

**Sixty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2305  
(Senators Klein, Burckhard, Vedaa)

AN ACT to create and enact section 26.1-44-03.3 of the North Dakota Century Code, relating to surplus lines insurance diligent search requirements; and to amend and reenact sections 26.1-44-02 and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance.

**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 signed statement.~~**

1. Each surplus lines producer, after the placing of any surplus lines insurance if the insured's home state is this state, shall execute and file a 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:
  - a. The name and address of the insured;
  - b. The identity of the insurer or insurers;
  - c. The amount of premium charged for the insurance;
  - d. The amount of premium tax; and
  - e. Any other pertinent information as the commissioner may reasonably require; ~~and~~
  - f. ~~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 signed diligent search statement must be open to public inspection. The signed diligent search statement must affirm that the insured was expressly advised in writing before placement of the insurance that:~~
    - (1) ~~The surplus lines insurer with which the insurance was to be placed is not licensed in this state and is not subject to the state's supervision; and~~
    - (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 signed diligent search statement in subdivision f of subsection 1~~ 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.** Section 26.1-44-03.3 of the North Dakota Century Code is created and enacted as follows:

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

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

**SECTION 3. 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 ~~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 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 signed diligent search statement~~ as required under section 26.1-44-02;
  - b. Fails or refuses to file the endorsement, audit, or cancellation 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.
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 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, 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 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.

Tanner  
President of the Senate

Dennis E Johnson  
Speaker of the House

Shanda Morgan  
Secretary of the Senate

Bull J. Reich  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2305.

Senate Vote:    Yeas 45            Nays 0            Absent 2

House Vote:    Yeas 91            Nays 1            Absent 2

Shanda Morgan  
Secretary of the Senate

Received by the Governor at 2:34 PM. on March 24, 2023.

Approved at 11:20 AM. on March 27, 2023.

Doug Burgum  
Governor

Filed in this office this 28<sup>th</sup> day of March, 2023,

at 2:53 o'clock P M.

Michael Howe  
Secretary of State