

**STATE OF NORTH DAKOTA**  
**BEFORE THE COMMISSIONER OF INSURANCE**

**In the Matter of the Promulgation )  
Of Proposed Rules Regarding: )  
Unfair Sex Discrimination, )  
Preferred Mortality Tables, )  
Loss Ratios, Accounting Practices )  
and Procedures, Model Rule )  
Requiring Audited Financial )  
Reports, Risk Retention and )  
Purchasing Groups, Licensing of )  
Insurance Producers, Continuing )  
Education and Prelicensure )  
Education, Viatical Settlement )  
Advertising, Surplus Lines, Military )  
Sales Model Regulations, and North )  
Dakota Boiler Rules. )**

**FINAL**  
**ORDER ADOPTING RULES**

**FILE NO. RU-07-208**

**THIS MATTER** regarding proposed changes to N.D. Admin. Code Title 45 came before the North Dakota Commissioner of Insurance for consideration. The Commissioner, having published notice, having held a public hearing, having considered the testimony and filed comments of all interested persons, and having been otherwise fully advised in the premises, **FINDS AND CONCLUDES THAT:**

1. A Notice of Intent to Amend Administrative Rules describing the proposed rule changes was prepared and filed on September 7, 2007. The North Dakota Insurance Department staff also prepared a Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis on September 7, 2007.

2. The Notice and Regulatory Analysis were made available to all interested persons.

3. An Abbreviated Notice of Intent to Amend Administrative Rules was properly published once in each official county newspaper at least 20 days prior to the date of the hearing.

4. A hearing was held on October 19, 2007, in Bismarck, North Dakota, to take comments on the proposed rules.

5. At the hearing, all interested persons were given a reasonable opportunity to submit relevant oral or written comments. The record was held open for additional written comments for 10 days after the hearing.

6. In promulgating the final version of the rules in the form attached to this Order, the Commissioner considered all testimony given at the hearings and all written comments that have been filed.

**N.D. ADMIN. CODE CHAPTER 45-03-10  
UNFAIR SEX DISCRIMINATION**

7. The rule updates the types of practices that will be considered as unfair in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

8. One comment was received from the American Council of Life Insurers (ACLI) in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-04-07.2  
PREFERRED MORTALITY TABLES**

9. The rule recognizes and permits the use of additional valuation mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities of life insurers. The table—the 2001 CSO Mortality Table—includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite

mortality tables unless the context indicates otherwise. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

10. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-06-08  
LOSS RATIOS**

11. The rule is designed to implement 2007 Senate Bill No. 2154 which reduced the loss ratios that apply to health insurers from 75% to 70% of premium received for group policyholders and 65% to 55% of premium received from individual policyholders.

12. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-03-15  
ACCOUNTING PRACTICES AND PROCEDURES**

13. The rule requires every insurance company doing business in this state to file the appropriate National Association of Insurance Commissioners (NAIC) annual statement blank, prepared in accordance with the NAIC Instructions Handbook and follow the accounting procedures and practices prescribed by the March 2007 version of the NAIC Accounting Practices and Procedures Manual for property and casualty and life and health insurance.

14. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-03-20  
MODEL RULE REQUIRING ANNUAL AUDITED FINANCIAL REPORTS**

15. The rule adds one item which impacts the qualifications of an independent certified public accountant. The rule provides that the Insurance Commissioner shall not recognize any person or firm as a qualified independent certified public accountant which has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer. It also provides that a qualified independent certified public

accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration.

16. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-05-05  
RISK RETENTION AND PURCHASING GROUPS**

17. The rule is necessary to comply with the requirements of the federal law known as the Gramm-Leach-Bliley Financial Services Modernization Act [Pub. L. No. 106-102, 113 Stat. 1338] relating to licensing reciprocity for nonresidents.

18. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-02-02  
LICENSING OF INSURANCE PRODUCERS**

19. The rules remove the requirement that the Department verify, at the time of licensing, that an applicant for an insurance producer's license by a business entity has an active Certificate of Authority with the North Dakota Secretary of State's office. An applicant licensed in another state who moves to this state must provide within 90 days proof of clearance from the state in which the insurance producer is currently or was most recently licensed which is needed to be consistent with statutory requirements. The rules also modify the requirements for producer licensing, prelicensing, and examinations.

20. One comment was received from the ACLI in support of the proposed rule.

21. A comment was also received from Ann Weber of Property Casualty Insurers Association of America (PCI). The commenter stated that subdivision e of subsection 4 of section 45-02-02-04 "...specifically exempts personal lines..." and, for clarification purposes, the commenter suggested that "...a personal lines license-type designation be obtainable to correlate with a personal lines exam." The commenter felt that such a clarification should assist in avoiding a situation of having a personal lines exam with a

property/casualty license and a personal lines examination with a correlating personal lines license is preferable for reciprocity purposes.

No change was made based on this comment because no change to this subdivision was proposed by the Department in this rulemaking project. In addition, the commenter misunderstands the rule. There is a personal lines license type and, although it is a reduced examination, passage of a personal lines examination is required before such a license will be issued for residents. Further, full reciprocity is granted to any person who applies for a nonresident personal lines only license type.

**N.D. ADMIN. CODE CHAPTER 45-02-04  
CONTINUING EDUCATION AND PRELICENSURE EDUCATION**

22. The rule adds a definition of “insurance continuing education” and removes prelicensing education requirements for those residents wishing to be licensed as insurance producers. It also provides that a nonresident insurance producer who has satisfied the producer’s home state’s continuing education requirements and is in good standing in the producer’s home state shall electronically submit a uniform application for individual producer license renewal/continuation through the NAIC. It repeals the rule that provides that a letter of certification is not required if the home state participates in the NAIC producer database because all states currently participate in this database and the Department can verify the license is in good standing in the insurance producer’s home state via the database.

23. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE CHAPTER 45-04-13  
VIATICAL SETTLEMENT ADVERTISING**

24. The rules apply to the advertising of viatical settlements intended for dissemination in the state. It provides that the advertising of viatical settlements must be done in a manner to assure that product descriptions are presented in a manner that

prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by viatical settlement licensees. The rules are related to the enactment of 2007 Senate Bill No. 2268.

25. Comments were received from Michael F. Daley, Enforcement Attorney, Deputy Commissioner, North Dakota Securities Department. The comments of the Securities Department center around several definitions used in the rules and the fact that they vary from those contained in the statute which provides the authority for the rules (2007 Senate Bill No. 2268 codified at N.D.C.C. Chapter 26.1-33.3). The commenter noted that the comments were intended to clarify that the rules are intended to apply to viatical settlement contracts and not to viatical settlement purchase agreements as defined in N.D.C.C. Chapter 26.1-33.3-01(15) which by definition are securities regulated under N.D.C.C. Chapter 10-04.

The commenter suggested that the rules be changed as follows to make them consistent with the statute:

- Section 45-04-13-01(1): Delete "purchase or"
- Section 45-04-13-01(2): Delete "or other agreement"
- Section 45-04-13-01(5): Add the statutory definition from N.D.C.C. § 26.1-33.3-01(12)(a) which was omitted from the rule and re-letter (5)(a) to (5)(b) and (5)(b) to (5)(c) accordingly;
- Section 45-04-13-01(6): Add "A viatical settlement investment agent is an agent as defined in section 10-04-02"

The changes suggested by the commenter to Section 45-04-13-01(1), (2), (5), and (6) were made as proposed.

The commenter also requested that Section 45-04-13-02 be amended to clarify that this chapter applies to those required to be licensed as a viatical settlement provider or viatical settlement broker and not to viatical settlement investment agents or viatical settlement purchasers who are not required become licensed under N.D.C.C. Chapter 26.1-33.3 or to viatical settlement purchase agreements. The suggested changes were made as proposed in order to make it clear that the rules apply only to those who are required to be licensed as viatical settlement providers or viatical settlement brokers.

The commenter also requested that all references in the rule to “viatical settlement purchase agreement, product or service”; “viatical settlement purchase agreements”; and “purchasers” where found in proposed Section 45-04-13-03(3), (4)(g), and (5)(a)(c) and (f) be deleted to also be consistent with the authorizing statute. The suggested changes were made as proposed.

26. Comments were received from Marilyn Foss, General Counsel, North Dakota Bankers Association (NDBA). The comments of the NDBA center around the definition of viatical settlement contract used in the rule and the fact that it varies from that contained in the statute which provides the authority for the rules (2007 Senate Bill No. 2268 codified at N.D.C.C. Chapter 26.1-33.3). The comment notes that Section 45-04-13-01(5)(b)(2) resurrects some language that was removed from 2007 Senate Bill No. 2268 as introduced. NDBA suggested the following language for Section 45-04-13-01(5)(b)(2) to conform to the definition contained in the bill in its enrolled version:

b. “Viatical settlement contract does not include:

- (2) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of the loan or, if there is a default on the loan and the policy is transferred, the further assignment of the policy by the lender, provided that the default itself is not pursuant to an agreement or

understanding with any other person for the purpose of evading regulation.

The commenter noted that this language has been accepted by the Office of the Comptroller of the Currency and the North Dakota Department of Financial Institutions and has effectively eliminated bank regulatory agency concern about North Dakota's new viatical settlement laws.

The change suggested by the commenter was made to conform the definition in these rules to that found in the authorizing statute.

**N.D. ADMIN. CODE CHAPTER 45-09-01  
SURPLUS LINES**

27. The rules delete obsolete appendices and extend the deadline for the filing of a surplus lines affidavit from 15 days to 60 days of the effective date of a policy in order to be consistent with the governing statute.

28. No comments were received.

**N.D. ADMIN. CODE CHAPTER 45-04-14  
MILITARY SALES MODEL REGULATION**

29. The rules are based upon the NAIC Model Regulation concerning unfair sales practices in the sale of insurance to active duty military personnel. The rules set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The rules apply to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

30. One comment was received from the ACLI in support of the proposed rule.

**N.D. ADMIN. CODE ARTICLE 45-12  
(CHAPTERS 45-12-01, 45-12-05, 45-12-10, and 45-12-11)  
NORTH DAKOTA BOILER RULES**

31. The rules govern the licensing and operation of boilers. Chapter 45-12-01 is amended to update the boiler and vessel construction code of the American society of mechanical engineers to the 2007 edition for sections I, II, IV, V, VIII (divisions 1 and 3), IX, and X; and section VIII, (division 2), to the 2004 edition.

Chapter 45-12-05-16 is amended to provide that the minimum factor of safety may not be less than four (rather than four and five-tenths) for existing installations.

Chapter 45-12-10-02 is amended to update the reference to the National Board Inspection Code to be consistent with the definition and to update the American Petroleum Institute Code from the 1997 to the 2004 edition.

Chapter 45-12-11 governs the operation of hobby boiler operators. It provides that the Insurance Commissioner may not issue a hobby boiler license to an individual unless the individual: files a written application with the Commissioner on a form prescribed by the Commissioner; passes an examination developed by the Commissioner and pays an examination fee of \$25; provides evidence of the successful completion of 120 hours of apprenticeship training with a licensed hobby boiler operator; is at least 16 years of age; and pays a \$25 license fee. The rules are related to the enactment of 2007 Senate Bill No. 2411.

32. No comments were received regarding the proposed amendments to Chapters 45-12-01, 45-12-05, or 45-12-10.

33. One comment was received from Smokey Wright of the North Dakota State Threshers Association in regard to Chapter 45-12-11. The commenter noted that Section 45-12-11-03 would allow an individual who has operated a hobby boiler within this state as of July 1, 2007, to receive a license without complying with subdivisions b and c of

subsection 2 of Section 45-12-11-02 which requires passing an examination and 120 hours of boiler operation training. The commenter felt that anyone who operates a hobby boiler should be required to pass a test before receiving a license rather than being “grandfathered” into a license.

No change was made based on this comment because 2007 Senate Bill No. 2411, codified at N.D.C.C. section 26.1-22.1-14, requires that an individual who is operating a hobby boiler within North Dakota as of July 1, 2007, must be considered “...acceptable for a license without additional training or examination.” A change to this state law would have to be made before testing and training requirements could be imposed on individuals who have operated a hobby boiler as of July 1, 2007.

34. One comment was received from Barbara Witteman, a North Dakota resident, regarding Chapter 45-12-11 in which she stated that she holds a hobby boiler license from Minnesota and, because of that, she hopes that any individual licensed in Minnesota would be allowed to operate a hobby boiler in North Dakota. She noted that Minnesota licensees have to complete apprentice hours and be tested and she hoped that there would be similarities between these requirements no matter the state in which the person resides.

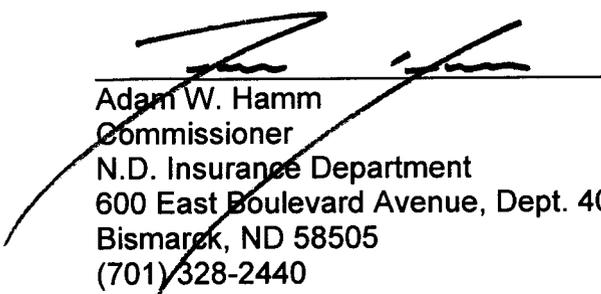
No change was made based on this comment. As noted above, 2007 Senate Bill No. 2411 provides that an individual who operates a hobby boiler within the State of North Dakota as of July 1, 2007, shall be considered acceptable for a license without additional training or examination. The individual will still need to apply for a license with the North Dakota Insurance Department; however, the testing and training requirements provided for in Section 45-12-11-02 will not need to be met by these individuals.

#### **ORDER**

IT IS, THEREFORE, ORDERED that the rules in the form attached to this Order, modified to include some of the changes recommended, be adopted and filed in accordance

with applicable provisions of state law to become effective on January 1, 2008, subject to the approval of the Administrative Rules Committee of the Legislative Council.

DATED this 15<sup>th</sup> day of November, 2007.



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