



Independent Insurance
Agents of North Dakota



March 20, 2023

Representative Scott Louser
House Industry, Business and Labor Committee
600 East Boulevard
Bismarck, ND 58505-0360

Re: SB 2305 – Surplus Lines Insurance

Dear Chairman Louser,

The Wholesale & Specialty Insurance Association¹ (WSIA) appreciate the opportunity to provide comments in support of SB 2305 which would make some welcome revisions to North Dakota law governing surplus lines insurance and passed the Senate by a vote of 45 to 0. The changes in SB 2305 seek to streamline the regulatory process for writing insurance policies that are difficult to place.

Surplus lines insurance serves as the safety valve of the property and casualty insurance industry. When a licensed insurance producer is unable to place business in the standard insurance market, they may seek coverage through a licensed surplus lines producer in the nonadmitted insurance market. Nonadmitted insurers are able to cover hard-to-place risks because they have more flexibility in the terms they can offer and the rates they can charge.

Currently, the process for seeking insurance in the surplus lines market requires a surplus lines broker to conduct a diligent search of the standard or admitted market before seeking insurance in the surplus lines market. That process is certified by submitting a signed statement to the to the Department of Insurance, attesting that a diligent search was conducted for every insurance policy placed.

This process can be confusing and burdensome for surplus lines brokers. The signed statement is confusing because the retail insurance producer actually conducts a diligent search of the admitted

¹ WSIA is the U.S. professional trade association representing the wholesale and specialty insurance market and the wholesale distribution system. WSIA presents approximately 400 wholesale broker member firms, 100 surplus lines insurance companies, and 200 associates and service providers to the surplus lines market, our membership operates in more than 1,500 offices representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide – all of whom are committed to the wholesale distribution system and U.S. surplus lines market.

market, but the surplus lines broker must attest to its completion with the signed statement. That requires brokers to rely upon the word of the insurance producer to verify that a diligent search was conducted. The process is burdensome because this statement must be executed and filed with the Department of Insurance for each surplus lines policy placed in the state of North Dakota, and most states require no such filing.

SB 2305 would alleviate time and cost associated with placing a surplus lines policy by eliminating the certified diligent search statement requirement.

Further, the bill would establish an exemption to diligent search requirements only when a insurance producer (otherwise known as a retail producer) refers business to a surplus line producer. Longstanding public policy has established that all insurance options within the admitted market should be exhausted before insurance may be placed in the surplus lines market, and for good reason. Surplus lines insurance was established as a market of last resort and our members wish to preserve this dynamic going forward. However, evidence shows that the structure of the wholesale insurance distribution system, and not the formal diligent search process, is what preserves the primacy of the admitted market.

When retail producers look to place insurance for one of their customers, they exhaust all their options in the admitted market before seeking insurance in the surplus lines market through a licensed broker. Why? Because partnering with a licensed surplus lines broker means splitting the commission they would otherwise be able to keep entirely to themselves. The legal structure of the insurance licensing system has set up incentives that will always reward an insurance producer for placing insurance in the standard market. It's only after those options are exhausted that a producer has incentive to seek insurance in the surplus lines market.

To summarize, SB 2305 will alleviate the paperwork, time and burden associated with conducting a diligent search of the admitted market. It will also preserve the primacy of the admitted market while streamlining the process of obtaining complex insurance for North Dakota citizens and businesses. For those reasons we urge your support of SB 2305.

Sincerely,

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