

2023 SENATE INDUSTRY AND BUSINESS

SB 2305

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2305
2/1/2023

A bill relating to surplus lines insurance diligent search requirements; and relating to surplus lines insurance.

11:09 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Surplus lines insurance
- Regulatory process
- Insurance policies
- Admitted company and surplus line company
- Committee action

11:09 AM Senator Klein introduced SB 2305 and verbally testified in favor.

11:10 AM John Mates, Wholesale and Specialties Inc, testified in favor of SB 2305. #19646

11:23 AM Johannes (Johnny) Palsgraaf, General Council, North Dakota Insurance Department, answered questions from the committee.

11:35 AM Steve Becher, Executive Director, Professional Insurance Agents of North Dakota, testified in favor of SB 2305. #17780

11:37 AM Chairman D. Larsen closed the hearing.

11:38 AM Senator Klein moved to adopt the Amendment to SB 2305. #23.0965.01001

11:38 AM Senator Barta seconded the motion to adopt the Amendment to SB 2305. #23.0965.01001

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion passed. 5-0-0

11:38 AM Senator Klein moved to DO PASS as AMENDED.

11:38 AM Senator Barta seconded the motion to DO PASS as AMENDED.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion passed. 5-0-0

11:39 A.M. Chairman D. Larsen will carry the bill.

11:39 A.M. Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

January 27, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2305

Page 1, line 8, overstrike "**and signed statement**"

Page 2, line 25, overstrike "**and signed statement**"

Page 3, line 1, remove the overstrike over "~~Fails or refuses to file the report of placement~~"

Page 3, remove the overstrike over line 2

Page 3, line 3, remove the overstrike over "b."

Page 3, line 5, remove the overstrike over "e."

Page 3, line 5, remove "b."

Renumber accordingly

AK
2-1-23
(1-1)

REPORT OF STANDING COMMITTEE

SB 2305: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2305 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 8, overstrike "**and signed statement**"

Page 2, line 25, overstrike "**and signed statement**"

Page 3, line 1, remove the overstrike over "~~Fails or refuses to file the report of placement~~"

Page 3, remove the overstrike over line 2

Page 3, line 3, remove the overstrike over "~~b.~~"

Page 3, line 5, remove the overstrike over "~~e.~~"

Page 3, line 5, remove "b."

Re-number accordingly

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2305

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2305
3/20/2023

Relating to surplus lines insurance diligent search requirements.

Chairman Louser called meeting to order 3:37 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Sophisticated Insurance
- Do diligent

In Favor:

Senator Jerry Klein, District 14, Fessenden, ND (no written testimony)
Johannes (Johnny) Palsgraaf, General Counsel, ND Insurance Department, #25914
Jeff Kleven, Executive Director, Independent Insurance Agents of ND, #25748

Representative Kasper moved a do pass.
Representative Koppelman seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	AB
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 13-0-1

Representative J. Johnson will carry the bill.

House Industry, Business and Labor Committee

SB 2305

03/20/2023

Page 2

Additional written testimony:

Steve Becher, Executive Director, Professional Insurance Agents of ND, #25731

Chairman Louser adjourned the meeting 3:56 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2305, as engrossed: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2305 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2305

Testimony for SB 2305– ND Senate IBL Committee

Chairman Larsen and members of the Senate Industry and Business Committee for the record my name is Steve Becher and I am the Executive Director of the Professional Insurance Agents of ND. PIA of ND represents approximately 300 main street insurance agencies with well over 1000 independent agents across the state of North Dakota. I am providing testimony today and asking you for a Do Pass recommendation on Senate Bill **2305**.

Insurance agents place their business through a couple of different types of insurance companies – admitted and non-admitted (surplus lines). Admitted carriers are those that have chosen to get licensed in the state of North Dakota and non-admitted (surplus lines) are those that have chosen not to be licensed. Surplus lines companies still may write business in the state when the coverage that a consumer needs is not available from an admitted carrier and the surplus lines company completes the necessary paperwork for the ND Insurance Dept and pays the applicable premium tax on the policy. Surplus lines companies normally write many of the risks that are out of the ordinary and tend to be riskier than a normal piece of business. These risks also tend to be fairly limited in number which is why the companies choose not to be admitted as the costs and paperwork to be admitted can outweigh the possibility of maybe writing one or two of these accounts.

Insurance agents only write policies with these surplus lines companies as a last resort when they have no admitted company options because of state law but also for many practical reasons that are better for the insurance agency. For

example, most admitted carriers will require a minimum amount of premium from an agency in order to keep the appointment with the company and any policies written through a surplus lines company would not help the agency maintain that premium volume requirement. Admitted companies also have all of their policy forms reviewed and vetted by the ND insurance Dept with many of the forms being standard between many of the admitted companies. Surplus lines companies do not have their forms reviewed and tend to be nonstandard forms which make the job of the agent much more difficult as they must review these forms personally for each different customer and each surplus lines company. Also, commissions tend to be significantly lower on surplus lines policies with a lot more work for the agent to get it in place so it is not cost effective to place a policy in surplus lines unless there is no other option.

Current law requires an insurance agent to make a diligent search of admitted carriers before placing business with a surplus lines company and to file a signed diligent search form with the Insurance Dept verifying this search. This form is unnecessary as the only time an insurance agent is going to place business with a surplus lines company is when they have no other options due to the things I have just talked about. It creates additional work for the insurance agent, additional work for the Insurance Dept, and serves little or no purpose as there is no way to prove or disprove the amount of diligent search. The premium volume requirements, policy form issues, and lower commissions are enough by themselves to guarantee that the insurance agent will diligently search for an admitted company before placing business with a surplus lines company. Senate bill **2305** simply removes the due diligence form requirement from law.

In the interest of efficiency and red tape reduction, I would ask for a “Do Pass” recommendation on Senate Bill **2305**.



February 1, 2023

Senator Doug Larsen
Senate Industry and Business Committee
600 East Boulevard
Bismarck, ND 58505-0360

Re: SB 2305 – Surplus Lines Insurance

Dear Chairman Larsen,

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. 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 of 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,



John H. Meetz
Director of Government Relations
john@wsia.org
816.799.0863

Testimony for SB 2305– ND House IBL Committee

Chairman Louser and members of the House Industry, Business, and Labor Committee for the record my name is Steve Becher and I am the Executive Director of the Professional Insurance Agents of ND. PIA of ND represents approximately 300 main street insurance agencies with well over 1000 independent agents across the state of North Dakota. I am providing testimony today and asking you for a Do Pass recommendation on Senate Bill **2305**.

Insurance agents place their business through a couple of different types of insurance companies – admitted and non-admitted (surplus lines). Admitted carriers are those that have chosen to get licensed in the state of North Dakota and non-admitted (surplus lines) are those that have chosen not to be licensed. Surplus lines companies still may write business in the state when the coverage that a consumer needs is not available from an admitted carrier and the surplus lines company completes the necessary paperwork for the ND Insurance Dept and pays the applicable premium tax on the policy. Surplus lines companies normally write many of the risks that are out of the ordinary and tend to be riskier than a normal piece of business. These risks also tend to be fairly limited in number which is why the companies choose not to be admitted as the costs and paperwork to be admitted can outweigh the possibility of maybe writing one or two of these accounts.

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example, most admitted carriers will require a minimum amount of premium from an agency in order to keep the appointment with the company and any policies written through a surplus lines company would not help the agency maintain that premium volume requirement. Admitted companies also have all of their policy forms reviewed and vetted by the ND insurance Dept with many of the forms being standard between many of the admitted companies. Surplus lines companies do not have their forms reviewed and tend to be nonstandard forms which make the job of the agent much more difficult as they must review these forms personally for each different customer and each surplus lines company. Also, commissions tend to be significantly lower on surplus lines policies with a lot more work for the agent to get it in place so it is not cost effective to place a policy in surplus lines unless there is no other option.

Current law requires an insurance agent to make a diligent search of admitted carriers before placing business with a surplus lines company and to file a signed diligent search form with the Insurance Dept verifying this search. This form is unnecessary as the only time an insurance agent is going to place business with a surplus lines company is when they have no other options due to the things I have just talked about. It creates additional work for the insurance agent, additional work for the Insurance Dept, and serves little or no purpose as there is no way to prove or disprove the amount of diligent search. The premium volume requirements, policy form issues, and lower commissions are enough by themselves to guarantee that the insurance agent will diligently search for an admitted company before placing business with a surplus lines company. Senate bill **2305** simply removes the due diligence form requirement from law.

In the interest of efficiency and red tape reduction, I would ask for a “Do Pass” recommendation on Senate Bill **2305**.



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

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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,

Jeff Kleven
Executive Director
Independent Insurance Agents of ND
jeff@iiaand.org
701.640.0593

John H. Meetz
Director of Government Relations
WSIA
john@wsia.org
816.799.0863

TESTIMONY SB 2305

Presented by: Johannes (Johnny) Palsgraaf
General Counsel
North Dakota Insurance Department

Before: House Industry, Business, and Labor Committee
Representative Scott Louser, Chairman

Date: March 20, 2023

Good afternoon, Chairman Louser and members of the committee, my name is Johannes (“Johnny”) Palsgraaf, and I am general counsel for the North Dakota Insurance Department. I am here today testifying in support of senate bill 2305.

SB 2305 does two things. It eliminates a diligent search certified statement that surplus lines insurance producers are required to submit every time a policy is placed with a surplus lines insurance company. It also permits the surplus lines insurance producer to skip the diligent search requirement when an insurance producer refers the insured to a surplus lines producer to place the insurance with a surplus lines insurance company.

For those members of the committee that are unfamiliar with surplus lines insurance, I will provide a brief explanation. Surplus lines insurance is generally for meeting insurance needs that are not generally available from the commonly known insurance companies. The commonly known Insurance companies are the insurers that normally insure your vehicle, home, health, life, or small business. These commonly known insurance companies are called “admitted insurance companies” because they are officially admitted to do business in North Dakota. Surplus lines companies insure the less common risks and usually sell policies to more sophisticated purchasers. Surplus lines companies are also known as non-admitted insurance companies because they do not possess an official certificate of authority to do business in North Dakota.

When an insurance producer is assisting an insurance consumer and the insurance producer is unable to find insurance coverage from one of the common insurance

companies, aka admitted insurers, the insurance producer will refer the insurance consumer to a surplus lines insurance producer. Under the current law the surplus lines producer is required to confirm the insurance is unavailable from the admitted insurance companies and sign a statement certifying under penalty of law that a diligent search of the admitted market was completed. The certified statement is then submitted to the insurance department.

SB 2305, if passed, will no longer require surplus lines producers to sign and submit a certified statement of a diligent search of the admitted market to the Insurance Department. The Insurance Department is not concerned about eliminating this requirement. I have been with the Insurance Department for over ten years, and within my time with the Insurance Department the last ten years the Insurance there has not been a need to use this form to enforce compliance with the law requiring a diligent search of the admitted market.

SB 2305, if passed, will also eliminate the diligent search requirement when the surplus lines producer receives a referral from an insurance producer. This is more of a policy change from the current law. Because this is a policy change, the Insurance Department leaves it up to this committee and the insurance industry to decide whether to adopt this change.

Thank you for this opportunity to testify, and I will stand for any questions from the committee.