

2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1075

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB1075
1/9/2019
30595

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surplus lines insurance.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens hearing on HB 1075.

Johannes (Johnny) Palsgraaf~Legal Counsel-ND Insurance Department: Attachment1.

11:45

Rep Kasper: What was the fines in the past because there was no cap. Is there a lot of abuse? What are some normal fines?

Johnny Palsgraaf: The fine is still \$25 a day under the current law with the cap of \$500. Under the old law, fines reached \$10,000 or more of dollars.

Rep Kasper: Regarding the collection of the premium tax on the surplus lines policy, do you know how that process works?

Johnny Palsgraaf: That is the primary distinction between surplus line insurance & the admitted market home owner's insurance. Your home owner's insurance, they are admitted companies & the responsibility comes straight from that company. The producer has no involvement in the surplus lines tax.

With the non-admitted insured, federally they have the ability to act in any states that they would like. The regulation is only on their agents. The insurance producer may go into contract with these surplus lines companies. They are responsible when they are submitting that policy that there is going to be some surplus tax coming to ND. Under the current law, that is reported at the end of the year.

Rep Kasper: So the insurance agent is collecting the tax on behave of the department?

Johnny Palsgraaf: Yes.

Rep Kasper: With the insurance agent has the choice to include the premium tax & charge to the customer? How does that work?

Johnny Palsgraaf: I would say it's more up on the company they are working with.

Rep Kasper: Is the premium tax add to the premium?

Johnny Palsgraaf: Yes, definitely.

Vice Chairman Lefor: You are asking for an emergency clause in relationship to the \$100 fine, doesn't the insurance commissioner have the ability to determine fines now?

Johnny Palsgraaf: There is flexibility in statute for the insurance commissioner.

Rep Ruby: The language on page 2, lines 22-24, talks about in this state or out of state. It doesn't say anything about the premiums charged from another state. Is that something understood?

Johnny Palsgraaf: In 2011 federal law came into play & it changed how it was mandated how states treat each policy. Look on lines 22 of page 2, the home state is defined in statute. That's where the policy would be directed. It's based on the home state.

Steve Bain~Representing the Independent Insurance Agents of ND: Attachment 2. We do support the bill.

Chairman Keiser: Is there anyone else here to testify in support, opposition, neutral. Closes the hearing on HB 1075. What are the wishes of the committee?

Vice Chairman Lefor: Make a motion for a Do Pass.

Rep Ruby: Second.

Chairman Keiser: This is a complicated area & I do support the bill.

Roll call was take on HB 1075 for a Do Pass with 14 yes, 0 no, 0 absent & Rep Kasper is the carrier.

Date: Jan 9, 2019Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1075

House _____ Industry, Business and Labor _____ Committee

☐ SubcommitteeAmendment LC# or
Description: _____

Recommendation

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions

- ☐ Reconsider ☐ _____

Motion Made by Rep Lefor Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 14 No 0Absent 0Floor
Assignment Rep Kasper

REPORT OF STANDING COMMITTEE

HB 1075: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1075 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1075

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1075
2/6/2019
Job# 32252

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to surplus lines insurance; and to declare an emergency.

Minutes:

Att. #1

Chairman Klein: Opened the hearing on HB 1075. All members were present.

Johannes Palsgraaf, Legal Counsel, North Dakota Insurance Department: see attachment #1 for testimony in support of the bill.

(5:45) Senator Roers: Is this like the Lloyds of London? The really unusual insurance types? Are there more of those?

Johannes: Yes, it is. Many of these types of insurance operating around the world, Lloyds of London is the most popular.

(9:02) Senator Piepkorn: How often do these transactions take place if the rolling is too often? One a week or?

Johannes: For a brand new surplus line agent who's just getting into this market, he might receive very few filings, but the vast majority these guys are set up as surplus lines agents and they can do 90 placements in a quarter. They have large operations.

Chairman Klein: Generally, the surplus line producers are their own thing, they deal specifically with surplus lines?

Johannes: Yes, if you for some reason as a private citizen needed to have something go to the surplus lines market, your agent would refer you to one of these agents that deal with doing these.

(11:42) Chairman Klein: So we'll no longer need the notarized statement, now we're just gonna allow the certified statement process?

Johannes: Correct. The department developed with ITT an online system to report these things. Right now they're required to send in the affidavit or scan it and attach it. They wouldn't be required to do that anymore they'd basically just have a check box at the end of each filing that says you certify that this is true.

Chairman Klein: And other states have moved this direction already?

Johannes: Yes, North Dakota is in the very few minorities now that have an affidavit.

(16:03)Senator Piepkorn: Seems a little feeble that we're unable to get our report in on time because we had some changeover in personnel and the files are over here and the new person didn't know that. I mean, isn't it?

Johannes: I agree, for a small operation, I agree that we get a few producers that are maybe saying that disingenuously, that this was the cause. But when you think about it and it's a large insurance agency and they're doing 90 policies a quarter, every once in a while something will slip through the cracks. At \$25 a day with no cap, at the end of the year, that can add up to a really high fine. The previous law did give the commissioner discretion to reduce that fine or consider the circumstances of that fine but we feel that that discretion should be more in the hands of the legislature and kind of understand that this is more of a reasonable cap on the fines.

Chairman Klein: these producers aren't little guys are they?

Johannes: Very few of them.

Chairman Klein: I mean this isn't Jim on the corner selling surplus lines, this is companies who do some business across state lines?

Johannes: There may be some smaller operations with maybe four employees, especially if they're just getting started out in this industry. But the majority of them are placing a larger number of policies.

Chairman Klein: The \$500 cap in helping some companies so they don't get fined thousands of dollars because you're capping it at \$500?

Johannes: Yes, exactly.

Chairman Klein: And that fine goes where?

Johannes: It's my understanding that everything the insurance department does with premium tax goes back into the general fund and then our money is allocated straight from the general fund after that.

Senator Piepkorn: I'm guessing that some North Dakotan wanting their fingers insured because they are the state's greatest accordion player, are not that frequent, what sector do most of these requests come from?

Johannes: A larger business sector for like oil rigs or trucking. A number of different items, on a list in the administrative rules that are presumed to be on the surplus lines market and they would be your less common things like hole in one insurance.

Senator Piepkorn: About your job, are you an employee of the state of North Dakota?

Johannes: Yes, legal counsel to the North Dakota Insurance Department.

Chairman Klein: The surplus lines folks are okay with this?

Johannes: Yes, John Meats and the department met together, we worked on this bill together and they're very supportive of the changes and favorable to the business of insurance and to the insurance producers.

Senator Piepkorn: How many producers are there in the state selling these supplementary policies?

Johannes: I don't have that information. I'm hearing 5,000 resident insurance producers, much smaller number for surplus line producers.

26:45 Chairman Klein: Closed the hearing on HB 1075. I want to speak to John Meats before we do anything with this.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1075
2/13/2019
Job #32655

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to surplus lines insurance; and to declare an emergency.

Minutes:

Chairman Klein: Opened the committee work session on HB 1075. All members were present.

Chairman Klein: This was the discussion of the surplus lines issue. Johnny Palsgraf was the guy from the insurance department with the reasons and they corrections. Once again, surplus lines deals with not the insurers who are currently here but the ones, for example, who insure oil rigs and odds and ends things.

Vice Chairman Vedaa: Moved a Do Pass.

Senator Burckhard: Seconded.

Senator Roers: Any testimony from this? Was I gone for this?

Chairman Klein: Yeah you may have been. There was only testimony from the insurance department, there was no opposition. Any other discussion?

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Burckhard will carry the bill.

Date: 2/13
Roll Call Vote #: _____

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1075

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vedaa Seconded By Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1075: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1075 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1075

HOUSE BILL NO. 1075

Attachment 1
Jan 9, 2019
Page 1

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

Before: House Industry, Business, and Labor Committee
Representative George Keiser, Chairman

Date: January 9, 2019

TESTIMONY

Good morning Chairman Keiser and members of the committee. My name is Johannes Palsgraaf and I am Legal Counsel for the North Dakota Insurance Department. House Bill No. 1075 was introduced at the request of Insurance Commissioner Jon Godfread.

House Bill No. 1075 amends the existing Surplus Lines chapter in the insurance code, Title 26.1. For those members of the committee not familiar with surplus lines insurance, surplus lines insurance is insurance that covers unique risks where coverage is not available from insurance companies admitted to conduct business in North Dakota.

House Bill No. 1075 modifies four areas of the current insurance law: (1) the bill changes the surplus lines insurance producer (a.k.a. insurance agent) filing requirements from a rolling basis to a quarterly bases; (2) the bill replaces the diligent search witnessed affidavit requirement with a diligent search certified statement; (3) the bill removes insurance producer accounting requirements for insurance premium attributable to other states; and (4) this bill provides a cap of \$500 for insurance producer late filing penalties. We worked closely with the surplus lines industry in drafting this bill and they are supportive of this legislation.

Insurance producers are required to file with the state a report of placement and an affidavit of diligent search within 60 days of placing or endorsing each and every insurance policy placed on the surplus lines market. (1) This bill changes the filing requirements from a rolling basis for each filing to a quarterly basis filing for business conducted within the quarter.

When placing insurance on the surplus lines market, insurance producers are currently required to file with the Department a witnessed affidavit of diligent search of the admitted market. (2) This bill replaces the affidavit requirement with signed statement certifying that the producer conducted the diligent search. The primary difference between an affidavit and certified statement is a witness or notarization requirement. Moving to a certified statement streamlines the process and provides consistency with other documents insurance producers submit to the Insurance Department, such as the insurance producer application.

When an insurance producer reports an insurance policy placement, endorsement, or files the annual report, the insurance producer is currently required to specify the amount of premium attributed to the property or the risk insured against in each and every state of a multistate insurance policy. (3) This bill removes the insurance producer's requirement to specify each state's attributable premium and allows the producer to report just a total of all premium as a single figure. Beginning in 2011 the surplus lines chapter was amended in response to changes in the federal law. North Dakota law currently requires all premium tax be paid to North Dakota at North Dakota's premium tax rate, and the Insurance Department no longer finds it necessary to require insurance producers to specify in filings the premium attributable to property or risks that are located in other states, only the total premium amount is important for accounting purposes.

The current law does not provide a cap for the filing penalties associated with filing deadlines. (4) This bill provides a cap of \$500 for late filing penalties.

In addition to those four areas of change, the bill includes some technical changes.

- Grammatical changes are located on Page 2, lines 6 and 7; Page 5, line 2; Page 6 lines 17 – 20.
- Page 2, lines 22 – 24 changes are to remove unnecessary text.
- Page 2, line 25, removes the word “collect” from the “collect and pay” clause. This change is consistent with the prior text of the statute. The term “collect” added ambiguity to the statute.
- Page 3, line 21, removes text that is no longer applicable to ND surplus lines policies.

This bill contains an emergency clause. The emergency clause is particularly aimed at establishing the \$500 cap on fines and implementing the quarterly reporting for insurance producers.

In conclusion, this bill will relieve insurance producers of unnecessary administrative burdens and provide a cap to prevent unreasonable and excessive fines for untimely filings. I respectfully request a “do pass” recommendation from this committee on House Bill No. 1075 and I am happy to take any questions.



HB 1075

Attachment 2
Jan 9, 2019
Page 1

January 9, 2019

Representative George Keiser, Chair
Industry, Business and Labor Committee
600 East Boulevard
Bismarck, ND 58505-0360

Re: HB 1075 – Surplus Lines Insurance

Dear Chairman Keiser,

The Wholesale & Specialty Insurance Association¹ (WSIA) appreciate the opportunity to provide comments in support of the committee substitute to HB 1075 which would make some welcome revisions to North Dakota law governing surplus lines insurance. The changes in HB 1075 seek to provide nationwide uniformity in several areas, eliminate unnecessary regulatory burdens and provide efficiencies for both the surplus lines broker and the ND Department of Insurance. WSIA would like to sincerely thank Commissioner Godfreed and his staff for working closely with the WSIA on these statutory revisions.

Changing “affidavit” to “signed statement”

WSIA supports changing the requirements of section 26.1-44-02 from an “affidavit” to that of a “signed statement.” This change will allow surplus lines brokers to file evidence of insurance without a wet signature and ultimately allow the filing of that evidence electronically. Signed statements will provide the same information as the existing affidavit and carry the same weight of law but will now be filed more efficiently by the broker.

Elimination of allocation reports

Since the passage of the federal Nonadmitted and Reinsurance Reform Act (NRRA), nationwide procedures for filing surplus lines taxes and regulating surplus lines transactions have been greatly streamlined. The NRRA specified that only one state, the home state of the insured, has jurisdiction over a surplus lines transaction. As a result, HB 1075 would remove the existing requirement that brokers file premium information allocated by state. Because North Dakota is the sole jurisdiction of authority when North Dakota is considered the home state of the insured, and because no surplus lines taxes are shared among the states, allocation reporting serves no purpose in the current surplus lines regulatory environment and we applaud the

¹ Effective August 1, 2017, the National Association of Professional Surplus Lines Offices (NAPSLO) and the American Association of Managing General Agents (AAMGA) merged to form the WSIA. 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

Department of Insurance for proposing this change. In 2018, Massachusetts, New Mexico and Utah eliminated allocation reporting bills and in 2019, similar bills are being proposed in Hawaii, New Hampshire and Vermont.

Quarterly reporting

HB 1075 will also standardize reporting dates so that brokers will only be required to file four reports a year on March 1, June 1, September 1 and December 1. Currently reports are required every 60 days after a transaction. This change will allow brokers to consolidate their filings and provide administrative efficiencies. Currently, 29 states require surplus lines reports to be filed quarterly or less frequently, and 18 states require a filing that is consistent with the dates chosen in HB 1075.

Cap on penalties

Current law imposes a fine of \$25 for each failure or refusal to file information related to a surplus lines placement for a North Dakota insured. The proposed revision would cap those penalties at \$500. The current law has occasionally resulted in significantly exorbitant fines for WSIA members under routine clerical errors and we believe that capping the fines will alleviate those issues while still incentivizing broker to timely file each of their transactions. These fines more closely align with regional and national standards for fines related to late filings.

WSIA strongly supports each of the provisions contained in HB 1075 and we would urge the Industry, Business and Labor Committee to report HB 1075 favorably for passage. We would also like to reiterate our appreciation for the ND Department of Insurance for their diligent work on these issues and to sincerely thank the Commissioner Godfreed and Legal Counsel Johnny Palsgraaf for their cooperation on these issues.

Sincerely,



John H. Meetz
State Relations Manager, WSIA
john@wsia.org
816.799.0863

HOUSE BILL NO. 1075

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

Before: Senate Industry, Business, and Labor Committee
Senator Jerry Klein, Chairman

Date: February 6, 2019

TESTIMONY

Good morning Chairman Klein and members of the committee. My name is Johannes Palsgraaf and I am Legal Counsel for the North Dakota Insurance Department. House Bill No. 1075 was introduced at the request of Insurance Commissioner Jon Godfread.

House Bill No. 1075 amends the existing Surplus Lines chapter in the insurance code, Title 26.1. For those members of the committee not familiar with surplus lines insurance, surplus lines insurance is insurance that covers unique risks where coverage is not available from insurance companies admitted to conduct business in North Dakota.

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