10022.0100

Sixty-second Legislative Assembly of North Dakota

Introduced by

## FIRST DRAFT:

Prepared by the Legislative Council staff for the Industry, Business, and Labor Committee
January 2010

- A BILL for an Act to amend and reenact sections 26.1-03-17, 26.1-17-10, and 50-06-19 of the
- 2 North Dakota Century Code, relating to exempting nonprofit health insurance companies from
- 3 the insurance premium tax.

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

**SECTION 1. AMENDMENT.** Section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

## 26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service <del>corporation,</del> health maintenance organization, and prepaid legal service organization, except any nonprofit health insurer and fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. Collections from this tax, except for collections deposited in the firefighters death benefit fund, must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the

- biennial amount appropriated for distribution under sections 18-04-05 and 23-40-05 in any fiscal year. Collections from this tax in an amount of up to fifty thousand dollars per biennium, as may be necessary, are appropriated on a continuing basis for deposit in the firefighters death benefit fund for distribution under chapter 18-05.1. Collections from this tax exceeding the sum of the amount deposited in the insurance tax distribution fund and the amount deposited in the firefighters death benefit fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.
- 2. An insurance company, nonprefit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 3 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.
- 3. Any company failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of one hundred dollars plus twenty-five dollars per day, excepting the first day after the tax became due. Any company failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.

- 4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit or benevolent societies, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of the total tax paid during the previous calendar year, or eighty percent of the actual tax for the quarter being reported of the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
- 5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.
- 6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5. Failure of a company to pay the two hundred dollar filing fee subjects the company to the penalty as provided in subsection 3.

**SECTION 2. AMENDMENT.** Section 26.1-17-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-10. Nonprofit corporation tax exempt - Insurance premium tax - Law governing charitable organizations applicable. Every nonprofit health service corporation is a charitable and benevolent organization and is exempt from taxation by the state or any political subdivision thereof, except that the tax imposed by section 26.1-03-17 is applicable to a corporation subject to this chapter and the real property of a nonprofit health service

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of benefits.

- 1 corporation is subject to ad valorem taxes and special assessments for special improvements.
- 2 Except as otherwise provided in this chapter, the laws of this state relating to and affecting
- 3 nonprofit charitable and benevolent corporations are applicable to all nonprofit health service
- 4 corporations writing health service contracts.
  - **SECTION 3. AMENDMENT.** Section 50-06-19 of the North Dakota Century Code is amended and reenacted as follows:
- 50-06-19. Exemption from insurance premium tax. No tax otherwise due under section 26.1-03-17 may be required of a stock or mutual insurance company, nonprofit health service corporation, or health maintenance organization with respect to service fees collected by any third-party administrator providing administrative services or premiums, capitation payments, or policy fees paid by the department for coverage or services provided to a recipient