

CHAPTER 26.1-11 FOREIGN INSURANCE COMPANIES

26.1-11-01. Conditions to be complied with by foreign company before transacting insurance business in state. A foreign insurance company may not take any risk or transact insurance business in this state, either directly or indirectly, until it has:

1. Deposited with the commissioner a certified copy of its articles of incorporation.
2. Deposited with the commissioner a statement of its financial condition and business in the form and detail the commissioner requires, signed and sworn to by its president and secretary or other similar officers.
3. Satisfied the commissioner that it is fully and legally organized under the laws of its state or government to do the business which it proposes to transact.
4. Satisfied the commissioner, if it is a stock company, that it has a fully paid-up capital stock and surplus at least equal to the stock and surplus required of domestic companies transacting the same classes of insurance.
5. Satisfied the commissioner, if it is a mutual company, that it has complied with subsection 7 of section 26.1-12-27.
6. Satisfied the commissioner that its assets are well invested and immediately available for the payment of losses in this state and in making this determination the commissioner may rely upon the provisions pertaining to authorized investments of domestic insurance companies.
7. Satisfied the commissioner that it does not insure any single hazard for a sum larger than one-tenth of its net assets.
8. Appointed the commissioner and the commissioner's successors, by a duly executed instrument filed in the commissioner's office, its attorney upon whom all process in any action or proceeding against it may be served and has agreed in the instrument that any process that may be served upon its attorney is of the same force and validity as if the process were served on the company and that the authority thereof continues in force irrevocable so long as any liability of the company remains outstanding in this state.
9. Agreed to appoint, and will appoint, as its insurance producers in this state only residents of this state except as otherwise provided in chapter 26.1-26.
10. Adopted a name which is not so similar to a name already in use by an existing company organized or licensed in this state as to be confusing or misleading.

26.1-11-02. Liability of officers, agents, and stockholders of noncomplying foreign company - Penalty. Any failure to comply with section 26.1-11-01 renders each officer, agent, and stockholder of any foreign insurance company failing to comply therewith jointly and severally liable on all contracts of the company made within this state during the time the company is in default. Each officer and agent of the noncomplying company is guilty of a class A misdemeanor.

26.1-11-03. Failure to comply with conditions renders contracts void on behalf of company - Enforcement against company. A contract made by or on behalf of any foreign insurance company doing business in this state without first complying with section 26.1-11-01 or 26.1-11-04 is void and unenforceable on behalf of the company and its assigns, but the contract may be enforced against the company.

26.1-11-04. Foreign life company required to maintain funds or stop writing business - Penalty. When the actual funds of any foreign life insurance company authorized to do business in this state are not of a net value equal to the net value of its policies according to the combined experience or actuaries' rate of mortality, with interest at four percent per annum, or by such higher standard as the company may have adopted, the commissioner shall give notice to the company and its agents to discontinue the issuance of new policies in this state until its funds have become equal to its liabilities when its policies are valued as provided in this section. Any officer or agent who, after notice has been given, issues or delivers a new policy from and in behalf of the company before its funds have become equal to its liabilities as provided by this section is guilty of a class A misdemeanor. This section does not apply to a cooperative or assessment life association licensed to transact business in this state.

26.1-11-05. Deposit required of foreign accident and health insurance company doing business on assessment plan. Each foreign accident and health insurance company doing business on the assessment plan in this state shall keep deposited at all times with the commissioner one regular assessment sufficient in amount to pay the average loss or losses occurring among its members in this state during the time allowed by it for the collection of assessments and payment of losses. No such company may be licensed by the commissioner unless it keeps and maintains with the commissioner for the protection of persons to whom it may become obligated at least ten thousand dollars in bonds of the United States of America, of the state of North Dakota, or of political subdivisions within this state, or in mortgages on improved and unencumbered real estate within this state worth double the sum loaned thereon and approved by the commissioner.

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 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 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 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.

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, there may not be any requirement that an insurance producer 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 insurance producer resident in that state on an insurance policy written by a nonresident insurance producer of that state, then any insurance policy written by an insurance producer resident of that state licensed as a nonresident insurance producer 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 insurance producer 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 insurance producer resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the insurance producer in that state at the request of a nonresident insurance producer of that

state, then the insurance producer resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident insurance producer 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.

26.1-11-08. Grounds for revocation of authority of foreign company. The commissioner shall revoke or suspend all certificates of authority granted to a foreign insurance company or to its agents if, upon examination or other evidence, the commissioner is of the opinion that:

1. The company is in an unsound condition.
2. The company has failed to comply with any provision of the applicable laws of this state.
3. The company, or any officer or agent thereof, has refused to submit to examination or to perform any other legal obligation.

26.1-11-09. Procedure for suspension or revocation of foreign company's authority - Effect. Whenever it appears to the commissioner, either upon complaint or otherwise, that any foreign insurance company is in violation of section 26.1-02-23 or 26.1-11-08, the commissioner may issue a temporary order suspending the certificate of authority granted to a foreign insurance company if the commissioner deems it necessary or appropriate to the public interest to do so. Any company aggrieved by a temporary order may request a hearing before the commissioner within ten days after the company receives the order. If the commissioner revokes the certificate of authority granted to a foreign insurance company, the commissioner shall publish a notice of revocation once each week for three successive weeks in a newspaper published at the state capital. Thereafter, no new business may be done by the company, or by its agents, in this state until its certificate of authority is restored by the commissioner. The commissioner, after a hearing and for good cause, may cancel the revocation and restore the certificate.

26.1-11-10. Consent to service of process. Service of process upon the commissioner as attorney for a foreign insurance company doing business in this state is sufficient service upon the company.

26.1-11-11. Consent to service of process - Unauthorized insurance company. Any of the following acts in this state, effected by mail or otherwise, by any unauthorized foreign or alien insurance company is equivalent to and constitutes an appointment by the company of the commissioner as its attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any insurance contract, and any such act signifies its agreement that the service of process is of the same legal force and validity as personal service in this state, upon such insurer:

1. The issuance or delivery of insurance contracts to residents of this state or to corporations or limited liability companies authorized to do business in this state.
2. The solicitation of applications for such contracts.
3. The collection of premiums, membership fees, assessments, or other considerations for such contracts.
4. Any other transaction of insurance business.

26.1-11-12. Additional means of service.

1. Service in any action, suit, or proceeding is, in addition to the manner provided in section 26.1-01-04, valid if served upon any person within this state who on behalf of the insurance company is:

- a. Soliciting insurance;
 - b. Making, issuing, or delivering any insurance contract; or
 - c. Collecting or receiving any premium membership fee, assessment, or other consideration for insurance.
2. A copy of the process must be sent within ten days thereafter by registered mail by the plaintiff or the plaintiff's attorney, to the defendant at the defendant's last-known principal place of business.
 3. The defendant's receipt, or the receipt issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the letter showing a compliance herewith must be filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within such further time as the court allows.

26.1-11-13. Right of service not abridged. This chapter does not limit or abridge the right to serve any process, notice, or demand upon any insurance company in any other manner permitted by law.

26.1-11-14. Judgment by default - Time of entry. A judgment by default under this chapter may not be entered until the expiration of thirty days from the date of the filing of the affidavit of compliance.

26.1-11-15. Defense of action by unauthorized company. Before any unauthorized foreign or alien insurance company may file or cause to be filed any pleading in any action, suit, or proceeding instituted against it, the company shall deposit with the clerk of the court in which the action, suit, or proceeding is pending, cash or securities, or file with the clerk a bond with good and sufficient sureties approved by the court in an amount fixed by the court sufficient to secure the payment of any final judgment which may be rendered in the action. The court may, in its discretion, dispense with the deposit or bond if the company makes a showing satisfactory to the court that it maintains in the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in the action, suit, or proceeding, and that the company will pay any final judgment rendered without requiring suit to be brought on the judgment in the state where the securities are located, or procure a certificate of authority to transact insurance business in this state.

26.1-11-16. Court may order postponement. The court, in any action, suit, or proceeding in which service is made in the manner provided in section 26.1-01-04 or 26.1-11-12, may order any postponement necessary to afford the defendant reasonable opportunity to comply with this chapter and to defend the action.

26.1-11-17. Construction. Section 26.1-11-16 does not prevent an unauthorized foreign or alien insurance company from filing a motion to quash a writ or to set aside service thereof made in the manner provided in this chapter on the ground that the company has not done any of the acts enumerated in this chapter or that the person on whom service was made pursuant to section 26.1-11-12 was not doing any of the acts therein enumerated.

26.1-11-18. Attorney's fees. In any action against an unauthorized foreign or alien insurance company upon an insurance contract issued or delivered in this state to a resident of this state or to a corporation or limited liability company authorized to do business in this state, if the insurance company has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include the fee in any judgment that may be rendered in the action. The fee may not exceed twelve and one-half percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurance company, but the fee awarded may not be

less than twenty-five dollars. Failure of an insurance company to defend any action is prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

26.1-11-19. Application. This chapter does not apply to any action, suit, or proceeding against any unauthorized foreign or alien insurance company arising out of any reinsurance, ocean marine, aircraft, or railway insurance contract, insurance against legal liability arising out of the ownership, operation, or maintenance of any property having a permanent situs outside this state, or insurance against loss of or damage to any property having a permanent situs outside this state, when the insurance contract designates the commissioner or a bona fide resident of this state the attorney of the unauthorized insurance company upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of the contract or when the insurance company enters a general appearance in the suit, action, or proceeding.