

## LEGISLATIVE BILL 836

Approved by the Governor April 5, 1978

Introduced by Banking, Commerce and Insurance Committee,  
DeCamp, 40, Chmn.; Mills, 44; Merz, 1; Labedz,  
5; Schmit, 23

AN ACT to amend sections 44-139 to 44-142, and 44-145, Reissue Revised Statutes of Nebraska, 1943, and section 44-147, Revised Statutes Supplement, 1977, relating to insurance; to change provisions relating to surplus lines insurance as prescribed; and to repeal the original sections, and also sections 44-143, 44-144, and 44-146, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 44-139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-139. The Department of Insurance, in consideration of a yearly payment as otherwise provided by law and the furnishing of a bond as hereinafter provided in section 44-140, may issue to any citizen-of this-state person who currently holds a resident agent's license a license, revocable at any time, permitting the party named in such license to place or effect insurance upon risks located in this state with companies not licensed to do business in this state. Such license shall be known as a surplus lines agent's license.

Sec. 2. That section 44-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-140. (1) No person shall place, procure or effect insurance upon any risk located in this state, in any company not licensed to do business in this state, until such person shall have first procured a license from the Department of Insurance as provided in section 44-139, ~~and furnished a bond to the State of Nebraska in the penal sum of not less than five hundred dollars, nor more than three thousand dollars, the amount thereof to be fixed by the department, with sureties thereon to be approved by the department, conditioned that he will conduct such business in accordance with the provisions of sections 44-139 to 44-146, and will pay the taxes assessed against such company.~~

(2) Application for a surplus lines agent's license shall be made to the Department of Insurance on forms designated and furnished by the department. The license fees shall be as specified in subdivision (17) of section 44-114. Before the issuance of a surplus lines agent's license, the applicant therefor shall file with the director and thereafter maintain in force while so licensed a bond in favor of the State of Nebraska in the penal sum of not less than ten thousand dollars with authorized surety insurers approved by the director. The director may require a bond in an amount greater than ten thousand dollars if he determines that the volume of business written or to be written by an agent warrants the maintenance of such a bond. In no event shall the director require a bond greater than fifty thousand dollars. The bond shall be conditioned that the surplus lines licensee shall: (a) Conduct business under such license in accordance with the provisions of this act; (b) duly account for and pay to persons entitled thereto funds received by him in transactions under the license; and (c) pay the taxes required by section 44-142. The bond shall remain in force until released by the director or until cancelled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon thirty days' written notice to the agent and the director. The form of bond must have the prior written approval of the director.

Sec. 3. That section 44-141, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-141. Every--such Each surplus lines agent shall keep in his office in this state a true and complete record of the business transacted by him the agent, showing (1) the exact amount of each insurance or limits of exposure; (2) the gross premiums charged therefor; (3) the return premium paid thereon; (4) the rate of premium charged for such insurance; upon--the different--items--of--property; (5) the date of such insurance, and terms thereof; (6) the name and address of the company making such insurance; and (7) a copy of the declaration page of each policy and a copy of each policy form issued by the agent; (8) a copy of the written statement described in subdivision (2) of section 8 of this act or, in lieu thereof, a copy of the application containing such written statement; and (7) (9) the name and address of the insured, and a brief and general description of the property risk or exposure insured, where located, and such other facts and information as the Department of Insurance may direct and require. 7 which-record-shall Such records shall be kept by the agent in his office within the state for not less than

five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the agent.

Sec. 4. That section 44-142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-142. Every agent who places, effects or delivers any insurance or insurance policy, as provided in sections 44-139 ~~to 44-146~~, to 44-142, 44-145, and 44-147, and sections 7 to 12 of this act, shall annually, on or before February 15 in each year, make and file with the Department of Insurance a verified statement upon a form prescribed by the department, which shall exhibit the true amount of all such business transacted during the year ending on December 31 next preceding the making thereof, ~~showing the gross amount of each kind of insurance, the gross premiums charged, the aggregate amount of return premiums paid to the insured, the amount of net premiums, and such other facts as the department may prescribe and require. The agent making such statement shall list with the proper assessor the premiums received, and pay taxes thereon in the same manner as other foreign companies.~~ The agent shall, at the time such statement is submitted, pay to the department the tax on such business in the same manner as other foreign companies.

Sec. 5. That section 44-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-145. Every company making transacting insurance under the provisions of sections 44-139 to ~~44-145 44-142, 44-145, and 44-147~~, and sections 7 to 12 of this act shall be held to be doing business in this state as an unlicensed company, and may be sued, upon any cause of action arising under any policy of insurance so issued ~~and delivered~~ by it, in the county where the surplus lines agent who issued ~~registered or delivered~~ such policy either resides or transacts business, by the service of summons made upon such agent for such company. Upon service of summons being had upon such agent, the court in which the action is begun shall be deemed to have duly acquired jurisdiction in personam of the defendant company so served.

Sec. 6. That section 44-147, Revised Statutes Supplement, 1977, be amended to read as follows:

44-147. Every surplus lines agent, or--broker transacting business under the provisions of sections 44-139 to 44-145, 44-142, 44-145, and 44-147, and sections 7 to 12 of this act, shall ascertain the financial condition of each insurer before he procures a policy of insurance therefrom or places any insurance with such insurer. No such agent or--broker shall knowingly, or without proper investigation, place any insurance with or procure any insurance from any nonadmitted foreign insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the aggregate requirements of surplus, capital, and reserves placed on companies admitted to do business in this state which write the same kinds of insurance; or, place any insurance with or procure any insurance from nonadmitted alien insurers who do not maintain in the United States adequate guaranty deposits for the protection of policyholders in the United States. Any person violating the provisions of this section shall be guilty of a Class V misdemeanor.

Sec. 7. A surplus lines agent shall stamp or type upon the declaration page of each policy procured and delivered under the provisions of sections 44-139 to 44-142, 44-145, and 44-147, and sections 7 to 12 of this act the following information: (1) His name, business address, and surplus lines license number; (2) the name under which he conducts business if different than his own; and (3) the language: This policy is issued by a nonadmitted insurance company.

Sec. 8. If an applicant for insurance is unable to procure such insurance as he deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from an insurer not admitted to do business in this state, upon the following terms and conditions:

(1) The insurance shall be procured from a licensed surplus lines agent;

(2) Prior to the effective date of such insurance, the insured shall provide, in writing, his permission for such insurance to be written in an insurance company that is not licensed to do business in Nebraska; and

(3) Compliance with section 9 of this act.

Sec. 9. No later than thirty days after the last day of each calendar quarter, every licensed surplus lines agent shall file with the department a report, containing such information as the department may

require, including but not limited to the following: (1) The name of the nonadmitted insurer; (2) the name of the agent; (3) the number of policies issued by each nonadmitted insurer; (4) a sworn statement by the agent with regard to the coverages described in the quarterly report that, to the best of his or her knowledge and belief, he or she could not reasonably procure such coverage from a company admitted to do business in Nebraska; and (5) the premium volume for each nonadmitted insurer by line of business.

Sec. 10. (1) Whenever the Director of Insurance shall have reason to believe that a surplus lines agent has violated the provisions of sections 44-139 to 44-142, 44-145, and 44-147, and sections 7 to 12 of this act, he shall have the authority to hold a hearing to determine whether or not such violation occurred.

(2) Such hearing, and any appeal therefrom, shall be conducted in accordance with section 44-2312.

(3) If, after such hearing, the Director of Insurance shall find that the person charged has committed the violations as alleged, he shall reduce his findings to writing and serve a copy of the same on the person charged and, in addition, the Director of Insurance may order any one or more of the following:

(a) That such person cease and desist from engaging in such activities;

(b) Payment of a fine of not more than five thousand dollars; and

(c) Suspension or revocation of the agent's license for such period of time as the director shall determine.

(4) Any person who violates a cease and desist order may, after notice and hearing as provided in this section, and upon order of the director, be subject to:

(a) Payment of a fine of not more than ten thousand dollars; and

(b) Suspension or revocation of each insurance license held by such person for such period of time as the director shall determine.

Sec. 11. A person licensed pursuant to sections 44-139 to 44-142, 44-145, and 44-147, and sections 7 to 12 of this act shall maintain a good faith office in this state, including all documents required by section

44-141.

Sec. 12. The director shall have the authority to adopt reasonable rules and regulations as may be reasonably necessary to carry out the provisions of sections 44-139 to 44-142, 44-145, and 44-147, and sections 7 to 12 of this act.

Sec. 13. That original sections 44-139 to 44-142, and section 44-145, Reissue Revised Statutes of Nebraska, 1943, and 44-147, Revised Statutes Supplement, 1977, and also sections 44-143, 44-144, and 44-146, Reissue Revised Statutes of Nebraska, 1943, are repealed.