

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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
2 of 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, 26.1-25-04, subsection 4 of section
4 26.1-30-19, sections 26.1-30.1-01, and 26.1-44-02 of the North Dakota Century Code, relating
5 to insurance contracts issued to industrial concerns, exempt commercial policyholders, rate
6 filings, filing of policy forms, cancellation and nonrenewal of commercial insurance, and surplus
7 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
13 certified to the commissioner that it meets two of the following seven criteria and
14 requests exemption from policy, form, and rate regulatory oversight:
- 15 a. Has net worth of over twenty-five million dollars;
16 b. Has net revenue or sales of over fifty million dollars;
17 c. Has more than seventy-five employees per individual company or one
18 hundred fifty 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 seventy-five
21 thousand dollars;
22 f. Is a not-for-profit or public entity with an annual budget or assets of at least
23 twenty-five million dollars; or
24 g. Is a municipality with a population of over twenty-five 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 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
6 the rationale for such use, including its own information and method of utilization of
7 the advisory organization's information. This chapter does not require any insurer
8 to 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.