

Fifty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2123**

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact sections 26.1-44-02 and 26.1-44-08 of the North  
2 Dakota Century Code, relating to surplus lines insurance.

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

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

6 **26.1-44-02. Affidavit as prerequisite of insurance - Contents.** A surplus lines  
7 insurance producer licensed under chapter 26.1-26 shall in every case execute and file with the  
8 commissioner within ~~fifteen~~ sixty days of the effective date of any surplus line insurance policy,  
9 indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an  
10 inability exists to procure the insurance, indemnity contract, or surety bond desired from an  
11 insurer authorized to do business in this state. There is a presumption that such inability exists  
12 and that a diligent search has been made if the insurance, indemnity contract, or surety bond  
13 provides coverage listed by the commissioner as an approved surplus lines coverage. If the  
14 commissioner concurs in the allegation in the affidavit, the commissioner may authorize the  
15 procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do  
16 business in this state.

17 **SECTION 2. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for**  
20 **recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing**  
21 **procedure and judicial review.** Every such surplus lines insurance producer who fails or  
22 refuses to make and file the annual statement, and to pay the taxes required to be paid prior to  
23 the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of  
24 delinquency. The tax and fine may be recovered in an action to be instituted by the

1 commissioner in the name of the state, the attorney general representing the commissioner, in  
2 any court of competent jurisdiction, and the fine, when so collected, must be paid to the state  
3 treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the  
4 delay in filing the annual statement and the payment of the tax was excusable, may waive all or  
5 any part of the fine. The commissioner ~~shall~~ may revoke or suspend the surplus lines  
6 insurance producer's license of the producer if any surplus lines insurance producer fails to  
7 make and file the annual statement and pay the taxes, or refuses to allow the commissioner to  
8 inspect and examine the producer's records of the business transacted by the producer  
9 pursuant to this chapter, or fails to keep the records in the manner required by the  
10 commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

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