

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact section 26.1-03.2-08 of the North Dakota Century
2 Code, relating to confidentiality for risk-based capital reports.

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

4 **SECTION 1. AMENDMENT.** Section 26.1-03.2-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-03.2-08. Confidentiality - Prohibition on announcements - Prohibition on use in**
7 **ratemaking.**

- 8 1. All risk-based capital reports, to the extent the information is not required to be set
9 forth in a publicly available annual statement schedule, and risk-based capital plans,
10 including the results or report of any examination or analysis of a health organization
11 performed pursuant to this chapter, and any corrective order issued by the
12 commissioner pursuant to examination or analysis, with respect to a domestic health
13 organization or foreign health organization, which are filed with the commissioner
14 constitute information that might be damaging to the health organization if made
15 available to its competitors, and therefore shall be kept confidential by the
16 commissioner. This information may not be made public or be subject to subpoena,
17 other than by the commissioner and then only for the purpose of enforcement actions
18 taken by the commissioner pursuant to this chapter or any other provision of the
19 insurance laws of this state.
- 20 2. Neither the commissioner nor any person that received documents, materials, or other
21 information while acting under the authority of the commissioner is permitted or
22 required to testify in any private civil action concerning any confidential documents,
23 materials, or information subject to subsection 1.
- 24 3. To assist in the performance of the commissioner's duties, the commissioner may:

- 1 a. Share documents, materials, or other information, including the confidential and
2 privileged documents, materials, or information subject to subsection 1, with
3 other state, federal, and international regulatory agencies; with the national
4 association of insurance commissioners and its affiliates and subsidiaries; and
5 with state, federal, and international law enforcement authorities, if the recipient
6 agrees to maintain the confidentiality and privileged status of the document,
7 material, or other information.
- 8 b. Receive documents, materials, or information, including otherwise confidential
9 and privileged documents, materials, or information from the national association
10 of insurance commissioners and its affiliates and subsidiaries, and from
11 regulatory and law enforcement officials of other foreign or domestic jurisdictions,
12 and shall maintain as confidential or privileged any document, material, or
13 information received with notice or the understanding documents, materials, or
14 information is confidential or privileged under the laws of the jurisdiction that is
15 the source of the document, material, or other information; and
- 16 c. Enter agreements governing sharing and use of information consistent with this
17 subsection.
- 18 4. A waiver of an applicable privilege or claim of confidentiality in the documents,
19 materials, or information does not occur as a result of disclosure to the commissioner
20 under this section or as a result of sharing as authorized in subdivision c of
21 subsection 3.
- 22 5. It is the judgment of the legislature that the comparison of a health organization's total
23 adjusted capital to any of its risk-based capital levels is a regulatory tool that may
24 indicate the need for corrective action with respect to the health organization and is
25 not intended as a means to rank health organizations generally. Therefore, except as
26 otherwise required under the provisions of this chapter, the making, publishing,
27 disseminating, circulating, or placing before the public, or causing, directly or indirectly
28 to be made, published, disseminated, circulated, or placed before the public, in a
29 newspaper, magazine, or other publication, or in the form of a notice, circular,
30 pamphlet, letter, or poster, or over a radio or television station, or in any other way, an
31 advertisement, announcement, or statement containing an assertion, representation,

1 or statement with regard to the risk-based capital levels of any health organization, or
2 of any component derived in the calculation, by any health organization, insurance
3 producer, or other person engaged in any manner in the insurance business would be
4 misleading and is therefore prohibited. However, if any materially false statement with
5 respect to the comparison regarding a health organization's total adjusted capital to its
6 risk-based capital levels, or any of them, or an inappropriate comparison of any other
7 amount to the health organization's risk-based capital levels is published in any written
8 publication and the health organization is able to demonstrate to the commissioner
9 with substantial proof the falsity of the statement, or the inappropriateness, as the
10 case may be, then the health organization may publish an announcement in a written
11 publication if the sole purpose of the announcement is to rebut the materially false
12 statement.

13 3-6. It is the further judgment of the legislature that the risk-based capital instructions,
14 risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans,
15 and revised risk-based capital plans are intended solely for use by the commissioner
16 in monitoring the solvency of health organizations and the need for possible corrective
17 action with respect to health organizations and may not be used by the commissioner
18 for ratemaking nor considered or introduced as evidence in any rate proceeding nor
19 used by the commissioner to calculate or derive any elements of an appropriate
20 premium level or rate of return for any line of insurance that a health organization or
21 any affiliate is authorized to write.