

**OPINION
53-65**

August 25, 1953 (OPINION)

INSURANCE

RE: Financial Responsibility - Unauthorized Insurance Companies

We have your request for an opinion dated August 14, 1953, on a matter pertaining to proof of financial responsibility as required by section 39-1618 of the 1949 supplement to the North Dakota Revised Code of 1943.

You state that an insurance company, not authorized to do business in this state other than under the Surplus Lines Act, chapter 191 of the 1953 session laws, has begun the practice of filing with your office in cases where proof of financial responsibility is required form SR 22, which we understand to be notification of financial responsibility by insurance.

You have pointed out that the assigned risk plan has been adopted in this state by legislative enactment and approved by the authorized insurance companies of this state. Under this plan, any person who has been refused insurance coverage by reason of conviction connected with the operation or use of an automobile may obtain coverage under a plan whereby the risk of such policies is pooled and distributed equally among the authorized companies.

Subsection 1 of section 39-1618, provides that as proof of financial responsibility a person may file a certificate of insurance (SR-22) from "any insurance company duly authorized to do business in this state".

However, under the Surplus Lines Act, passed at the last session of the state legislature, bonded agents are authorized under certain circumstances to write insurance for "unauthorized insurance companies". Section 8 of this act provides:

"Insurance contracts procured as 'surplus lines' coverage from unauthorized insurers in accordance with this Act shall be fully valid and enforceable contracts as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers".

Insurance may be written in this manner only in the case where the insured is unable to procure such coverage from an "authorized" company and only after filing with the commissioner of insurance an affidavit to this effect, with which the commissioner must concur.

Your question is whether under section 39-1618 you must accept the SR-22 filings in the case where the insurance has been written under the Surplus Lines Act by an "unauthorized company".

We may observe in the outset that at the time of the adoption of what is now section 39-1618, the only authorized companies in this state

were those which had received certificate of authority from the State Insurance Commissioner, which certificate could not be granted until after the commissioner had satisfied himself as to the financial background and general qualification of the company to do business in this state.

It must be determined, therefore, what change, if any, the legislature contemplated in the adoption of the Surplus Lines Act.

We note in this regard that continuous reference is made in the Surplus Lines Act to "unauthorized companies" and "companies not authorized to do business in this state". It could be concluded therefrom that such companies continue to be "unauthorized" for all purposes in this state.

However, our state supreme court, in the case of State v. Olson, 26 N.D. 304, 144 N.W. 661, has held that reference may be made to the title of an act for aid in the interpretation thereof and in the title to the bill which is now chapter 191 of the 1953 session laws, it is stated that the act is designed to allow the procurement of insurance in specified cases from companies "not otherwise authorized to do business".

We believe that this, when read in conjunction with section 8 of the Act, evinces a desire on the part of the legislature to authorize otherwise unauthorized insurance companies to do certain type of business under certain circumstances and when so authorized to have their policies of insurance treated with the same respect and validity as policies written by the so-called "authorized" companies.

Therefore, such companies, while unauthorized to do business except as provided in the Surplus Lines Act, are authorized on the basis of each specific case when compliance with the law is shown. For this reason, it is our opinion that the form SR-22 when filed with your department by a company otherwise unauthorized to do business in this state is a valid showing of financial responsibility and must be accepted as such under the terms of section 39-1618.

In the case where such applicant could have secured coverage through the assigned risk plan, this is a matter for the insurance commissioner in each specific case to decide in accepting or rejecting the affidavit as provided by section 4 of the Act. Acceptance of this affidavit by the insurance commissioner precludes refusal on your part of the SR-22 filing in view of the fact that the company is, in this instance, authorized to do business in the state.

ELMO T. CHRISTIANSON

Attorney General