

## **CHAPTER 26.1-26**

### **INSURANCE PRODUCERS AND CONSULTANTS**

#### **26.1-26-01. Scope.**

This chapter governs the qualifications and procedures for the licensing of insurance producers, insurance consultants, and surplus lines insurance producers. This chapter applies to all lines of insurance and types of insurers, including prepaid legal services organizations and health maintenance organizations.

#### **26.1-26-02. Definitions.**

As used in this chapter, unless the context requires otherwise:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
2. "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.
3. "Insurance" means any of the lines of authority in section 26.1-26-11.
4. "Insurance consultant" means a person that, for a fee, holds oneself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any insurance policy that could be issued in this state.
5. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
6. "Insurer" means all types of insurance companies as well as prepaid legal services organizations and health maintenance organizations.
7. "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.
8. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.
9. "Person" means an individual or a business entity.
10. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
11. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.
12. "Surplus lines insurance producer" means a person that sells, solicits, negotiates, or procures an insurance policy from an insurer not licensed to transact business in this state which cannot be procured from an insurer licensed to do business in this state.
13. "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.
14. "Uniform application" means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.
15. "Uniform business entity application" means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

**26.1-26-03. License required - Acting as insurance producer or consultant without license prohibited - Penalty.**

No person may act as or hold oneself out to be an insurance producer, insurance consultant, or surplus lines insurance producer unless licensed under this chapter. A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed for that line of authority in accordance with this chapter. Any person willfully violating this section is guilty of a class C felony.

**26.1-26-04. Commissions.**

1. An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.
2. A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.
3. Renewal or other deferred compensation may be paid to a person for selling, soliciting, or negotiating insurance in this state if that person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.
4. An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons that do not sell, solicit, or negotiate insurance in this state, unless the payment violates section 26.1-04-06.

**26.1-26-05. Unlicensed person - Effect - Agent for insurer.**

A person not licensed as an insurance producer or surplus lines insurance producer who sells, solicits, or negotiates an insurance policy on behalf of an insurer is an insurance producer within the intent of this chapter and is liable for all the duties, requirements, liabilities, and penalties to which an insurance producer of the insurer is subject. An insurer accepting business from an unlicensed person through any of its officers, insurance producers, or employees thereby acknowledges that person as an insurance producer acting on its behalf in the transaction.

**26.1-26-06. Insurance producer - Agent of insurer.**

An insurance producer who sells, solicits, or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer. This section does not affect the apparent authority of an agent.

**26.1-26-07. Insurance producer - Agent of insured.**

An insurance producer or surplus lines insurance producer, who is not an appointed insurance producer of the insurer with which an insurance policy is placed and who acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself, is regarded as representing the insured or the insured's beneficiary and not the insurer.

**26.1-26-08. Licensing of partnership, limited liability partnership, corporation, or limited liability company - Notice of change of individuals.**

Repealed by S.L. 2001, ch. 262, § 136.

## **26.1-26-09. Exceptions to licensing requirements.**

1. Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.
2. A license as an insurance producer is not required of the following:
  - a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and:
    - (1) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;
    - (2) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
    - (3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.
  - b. A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under plans or otherwise assisting in administering plans, or performs administrative services related to mass-marketed property and casualty insurance, when no commission is paid to the person for the service.
  - c. An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.
  - d. An employee of an insurer or an organization employed by an insurer or an organization who inspects, rates, or classifies risks or supervises the training of insurance producers and who is not individually engaged in the sales, solicitation, or negotiation of insurance.
  - e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.
  - f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.
  - g. A salaried full-time employee who counsels or advises that person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.
  - h. An employee of an insurer or of an insurance producer who responds to requests from existing policyholders on existing policies provided that employee is not directly compensated based on the volume of premiums that may result from

these services and provided that employee does not sell, solicit, or negotiate insurance.

**26.1-26-10. Consultant - Exceptions to licensing requirement.**

A person may not act as an insurance consultant until licensed as such by the commissioner. However, a license as an insurance consultant is not required of:

1. An attorney licensed to practice law in this state acting in the attorney's professional capacity.
2. A licensed insurance producer or surplus lines insurance producer.
3. A trust officer of a bank acting in the normal course of the trust officer's employment.
4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or the certified public accountant's professional capacity.

**26.1-26-11. License of insurance producer - Lines of insurance.**

An insurance producer or surplus lines insurance producer may receive a license to market products under one or more of the following lines:

1. Life and annuity means insurance coverage on human lives, including benefits of endowment, annuities, and credit life.
2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.
5. Variable life and annuity means insurance coverage provided under variable life insurance contracts and variable annuities.

The product types found under each of the above lines of insurance are those adopted pursuant to section 26.1-05-02.1.

**26.1-26-11.1. Authority to define procedures and requirements.**

The commissioner may adopt rules to implement licensing procedures and requirements specific to each line of insurance and each product type within each line of insurance.

**26.1-26-12. License application - Accompanied by fees.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-13. Insurance agent - Application - Age - Appointment by insurer.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-13.1. Appointments.**

1. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.
2. To appoint an insurance producer as its agent, the appointing insurer shall file a notice of appointment within thirty days from the later of the date the agency contract is executed or the first insurance application is submitted. The notice must be in a format approved by the insurance commissioner. An insurer may also appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.
3. An insurer shall pay an appointment fee for each insurance producer appointed by the insurer in the amount and method of payment set forth in section 26.1-01-07.
4. An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in section 26.1-01-07.

### **26.1-26-13.2. Application for examination.**

1. A resident individual applying for an insurance producer license or an insurance consultant license must pass a written examination unless exempt under section 26.1-26-25. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or consultant, and the insurance laws and regulations of this state. The individual must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the individual seeks qualification.
2. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 26.1-01-07.
3. An individual applying for an examination must remit a nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
4. An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination provided the individual remits all required fees and forms before being rescheduled for another examination.

### **26.1-26-13.3. Application for license.**

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:
  - a. Is at least eighteen years of age;
  - b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;
  - c. Has paid the fees set forth in section 26.1-01-07; and
  - d. Has successfully passed the examinations for the lines of authority for which the individual has applied.
2. A business entity acting as an insurance producer must obtain an insurance producer license. Application must be made using the uniform business entity application. Before approving the application, the commissioner must find that:
  - a. The business entity has paid the fee set forth in section 26.1-01-07;
  - b. The business entity has designated a licensed individual principal insurance producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
  - c. The individual designated as the licensed principal insurance producer of the business entity has taken the examination required by section 26.1-26-13.2. The business entity may only be licensed for those lines of insurance for which one or more of its principal insurance producers is licensed. The business entity shall inform the commissioner within ten working days of any change in the status of its principal insurance producer or producers.
  - d. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

### **26.1-26-13.4. Biennial license continuation.**

A licensed individual insurance producer shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee of twenty-five dollars. The commissioner shall give a licensee not less than sixty days' notice of the biennial license continuation filing deadline.

### **26.1-26-14. Investigation by commissioner.**

Within a reasonable time after receipt of a properly completed application for a license under this chapter, the commissioner may conduct investigations and propound interrogatories

concerning the applicant's qualifications, residence, business affiliations, and any other matter which the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

**26.1-26-15. License requirement - Character.**

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

**26.1-26-15.1. Prelicensure education.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-16. License requirement - Insurance broker - Experience.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-16.1. Errors and omissions insurance - License requirement for insurance brokers.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-16.2. Payment of commissions by brokers - Limitations.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-17. License requirement - Surplus lines insurance producer.**

An applicant for a license as a surplus lines insurance producer must be licensed in this state as an insurance producer qualified as to the line or lines to be written.

**26.1-26-18. License requirement - Brokers - Bond.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-19. Determination of residency for license issuance - Election of residency - When void.**

An applicant may qualify as a resident if the applicant resides in this state or maintains the applicant's principal place of business in this state. A license issued pursuant to an application claiming residency for licensing purposes constitutes an election of residency in this state. A license is void if the licensee, while holding a resident license in this state, also holds or applies for a resident license from, or thereafter claims to be a resident of, any other state or other jurisdiction or ceases to be a resident of this state.

**26.1-26-20. Nonresident licensing.**

1. Unless denied licensure pursuant to this chapter, the commissioner shall issue a nonresident person a nonresident insurance producer license if:
  - a. The person is currently licensed as a resident and is in good standing in the person's home state;
  - b. The person has submitted the proper request for licensure and has paid the fees required by section 26.1-01-07;
  - c. The person has submitted or transmitted to the commissioner either the person's home state application for licensure or a completed uniform application; and
  - d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.
2. The commissioner may verify the insurance producer's licensing status through the insurance producer database maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.
3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. A fee or license application is not required.

4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in the person's home state is entitled to receive a nonresident surplus lines insurance producer license pursuant to subsection 1. Except as to subsection 1, nothing in this section otherwise amends or supersedes any provision of chapter 26.1-44.
5. Notwithstanding any other provision of this chapter, a person licensed as a limited lines credit insurance or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited lines insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 26.1-26-11.

**26.1-26-21. Agents to designate commissioner as attorney for service of process - Fee.**

The commissioner may not issue a license to any applicant until the applicant files with the commissioner a designation of the commissioner and the commissioner's successors in office, as the applicant's true and lawful attorney, upon whom may be served all lawful process in any action or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this state. The designation constitutes an agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the person.

**26.1-26-22. Nonresident proceeding by commissioner - Service of process - Procedure.**

The commissioner shall serve process upon any nonresident licensee in any action or proceeding instituted by the commissioner under this chapter by mailing the process by registered mail return receipt requested to the licensee at the licensee's last-known address of record or principal place of business. Service of process under this section is complete upon mailing.

**26.1-26-23. Examination of individuals.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-24. Examination when partnership, limited liability partnership, corporation, or limited liability company is applicant.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-25. Exceptions from examination.**

The requirement for a written examination is subject to the following exceptions:

1. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's insurance producer database records, maintained by the national association of insurance commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.
2. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence in this state to become a resident licensee pursuant to section 26.1-26-13.2. A prelicensing education or examination may not be required of that person to obtain any line of authority

previously held in the prior state unless the commissioner determines otherwise by rule.

3. An applicant may be licensed without examination to market a specific product type if the commissioner finds by rule the specific product type does not require the same professional competency demanded for other product types.
4. An applicant for a license to write only a specific product type may be licensed subject to reduced examination requirements if the commissioner finds by rule that the requirements for licensure would otherwise be too burdensome and unrelated to that specific product type.

**26.1-26-25.1. Assumed names.**

An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner before using the assumed name.

**26.1-26-26. Temporary license as an insurance producer.**

The commissioner may issue a temporary license as an insurance producer for a period not to exceed one hundred eighty days without requiring an examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse, next of kin, administrator, executor, or employee of a licensed insurance producer who died, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance producer who became disabled.
2. To a member or employee of a business entity, licensed as an insurance producer, upon the death or disability of an individual designated as the principal insurance producer in the business entity application or the license.
3. To the designee of a licensed insurance producer entering upon active service in the armed forces of the United States.
4. In any other circumstance when the commissioner determines that the public interest will best be served by the issuance of the license.

**26.1-26-27. Approval of examination by commissioner - Contents.**

Each examination must be approved for use by the commissioner and must reasonably test the applicant's knowledge as to the lines of insurance, policies, and transactions to be handled under the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

**26.1-26-28. Time and place of examination - Grading of examination - Notice of results.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-29. Failure to pass examination - Reexamination.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-30. Contents of license.**

The license shall state the name, address, social security number, personal identification number, or internal revenue service identification number of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

**26.1-26-30.1. Vendor authority.**

In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliates or subsidiaries that the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees,



related to insurance producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

**26.1-26-31. Term of license.**

A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a business entity, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. The individual resident licensee fails to comply with continuing education requirements of this chapter;
6. The individual licensee fails to file the biennial continuation and pay the fee;
7. The surplus lines insurance producer has failed to maintain a resident or nonresident license as an insurance producer as required by section 26.1-26-17, or has failed to pay the annual renewal fee to the commissioner; or
8. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

**26.1-26-31.1. Continuing education required - Exceptions.**

1. Except as otherwise provided in this chapter, any individual licensed as a resident insurance producer or resident insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the individual attended or participated in continuing education of not less than twenty-four hours of approved coursework, of which three hours must be in ethics. The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any individual having a license limited to a specific product type. Credits for courses attended in any one year over the minimum number of hours of coursework required, not to exceed twelve hours, may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of a two-year period. The commissioner may provide a one-time extension of the two-year reporting requirement, not to exceed thirty-six months, if additional time is necessary in order to implement the transition to reporting continuing education by birth month. No continuing education is required of an insurance producer who, as of January 1, 2010, is at least sixty-two years of age and who has a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five.
2. The commissioner shall by rule provide for reporting by birth month of compliance with the continuing education requirements of this section.

**26.1-26-31.2. Continuing education advisory task force.**

The commissioner shall appoint a continuing education advisory task force consisting of nine members. The members must be representative, to the extent possible, of the various members of the insurance industry and of the several classes of insurance. Before making appointments to the advisory task force, the commissioner shall solicit nominations from the several professional organizations representing persons selling insurance in this state and from the organizations representing companies authorized to do business in this state. Members are entitled to expenses pursuant to sections 44-08-04 and 54-06-09. The advisory task force may recommend any rules to the commissioner which are necessary to fulfill its duties and powers.

**26.1-26-31.3. Accreditation of courses.**

The commissioner shall adopt by rule criteria for the accreditation of courses for continuing or prelicensure education. Applications for accreditation of any course offered in this state for continuing or prelicensure education must be submitted to the commissioner within the time

prescribed by rule and on forms prescribed by rule and with a fee of fifty dollars. The advisory task force shall recommend to the commissioner whether any course satisfies the criteria for accreditation and the number of credit hours to be assigned to the course. The commissioner shall make a final determination as to accreditation and assignment of credit hours for courses.

**26.1-26-31.4. Report of compliance.**

Repealed by S.L. 2009, ch. 252, § 7.

**26.1-26-31.5. Extension.**

The commissioner may grant an extension of time, not to exceed one year, for completion of the requirements imposed by section 26.1-26-31.1.

**26.1-26-31.6. Credit for teaching.**

Any person teaching or lecturing at any approved continuing education course, seminar, or program qualifies for the same number of hours granted to a person enrolled in the approved course, seminar, or program.

**26.1-26-31.7. Credit for out-of-state courses.**

The commissioner may approve credit earned at any seminar, course, or program offered for prelicensure or continuing education in another state.

**26.1-26-31.8. License revocation.**

Repealed by S.L. 2009, ch. 252, § 7.

**26.1-26-32. Renewal of appointments and licenses - Annual fee.**

An appointment of an insurance producer and the license of a surplus lines insurance producer or insurance consultant terminates upon failure to pay the prescribed annual renewal fees before May first.

**26.1-26-33. Notification of address change - Duty of licensee.**

Every licensee shall notify the commissioner of any change in the licensee's residential or business address or legal name within thirty days of the change. Any licensee who ceases to maintain residency in this state shall deliver the insurance license to the commissioner by personal delivery or by mail within thirty days after terminating residency.

**26.1-26-34. Notification to commissioner of termination.**

1. Termination for cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 26.1-26-42 or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 26.1-26-42. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.
2. Termination without cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 26.1-26-42 shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
3. Ongoing notification requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional

- information that would have been reportable to the commissioner in accordance with subsection 1 had the insurer then known of the information's existence.
4. Copy of notification to be provided to insurance producer.
    - a. Within fifteen days after making the notification required by subsections 1, 2, and 3, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last-known address. If the insurance producer is terminated for cause for any of the reasons listed in section 26.1-26-42, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last-known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
    - b. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments become a part of the commissioner's file and must accompany every copy of a report distributed or disclosed for any reason about the insurance producer as permitted under subsection 6.
  5. Immunities.
    - a. In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies is not subject to civil liability, and a civil cause of action of any nature does not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.
    - b. In any action brought against a person who may have immunity under subdivision a for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision a does not apply because the person making the statement or providing the information did so with actual malice.
    - c. Subdivision a or b does not abrogate or modify any existing statutory or common-law privileges or immunities.
  6. Confidentiality.
    - a. Any documents, materials, or other information in the control or possession of the insurance department that is furnished by an insurer, insurance producer, or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner, in an investigation pursuant to this section is confidential and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.
    - b. Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision a.

- c. In order to assist in the performance of the commissioner's duties under this chapter, the commissioner:
  - (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision a, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
  - (2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
  - (3) May enter into agreements governing sharing and use of information consistent with this subsection.
  - (4) A privilege or claim of confidentiality in the documents, materials, or information shall not be waived as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph 3.
  - (5) Nothing in this chapter prohibits the commissioner from releasing final, adjudicated actions, including for-cause terminations that are open to public inspection to a database or other clearinghouse service maintained by the national association of insurance commissioners, its affiliates, or subsidiaries of the national association of insurance commissioners.
7. Penalties for failing to report. An insurer, the authorized representative of the insurer, or insurance producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with sections 26.1-26-42, 26.1-26-43, and 26.1-26-50.

**26.1-26-35. Duties of consultant - Agreements.**

An insurance consultant shall serve with objectivity and complete loyalty the interests of the consultant's client alone and to render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests. Before rendering any service set forth in subsection 4 of section 26.1-26-02, an insurance consultant shall prepare a written agreement on a form approved by the commissioner. The agreement must outline the nature of the work to be performed by the consultant and must state the fee for the work. The consultant and the client shall sign the agreement. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. This copy must be available to the commissioner.

**26.1-26-36. Surplus lines insurance producer's authority.**

A surplus lines insurance producer may act as a surplus lines insurance producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance producer may accept business from any licensed insurance producer for a nonadmitted company and may compensate the insurance producer for the business, provided the insurance is written in conformity with this title.

**26.1-26-37. Lost, stolen, or destroyed license - Issuance of duplicate.**

Upon payment of the fee for a duplicate license under section 26.1-01-07, the commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon an affidavit of the licensee, as prescribed by the commissioner, concerning the facts of the loss, theft, or destruction.

**26.1-26-38. Controlled business prohibited - Definition - Formula for determination.**

Repealed by S.L. 2001, ch. 262, § 136.

**26.1-26-39. Refusal of license - Notification of applicant - No refund of fees.**

If the commissioner finds that the applicant has not met the requirements for licensing, the commissioner shall refuse to issue the license. The commissioner shall, in writing, promptly notify the applicant and the appointing insurer, if applicable, of the refusal, stating the grounds for the refusal. All fees accompanying the application for license are not refundable.

**26.1-26-40. Refusal of initial license - Notice - Hearing.**

If the commissioner refuses to issue a license to an applicant, the notice to the applicant as provided in section 26.1-26-39 must state that the applicant may request a hearing within thirty days from the date of issuance of the notice. The commissioner shall hold a hearing, if requested by the applicant, within thirty days of the receipt of the request for a hearing and upon ten days' written notice to the applicant.

**26.1-26-41. Prohibited activities by consultants.**

No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or limited liability company with nor receive any remuneration whatsoever from any licensed insurance producer, surplus lines insurance producer, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance producer or surplus lines insurance producer in any line.

**26.1-26-42. License suspension, revocation, or refusal - Grounds.**

The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.
2. An acquisition or attempt to acquire a license through misrepresentation or fraud.
3. The applicant has been found to have been cheating on an examination for an insurance license.
4. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
5. The applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance producer, insurance consultant, or surplus lines insurance producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.
8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary or excessive insurance coverage to any person.
9. The licensee has forged another's name to an application for insurance.
10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.
13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.
14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.
15. Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.
16. The licensee knowingly accepts insurance business from an individual who is not licensed.
17. The applicant or licensee knowingly fails to comply with a court order imposing child support obligation.
18. The applicant or licensee knowingly fails to pay state income tax or comply with a court order directing payment of state income tax.

**26.1-26-42.1. Revocation of nonresident license.**

Notwithstanding the provisions of subsection 13 of section 26.1-26-42, any nonresident license issued pursuant to this chapter may be suspended or revoked without notice and hearing to the licensee and without proceeding in conformity with chapter 28-32, upon evidence in the form of a certified copy that the authority which issued the resident license to the North Dakota nonresident licensee has revoked or suspended the resident license.

**26.1-26-43. License suspension, revocation, or refusal - Business entity - Additional ground.**

The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

**26.1-26-44. Notification of suspension, revocation, or refusal - Duty of commissioner.**

The commissioner shall promptly notify all appointing insurers, when applicable, and the licensee regarding any suspension, revocation, or refusal of a license by the commissioner.

Upon suspension, revocation, or refusal of the license of a resident of this state, the commissioner shall notify the central office of the national association of insurance commissioners.

**26.1-26-45. Notification of suspension or revocation of nonresident license.**

If the commissioner suspends or revokes any nonresident's license through a formal proceeding under this chapter, the commissioner shall promptly notify the appropriate commissioner of the licensee's residence of the action and of the particulars of the action.

**26.1-26-45.1. Reporting of actions.**

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the

matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

2. Within thirty days after a criminal conviction, an insurance producer shall report to the commissioner any criminal conviction of the insurance producer taken in any jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.

**26.1-26-46. License suspension or revocation - Duty of licensee.**

Upon suspension or revocation of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

**26.1-26-47. Reciprocal provision - Retaliatory action.**

Repealed by S.L. 1999, ch. 252, § 31.

**26.1-26-47.1. Reciprocity.**

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the insurance producer's home state, except the requirements imposed by section 26.1-26-20, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
2. A nonresident insurance producer's satisfaction of the insurance producer's home state's continuing education requirements for licensed insurance producers constitutes satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

**26.1-26-48. Commissioner may make examinations and investigations.**

Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer or insurance producer, whether located within or without this state, all books, records, and papers of the insurer or insurance producer and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and insurance producers of the insurer, or the insured, as to the violation.

**26.1-26-49. Rulemaking authority.**

The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

**26.1-26-50. Civil penalty for violation of chapter.**

In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil fine not to exceed ten thousand dollars for each violation. The fine may be collected and recovered in an action brought in the name of the state.

**26.1-26-51. Statute of limitations.**

A civil action for the recovery of damages resulting from negligence or breach of contract brought against any person licensed under this chapter by any person claiming to have been injured as a result of the providing of insurance services or the failure to provide insurance services by a licensee may not be commenced in this state after July 31, 1995, unless the action is commenced on or before the earlier of:

1. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by the exercise of reasonable diligence; or
2. Six years after performance of the service for which the claim for relief arises, unless discovery was prevented by the fraudulent conduct of the licensee.

### **26.1-26-52. Insurance license for automobile rental agencies - Exception.**

A license as an insurance producer is not required for the counter sales personnel of an automobile rental company or its franchisee if:

1. The automobile rental company is appropriately licensed in this state under subsection 2 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer.
2. The coverage offered by the counter sales personnel is limited to the following:
  - a. Personal accident insurance covering the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;
  - b. Supplemental liability insurance that must include uninsured and underinsured motorist coverage, either offered separately or in combination with other liability insurance, and that provides coverage to renters and other authorized drivers for liability arising from the operation of the rental vehicle;
  - c. Personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period;
  - d. Roadside assistance and emergency sickness protection programs; and
  - e. Any other coverage that a rental company offers in connection with and incidental to the rental of vehicles.
3. The rental period is ninety days or less.
4. The automobile rental company files an acknowledgement with the commissioner that its counter sales personnel act on its behalf and that it is responsible for any representations made by the counter sales personnel relating to insurance products offered through the automobile rental company or its franchisee. The acknowledgement must state that the commissioner has the right to take any administrative action contemplated in this title, including revocation or suspension of the license required under subsection 1.
5. The automobile rental company provides basic training to counter sales personnel in the insurance products offered under this section. The training must require counter sales personnel to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed insurance producers employed by the automobile rental company or to written brochures or other materials that:
  - a. Summarize the material terms of the coverage, including the identity of the insurer;
  - b. Disclose that the policies offered by the automobile rental company may duplicate coverage already provided by other insurance the renter may have;
  - c. State that the purchase of insurance is not required to rent the vehicle; and
  - d. Describe the process of filing a claim.
6. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the automobile rental company from including the insurance products in an overall employee performance compensation incentive program.

### **26.1-26-53. Controlled business prohibited - Definition - Formula for determination.**

1. As used in this section, unless the context otherwise requires, "controlled business" means insurance written on the interests of the licensee, licensee's immediate family, or licensee's employer; or insurance covering the licensee, the members of the licensee's immediate family, a business entity, or the officers, directors, substantial stockholders, partners, or employees of such a business entity of which the licensee or a member of the licensee's immediate family is an officer, a director, a substantial stockholder, a partner, an associate, or an employee. "Controlled business" does not include crop insurance business sold by a business entity licensed as an insurance producer for crop insurance between August 1, 2001, and December 31, 2002.



2. The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner determines that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. A license is deemed to have been or intended to be used for the purpose of writing controlled business if the commissioner determines that during any twelve-month period the aggregate commissions earned from the controlled business exceeded thirty-five percent of the aggregate commissions earned on all business written by the licensee during the same period.
3. This section does not apply to insurance written in connection with credit transactions, including title insurance.