~date~~ data of  
30                                other insurers or advisory organizations relied upon by the filer;  
31                                b.     The interpretation of any other data relied upon by the filer; and

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

3           **SECTION 4. AMENDMENT.** Section 26.1-25-04 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **26.1-25-04. Rate filings.**

- 6           1. Every insurer shall file with the commissioner, except as to inland marine risks  
7   which by general custom of the business are not written according to manual rates  
8   or rating plans and exempt commercial policyholder risks, every manual, minimum  
9   class rate, rating schedule or rating plan, and every other rating rule, and every  
10    modification of any of the foregoing which it proposes to use. Every filing must  
11    state the proposed effective date thereof and must indicate the character and  
12    extent of the coverage contemplated. When a filing is not accompanied by the  
13    information upon which the insurer supports the filing, and the commissioner does  
14    not have sufficient information to determine whether the filing meets the  
15    requirements of this chapter, the commissioner shall require the insurer to furnish  
16    the information upon which it supports the filing and the waiting period commences  
17    as of the date the information is furnished. Every insurer shall file or incorporate by  
18    reference to material which has been approved by the commissioner, at the same  
19    time as the filing of the rate, all supplementary rating and supporting information to  
20    be used in support of or in conjunction with a rate. The information furnished in  
21    support of a filing may include:
- 22    a. The experience or judgment of the insurer or advisory organization making  
23   the filing.
- 24    b. Its interpretation of any statistical data upon which it relies.
- 25    c. The experience of other insurers or advisory organizations.
- 26    d. Any other relevant factors.
- 27    A filing and any supporting information is open to public inspection after the filing  
28    becomes effective. Specific inland marine rates on risks specially rated, made by  
29    an advisory organization, must be filed with the commissioner.
- 30           2. After reviewing an insurer's filing, the commissioner may require that the insurer's  
31    rates be based upon the insurer's own loss and expense information. If the

- 1 insurer's loss or allocated loss adjustment expense information is not actuarially  
2 credible, as determined by the commissioner, the insurer may use or supplement  
3 its experience with information filed with the commissioner by an advisory  
4 organization. Insurers utilizing the services of an advisory organization must  
5 provide with their rate filing, at the request of the commissioner, a description of the  
6 rationale for such use, including its own information and method of utilization of the  
7 advisory organization's information. This chapter does not require any insurer to  
8 become a member of or a subscriber to any advisory organization.
- 9 3. The commissioner shall review filings as soon as reasonably possible after they  
10 have been made in order to determine whether they meet the requirements of this  
11 chapter.
- 12 4. Subject to the exceptions specified in ~~subsection~~ subsections 5 and 6, each filing  
13 must be on file for a waiting period of sixty days before it becomes effective. The  
14 period may be extended by the commissioner for an additional period not to  
15 exceed fifteen days if the commissioner gives written notice within the waiting  
16 period to the insurer or advisory organization which made the filing that the  
17 commissioner needs the additional time for the consideration of the filing. Upon  
18 written application by the insurer or advisory organization, the commissioner may  
19 authorize a filing which the commissioner has reviewed to become effective before  
20 the expiration of the waiting period or any extension thereof. A filing is deemed to  
21 meet the requirements of this chapter unless disapproved by the commissioner  
22 within the waiting period or any extension thereof.
- 23 5. Any special filing with respect to a surety or guaranty bond required by law or by  
24 court or executive order or by order or rule of a public body, not covered by a  
25 previous filing, becomes effective when filed and is deemed to meet the  
26 requirements of this chapter until such time as the commissioner reviews the filing  
27 and so long thereafter as the filing remains in effect. Specific inland marine rates  
28 on risks specially rated by an advisory organization become effective when filed  
29 and are deemed to meet the requirements of this chapter until such time as the  
30 commissioner reviews the filing and so long thereafter as the filing remains in  
31 effect.

1           6. Commercial risk rate changes, except crop insurance, of no more than five percent  
2           increase or decrease for a class of risk are presumed to meet the requirements of  
3           this chapter upon implementation. The changes must be filed for informational  
4           purposes with the commissioner within sixty days of implementation.

5           7. Under any rules the commissioner may adopt, the commissioner may, by written  
6           order, suspend or modify the requirement of filing as to any kind of insurance,  
7           subdivision, or combination thereof, or as to classes of risks, the rates for which  
8           cannot practicably be filed before they are used. The orders and rules must be  
9           made known to insurers and advisory organizations affected thereby. The  
10          commissioner may make any examination the commissioner deems advisable to  
11          ascertain whether any rates affected by the order meet the standards set forth in  
12          subdivision e of subsection 1 of section 26.1-25-03.

13         ~~7.~~ 8. Upon the written application of the insured, stating the insured's reasons therefor,  
14          filed with and approved by the commissioner, a rate in excess of that provided by a  
15          filing otherwise applicable may be used on any specific risk.

16         ~~8.~~ 9. No insurer may make or issue a contract or policy except in accordance with the  
17          filings that have been approved and are in effect for the insurer as provided in this  
18          chapter or in accordance with subsection ~~6 or 7~~ or 8.

19         ~~9.~~ 10. Nothing in this chapter may be construed to require an advisory organization or its  
20          members or its subscribers to immediately refile final rates or premium charges  
21          previously approved by the commissioner. Members or subscribers of an advisory  
22          organization are authorized to continue to use insurance rates or premium charges  
23          approved before July 1, 1991, or decreases from those rates or premium charges  
24          filed by the advisory organization and subsequently approved after July 1, 1991.

25           **SECTION 5. AMENDMENT.** Subsection 4 of section 26.1-30-19 of the North Dakota  
26          Century Code is amended and reenacted as follows:

27           4. No casualty or fire and property insurance policy, certificate, contract, or  
28          agreement may be issued for delivery or delivered to any person in this state nor  
29          may any application, rider, or endorsement be used in connection therewith until  
30          the form thereof has been filed and approved by the commissioner to the extent

1 rates are filed and approved pursuant to chapter 26.1-25 or filed for informational  
2 purposes under subsection 6 of section 26.1-25-04.

3 **SECTION 6. AMENDMENT.** Section 26.1-30.1-01 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5 **26.1-30.1-01. Application.** This chapter applies to policies primarily insuring risks  
6 arising from the conduct of a commercial or industrial enterprise except workers' compensation  
7 policies, private passenger automobile policies, inland marine policies, excess umbrella liability  
8 policies, errors and omissions policies, ~~and~~ officers and directors liability policies, and  
9 exempted commercial policyholders as defined in section 26.1-25-02.1.

10 **SECTION 7. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **26.1-44-02. Affidavit as prerequisite of insurance - Contents.** A surplus lines  
13 insurance broker licensed under chapter 26.1-26 shall in every case execute and file with the  
14 commissioner within fifteen days of the effective date of any surplus line insurance policy,  
15 indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an  
16 inability exists to procure the insurance, indemnity contract, or surety bond desired from an  
17 insurer authorized to do business in this state. There is a presumption that such inability exists  
18 and that a diligent search has been made if the insurance, indemnity contract, or surety bond  
19 provides coverage listed by the commissioner as an approved surplus lines coverage or if the  
20 risk qualifies as an exempt commercial policyholder as defined in section 26.1-25-02.1. If the  
21 commissioner concurs in the allegation in the affidavit, the commissioner may authorize the  
22 procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do  
23 business in this state.