

SENATE BILL NO. 2194

Introduced by

Senators Klein, Krebsbach

Representatives Keiser, Wald

1 A BILL for an Act to amend and reenact section 26.1-02-21 and 26.1-06.1-31 of the North
2 Dakota Century Code, relating to treatment of reinsurance upon insolvency, liquidation, or
3 dissolution and reinsurer's liability in delinquency proceedings.

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

5 **SECTION 1. AMENDMENT.** Section 26.1-02-21 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution.**

8 ~~No credit~~

9 1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to
10 any ceding insurer for reinsurance; ~~unless the reinsurance is contract provides, in~~
11 ~~substance, that in the event of the insolvency of the ceding insurer, the reinsurance~~
12 ~~must be payable under one or more contracts reinsured~~ by the assuming insurer
13 on the basis of ~~the liability of the ceding insurer under the contract or contracts~~
14 ~~reinsured reported claims allowed by the liquidation court~~ without diminution
15 because of the insolvency of the ceding insurer ~~or to its domiciliary liquidator or~~
16 ~~receiver except when.~~ The payments must be made directly to the ceding insurer
17 or to the ceding insurer's domiciliary liquidator except if:

18 4. a. The contract or other written agreement specifically provides another payee of
19 such reinsurance in the event of the insolvency of the ceding insurer; ~~and or~~
20 2. b. The assuming insurer, with the consent of the direct insured, has assumed
21 such policy obligations of the ceding insurer as direct obligations of the
22 assuming insurer to the payees under the policies and in substitution for the
23 obligations of the ceding insurer to the payees.

- 1 2. Notwithstanding subsection 1, if a life and health insurance guaranty association
2 has elected to succeed to the rights and obligations of the insolvent insurer under
3 the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims
4 continues under the contract of reinsurance, subject to the payment to the
5 reinsurer of the reinsurance premiums for such coverage. Payment for such
6 reinsured claims may only be made by the reinsurer pursuant to the direction of the
7 guaranty association or the guaranty association's designated successor. Any
8 payment made at the direction of the guaranty association or the guaranty
9 association's designated successor by the reinsurer will discharge the reinsurer of
10 all further liability to any other party for the claim payment.
- 11 3. The reinsurance agreement may provide that the domiciliary liquidator of and
12 insolvent ceding insurer shall give written notice to the assuming insurer of the
13 pendency of a claim against such ceding insurer on the contract reinsured within a
14 reasonable time after the claim is filed in the liquidation proceeding. During the
15 pendency of the claim, any assuming insurer may investigate the claim and
16 interpose, at the assuming insurer's own expense, in the proceeding in which the
17 claim is to be adjudicated any defenses the assuming insurer determines available
18 to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed
19 as a claim against the insolvent ceding insurer to the extent of a proportionate
20 share of the benefit which may accrue to the ceding insurer solely as a result of the
21 defense undertaken by the assuming insurer. If two or more assuming insurers are
22 involved in the same claim and a majority in interest elect to interpose one or more
23 defenses to the claim, the expense must be apportioned in accordance with the
24 terms of the reinsurance agreement as though the expense had been incurred by
25 the ceding insurer.

26 **SECTION 2. AMENDMENT.** Section 26.1-06.1-31 of the North Dakota Century Code
27 is amended and reenacted as follows:

28 **26.1-06.1-31. Reinsurer's liability.**

- 29 1. The amount recoverable by the liquidator from reinsurers may not be reduced as a
30 result of the delinquency proceedings, ~~regardless of any provision in the~~
31 ~~reinsurance contract or other agreement. Payment made directly to an insured or~~

- 1 ~~other creditor does not diminish the reinsurer's obligation to the insurer's estate~~
2 ~~except when the reinsurance contract provided for direct coverage of a named~~
3 ~~insured and the payment was made in discharge of that obligation unless the~~
4 ~~reinsurance contract provides, in substance, that in the event of the insolvency of~~
5 ~~the ceding insurer, the reinsurance must be payable under one or more reinsured~~
6 ~~by the assuming insurer on the basis of reported claims allowed by the liquidation~~
7 ~~court without diminution because of the insolvency of the ceding insurer. The~~
8 ~~payments must be made directly to the ceding insurer or to the ceding insurer's~~
9 ~~domiciliary liquidator except if:~~
- 10 a. The contract or other written agreement specifically provides another payee of
11 such reinsurance in the event of the insolvency of the ceding insurer; or
12 b. The assuming insurer, with the consent of the direct insured, has assumed
13 such policy obligations of the ceding insurer as direct obligations of the
14 assuming insurer to the payees under the policies and in substitution for the
15 obligations of the ceding insurer to such payees.
- 16 2. Notwithstanding subsection 1, if a life and health insurance guaranty association
17 has elected to succeed to the rights and obligations of the insolvent insurer under
18 the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims
19 continues under the contract of reinsurance, subject to the payment to the
20 reinsurer of the reinsurance premiums for such coverage. Payment for such
21 reinsured claims may only be made by the reinsurer pursuant to the direction of the
22 guaranty association or the guaranty association's designated successor. Any
23 payment made at the direction of the guaranty association or the guaranty
24 association's designated successor by the reinsurer will discharge the reinsurer of
25 all further liability to any other party for the claim payment.