

# TITLE 26.1 INSURANCE

## CHAPTER 26.1-01 INSURANCE COMMISSIONER

**26.1-01-01. Commissioner defined.** Unless the context or subject matter otherwise requires, in this title the word "commissioner" means the insurance commissioner.

**26.1-01-02. Commissioner - Seal - Employment of deputy and assistants.** The commissioner shall have an official seal and shall keep an impression of the seal on file in the office of the secretary of state. The commissioner shall employ a deputy and other competent officials and clerks to discharge the duties assigned by the commissioner. When the commissioner is absent temporarily from the office, the deputy commissioner may sign the commissioner's name and perform any other statutory duties pertaining to the office.

**26.1-01-03. Duties of commissioner.** The commissioner shall:

1. See that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully.
2. Report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents.
3. File the articles of incorporation of all insurance companies organized or doing business in this state, and on application furnish a certified copy thereof.
4. Furnish the insurance companies required to make reports to the commissioner and the benevolent societies the necessary blank forms for required statements and reports. The commissioner is not required to send blank forms to those insurance companies which submit their reports on printed forms conforming to those furnished by the commissioner.
5. Preserve in permanent form a full record of the commissioner's proceedings and a concise statement of each company or agency visited or examined.
6. Furnish at the request of any person, upon the payment of the required fee, certified copies of any record or paper in the commissioner's office, if the commissioner deems it not prejudicial to the public interests to do so, and give such other certificates as may be provided by law.
7. Submit a biennial report as prescribed by section 54-06-04 to the governor and the secretary of state. In addition to the requirements of section 54-06-04, the report must contain an abstract only of the reports of the various insurance companies doing business in this state showing the condition of the companies.
8. Upon request, send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.
9. Communicate, on request, to the insurance commissioner of any other state any facts that by law it is the commissioner's duty to ascertain respecting companies of this state doing business within that state.
10. Manage, control, and supervise the state bonding fund.
11. Manage, control, and supervise the state fire and tornado fund and the insurance of public buildings in that fund.

**26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear.** The commissioner may issue an order to cease and desist and notice of opportunity for hearing when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. Any party aggrieved by the commissioner's order may make written application for a hearing on the order within thirty days of the date of the order. The application for a hearing must briefly state the respects in which the applicant is aggrieved by the order and the grounds for relief to be relied upon at the hearing. A hearing must be held not later than ten days after an application for hearing is received unless a delay is requested by all persons named in the order. The commissioner, within thirty days after the hearing, shall issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing. If no hearing is requested by written application, the commissioner's order becomes permanent.

**26.1-01-03.2. Injunctive authority.** The commissioner may bring an action in the district court of Burleigh County to enjoin any acts or practices which are prohibited under this title, upon not less than eight days' notice to the defendants named in the action.

**26.1-01-03.3. Penalty for violation of title.** Unless otherwise provided by law, a person who violates this title is subject, after hearing by the commissioner, to payment of an administrative monetary penalty of up to ten thousand dollars.

**26.1-01-04. Service of process upon commissioner - Procedure.** When a consent to service of any process, notice, order, or demand upon the commissioner is provided under this title, the service is to be in duplicate. The commissioner immediately shall forward one copy by registered mail to the person against whom the process, notice, order, or demand is directed at that person's last reasonably ascertainable address and shall file the other copy in the office of the commissioner. The person serving process upon the commissioner shall pay the fee provided in section 26.1-01-07. The commissioner shall keep a record of the date and hour of service.

**26.1-01-05. Reporting and review of medical malpractice claims, settlements, and judgments.**

1. A health care provider or the insurer of a health care provider, if any, shall report all claims, settlements of claims, or final judgments against the health care provider to the commissioner. The report must be made in the manner prescribed by the commissioner and must provide those facts the commissioner deems necessary to gather adequate information regarding claims, settlements of claims, and final judgments against health care providers. For the purposes of this section, a "health care provider" includes any person, corporation, facility, or institution licensed by this state to provide health care or professional services as a physician, hospital, dentist, professional or practical nurse, physician's aide, optometrist, podiatrist, chiropractor, physical therapist, or psychologist, or an officer, employee, or agent thereof acting in the course and scope of employment.
2. The commissioner shall forward copies of all reports required by this section to the appropriate board of professional registration, examination, or licensure. That board shall review all reports which it receives and may take any necessary disciplinary action against a health care provider when the action is appropriate, including censure, imposition of probation, or suspension or revocation of the health care provider's license. The board shall conduct the review as an administrative hearing in the manner provided in chapter 28-32, including the giving of appropriate notice.

**26.1-01-06. Reporting of statistical data regarding legal malpractice claims, settlements, and judgments.** Repealed by S.L. 2003, ch. 245, § 4.

**26.1-01-07. (Effective through December 31, 2009) 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 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.
14. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.
15. For issuing an insurance producer's license, one hundred dollars.
16. For issuing a duplicate of any license or registration issued under this title, ten dollars.

17. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.
18. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.
19. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
20. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
21. For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.
22. 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.
23. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.
24. 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.
25. For issuing and each annual renewal of a license to an advisory organization, 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, 15, 18, 19, and 20.

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.

**(Effective after December 31, 2009) 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 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.
14. For issuing a surplus lines insurance producer's or insurance consultant's license, one hundred dollars. For each annual renewal of a surplus lines insurance producer's or insurance consultant's license, twenty-five dollars.
15. For issuing an insurance producer's license, one hundred dollars.
16. For issuing a duplicate of any license or registration issued under this title, ten dollars.
17. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.
18. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.
19. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
20. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
21. For each insurance company appointment and renewal of an appointment of an insurance producer, ten dollars.
22. 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.
23. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.

24. 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.
25. For issuing and each annual renewal of a license to an advisory organization, fifty dollars.
26. For filing an individual insurance producer licensing continuation, twenty-five 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, 15, 18, 19, and 20.

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.

**26.1-01-07.1. Insurance regulatory trust fund established.**

1. There is hereby created a trust fund designated "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:
  - a. All sums received under section 26.1-01-07.
  - b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust fund investments.
  - c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.
  - d. All administrative penalties, fines, and fees collected by the commissioner from any person subject to this title.
  - e. Any other amounts provided by legislative appropriation.
2. The moneys so received and deposited in the insurance regulatory trust fund are reserved for use by the insurance department to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriations of state funds and to the deposit and expenditure of state moneys. The insurance department is responsible for the proper expenditure of these moneys as provided by law.
3. Except as otherwise provided by law, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the office of management and budget shall transfer any fund balance remaining in the insurance regulatory trust fund that exceeds one million dollars to the general fund.

**26.1-01-07.2. Insurance regulatory trust fund investment.**

1. It is the responsibility of the insurance department, charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the state investment board.

2. The insurance department shall monthly notify the state investment board of the amount available for investment, and the moneys must be invested by the investing authority according to the laws relating to state investments. Such notification must include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.
3. All earnings derived from such investments must be paid into the insurance regulatory trust fund.

**26.1-01-07.3. Cash flow financing.** In order to effectively meet the cyclical cash flow needs of the insurance regulatory trust fund, the office of management and budget upon approval of the emergency commission is hereby authorized to issue certificates in anticipation of revenue, notes, or bonds, to funds on deposit in the state treasury. Any issue of such certificates, notes, or bonds must be approved by the emergency commission and are to be used for cash flow financing only and not to offset projected deficits in the insurance regulatory trust fund. The terms of any specific issue of such certificates, notes, or bonds may not exceed one hundred eighty days from the date of issuance whereupon the principal and interest on the certificates, notes, or bonds must be paid in full from the insurance regulatory trust fund or from another issue of a similar nature. All principal and interest on such issues made during a biennial period must be repaid in full at the close of the biennial period from the insurance regulatory trust fund. When certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would be invested, with the investment income accruing to the fund, the certificate shall bear an investment rate of return which must be agreed upon by the state investment board and must be at a level commensurate with the yield to be reasonably expected by such fund if invested in alternate securities.

**26.1-01-07.4. Group health care coverage - Cooperative agreement allowed.** The insurance commissioner shall adopt rules to enable groups to form a cooperative that would allow those groups to purchase group health insurance coverage or to self-insure as one entity.

**26.1-01-07.5. Fire district maps - Insurance applications to show fire district in which property is located - Penalty.** Before December first of each year, the insurance commissioner shall publish maps of the fire districts of the state for use by insurers under this section for the following calendar year. The state firefighter's association and the state fire marshal shall assist the insurance commissioner in preparing the maps. After December 31, 1993, no insurer may issue or renew a policy for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, or crop hail insurance coverage for property in this state unless the application identifies each fire district in which the insured property is located. The application must identify the property and insured value of the property located within each fire district if the policy provides coverage for property that is not all within a single district. For purposes of this section, "fire district" means rural fire protection district, city, or area served by a certified rural fire department. An insurer that is found by the commissioner to be in violation of this section is subject to a penalty of one hundred dollars for each violation to be deposited in the insurance tax distribution fund. The insurance commissioner may adopt rules necessary for administration of this section, including rules governing preparation, charges for, and use of maps under this section.

**26.1-01-07.6. Medicare provider-sponsored organizations.** The insurance commissioner shall adopt rules relating to provider-sponsored organizations as defined in section 4001 of the Balanced Budget Act of 1997 [Pub. L. 105-33; 111 Stat. 312; 42 U.S.C. 1395 et seq.].

**26.1-01-08. Rulemaking - Administrative procedure - Appeal from commissioner's decision.** Any rulemaking or any administrative proceeding conducted by the commissioner is subject to chapter 28-32, and any order or decision of the commissioner, unless otherwise specifically provided for by law, is subject to review or appeal in the manner provided by chapter 28-32.

**26.1-01-08.1. Electronic filings allowed.**

1. Notwithstanding any other provision of this title, the commissioner may adopt rules that allow either an applicant or a licensee to file documents electronically with the commissioner or the commissioner's designee. The rules may contain procedures for the electronic filing of the following:
  - a. Any document required as part of an application for a license under this title;
  - b. Any document required to be filed by an applicant or licensee to maintain the license in good standing;
  - c. Any fee required under this title; and
  - d. Any other document required or permitted to be filed.
2. This section may not be interpreted to supersede any other provision of law that requires the electronic filing of a document or to require an applicant or licensee to make any other filing electronically. The commissioner or the commissioner's designee may charge a processing fee for electronic filing. A fee charged for the processing of an electronic filing is in addition to any other fee imposed for the filing. Processing fees charged for an electronic filing are limited to the lesser of twenty dollars per transaction or the actual cost of the electronic transaction charged by the designee processing the filing. If the actual cost of processing an electronic filing exceeds twenty dollars per transaction the commissioner may adopt rules to increase an electronic processing fee not to exceed the actual cost charged by the designee.

**26.1-01-09. Salary of commissioner.** The annual salary of the commissioner is eighty-three thousand five hundred fifty dollars through June 30, 2010, and eighty-seven thousand seven hundred twenty-eight dollars thereafter.

**26.1-01-10. General penalty.** For a violation of any provision of this title, when no penalty is provided specifically, the offender is guilty of an infraction.

**26.1-01-11. Prescription drug assistance.** The insurance commissioner shall create and implement a program to assist individuals of low income to gain access to prescription medications through prescription drug assistance programs offered by pharmaceutical manufacturers, including free discount and coverage programs. The commissioner shall use available computer software programs that link an eligible individual with the appropriate pharmaceutical company patient assistance program relating to the individual's medically necessary drugs. The commissioner shall provide education to individuals and providers to promote the program and to expand enrollment and access to necessary medications for low-income individuals qualifying for the programs.