

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2181
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

AN ACT to amend and reenact sections 26.1-01-07, 26.1-11-06, 26.1-11-07, 26.1-26-01, 26.1-26-02, 26.1-26-03, 26.1-26-04, 26.1-26-05, 26.1-26-06, 26.1-26-08, 26.1-26-09, 26.1-26-10, 26.1-26-13, 26.1-26-14, 26.1-26-20, 26.1-26-21, 26.1-26-22, 26.1-26-23, 26.1-26-24, 26.1-26-25, 26.1-26-31, 26.1-26-32, 26.1-26-34, 26.1-26-37, 26.1-26-38, 26.1-26-40, 26.1-26-41, 26.1-26-42, 26.1-26-46, and 26.1-39-09.2 of the North Dakota Century Code, relating to fees charged by commissioner, reciprocal penalties of foreign insurance companies, countersignature requirements, and insurance agents; and to repeal sections 26.1-26-47 and 26.1-39-09.1 of the North Dakota Century Code, relating to insurance agents and property and casualty insurance programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07. Fees chargeable by commissioner. The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
2. For each original certificate of authority issued upon admittance, one hundred dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, fifty dollars.
3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.
5. For filing bylaws or amendments thereof, ten dollars.
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.
8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.
9. For filing an annual statement, twenty-five dollars.
10. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.
11. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by

the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of the certificate, ten dollars.
13. For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.
14. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.
15. For issuing and each annual renewal of ~~a resident~~ an insurance broker's, surplus lines insurance broker's, or insurance consultant's, ~~health service corporation sales representative's, and prepaid legal services organization sales representative's license, or duplicate thereof,~~ ten dollars.
16. ~~For issuing and each annual renewal of a nonresident insurance broker's, health service corporation sales representative's, prepaid legal services organization sales representative's, and insurance consultant's license, or duplicate thereof, fifteen dollars.~~
17. ~~For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate~~ an insurance agent's license, ten one hundred dollars.
18. ~~For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars.~~
19. ~~17. For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, ten dollars. For issuing a duplicate of any license or registration issued under this title, ten dollars.~~
20. 18. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.
21. 19. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.
22. 20. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
23. 21. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
24. 22. For each insurance company appointment and renewal of an appointment of an insurance agent ~~or limited insurance representative,~~ ten dollars.
25. 23. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.
26. 24. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.
27. 25. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.
28. 26. For issuing and each annual renewal of a license to an advisory organization, ~~or duplicate thereof,~~ fifty dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, ~~13, 19, 22, 23, and 24~~ 16, 19, 20, and 21.

However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 2. AMENDMENT. Section 26.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-11-06. Reciprocal penalties - Retaliatory charges. Whenever the laws of any other state, or of any foreign country, or of any province or territory thereof, or when the rules of the insurance department of that state, country, province, or territory, require any insurance company, corporation, limited liability company, association, or society organized under the laws of this state, ~~or of any agent thereof,~~ to deposit securities in that state, country, province, or territory for the protection of policyholders or others, or any payment for taxes, fines, penalties, certificates of authority, licenses, or fees, or the performance of any duties or acts other than and exceeding those required by the laws of this state of a like insurance company, corporation, limited liability company, association, or society, ~~or the agents thereof,~~ organized under the laws of that state, country, territory, or province, while transacting business in this state, then and in every such case, an insurance company, corporation, limited liability company, association, or society organized in that state, country, province, or territory which establishes an agency or transacts business in this state, is required to make deposits and to pay to the commissioner charges, licenses, fees, taxes, fines, or penalties in the amounts respectively, and to do all other acts which that other state, country, province, or territory, by the laws or the rules of the insurance department thereof, requires of a like insurance company, corporation, limited liability company, or society, ~~or the agents thereof,~~ organized under the laws of this state when doing business in that other state, country, province, or territory. This section applies regardless of the plan of assessment or collection of premiums, contributions, or assessments adopted by the foreign company, corporation, limited liability company, association, or society.

SECTION 3. AMENDMENT. Section 26.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, ~~except as provided in section 26.1-39-09.1,~~ there may not be any requirement that an agent resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an agent resident in that state on an insurance policy written by a nonresident agent or nonresident broker of that state, then any insurance policy written by an agent resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an agent resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an agent resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the agent in that state at the request of a nonresident agent or nonresident broker of that state, then the agent resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

SECTION 4. AMENDMENT. Section 26.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance agents, insurance brokers, insurance consultants, ~~limited insurance representatives,~~ and

surplus lines insurance brokers. This chapter applies to all lines of insurance and types of insurers including life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal, benevolent, fraternal, or health service plan, as set forth in this title.

SECTION 5. AMENDMENT. Section 26.1-26-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Insurance" includes annuities.
2. "Insurance agent" means an individual, partnership, limited liability partnership, corporation, or limited liability company appointed by an insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.
3. "Insurance broker" means any individual, partnership, limited liability partnership, corporation, or limited liability company which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.
4. "Insurance consultant" means an individual, partnership, limited liability partnership, corporation, or limited liability company 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. ~~"Limited insurance representative" means an individual, partnership, corporation, or limited liability company authorized by the commissioner to solicit or negotiate contracts for a particular line of insurance which the commissioner may by rule deem essential for the transaction of business in this state and which does not require the professional competency demanded for a license as an insurance agent or insurance broker.~~
6. "Surplus lines insurance broker" means an individual, partnership, limited liability partnership, corporation, or limited liability company which 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.

SECTION 6. AMENDMENT. Section 26.1-26-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-03. Acting as agent, broker, or consultant, ~~or limited representative~~ without license prohibited - Penalty. No person may act as or hold oneself out to be an insurance agent, insurance broker, insurance consultant, ~~limited insurance representative~~, or surplus lines insurance broker unless licensed under this chapter. No insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker may apply for, procure, negotiate for, or place for others, any policy for any line of insurance as to which that person is not then qualified and licensed under this chapter. ~~No insurance agent or limited insurance representative may place an insurance policy with any insurer as to which that person does not then hold a license as an insurance agent or limited insurance representative under this chapter.~~ Any person willfully violating this section is guilty of a class C felony.

SECTION 7. AMENDMENT. Section 26.1-26-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04. Payment to or acceptance by unlicensed person of commission prohibited - When payment or assignment of commissions permitted. No insurer, insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that

line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. In the case of an insurance agent, the agent must also be properly appointed under this chapter before the insurer may pay, or the agent may accept, any commission or other valuable consideration for services as an insurance agent. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid, to a partnership or limited liability partnership of which that person is a member, employee, or agent, to a corporation of which that person is an officer, employee, or agent, or to a limited liability company of which that person is a manager, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

SECTION 8. AMENDMENT. Section 26.1-26-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker who solicits an insurance policy on behalf of an insurer is an insurance agent within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of the insurer is subject, ~~and the~~. An insurer by compensating that accepting business from an unlicensed person through any of its officers, agents, or employees for soliciting insurance policies thereby accepts and acknowledges that person as its agent in the transaction. A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the negotiations of such insurance, is an insurance broker within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are subject.

SECTION 9. AMENDMENT. Section 26.1-26-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-06. ~~Agent or limited representative~~ Insurance agent - Agent of insurer. Every insurance agent ~~or limited insurance representative~~ who 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. This section does not affect the apparent authority of an agent.

SECTION 10. AMENDMENT. Section 26.1-26-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-08. Licensing of partnership, limited liability partnership, corporation, or limited liability company - Notice of change of individuals. A partnership, limited liability partnership, corporation, or limited liability company engaging in the activities of an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker must be licensed as such. Every member of the partnership or limited liability partnership, every officer, director, stockholder, and employee of the corporation, and every manager, governor, member, and employee of the limited liability company ~~personally engaged in this state in soliciting or negotiating policies of insurance~~ must be registered with the commissioner, ~~and each member, officer, director, stockholder, manager, governor, or employee must also be licensed.~~ Within a reasonable time after the transfer of ownership of a partnership, corporation, or limited liability company or after receipt of a properly completed application from a partnership, corporation, or limited liability company for a license as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker, the commissioner may conduct investigations and propound interrogatories to satisfy the commissioner that the owners, stockholders, partners, or members of the partnership, corporation, or limited liability company are competent, trustworthy, financially responsible, and of good personal and business reputation. The required license fee must be paid for the partnership, limited liability partnership, corporation, or limited liability company ~~and for each individual registered.~~ The partnership, limited liability partnership, ~~corporate corporation~~, or limited liability company licensee shall within ten business days notify the commissioner of every change relative to the individuals registered under the partnership, corporation, or limited liability company. This section does not apply to a management

association, partnership, limited liability partnership, corporation, or limited liability company whose operations do not entail the solicitation of insurance from the public. Every partnership or corporation subject to this section must be licensed by January 1, 1994.

SECTION 11. AMENDMENT. Section 26.1-26-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-09. Exceptions to licensing requirements. No license as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker is required of:

1. Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
2. Any person who secures and furnishes information for the purpose of group or wholesale life insurance, annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates under such plans or otherwise assisting in administering such plans, where no commission is paid for the service.
3. Employers or their officers or employees or the trustees of any employee trust plan, to the extent that the employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided, that the employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance.
4. Employees of a creditor who enrolls debtors under a group policy; provided, that the employees receive no commission or other compensation directly related to the enrollment.

SECTION 12. AMENDMENT. Section 26.1-26-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-10. Consultant - Exceptions to licensing requirement. ~~No~~ An individual, partnership, limited liability partnership, corporation, or limited liability company 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 agent, insurance broker, or surplus lines insurance broker.
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.

SECTION 13. AMENDMENT. Section 26.1-26-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-13. ~~Agent or limited representative~~ Insurance agent - Application - Age - Appointment by insurer. Every applicant for a license as an insurance agent ~~or limited insurance representative~~, except a partnership, limited liability partnership, corporation, or limited liability company, must be eighteen years or more of age. The application for a license as an insurance agent ~~or limited insurance representative~~ must be accompanied by a written appointment. The appointment must be made by an officer of the insurer designating the applicant as an insurance agent ~~or limited insurance representative~~ for the lines of insurance the applicant will be authorized to write for the

insurer. An insurance agent ~~or limited insurance representative~~ may represent as many insurers as may appoint the agent or representative. All appointments for any licensee must be submitted on behalf of the appointing insurer, on a form prescribed by the commissioner, and unless terminated remain in force until 12:01 a.m. on the annual renewal date. An insurer accepting business from unappointed agents with a frequency indicating a general business practice will be deemed to have violated this section. An insurance agent who holds a valid license may solicit applications for insurance on behalf of an admitted insurer with which the insurance agent does not have a valid appointment on file with the commissioner if the insurance agent has permission from the insurer to solicit insurance on the insurer's behalf and if the insurer upon receipt of the application for insurance submits a written notice of appointment to the commissioner accompanied by the insurer's check payable in the amount of the appointment fee prescribed in subsection 24 of section 26.1-01-07. The notice of appointment must be on a form prescribed by the commissioner.

SECTION 14. AMENDMENT. Section 26.1-26-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-14. ~~Consultant~~ – Investigation by commissioner. Within a reasonable time after receipt of a properly completed application for a license ~~as an insurance consultant~~ 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.

SECTION 15. AMENDMENT. Section 26.1-26-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-20. Nonresident license - Must hold like license elsewhere. An applicant may qualify for a nonresident license if the applicant holds a like resident license from a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee, ~~except as provided in section 26.1-26-47.~~

SECTION 16. AMENDMENT. Section 26.1-26-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-21. ~~Nonresident Agents~~ to designate commissioner as attorney for service of process - Fee. The commissioner may not issue a license to any ~~nonresident~~ 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.

SECTION 17. AMENDMENT. Section 26.1-26-22 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 18. AMENDMENT. Section 26.1-26-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-23. Examination of individuals. Except as provided in section 26.1-26-25, the commissioner shall subject each applicant for a license as an insurance agent, insurance broker, insurance consultant, ~~limited insurance representative, or surplus lines insurance broker~~, health service corporation sales representative, or prepaid legal services organization sales representative to a written examination as to competence to act as a licensee.

SECTION 19. AMENDMENT. Section 26.1-26-24 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-24. Examination when partnership, limited liability partnership, corporation, or limited liability company is applicant. If an applicant is a partnership, limited liability partnership, corporation, or limited liability company, ~~each~~ at least one individual who is to be registered with the ~~corporate corporation, partnership, limited liability partnership, or limited liability company license must be designated as the company's principal agent. The individual designated as the principal agent of the partnership, limited liability partnership, corporation, or limited liability company, shall take the examination required by 26.1-26-23. The partnership, limited liability partnership, corporation, or limited liability company, may only be initially licensed and continue to maintain a license for those lines of insurance in which one or more of its principal agents is licensed. The partnership, limited liability partnership, corporation or limited liability company, shall inform the commissioner within ten working days of any change in status of its principal agent or agents.~~

SECTION 20. AMENDMENT. Section 26.1-26-25 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next preceding the date of application, unless the previous license was suspended or revoked by the commissioner.
2. A nonresident applicant may be licensed without examination if the ~~commissioner of the~~ public official having supervision of insurance in the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time the written examination was required, of a license like the license being applied for in this state.
3. An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.
4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and eighteen pertaining to state laws and rules.
5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines two through seventeen pertaining to state laws and rules.
6. An applicant ~~for a license to act as a limited insurance representative may be licensed without examination in one or more of the following lines:~~
 - a. ~~Any ticket selling agent of a common carrier who acts thereunder only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by the common carrier, or an applicant selling limited travel accident insurance in transportation terminals.~~
 - b. ~~Any other lines that to market a specific product type if the commissioner finds by rule~~ do the specific product type does not require the professional competency demanded for a license as an agent or broker other product types.

SECTION 21. AMENDMENT. Section 26.1-26-31 of the North Dakota Century Code is amended and reenacted as follows:

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 corporation, partnership, limited liability partnership, or limited liability company, 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 insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;
6. The insurance broker or surplus lines insurance broker has failed to maintain a bond as required by section 26.1-26-18, has failed to maintain a resident or nonresident license as an insurance agent as required by section 26.1-26-16, or has failed to pay the annual renewal fee to the commissioner; or
7. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

SECTION 22. AMENDMENT. Section 26.1-26-32 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance agent ~~or limited insurance representative~~ and the license of an insurance broker, surplus lines insurance broker, or insurance consultant terminates upon failure to pay the prescribed annual renewal fees before May first.

SECTION 23. AMENDMENT. Section 26.1-26-34 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-34. Termination reports by insurer - Duty of insurer - Information furnished privileged in civil action. If an appointment is terminated for any of the grounds listed in this chapter, or for cause as defined by the insurer involved, the insurer shall promptly give written notice of the termination and the effective date of the termination to the commissioner and to the licensee where reasonably possible. The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to notify the licensee.

All notices of termination must be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of termination.

~~If the termination is for any of the grounds listed in this chapter, the insurer shall so notify the commissioner.~~ Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.

SECTION 24. AMENDMENT. Section 26.1-26-37 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 25. AMENDMENT. Section 26.1-26-38 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-38. Controlled business prohibited - Definition - Formula for determination. The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. Controlled business means insurance written on the interests of the licensee, or those of the licensee's immediate family or of the licensee's employer; or insurance covering the licensee or members of the licensee's immediate family or a corporation, limited liability company, limited liability partnership, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, limited liability company, limited liability partnership, association, or partnership of which the licensee or a member of the licensee's immediate family is an officer, director, substantial stockholder, partner, associate, or employee. A license is deemed to have been, or intended to be, used for the purpose of writing controlled business if the commissioner finds that during any twelve-month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent of the aggregate commissions earned on all business written by the licensee during the same period. This section does not apply to insurance written in connection with credit transactions.

SECTION 26. AMENDMENT. Section 26.1-26-40 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-40. Refusal of initial license - Notice - Hearing. If the commissioner refuses to issue a license to an applicant ~~not previously licensed in this state~~, 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.

SECTION 27. AMENDMENT. Section 26.1-26-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or ~~in a~~ limited liability company with nor receive any remuneration whatsoever from any licensed insurance agent, insurance broker, ~~limited insurance representative~~, surplus lines insurance broker, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker in any line.

SECTION 28. AMENDMENT. Section 26.1-26-42 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, 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. A conviction 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 agent, insurance broker, insurance consultant, ~~limited insurance representative~~, or surplus lines insurance broker, 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.

SECTION 29. AMENDMENT. Section 26.1-26-46 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-46. License suspension, or revocation, or refusal - Duty of licensee. Upon suspension, or revocation, or refusal of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

SECTION 30. AMENDMENT. Section 26.1-39-09.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-09.2. Suspension or revocation of certificate or license for noncompliance or for acceptance of a reduced service fee. The commissioner shall suspend or revoke the certificate of authority of any insurer who intentionally fails to comply with section 26.1-11-07 or 26.1-39-09.1. The commissioner may suspend or revoke the license of any resident agent or broker who agrees to accept or who accepts a service fee in an amount less than the service fee provided for in section 26.1-39-09.4 and may suspend or revoke the license of any nonresident agent who seeks to induce or who induces any resident agent into accepting a service fee in an amount less than the service fee provided for in section 26.1-39-09.1.

SECTION 31. REPEAL. Sections 26.1-26-47 and 26.1-39-09.1 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2181.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 95 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State