CHAPTER 26.1-44
SURPLUS LINES INSURANCE

26.1-44-01. Surplus lines insurance valid.

Insurance contracts procured as surplus lines coverage from nonadmitted insurers in accordance with this chapter are valid and enforceable as to all parties and must be given recognition in all matters and respects to the same effect as like contracts issued by admitted insurers.

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. "Surplus lines insurance" means any property and casualty insurance 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.
10. "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.
11. "Type of insurance" means coverage afforded under the particular policy that is being placed.

26.1-44-02. Duty to file evidence of insurance.

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.
2. A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search 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.

26.1-44-03. Surplus lines insurance.

The placement of nonadmitted insurance is subject to this section only if the insured's home state is this state. Surplus lines insurance may be placed by a surplus lines producer if:

1. Each insurer is an eligible surplus lines insurer;
2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
3. The surplus lines producer is aware that:
   a. The full amount and type of insurance is not available from the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it; or
   b. The risk was referred to the surplus lines producer by an insurance producer licensed in this state.
4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:
   a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(1) (a) The minimum capital and surplus requirements under the law of this state; or
(b) Fifteen million dollars.
(2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or

b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and

5. All other requirements of this chapter are met.

26.1-44-03.1. Surplus lines tax.

1. If the insured's home state is this state, every surplus lines producer shall 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.
2. The tax on any portion of the premium unearned at termination of insurance having been credited or refunded 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. At the time of filing the annual tax statement 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 annual tax statement.

26.1-44-03.2. Domestic surplus lines insurers.

1. A North Dakota domestic insurer may be designated a domestic surplus lines insurer if:
   a. The insurer possesses a policyholder surplus of at least fifteen million dollars;
   b. The designation is in compliance with a resolution of the insurer's board of directors; and
   c. The commissioner has provided written approval of the designation.
2. A domestic surplus lines insurer may write surplus lines insurance in North Dakota and any other jurisdiction in which the insurer is eligible. A domestic surplus lines insurer may insure in this state any risk if:
   a. Produced pursuant to chapter 26.1-44; and
   b. The premium is subject to surplus lines premium tax pursuant to section 26.1-44-03.1.
3. For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010 [15 U.S.C. 8201 et seq.], a domestic surplus lines insurer is considered a nonadmitted insurer as defined under that Act, with respect to risks insured in this state.
4. A domestic surplus lines insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirements in chapter 26.1-41 or any other law mandating insurance coverage by a licensed insurance company.
5. Except as specifically exempted from such requirements, a domestic surplus lines insurer is subject to compliance with all financial examination and solvency requirements that apply to domestic insurers under chapter 26.1-03 regarding examinations and reports.

6. A domestic surplus lines insurer is not subject to the provisions of chapter 26.1-38.1 regarding the life and health insurance guaranty association nor to chapter 26.1-39 regarding property and casualty insurance.

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

Repealed by S.L. 2025, ch. 279, § 15.

26.1-44-03.4. Surplus lines insurance policies.

A surplus lines insurer may not issue a policy designed to satisfy any law mandating insurance coverage by a licensed insurance company.

26.1-44-04. Service of process.

Any insurer desiring to transact any business under this chapter, by any surplus lines producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

26.1-44-05. Consumer notice.

If the insured's home state is this state, the surplus lines producer shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer shall maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer shall tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line."

26.1-44-06. Records of surplus lines producer.

1. If the insured's home state is this state, each surplus lines producer shall keep in this state a full and true record of each surplus lines insurance contract placed by or through the producer, including a copy of the policy, certificate, cover note, or other evidence of insurance showing each of the following applicable items:
   a. Amount of the insurance, risks, and perils insured;
   b. Brief description of the property insured and its location;
   c. Gross premium charged;
   d. Any return premium paid;
   e. Rate of premium charged upon the several items of property;

f. Effective date and terms of the contract;
g. Name and address of the insured;
h. Name and address of the insurer;
i. Amount of tax and other sums to be collected from the insured;
j. Identity of the producer of record;
k. Any confirming correspondence from the insurer or its representative; and
l. The application.

2. The surplus lines producer shall keep open the record of each contract at all reasonable times to examination by the commissioner without notice for a period not less than five years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines producer shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

26.1-44-06.1. Reports and policy changes.

1. If the insured's home state is this state, no later than March first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner an annual tax statement of all surplus lines insurance transacted during the preceding calendar year, including:
   a. Aggregate gross premiums written;
   b. Aggregate return premiums; and
   c. Amount of aggregate tax remitted.
2. An annual tax statement is not required to be filed if a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.
3. a. If the insured's home state is this state, each surplus lines producer shall file with the commissioner in the manner prescribed by the commissioner any surplus lines insurance endorsement, audit, or cancellation as follows:
      (1) After any change to the initial surplus lines insurance placement which changes the insurance premium amount; or
      (2) After the producer obtains knowledge of any change to the initial surplus lines insurance placement which changes the insurance premium amount and the producer is able to provide written proof to the commissioner of the date the producer obtained knowledge of the change.
   b. Any endorsement, audit, or cancellation subject to subdivision a must be filed no later than March first for the calendar quarter ending the preceding December thirty-first, June first for the calendar quarter ending the preceding March thirty-first, September first for the calendar quarter ending the preceding June thirtieth, or December first for the calendar quarter ending the preceding September thirtieth of each year.

26.1-44-07. Actions against insurers issuing insurance - Venue - Service of process - Time for answer.

Every insurer making insurance under this chapter is deemed to be doing business in this state as an unlicensed concern and may be sued upon any claim for relief arising under any policy of insurance so issued and delivered by the insurer. The suit must be brought in the district court of the county in which the plaintiff resides. Service of summons and complaint in the suit must be made upon the commissioner in the manner provided by section 26.1-44-04.

26.1-44-08. Civil penalty for failure to file report of placement, 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 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 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.
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.

26.1-44-09. Rulemaking authority.

The commissioner may adopt reasonable rules to implement this chapter.

26.1-44-10. Independently procured insurance - Duty to report and pay tax.

If the insured's home state is this state, in accordance with subsection 9 of section 26.1-02-05, each insured in this state who independently procures or continues or renews insurance with a nonadmitted insurer on properties, risks, or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines producer, is subject to the same requirements under this chapter as apply to a surplus lines producer.

26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.

Repealed by S.L. 2015, ch. 224, § 4.