

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1075
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to amend and reenact sections 26.1-44-02, 26.1-44-03.1, 26.1-44-03.2, 26.1-44-06, 26.1-44-06.1, and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-02. Duty to file evidence of insurance and affidavitsigned statement.

1. Each surplus lines producer, ~~within sixty days~~ after the placing of any surplus lines insurance ~~whereif~~ the insured's home state is this state, shall execute and file a ~~written~~ report of placement, no later than March first for the quarter ending the preceding December thirty-first, June first for the quarter ending the preceding March thirty-first, September first for the quarter ending the preceding June thirtieth, and December first for the quarter ending the preceding September thirtieth of each year, regarding the insurance which must be kept confidential by the commissioner. The report of placement must include:
 1. a. The name and address of the insured;
 2. b. The identity of the insurer or insurers;
 3. ~~A description of the subject and location of the risk;~~
 4. c. The amount of premium charged for the insurance;
 5. d. ~~AThe amount of premium tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;~~
 6. e. Any other pertinent information as the commissioner may reasonably require; and
 7. f. ~~An affidavit on a~~ A signed statement certifying under penalty of law in the form prescribed by the commissioner as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The ~~affidavitsigned diligent search statement~~ must be open to public inspection. The ~~affidavitsigned diligent search statement~~ must affirm that the insured was expressly advised in writing ~~prior to~~before placement of the insurance that:
 - a. (1) The surplus lines insurer with ~~whom~~which the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and
 - b. (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
2. A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search or to file the ~~affidavitsigned diligent search statement~~ in subdivision f of subsection 71 if the surplus lines producer has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight and

the exempt commercial purchaser has subsequently requested in writing the surplus lines producer to procure or place such insurance from a nonadmitted insurer.

SECTION 2. AMENDMENT. Section 26.1-44-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03.1. Surplus lines tax.

1. If the insured's home state is this state, ~~in addition to the full amount of gross premiums charged by the insurer for the insurance on properties, risks, or exposures located or to be performed in this state or another state,~~ every surplus lines producer shall collect and pay to the commissioner a sum equal to one and three-fourths percent of the gross premiums charged, assessments, membership fees, subscriber fees, policy fees, and service fees, less any return premiums, for surplus lines insurance provided by the surplus lines producer.
2. The tax on any portion of the premium unearned at termination of insurance having been credited or refunded by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.
3. At the time of filing the annual tax statement as set forth in section 26.1-44-06.1, each surplus lines producer shall pay the premium tax due for the policies written during the period covered by the annual tax statement.

SECTION 3. AMENDMENT. Section 26.1-44-03.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03.2. Domestic surplus lines insurers.

1. A North Dakota domestic insurer may be designated a domestic surplus lines insurer if:
 - a. The insurer possesses a policyholder surplus of at least fifteen million dollars;
 - b. The designation is in compliance with a resolution of the insurer's board of directors; and
 - c. The commissioner has provided written approval of the designation.
2. A domestic surplus lines insurer may write surplus lines insurance in North Dakota and any other jurisdiction in which the insurer is eligible. A domestic surplus lines insurer may insure in this state any risk if:
 - a. Produced pursuant to chapter 26.1-44; and
 - b. The premium is subject to surplus lines premium tax pursuant to section 26.1-44-03.1; and
 - c. ~~Issued pursuant to the surplus lines insurance multistate compliance compact.~~
3. For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010 [15 U.S.C. 8201 et seq.], a domestic surplus lines insurer is considered a nonadmitted insurer as defined under that Act, with respect to risks insured in this state.
4. A domestic surplus lines insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirements in chapter 26.1-41 or any other law mandating insurance coverage by a licensed insurance company.
5. Except as specifically exempted from such requirements, a domestic surplus lines insurer is subject to compliance with all financial examination and solvency requirements that apply to domestic insurers under chapter 26.1-03 regarding examinations and reports.

6. A domestic surplus lines insurer is not subject to the provisions of chapter 26.1-38.1 regarding the life and health insurance guaranty association nor to chapter 26.1-39 regarding property and casualty insurance.

SECTION 4. AMENDMENT. Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-06. Records of surplus lines producer.

1. If the insured's home state is this state, each surplus lines producer shall keep in this state a full and true record of each surplus lines insurance contract placed by or through the producer, including a copy of the policy, certificate, cover note, or other evidence of insurance showing each of the following applicable items:
 1. a. Amount of the insurance, risks, and perils insured;
 2. b. Brief description of the property insured and its location;
 3. c. Gross premium charged;
 4. d. Any return premium paid;
 5. e. Rate of premium charged upon the several items of property;
 6. f. Effective date and terms of the contract;
 7. g. Name and address of the insured;
 8. h. Name and address of the insurer;
 9. i. Amount of tax and other sums to be collected from the insured;
 10. ~~Allocation of taxes by state;~~
 11. j. Identity of the producer of record;
 12. k. Any confirming correspondence from the insurer or its representative; and
 13. l. The application.
2. The surplus lines producer shall keep open the record of each contract at all reasonable times to examination by the commissioner without notice for a period not less than five years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines producer shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

SECTION 5. AMENDMENT. Section 26.1-44-06.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-06.1. Reports and policy changes.

1. If the insured's home state is this state, ~~before~~ no later than March ~~second~~ first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner an annual tax statement of all surplus lines insurance transacted during the preceding calendar year, including:
 - a. Aggregate gross premiums written;
 - b. Aggregate return premiums; and

- c. ~~Amount of aggregate tax remitted on risks located or to be performed in this state; and~~
- d. ~~Amount of aggregate tax remitted on risks located or to be performed in another state.~~
- 2. An annual tax statement is not required to be filed ~~whenif~~ a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.
- 3. a. If the insured's home state is this state, each surplus lines producer shall file with the commissioner in the manner prescribed by the commissioner any surplus lines insurance endorsement, audit, or cancellation as follows:
 - (1) After any change to the initial surplus lines insurance placement which changes the insurance premium amount; or
 - (2) After the producer obtains knowledge of any change to the initial surplus lines insurance placement which changes the insurance premium amount and the producer is able to provide written proof to the commissioner of the date the producer obtained knowledge of the change.
- b. Any endorsement, audit, or cancellation subject to subdivision a must be filed no later than March first for the calendar quarter ending the preceding December thirty-first, June first for the calendar quarter ending the preceding March thirty-first, September first for the calendar quarter ending the preceding June thirtieth, or December first for the calendar quarter ending the preceding September thirtieth of each year.

SECTION 6. AMENDMENT. Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-08. Civil penalty for failure to file report of placement and affidavit signed statement, endorsement, audit, cancellation, file annual tax statement, and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.

- 1. A surplus lines producer is liable for a fine ~~of up to~~ twenty-five dollars for each day of delinquency, not to exceed the sum of five hundred dollars for each failure or refusal to file, if the producer:
 - a. ~~Fails or refuses to file the report of placement or affidavit within sixty days signed diligent search statement as required under section 26.1-44-02;~~
 - b. ~~Fails or refuses to file the endorsement, audit, or cancellation within sixty days after any change to the initial placement which changes the insurance premium amount, except a surplus lines producer that is able to provide written proof of the date the producer obtained knowledge of the change to the initial placement which changes the insurance premium amount has sixty days from the date the producer obtained knowledge of this change~~ as required under section 26.1-44-06.1; or
 - c. ~~Fails or refuses to make and file the annual tax statement or pay the tax no later than March first as required under section 26.1-44-06.1; or~~
 - d. ~~Fails or refuses to pay the taxes required to be paid before the second day of March after such tax is due.~~
- 2. 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 tax statement, report of placement, endorsement, audit cancellation, or ~~affidavit and signed diligent search statement~~ or 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 producer's license if any surplus lines producer fails to make and file the annual tax 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 or provides false information in the affidavit signed diligent search statement referred to in section 26.1-44-02.

3. If the license of a surplus lines producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines 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.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1075 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 91 Nays 0 Absent 3

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State