

CHAPTER 45-02-02

LICENSING OF INSURANCE PRODUCERS, SURPLUS LINES INSURANCE PRODUCERS, AND CONSULTANTS

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45-02-02-01. Definitions.

Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-26. "Department" means North Dakota insurance department.

History: Effective September 1, 1983; amended effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-02

45-02-02-02. Applications for licenses.

1. Resident insurance producers' applications.

- a. A complete application must be completed in accordance with the instruction sheet and submitted either electronically or with a paper filing on a commissioner-approved application form.
- b. An applicant licensed in another state within the preceding ninety days who moves to this state must provide, with the application, proof of clearance from the state in which the insurance producer is currently or was most recently licensed as a resident insurance producer.
- c. An application form is required to add an additional line of insurance.
- d. Every application submitted to the department through either a paper or electronic filing must be accompanied by the appropriate fee made payable to either the commissioner or the commissioner's designee.

2. Nonresident insurance producers' applications.

- a. A complete application for a nonresident insurance producer's license must comply with subdivisions a, c, and d of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that insurance producer's true and lawful attorney for purposes of service of process.
- b. An applicant for a nonresident insurance producer's license must have the state, which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state. This certification may be submitted by the national association of insurance commissioners' producer data base.

3. Surplus lines insurance producers' applications. A surplus lines insurance producer's application must be submitted in accordance with chapter 45-09-01.

4. Consultants' applications.

- a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.
- b. No person holding a license as an insurance producer or surplus lines insurance producer may obtain and simultaneously hold a license as a consultant. If the applicant holds such licenses at the time of application, the licenses must be canceled prior to obtaining a consultant's license.

5. Temporary license applications.

- a. An application for a temporary insurance producer's license must be submitted in accordance with section 45-02-02-02.
- b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
- c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the insurance producers' examination and desires to be licensed until such time as a passing examination score is obtained.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; April 1, 1996; January 1, 2000; December 1, 2001; January 1, 2008; January 1, 2016; October 1, 2019.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-12, 26.1-26-13

45-02-02-03. Examination for licensure.

1. An applicant must qualify for a line of authority by passing the examination as provided in this chapter.
2. The examination is administered under a contract with a testing service.
3. An applicant must present a photo identification card at the test center prior to being admitted for testing.
4. An examination score is valid for one year after the date of the examination for a license applicant who has not completed the application process and who has not obtained licensure. After one year from the date of the examination, an applicant must retake the required examination.

5. An examination is valid for as long as a person continuously holds a valid insurance producer's license issued by the North Dakota insurance department and for twelve months following cancellation of a license, with the exception that an examination ceases to be valid immediately upon the suspension or revocation of the license unless the order of suspension or revocation specifies otherwise.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001; January 1, 2008; April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-14, 26.1-26-27

45-02-02-04. Specific examination requirements.

1. An applicant applying to conduct insurance in the following lines must pass the following examinations:

a. Life and annuity	Life and annuity
b. Accident and health	Accident and health
c. Property	Property
d. Casualty	Casualty
e. Variable life and annuity	Life and annuity
2. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
 - a. The applicant must be a licensed abstractor or attorney; or
 - b. The applicant must have a minimum of eighty hours of training provided by an insurer licensed in the line of title insurance. A certification by the insurer that the training has been completed must accompany the application.
3. An applicant for a license to write travel and baggage insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier is exempt from examination requirements.
4. An applicant for a license with the line of authority of surety shall take and pass the casualty examination. Surety coverage is insurance or a bond that covers obligations to pay the debts of or answer for the default of another, including faithlessness in a position of public or private trust, but not including bail bonds.
5. An applicant for a license to write the following products need only take the reduced examination required for that specific product:
 - a. Bail bonds.
 - b. Credit including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of credit insurance.

- c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.
 - d. Legal expense, including prepaid legal service.
 - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
6. An applicant for a consultant's license shall take and pass the insurance producer's examination for the lines in which the applicant seeks to consult. If an applicant for a consultant's license holds a North Dakota insurance producer's license, the applicant is exempt from the testing requirements for the lines held on the insurance producer's license within the twelve months preceding the date on which the consultant application is filed with the commissioner. However, the applicant must cancel the insurance producer's license prior to obtaining a consultant's license.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001; January 1, 2008; April 1, 2010; January 1, 2016.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-25

45-02-02-05. Effective date of insurance producer license - New line.

- 1. An applicant who has filed a completed application for an insurance producer's license with the insurance department may first transact business under that license effective the date the applicant's application is approved by the insurance department.
- 2. An insurance producer who is adding a new line of insurance may first transact business in that new line effective the date the application is approved by the insurance department.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; January 1, 2000; December 1, 2001.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-32

45-02-02-05.1. Biennial license continuation.

On or before the last day of the month of the licensee's birthday following the two-year anniversary of the issuance of a license by the commissioner and every two years thereafter, an individual insurance producer shall submit an application for license continuation. Applications must be accompanied by the biennial continuation fee of twenty-five dollars. Resident insurance producers must have on file with the commissioner proof of compliance with continuing education requirements before submitting the application. Nonresident insurance producers must have satisfied the producer's home state's insurance continuing education requirements and be in good standing in the producer's home state before submitting the continuation application.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-13.4

45-02-02-05.2. Cancellation of license.

The license of an insurance producer who fails to complete the biennial continuation and pay the twenty-five dollar continuation fee will be canceled.

History: Effective April 1, 2010.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-13.4, 26.1-26-31

45-02-02-06. Appointment and termination procedures.

1. The appointment or termination of an insurance producer must be filed with the department on either a form prescribed by the commissioner or electronically through the national association of insurance commissioners' subsidiary. The insurer shall pay an appointment fee for each insurance producer appointed pursuant to North Dakota Century Code section 26.1-01-07.
2. An insurer shall file with the department a notice of appointment within thirty days from the later of the date the agency contract is executed or the first insurance application is submitted to the insurer. The date of the appointment must include the month, day, and year.
3. An insurer shall file the notice of termination of its agency relationship with an insurance producer within thirty days following the effective date of the termination. Terminations for cause shall be submitted to the department in accordance with the requirements of North Dakota Century Code section 26.1-26-34. The insurer is responsible for notifying the insurance producer of the termination in accordance with North Dakota Century Code section 26.1-26-34.
4. Failure to timely file appointment or termination notifications may subject an insurer to sanctions under North Dakota Century Code title 26.1.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-31, 26.1-26-32

45-02-02-07. Renewal procedure for appointments.

1. On or before December first of each year, a preliminary renewal list of the insurance producers appointed by that company, together with an instruction letter, will be furnished by the department to each company.
2. On or before March fifteenth of each year, an electronic renewal invoice will be made available through the national association of insurance commissioners' subsidiary to all companies with active appointments.
3. The insurer shall pay the appropriate fee for all appointments on the renewal invoice prior to May first.

History: Effective September 1, 1983; amended effective October 1, 1984; December 1, 2001; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-08, 26.1-26-32

45-02-02-07.1. License lapse.

Repealed effective December 1, 2001.

45-02-02-08. Agent - Sharing commission.

Repealed effective December 1, 2001.

45-02-02-09. Insurance consultant - Agreement.

In advance of rendering any service as a consultant, such consultant shall prepare a form of written agreement which shall substantially comply with the model form available on request from the insurance department. The form prepared by the consultant shall be submitted to the department for the commissioner's approval or disapproval. If the commissioner disapproves the form, the consultant shall not use the form so disapproved.

In advance of rendering any service as a consultant, a written agreement on the form which has been approved by the department shall be signed by both consultant and client. The consultant shall retain a copy of the agreement for not less than two years after completion of the services. A copy of the agreement shall be available to the department upon request.

History: Effective September 1, 1983.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-03, 26.1-26-10, 26.1-26-35

45-02-02-10. Insurance producer and surplus lines insurance producer acting as consultant.

Although licensed insurance producers or surplus lines insurance producers are exempt from licensing as consultants and are specifically prohibited from concurrently holding a consultant's license and a license as an insurance producer or surplus lines insurance producer in any line, licensed insurance producers or surplus lines insurance producers may perform consulting services in the ordinary course of their businesses. However, if licensed insurance producers or surplus lines insurance producers charge a fee, or receive any type of remuneration, for rendering such consulting service, they shall comply with the provisions and requirements of a consultant's agreement set forth in section 45-02-02-09.

History: Effective September 1, 1983; amended effective December 1, 2001.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-35

45-02-02-11. Insurance producers selling variable life and annuity contracts.

In addition to the requirements set forth in section 45-02-02-03, an applicant for a license to do business in the variable life and annuity line must first become licensed as a securities salesman under North Dakota law.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-11

45-02-02-12. Administrative cancellations.

1. An insurance producer may cancel one's North Dakota insurance license voluntarily and have a letter of clearance issued by filing a written request with the department.
2. The insurance producer must return the licenses to the department.
3. The insurance producer is responsible for notifying the appointing companies of the cancellation.
4. A surplus lines insurance producer or consultant may cancel one's license voluntarily and have a letter of clearance issued by the department upon receipt of a written request from the licenseholder.

History: Effective September 1, 1983; amended effective January 1, 2000; December 1, 2001; January 1, 2016.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31

45-02-02-13. Change of address.

The change of address required by North Dakota Century Code section 26.1-26-33 must be provided to the department electronically or on a letter or form separate from the application or appointment forms and submitted solely for that purpose.

History: Effective September 1, 1983; amended effective October 1, 1984; January 1, 2008.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-33

45-02-02-14. Excessive or unnecessary coverage.

1. **When presumed a violation.** An insurance producer is presumed to have violated subsection 8 of North Dakota Century Code section 26.1-26-42 when the insurance producer knowingly solicits, procures, or sells a Medicare supplement policy containing both A and B coverage to any person who has such a Medicare supplement policy in force unless the insured is informed by the insurance producer and understands there is to be a replacement of the existing policy and there is an indication in writing or on the face of the application that the new policy is intended to replace the existing policy. It is not presumed to be a violation to solicit and sell a second policy which provides only B coverage. A violation may occur in other situations where there is the sale or solicitation of unnecessary or excessive coverage, even though no presumption has been established under this section.
2. **Suitability.** In recommending the purchase of any accident and health, health service, life, annuity, or nursing home policy to any consumer over age sixty-five, or Medicare supplement policy to any consumer, an insurance producer shall have reasonable grounds at the time of sale for believing that the recommendation is suitable for the consumer and shall make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by examination of the totality of the particular consumer's circumstances, including, but not limited to, the following:
 - a. The consumer's income and assets;
 - b. The consumer's need for insurance at the time of sale; and
 - c. The values, benefits, and costs of the consumer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.
3. **Advisory committee.** Prior to determining whether to prosecute a complaint received for an alleged violation of the sale of life insurance under subsection 2 of section 45-02-02-14, the commissioner shall convene an advisory committee comprised of insurance professionals and other qualified persons to review individual life insurance sales transactions and to make recommendations to appropriate staff of the insurance department regarding the suitability of the sale and whether disciplinary action may be warranted by the facts if proven. The advisory committee shall include the president of the North Dakota association of insurance and financial advisors or the president's designated representative, the president of the North Dakota chapter of chartered life underwriters or the president's designated representative and may include a member designated by the board of the local chapter of the North Dakota association of insurance and financial advisors which is located nearest to the residence of the insurance producer who is the subject of the complaint.

History: Effective October 1, 1984; amended effective July 1, 1986; January 1, 1988; February 1, 1988; December 1, 2001.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-42

45-02-02-14.1. Client loans to licensed producers and consultants prohibited - Exceptions.

A licensed insurance producer or consultant may not solicit or accept a loan from an individual with whom the insurance producer or consultant came into contact in the course of the person's insurance business, or sold an insurance policy to, within the past ten years. This does not prohibit a licensed insurance producer or consultant from accepting loans from financial institutions; immediate family members, which shall mean only a spouse, parents, siblings, and children; or other loans upon the prior written approval of the insurance commissioner.

History: Effective November 1, 1987; amended effective December 1, 2001.

General Authority: NDCC 26.1-25-49

Law Implemented: NDCC 26.1-26-42(6)

45-02-02-14.2. Insurance producer indebtedness to companies.

An insurance producer who is personally liable and indebted to an insurance company for the payment of commissions, premiums, or other debts incurred in the insurance producer's insurance business with the company and who fails to timely pay that debt is financially irresponsible within the meaning of subsection 6 of North Dakota Century Code section 26.1-26-42. A civil judgment entered against an insurance producer in favor of an insurance company for the collection of such a debt creates a presumption that subsection 6 of North Dakota Century Code section 26.1-26-42 has been violated.

History: Effective November 1, 1987; amended effective December 1, 2001.

General Authority: NDCC 26.1-25-49

Law Implemented: NDCC 26.1-26-42(6)

45-02-02-15. Proceedings, hearings, and appeals.

All proceedings, hearings, and appeals under this chapter and North Dakota Century Code chapter 26.1-26 are governed by North Dakota Century Code chapter 28-32.

History: Effective October 1, 1984.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-01-08

45-02-02-16. Notification of criminal convictions and administrative actions - Duty of licensee.

Repealed effective December 1, 2001.