

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2305

Introduced by

Senators Klein, Burckhard, Vedaa

1 A BILL for an Act to create and enact section 26.1-44-03.3 of the North Dakota Century Code,
2 relating to surplus lines insurance diligent search requirements; and to amend and reenact
3 sections 26.1-44-02 and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines
4 insurance.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

8 **26.1-44-02. Duty to file evidence of insurance and signed statement.**

- 9 1. Each surplus lines producer, after the placing of any surplus lines insurance if the
10 insured's home state is this state, shall execute and file a report of placement, no later
11 than March first for the quarter ending the preceding December thirty-first, June first
12 for the quarter ending the preceding March thirty-first, September first for the quarter
13 ending the preceding June thirtieth, and December first for the quarter ending the
14 preceding September thirtieth of each year, regarding the insurance which must be
15 kept confidential by the commissioner. The report of placement must include:
 - 16 a. The name and address of the insured;
 - 17 b. The identity of the insurer or insurers;
 - 18 c. The amount of premium charged for the insurance;
 - 19 d. The amount of premium tax; and
 - 20 e. Any other pertinent information as the commissioner may reasonably require;
 - 21 and
 - 22 f. ~~A signed statement certifying under penalty of law in the form prescribed by the~~
23 ~~commissioner as to the diligent efforts to place the coverage with admitted~~
24 ~~insurers and the results of that effort. The signed diligent search statement must~~

1 be open to public inspection. The signed diligent search statement must affirm-
2 that the insured was expressly advised in writing before placement of the
3 insurance that:

4 (1) The surplus lines insurer with which the insurance was to be placed is not
5 licensed in this state and is not subject to the state's supervision; and

6 (2) In the event of the insolvency of the surplus lines insurer, losses will not be
7 paid by the state insurance guaranty fund.

8 2. A surplus lines producer seeking to place nonadmitted insurance for an exempt
9 commercial purchaser is not required to make a due diligence search ~~or to file the~~
10 signed diligent search statement in subdivision f of subsection 4 if the surplus lines
11 producer has disclosed to the exempt commercial purchaser that such insurance may
12 or may not be available from the admitted market that may provide greater protection
13 with more regulatory oversight and the exempt commercial purchaser has
14 subsequently requested in writing the surplus lines producer to procure or place such
15 insurance from a nonadmitted insurer.

16 **SECTION 2.** Section 26.1-44-03.3 of the North Dakota Century Code is created and
17 enacted as follows:

18 **26.1-44-03.3. Exemption from diligent search requirements.**

19 A licensed surplus line producer may procure a surplus line insurance contract from an
20 eligible surplus lines insurer without making the required diligent search to procure the
21 insurance from authorized insurers as specified under subsection 3 of section 26.1-44-03, if the
22 risk was referred to the surplus line producer by an insurance producer licensed in this state.

23 **SECTION 3. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **26.1-44-08. Civil penalty for failure to file report of placement and signed statement,**
26 **endorsement, audit, cancellation, file annual tax statement, and pay tax - Action for**
27 **recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing**
28 **procedure and judicial review.**

29 1. A surplus lines producer is liable for a fine up to twenty-five dollars for each day of
30 delinquency, not to exceed the sum of five hundred dollars for each failure or refusal to
31 file, if the producer:

- 1 a. Fails or refuses to file the report of placement ~~or signed diligent search statement~~
2 as required under section 26.1-44-02;
- 3 b. Fails or refuses to file the endorsement, audit, or cancellation as required under
4 section 26.1-44-06.1; or
- 5 c. Fails or refuses to make and file the annual tax statement or pay the tax no later
6 than March first as required under section 26.1-44-06.1.
- 7 2. The tax and fine may be recovered in an action to be instituted by the commissioner in
8 the name of the state, the attorney general representing the commissioner, in any
9 court of competent jurisdiction, and the fine, when so collected, must be paid to the
10 state treasurer and placed to the credit of the general fund. The commissioner, if
11 satisfied that the delay in filing the annual tax statement, report of placement,
12 endorsement, audit cancellation, ~~or signed diligent search statement~~ or the payment of
13 the tax was excusable, may waive all or any part of the fine. The commissioner may
14 revoke or suspend the surplus lines producer's license if any surplus lines producer
15 fails to make and file the annual tax statement and pay the taxes, refuses to allow the
16 commissioner to inspect and examine the producer's records of the business
17 transacted by the producer pursuant to this chapter, or fails to keep the records in the
18 manner required by the commissioner, ~~or falsifies or provides false information in the~~
19 ~~signed diligent search statement referred to in section 26.1-44-02.~~
- 20 3. If the license of a surplus lines producer is revoked, whether by the action of the
21 commissioner or by judicial proceedings, another license may not be issued to that
22 surplus lines producer until two years have elapsed from the effective date of the
23 revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied
24 that full compliance with this chapter will be had.