Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1146
(Representative Keiser)
(Senator Klein)

AN ACT to amend and reenact sections 26.1-44-01.1, 26.1-44-03.1, and 26.1-44-06.1 of the North Dakota Century Code, relating to surplus lines of insurance; to repeal section 26.1-44-11 of the North Dakota Century Code, relating to the surplus lines insurance multistate compliance compact; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-44-01.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-01.1. Definitions.

1. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.

2. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines producer may place surplus lines insurance pursuant to section 26.1-44-03.

3. "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

   a. The person employs or retains a qualified risk manager to negotiate insurance coverage.

   b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.

   c. (1) The person meets at least one of the following criteria:

      (a) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to paragraph 2.

      (b) The person generates annual revenues in excess of fifty million dollars, as such amount is adjusted pursuant to paragraph 2.

      (c) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.

      (d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to paragraph 2.

      (e) The person is a municipality with a population in excess of fifty thousand persons.

   (2) Each fifth January first occurring after July 21, 2010, and ongoing thereafter, the amounts in subparagraphs a, b, and d of paragraph 1 will be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the department of labor.

4. "Home state".

   a. Except as provided in subdivision b, "home state" means, with respect to an insured:

      (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

      (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

   b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

5. "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

6. "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.

7. "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.

8. "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this state but does not include a risk retention group as defined in paragraph 4 of subdivision a of section 2 of the Liability Risk Retention Act of 1986 [15 U.S.C. 3901(a)(4)].

9. ~~"Reciprocal state" means a state that has:~~

   ~~a. Entered into a nonadmitted insurance compact; or~~

   ~~b. Otherwise adopted the allocation schedule and reporting forms prescribed by a multistate agreement for nonadmitted insurance.~~

~~10.~~ "Surplus lines insurance" means any property and casualty insurance ~~in this state~~ on properties, risks, or exposures, located or to be performed in this state, permitted to be placed through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.

~~11.~~10. "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures ~~located or to be performed in this state~~ with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.

~~12.~~11. "Type of insurance" means coverage afforded under the particular policy that is being placed.

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.

~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable must be computed based on:~~

~~a. An amount equal to one and three-fourths percent on that portion of the gross premiums allocated to this state plus;~~

~~b. An amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to other properties, risks, or exposures located or to be performed outside of this state less;~~

~~c. The amount of gross premiums allocated to this state and returned to the insured.~~

2. The tax on any portion of the premium unearned at termination of insurance having been credited 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. ~~Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact for the purpose of collecting, allocating, and disbursing to reciprocal states any funds collected pursuant to subdivision b of subsection 1 applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this state, the net premium tax collected must be retained by this state.~~

~~4.~~ At the time of filing the verified report 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 report.

~~5. If the insured's home state is this state, in determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state must be considered written on properties, risks, or exposures located or to be performed in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of a reciprocal state.~~

SECTION 3. 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 ~~- Summary of exported business~~.

1. If the insured's home state is this state, on or before April first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar year, including:

~~1.~~ a. Aggregate gross premiums written;

~~2.~~ b. Aggregate return premiums;

~~3.~~ c. Amount of aggregate tax remitted on risks located or to be performed in this state; and

~~4.~~ d. Amount of aggregate tax ~~due or~~ remitted on risks located or to ~~each other state for which an allocation is made pursuant to section 26.1-44-03.1~~be performed in another state.

2. A verified report is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

SECTION 4. REPEAL. Section 26.1-44-11 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on June 1, 2015.

SECTION 6. 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-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1146 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 0 Absent 4

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 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

Received by the Governor at 12:36 P.M. on March 19, 2015.

Approved at 12:29 P.M. on March 20, 2015.

Governor

Filed in this office this 20th day of March, 2015,

at 3:50 o'clock P M.

Secretary of State