

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2123
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

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

SECTION 2. 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 statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review. Every such surplus lines insurance producer who fails or refuses to make and file the annual statement, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquency. 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 statement and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner ~~shall~~ may revoke or suspend the surplus lines insurance producer's license of the producer if any surplus lines insurance producer fails to make and file the annual 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 the affidavit referred to in section 26.1-44-02.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2123.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State