

## **CHAPTER 26.1-44 SURPLUS LINES INSURANCE**

**26.1-44-01. Surplus lines insurance valid.** Insurance contracts procured as surplus lines coverage from unauthorized insurers in accordance with this chapter are valid and enforceable as to all parties and must be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

**26.1-44-02. Affidavit as prerequisite of insurance - Contents.** A surplus lines insurance producer licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within sixty days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state.

**26.1-44-03. Surplus lines in solvent insurers.** A surplus lines insurance producer may not knowingly place surplus line insurance with an insurer that is financially unsound. The surplus lines insurance producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance producer may not so insure with:

1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.
2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

**26.1-44-04. Service of process.** Any insurer desiring to transact any business under this chapter, by any surplus lines insurance producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

**26.1-44-05. Endorsement of policy.** Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES PRODUCER'S LICENSE OF \_\_\_\_\_. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance producer shall properly complete the endorsement by typing or printing the producer's full name in the space provided and shall sign and date the endorsement.

**26.1-44-06. Record of business - Filing of statement - Content.** Every surplus lines insurance producer shall keep a separate account of the business under the producer's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of authorized insurance companies. If a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.

**26.1-44-07. Actions against insurers issuing insurance - Venue - Service of process - Time for answer.** Every insurer making insurance under this chapter is deemed to be doing business in this state as an unlicensed concern and may be sued upon any claim for relief arising under any policy of insurance so issued and delivered by the insurer. The suit must be brought in the district court of the county in which the plaintiff resides. Service of summons and complaint in the suit must be made upon the commissioner in the manner provided by section 26.1-44-04.

**26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.** Every such surplus lines insurance producer who fails or refuses to make and file the annual statement, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquency. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the annual statement and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines insurance producer's license of the producer if any surplus lines insurance producer fails to make and file the annual statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines insurance producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines insurance producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

**26.1-44-09. Rulemaking authority.** The commissioner may adopt reasonable rules to implement this chapter.