

## **CHAPTER 26.1-02 GENERAL PROVISIONS**

**26.1-02-01. Definitions.** In chapters 26.1-02 through 26.1-04, unless the context or subject matter otherwise requires:

1. "Domestic" means incorporated or formed in this state.
2. "Foreign", when used without limitation, means formed by the authority of any state or government other than this state.
3. "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States, against any insurer incorporated or authorized to do business in this state.
4. "Insurance company" includes any corporation, association, benefit society, exchange, partnership, or individual engaged as principal in the business of insurance.
5. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.
6. "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this chapter for the enforcement of decrees or orders in equity issued by courts located in other states, against any insurance company incorporated or authorized to do business in that state.

**26.1-02-01.1. Definition of limited benefit policy - Application.** In this title, "limited benefit policy" means a policy or certificate issued under a group insurance policy that provides coverage for accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance; coverage issued as a supplement to liability insurance, or automobile medical payment or no-fault insurance; or a policy or certificate of specified disease, hospital confinement indemnity, or any other type of limited benefit health insurance. Any statute that becomes effective after January 1, 1997, and affects accident and health insurance, or any hospital, medical, or major medical policy, whether issued on a group or individual basis, does not apply to a limited benefit policy unless the statute specifically identifies application to a limited benefit policy.

**26.1-02-02. Duty of commissioner before granting or renewing certificate of authority.** The commissioner must be satisfied by examination and evidence that an insurance company is legally qualified to transact business in this state, including compliance with section 26.1-03-11, before granting a certificate of authority to the company to issue policies or make insurance contracts. A certificate of authority issued under this title remains in force in perpetuity if the required renewal fee is paid by April thirtieth of each year and the commissioner is satisfied that the documents required by section 26.1-03-11 have been filed, the statements and evidences of investment required of the company have been furnished, the required capital or surplus or both, securities, and investments remain secure, and all other requirements of law are met. Any company which neglects to pay the renewal fee by April thirtieth forfeits twenty-five dollars for each day's neglect.

**26.1-02-03. Inquiry into condition of company - Information supplied to commissioner - Penalty.** The commissioner may address to any insurance company doing or applying for permission to do business in this state any inquiries in relation to the company's activities, condition, or any other matter connected with the company's transactions. The company shall reply in writing to such an inquiry within twenty days of receipt of the inquiry unless within that twenty days the company requests and the commissioner grants an extension of time. It is a violation of this title for a person to knowingly supply the commissioner with false, misleading, or incomplete information.

**26.1-02-04. Company controlled by foreign government prohibited - Penalty.** An insurance company or other insurance entity financially owned or financially controlled by any foreign government outside the United States may not do any insurance business in this state. The commissioner may not grant a license or issue a certificate of authority to any insurance company or other insurance entity financially owned or financially controlled by any foreign government outside the United States to transact any insurance business in this state. This section does not affect any insurance company qualified to do business in this state before January 2, 1955.

**26.1-02-05. Unauthorized insurance prohibited - Exceptions.** An insurance company may not transact insurance business in this state, as set forth in section 26.1-02-06, without a certificate of authority from the commissioner. This section does not apply to:

1. The lawful transaction of surplus lines insurance.
2. The lawful transaction of reinsurance by insurers.
3. Transactions involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
4. Transactions involving life insurance, health insurance, or annuities provided to educational or religious or charitable institutions organized and operated without profit to any private shareholder or individual, for the benefit of the institutions and individuals engaged in the service of the institutions.
5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
6. Transactions involving group life, accident, and health, or blanket accident and health insurance, or group annuities if the master policy of the group was lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.
7. Transactions involving any insurance policy or annuity contract issued before July 1, 1973.
8. Transactions relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
9. Transactions involving insurance contracts issued to one or more industrial insureds; provided, that this does not relieve an industrial insured from taxation imposed upon independently procured insurance. An industrial insured is an insured:
  - a. Which procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;
  - b. Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars; and
  - c. Which has at least twenty-five full-time employees.

**26.1-02-05.1. Group life and health insurance trust filing - Exemption requirements.**

Any insurance company claiming an exemption under subsection 6 of section 26.1-02-05 from a requirement that the company have a certificate of authority to do business in this state or comply with the insurance laws of this state shall provide the following information to the insurance commissioner for the commissioner's approval of the exemption:

1. A copy of the trust agreement for the group.
2. A full copy of the master contract.
3. A copy of the certificate of insurance to be issued or sold in this state.
4. A copy of the application for the certificate of insurance.
5. A copy of a disclosure statement used in the solicitation of the insurance indicating that the protection of North Dakota's insurance laws will not be provided to the holders of certificates of insurance issued by the group.
6. An assurance that only one type of insurance coverage may be included in each mailing or mass market solicitation.
7. Such other information as the commissioner deems necessary to assure that the group is organized for purposes other than the procurement of insurance or otherwise meets the requirements of subsection 6 of section 26.1-02-05.

No company may issue or deliver a policy of insurance or issue or deliver for issue a certificate of insurance in this state without a certificate of authority unless it has first been granted approval in writing to do so by the commissioner under this section.

**26.1-02-06. Insurance transactions defined - Venue.** Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurance company constitutes the transaction of an insurance business in this state:

1. Making or proposing to make, as an insurance company, an insurance contract.
2. Making or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. Taking or receiving of any application for insurance.
4. Receiving or collecting any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.
5. Issuing or delivering an insurance contract to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an insurance producer for or otherwise representing or aiding on behalf of another, any person or insurance company in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed, in this state. This subsection does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer.

7. Transacting any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.
8. Transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade these statutes.

The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect.

**26.1-02-07. Unauthorized contracts valid.** The failure of an insurance company transacting insurance business in this state to obtain a certificate of authority does not impair the validity of any act or contract of the company and does not prevent the company from defending any civil action in any court of this state, but a company transacting insurance business in this state without a certificate of authority may not maintain a civil action in any court of this state to enforce any right, claim, or demand arising out of the transaction of insurance business until the company has obtained a certificate of authority.

**26.1-02-08. Liability of unauthorized company.** If any unauthorized insurance company fails to pay any claim or loss within the provisions of its insurance contract, any person who assisted or in any manner aided, directly or indirectly, in the procurement of the insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the contract.

**26.1-02-09. Restraint of violations - Jurisdiction.** Whenever the commissioner believes that any insurance company is violating or is about to violate this chapter, the commissioner, through the attorney general of this state, may cause a complaint to be filed in the district court of Burleigh County to enjoin and restrain the company from continuing or engaging in any violation or doing any act in furtherance thereof. The court may make and enter an order or judgment awarding preliminary or final injunctive relief as in its judgment is proper.

**26.1-02-10. Agent for service of process - Unauthorized company.** Any act of transacting insurance business as set forth in this chapter by any unauthorized insurance company is an irrevocable appointment by the company, binding upon the company, its executor or administrator, or successor in interest if a corporation, of the secretary of state or the secretary's successor in office, as the attorney of the company upon whom may be served all lawful process in any action or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading, or process in any proceeding before the commissioner and which arises out of transacting insurance business in this state by the company. Any act of transacting insurance business in this state by any unauthorized company signifies its agreement that any lawful process in any court action or proceeding and any notice, order, pleading, or process in any administrative proceeding before the commissioner so served is of the same legal force and validity as personal service of process in this state upon the company.

**26.1-02-11. Service of process - How made.** Service of process is made by delivering to the secretary of state, or some person in apparent charge of the secretary of state's office, two copies thereof and by payment to the secretary of state of the fee prescribed by law. The secretary of state immediately shall forward by registered mail one copy to the defendant in a court proceeding, or to whom the process is addressed or directed in an administrative proceeding, at its last reasonably ascertainable address. The secretary of state shall keep a record of the date and hour of service. This service is sufficient if notice of the service and a copy of the process is mailed within ten days thereafter by certified mail to the defendant by the plaintiff or the plaintiff's attorney in a court proceeding, or to whom the process is addressed or directed by the commissioner in an administrative proceeding, at its last reasonably ascertainable address, and the defendant's receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of mailing showing compliance herewith is filed with the clerk of the court in which the proceeding is pending, or with the commissioner in an administrative proceeding. No judgment or determination by default may be

entered in any proceeding until the expiration of forty-five days from the date of filing of the affidavit of compliance.

This section does not limit or affect the right to serve any process upon any person or insurer in any other manner permitted by law.

**26.1-02-12. Pleading by unauthorized insurance company - When permitted.**

Before any unauthorized insurance company files or causes to be filed any pleading in any court proceeding instituted against the company by service made as provided in section 26.1-02-11, the company shall either:

1. File with the clerk of the court in which the proceeding is pending a cash or other bond with good and sufficient sureties, to be approved by the clerk, in an amount fixed by the court sufficient to secure payment of any final judgment which may be rendered in the action; or
2. Procure a certificate of authority to transact the business of insurance in this state. In considering the application for a certificate of authority, for the purposes of this subsection, the commissioner need not assert section 26.1-11-06 against the company with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for the certificate of authority.

**26.1-02-13. Enforcement of decisions or orders.** The attorney general upon request of the commissioner may proceed in the court of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

**26.1-02-14. List of reciprocal states.** The commissioner shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of reciprocal states.

**26.1-02-15. Filing and status of foreign decrees.** A certified copy of any foreign decree may be filed in the office of the clerk of any district court of this state and concurrently in the office of the commissioner with information showing which district court is being used. The clerk, upon receiving verification from the commissioner, shall treat the foreign decree in the same manner as a decree of the district court. A filed foreign decree has the same effect as a decree of a district court of this state, and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a decree of a district court and may be enforced or satisfied in like manner.

**26.1-02-16. Verification - Notice of filing.** At the time a foreign decree is filed in this state, the commissioner shall make and file with the clerk of the appropriate district court an affidavit setting forth the name and last-known post-office address of the defendant and verifying that the decree or order is a foreign decree. Promptly upon receipt of the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address contained in the affidavit and to the commissioner and shall make a note of the mailing in the docket.

**26.1-02-17. Enforcement of foreign decrees - Time limit.** No execution or other process for enforcement of a foreign decree may issue until thirty days after the date the decree is filed.

**26.1-02-18. Stay of enforcement.** If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered. If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay

enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree as would be required in this state.

**26.1-02-19. Fees.** Any person filing a foreign decree shall pay a filing fee as prescribed in subdivision d of subsection 1 of section 27-05.2-03 to the clerk of court. Fees for docketing, transcriptions, or other enforcement proceedings are as provided for decrees of the district court.

**26.1-02-20. Reinsurance permitted - Limitations.** Except as otherwise provided by this section and section 26.1-02-22, any insurance company organized or admitted to transact business in this state, including a mutual company, may reinsure any part or all of any risk taken by it in any insurance company or insurer licensed in any state or any insurance company or insurer not so licensed or any nonprofit health service corporation whether or not licensed in this state provided it was approved or accepted by the commissioner, if that company or insurer or nonprofit health service corporation conforms to the same standards of solvency which would be required if, at the time the reinsurance is effected, it was licensed in this state. A county mutual insurance company also may reinsure with any other county mutual insurance company. No reinsurance, however, may be effected with any company disapproved therefor by written order of the commissioner filed in the commissioner's office. A domestic insurance company organized to engage in the business of life, accident, or health insurance may not reinsure its risks or any part thereof without complying with chapter 26.1-07.

**26.1-02-21. Reinsurance - Treatment upon insolvency, liquidation, or dissolution.**

1. Credit may not be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:
  - a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
  - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.
3. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, in the proceeding in which the claim is to be adjudicated any defenses the assuming insurer determines available to the ceding insurer, or the ceding insurer's liquidator. The expense may be filed as

a claim against the insolvent ceding insurer as a class 7 claim under section 26.1-06.1-41 to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. If two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

**26.1-02-22. Accepting reinsurance of unauthorized company prohibited.** An insurance or surety company may not assume the whole or any part of any risk covering property located in this state, as a reinsurance company or in any other manner, insured by any insurance company not authorized to transact business in this state.

**26.1-02-23. Revocation of company's authority to do business in this state.** The commissioner shall revoke the certificate of authority of an insurance, bonding, surety, or indemnity company immediately if, at any time after examination, the commissioner has reason to believe that:

1. Any annual statement or other report required to be submitted by an officer or agent of the company pursuant to this title is false; or
2. The company is practicing discrimination against individual risks in the issue or cancellation of policies, bonds, or other insurance contracts or corporate suretyship.

**26.1-02-24. Copy of revocation to be mailed to company - Company to discontinue business - Setting aside of revocation.** If the certificate of authority of an insurance, bonding, surety, or indemnity company is revoked pursuant to section 26.1-02-23, the commissioner shall mail a copy of the revocation to the company, or to the agents thereof in this state. Thereafter, the company and its agents may not issue any new policy, bond, or surety contract nor renew any policy, bond, or surety contract previously issued. The revocation may not be set aside, nor may a new certificate of authority be issued, until satisfactory evidence has been submitted to the commissioner showing that the company is in the condition set forth in its annual statement or other report, or that the discrimination alleged has not been practiced, or that the practice of discrimination will cease immediately, as the case may be, and that this title has been complied with by the company.

**26.1-02-24.1. Definition.** For the purpose of this section and section 26.1-02-24.2, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, insurance producer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which the person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

**26.1-02-24.2. Immunity from liability.** In the absence of fraud or bad faith, no person is subject to civil liability of any kind, including for libel and slander, by virtue of filing reports, without malice, or furnishing other information, without malice, required by the insurance laws of this state or required by the commissioner, and no civil cause of action of any nature may arise against such person for any of the following:

1. Any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents and employees.
2. Any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of section 26.1-02-24.1 and this section.

3. Any such information furnished in reports to the insurance fraud bureau, national association of insurance commissioners, or any organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees, nor is the commissioner or any employee of the insurance frauds bureau, in the absence of fraud or bad faith, subject to civil liability and no civil cause of actions of any nature may arise against such person by virtue of the publication of any report or bulletin related to the official activities of the insurance frauds bureau. Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

**26.1-02-24.3. Insurance counseling programs - Volunteers - Immunity from liability.**

A person who, on a volunteer basis, provides services or performs duties on behalf of the insurance commissioner for an insurance counseling program is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission the person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties as a volunteer and the act or omission did not constitute willful misconduct or gross negligence. This section does not grant immunity to a person causing damage as a result of the negligent operation of a motor vehicle.

**26.1-02-25. Penalty.** Any unauthorized insurance company or other insurance entity or any representative or agent of the company or entity that transacts any unauthorized act of insurance business as provided by this chapter is guilty of a class C felony.

**26.1-02-26. Accounting practices and procedures manual.** The commissioner shall adopt by rule the accounting practices and procedures manual published by the national association of insurance commissioners. The provisions of the accounting practices and procedures manual adopted by the commissioner govern the statutory accounting practices of all insurance companies, including health maintenance organizations, licensed to do business in this state. Any reference to the accounting practices and procedures manual in this title means the manual the commissioner adopts by rule, unless specifically stated otherwise.

**26.1-02-27. Disclosing nonpublic personal information.**

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not disclose to a nonaffiliated third party a customer's nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act [Pub. L. 106-102; 113 Stat. 1436] or contrary to the rules adopted by the commissioner under this section.
2.
  - a. The commissioner shall adopt rules necessary to carry out this section.
  - b. The rules must be consistent with and not more restrictive than the model regulation adopted by the national association of insurance commissioners entitled "Privacy of Consumer Financial and Health Information Regulation".
  - c. Notwithstanding subdivision b and subject to the exceptions, including the affiliate sharing exception provided for in the national association of insurance commissioners' model regulation, the rules may prohibit the disclosure of nonpublic personal health and financial information concerning an individual unless an authorization is obtained from the individual whose nonpublic personal health and financial information is sought to be disclosed.
3. This section does not create a private right of action.

**26.1-02-28. Child support insurance data match.** Before paying a claim under a contract of insurance issued in this state, an insurer or government self-insurance pool may exchange information about the claimant with the department of human services or its designee. This section applies notwithstanding any provision of law making the information confidential. A person is immune from suit or any liability under any federal or state law, including chapter

12.1-13 or 44-04, for acting in good faith under this section. The court shall award reasonable attorney's fees and costs against any person that commences an action that is subsequently dismissed by reason of the immunity granted by this section.