



AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAW; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ENTER INTO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES OR A CLEARINGHOUSE FOR THE PURPOSE OF COLLECTING, ALLOCATING, AND DISBURSING PREMIUM TAXES AND FEES ATTRIBUTABLE TO MULTISTATE RISKS; REVISING DEFINITIONS; DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER"; PROVIDING EXCLUSIVE REGULATORY AND TAXING AUTHORITY TO THE HOME STATE OF THE INSURED; EXEMPTING SURPLUS LINES INSURANCE PRODUCERS FROM DILIGENT SEARCH REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CERTAIN LICENSING REQUIREMENTS; REVISING REQUIREMENTS PERTAINING TO UNAUTHORIZED INSURERS; ESTABLISHING REPORTING REQUIREMENTS; ESTABLISHING A TAX RATE ON SURPLUS LINES PREMIUMS; EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; REVISING EXEMPTIONS TO BE CONSISTENT WITH THE EXCLUSIVE REGULATORY JURISDICTION OF THE HOME STATE OF THE INSURED; ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION; AMENDING SECTIONS 2-9-211, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-307, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-317, AND 33-2-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-9-211, MCA, is amended to read:

**"2-9-211. Political subdivision insurance.** (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~(2)(a)(ii) through ~~(1)(d)~~ (2)(a)(iv). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~(2)(a)(ii) through ~~(1)(d)~~ (2)(a)(iv) only if the insurer carries an A rating or better by a nationally recognized rating company

or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf."

**Section 2.** Section 33-2-301, MCA, is amended to read:

**"33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) The purpose of this part is to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state

and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state;  
and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Affiliated" means that a person directly or indirectly controls, is controlled by, or is under common control with the insured.

(b) "Affiliated group" means any group of persons that are affiliated.

(c) "Approved risk list" means the list approved by the commissioner of the kinds of insurance presumed unobtainable from authorized insurers when Montana is the home state of the insured.

~~(a)~~(d) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

~~(b)~~(e) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.

(ii) The term does not include an individual.

(f) "Control", including the terms "controlled by" and "under common control with", means that:

(i) the person directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25% or more of any class of voting securities of a business entity; or

(ii) the person controls in any manner the election of a majority of the directors or trustees of a business entity.

~~(e)~~(g) "Eligible surplus lines insurer" means an unauthorized insurer ~~with which a surplus lines insurance producer may place~~ that is eligible to issue surplus lines insurance under 33-2-307.

(h) "Exempt commercial purchaser" has the meaning provided in [section 3].

~~(d)~~(i) "Export" means to place surplus lines insurance with an unauthorized insurer.

(j) "Home state" means, with respect to an insured:

(i) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;

(ii) if 100% of the insured risk is located outside the state referred to in subsection (3)(j)(i), the state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance contract;

(iii) if more than one insured from an affiliated group are named insureds on a single surplus lines

insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance contract; or

(iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group policyholder as determined under subsection (3)(j)(i), or if a group policyholder does not pay 100% of the premiums from its own funds, the home state of the group member as determined under subsection (3)(j)(i).

(k) "Independently procured insurance" means surplus lines insurance procured directly by an insured from an eligible surplus lines insurer.

(l) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.

(m) "Principal place of business" means the state where the insured business maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(n) "Principal residence" means the state where an individual insured resides for the greatest number of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is located.

~~(e)(o)~~ "Producing insurance producer" means the individual a Montana-licensed property and casualty insurance producer dealing directly with the a person seeking insurance.

(p) "Qualified risk manager" has the meaning provided in [section 4].

(q) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one state.

(r) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

~~(f)(s)~~ (i) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance. The term includes independently procured insurance.

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(g)(t)~~ "Surplus lines insurance producer" means an individual or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(h)(u)~~ "Unauthorized insurer" means ~~an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states, with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4).~~"

**Section 3. Exempt commercial purchaser defined.** (1) An exempt commercial purchaser means an individual or business entity who at the time of placement:

- (a) employs or retains a qualified risk manager to negotiate insurance coverage;
- (b) has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and
- (c) meets at least one of the following criteria:
  - (i) possesses a net worth in excess of \$20 million, as that amount may be adjusted pursuant to subsection (2);
  - (ii) generates annual revenue in excess of \$50 million, as that amount may be adjusted pursuant to subsection (2);
  - (iii) employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;
  - (iv) is a not-for-profit organization or a public entity generating annual budgeted expenditures of at least \$30 million, as that amount may be adjusted pursuant to subsection (2); or
  - (v) is a municipality with a population in excess of 50,000 persons.

(2) Effective January 1, 2015, and on every 5th subsequent January 1, the amounts in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iv) must be adjusted to reflect the percentage of change for that 5-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

**Section 4. Qualified risk manager defined.** (1) A qualified risk manager means a person who:

- (a) is an employee of or a third-party consultant retained by the commercial policyholder;
- (b) provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis

and purchases of insurance; and

(c) has the qualifications specified in subsection (2).

(2) To be a qualified risk manager, a person must have:

(a) (i) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(ii) (A) 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(B) one of the following designations:

(I) a designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(II) a designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(III) a designation as certified risk manager issued by the national alliance for insurance education and research;

(IV) a designation as a risk and insurance management society fellow issued by the global risk management institute;

(V) any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(b) (i) at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(ii) any one of the designations specified in subsection (2)(a)(ii)(B);

(c) at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

**Section 5.** Section 33-2-302, MCA, is amended to read:

**"33-2-302. Home state exclusive authority -- ~~Conditions~~ conditions precedent to sale of surplus lines insurance.** (1) Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus lines insurance transaction, the home state:

(a) is Montana, the surplus lines insurance transaction is subject to the applicable statutory and regulatory requirements in Montana; or

(b) is not Montana, the Montana statutory and regulatory requirements regarding the surplus lines insurance transaction are preempted by the statutory and regulatory requirements of the home state.

(2) When Montana is the home state at the time of the surplus lines insurance transaction, the following apply:

(a) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

~~(a)~~(i) the insurer is an eligible surplus lines insurer;

~~(b)~~(ii) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer; as evidenced by one of the following:

~~(c)~~(A) the producing insurance producer ~~makes~~ making a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(B) the appearance on the current approved risk list of the kind of insurance being sought;

~~(d)~~(iii) the insurance is not procured for the purpose of securing:

~~(i)~~(A) a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer; or

~~(ii)~~(B) an advantage in terms of the insurance contract; and

~~(e)~~(iv) all other requirements of this part are met.

~~(2)~~(b) A contract of insurance may not be placed with an unauthorized insurer under subsection ~~(1)~~(d)(i)

(2)(a)(iii)(A) unless the unauthorized insurer is the equivalent of A-rated or better is eligible under 33-2-307 and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.

(c) A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if:

(i) the surplus lines insurance producer placing the coverage has disclosed to the exempt commercial purchaser that the insurance may or may not be available from an authorized insurer that may provide greater protection with more regulatory oversight; and

(ii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines insurance producer that the coverage be placed with the surplus lines insurer."

**Section 6.** Section 33-2-303, MCA, is amended to read:

**"33-2-303. Filing and endorsement of contract -- submission form.** (1) Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part, along with a submission form prescribed by the commissioner by rule, must be filed with:

(a) the commissioner if Montana is the home state of the insured and:

(i) the coverage is for a single-state risk; or

(ii) the commissioner has not entered an agreement pursuant to [section 17] for multistate risks;

(b) the clearinghouse, established pursuant to [section 17], if in operation and if the commissioner has entered an agreement pursuant to [section 17] for multistate risks. the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer's license No. ...." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent".

(2) The commissioner shall establish by rule a submission form for reporting surplus lines transactions. The commissioner may establish different submission forms for insureds that independently procured insurance, surplus lines insurance producers, single-state risks, and multistate risks. The submission form for surplus lines insurance producers must include:

(a) information regarding the producing producer's diligent efforts to place the coverage with authorized



insurers and the results of the efforts; and

(b) the producing insurance producer's affirmation that the producer has expressly advised the insured prior to placing the insurance that:

(i) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(ii) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

(3) A submission form filed under this section is subject to public inspection.

(4) The commissioner may establish by rule an endorsement to be made on each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance by a surplus lines insurance producer under this part advising the insured that the coverage is issued by an unauthorized insurer that is not covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent. The surplus lines insurance producer shall properly fill in and sign the endorsement."

**Section 7.** Section 33-2-305, MCA, is amended to read:

**"33-2-305. Licensing of surplus lines insurance producer -- fee.** (1) ~~If a Montana is the home state of the insured, the person places placing~~ a contract of surplus lines insurance with an unauthorized insurer, ~~the person placing the contract must be licensed as a property and casualty insurance producer and must possess~~ a current surplus lines insurance producer's license issued by the commissioner.

(2) ~~The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of licenses to persons to act as surplus lines insurance producers on either a resident or nonresident basis. To be eligible for a resident surplus lines insurance producer license, the person must hold a current property and casualty insurance producer license, only if the insurance producer has:~~

(3) Persons applying for a resident surplus lines insurance producer license must:

(a) ~~remitted~~ remit to the commissioner the fee prescribed by 33-2-708; and

(b) ~~submitted~~ submit to the commissioner a completed license application in a form and manner approved by the commissioner.

(4) Persons applying for a nonresident surplus lines insurance producer license must comply with 33-17-401.

~~(3)~~(5) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

~~(4)~~(6) A business entity is eligible to be licensed as a surplus lines insurance producer if:

(a) the business entity license lists the individuals within the business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the business entity license transact surplus lines insurance.

~~(5)~~(7) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license.

(8) This section may not be construed to require a surplus lines insurance producer license for independently procured insurance.

(9) The commissioner may participate in the national association of insurance commissioners' producer licensing database regarding surplus lines insurance producer licensing."

**Section 8.** Section 33-2-307, MCA, is amended to read:

**"33-2-307. Requirements for eligible surplus lines insurers -- list of eligible surplus lines insurers.**

(1) ~~A~~ If an unauthorized insurer is domiciled in any state, a surplus lines insurance producer may not place insurance with ~~an~~ that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction;

and

~~\_\_\_\_\_ (a) has established satisfactory evidence of good reputation and financial integrity; and~~

~~\_\_\_\_\_ (b) is qualified under one of the following subsections:~~

~~\_\_\_\_\_ (i) the insurer~~

(b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

~~(A)~~(i) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

~~(B)~~(ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors ~~of~~ as the quality of management, capital, and surplus

of a 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 surplus lines insurer's capital and surplus is less than ~~\$7 million~~ \$4.5 million.

(2) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears

~~—— (ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers:~~

~~—— (iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).~~

~~—— (iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.~~

~~—— (c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:~~

~~\_\_\_\_\_ (i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer;~~  
or

~~\_\_\_\_\_ (ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.~~

~~\_\_\_\_\_ (2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.~~

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of A list of eligible surplus lines insurers must be published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

~~\_\_\_\_\_ (4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:~~

~~\_\_\_\_\_ (i) is in unsound financial condition;~~

~~\_\_\_\_\_ (ii) is no longer eligible under subsections (1) through (3);~~

~~\_\_\_\_\_ (iii) has willfully violated the laws of this state; or~~

~~\_\_\_\_\_ (iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.~~

~~\_\_\_\_\_ (b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.~~

~~(5)~~(4) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

**Section 9.** Section 33-2-310, MCA, is amended to read:

**"33-2-310. Records and annual tax and fee statement ~~--affidavit.~~** (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under the producer's license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other

evidence of insurance issued or delivered by the producer. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

~~(2) Prior to April 1 of each year~~ By the reporting date established by the commissioner by rule, the surplus lines insurance producer shall file with the commissioner or with the clearinghouse if requested by the commissioner a tax and fee statement for the preceding calendar year showing reporting period. The commissioner shall establish by rule the content and form of the tax and fee statement that must include but is not limited to:

- ~~(a) name and address~~ principal residence of each the insured or the address at which the insured maintains its principal place of business for whom surplus lines insurance was procured;
- ~~(b)~~ a brief and general description of the risk or exposure insured and where located;
- ~~(b)(c)~~ name and home office address of each insurer providing the surplus lines insurance;
- ~~(c)(d)~~ amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;
- ~~(d)(e)~~ date and term of the policy;
- ~~(e)(f)~~ amount of premium returned on each policy canceled or not taken;
- ~~(f)(g)~~ amount of tax and other sums to be collected from the insured;
- ~~(g)(h)~~ identity of the producing insurance producer; and
- ~~(h)(i)~~ additional information that the commissioner may reasonably require.

~~(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of the efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that the producer has expressly advised the insured prior to placing the insurance that:~~

- ~~(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and~~
- ~~(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.~~

(3) If Montana is the home state of the insured, an insured that has independently procured insurance shall report the surplus lines insurance transaction to the commissioner or the clearinghouse if requested by the commissioner in a manner and format prescribed by the commissioner. The insured is responsible for payment of the taxes, stamping fees, and clearinghouse processing fees associated with the surplus lines insurance transaction and is subject to the penalties under this part for failure to timely pay the taxes and fees."

**Section 10.** Section 33-2-311, MCA, is amended to read:

**"33-2-311. Tax Tax on surplus lines insurance.**

(1) ~~There is imposed~~ Except as provided in [section 17], when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax upon premiums collected for surplus lines insurance transacted in this state ~~a tax at the same rate and~~. The amount of premiums collected and the tax rate must be computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of the computation. Upon filing of the ~~annual tax and fee~~ statement referred to in 33-2-310~~(2)~~, the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by the surplus lines insurance producer during the preceding ~~calendar year reporting period~~ as well as the stamping fee on the premium payable by the insured regardless of whether the ~~coverage includes risks or exposures partially located or to be performed in another state~~. ~~If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state.~~

(2) Except as provided in [section 17], if this state is not the home state of the insured, the commissioner may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially located or to be performed in this state.

(3) The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state."

**Section 11.** Section 33-2-312, MCA, is amended to read:

**"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** (1) A surplus lines insurance producer ~~who or an insured that independently procured insurance that~~ fails to ~~make and~~ file the ~~annual tax and fee~~ statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable ~~to~~ for a penalty of \$25 for each day of delinquency, commencing ~~with April 1~~ 30 calendar days after the due date established by the commissioner by rule. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction; with the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the commissioner, forwarded to the state treasurer, and placed to the credit of the general fund. The surplus lines insurance producer's license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer or an insured that independently procured insurance does not pay the stamping fee provided for in 33-2-321, the commissioner ~~or the surplus lines advisory organization formed pursuant to 33-2-324~~ may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

**Section 12.** Section 33-2-313, MCA, is amended to read:

**"33-2-313. Revocation or suspension of license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer's license, together with any license as an insurance producer:

(a) if the insurance producer fails to file ~~an annual~~ a tax and fee statement or to remit the tax and fee as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the ~~affidavit~~ submission form required by 33-2-310~~(3)~~;

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, revocation, or refusal to license or renew

a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed."

**Section 13.** Section 33-2-316, MCA, is amended to read:

**"33-2-316. Rules.** The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

- (1) effectuation of The Surplus Lines Insurance Law; and
- (2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; ~~and~~
- ~~———(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law."~~

**Section 14.** Section 33-2-317, MCA, is amended to read:

**"33-2-317. Exemptions.** The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

- (1) wet marine insurance;
- ~~———(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;~~
- ~~(3)~~(2) insurance on property or operations of railroads engaged in interstate commerce; and
- ~~(4)~~(3) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft."

**Section 15.** Section 33-2-321, MCA, is amended to read:

**"33-2-321. ~~Surplus lines advisory organizations -- examination by commissioner -- stamping~~**



**Stamping fee and clearinghouse processing fee.** ~~(1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:~~

~~—— (a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;~~

~~—— (b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;~~

~~—— (c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and~~

~~—— (d) receive and disseminate to its members information relative to surplus lines insurance.~~

~~—— (2) The surplus lines advisory organization shall file with the commissioner:~~

~~—— (a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;~~

~~—— (b) a copy of its bylaws, rules, and regulations governing its activities;~~

~~—— (c) a current list of its members;~~

~~—— (d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at the commissioner's direction may be served; and~~

~~—— (e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).~~

~~—— (3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, the commissioner may issue an order requiring the discontinuance of the violation.~~

~~—— (4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.~~

~~———— (5) (a) If a surplus lines advisory organization is performing functions as provided in subsection (1), it (1) The commissioner may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses in connection with performing the functions set forth in subsection (1).~~

~~———— (b) If a surplus lines advisory organization is not operating as set forth in this section, the stamping fee may be collected by the commissioner and placed in a state special revenue account for commensurate with the expenses of regulating surplus lines. The stamping fee must be placed in a state special revenue account to the credit of the commissioner's office and used for the expenses of the commissioner's office in regulating surplus lines insurance.~~

(2) If the commissioner has entered an agreement with a clearinghouse as authorized pursuant to [section 17] to process multistate risks and allocate and distribute taxes and fees collected, the clearinghouse may collect a processing fee from the surplus lines insurance producer or the insured that independently procured insurance. The processing fee may be a flat fee per submission, a percentage of the premium payable for surplus lines insurance, or a combination of a flat fee and a percentage of premium payable. When a percentage of premium payable is used in calculating the processing fee, the charge may not exceed 1% of the premium payable for surplus lines insurance. The commissioner shall establish the processing fee by rule to be commensurate with the clearinghouse's charges to process multistate risks and allocate and distribute taxes and fees collected to the participating states.

(3) If applicable, the surplus lines insurance producer shall collect the stamping fee and clearinghouse processing fee from the insured in addition to the premium payable for the insurance contract and any taxes and fees."

**Section 16. Surplus lines advisory organization -- consultation with commissioner in developing approved risk list.** (1) A surplus lines insurance advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) communicate with organizations of authorized insurers with respect to the proper use of the surplus

lines insurance market;

(c) receive and disseminate to its members information relative to surplus lines insurance; and

(d) communicate member and industry concerns to the commissioner.

(2) The surplus lines insurance advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members.

(3) The commissioner may consult with the organization in regard to the development of the approved risk list and other matters concerning the regulation of surplus lines insurance transactions.

**Section 17. Authorization for agreements with other state regarding multistate risks.** (1) Following negotiated rulemaking under Title 2, chapter 5, the commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, for the purposes of collecting, allocating, and disbursing premium taxes and fees attributable to multistate risks. The allocation methodology of any agreement must be based upon readily available data, with simplicity and uniformity for the surplus lines insurance producer as a material consideration. Any agreement regarding multistate risks may require that a single, blended tax rate be used.

(2) An agreement entered into under this section must provide for:

(a) uniform eligibility standards for unauthorized insurers;

(b) uniform methods for reporting surplus lines insurance transactions and sharing information between the parties to the agreement based upon readily available data;

(c) uniform methods for allocating and reporting surplus lines insurance risk classifications based upon readily available data;

(d) uniform procedures for the collection, allocation, and distribution of taxes and fees attributable to the multistate risks;

(e) uniform disclosures to policyholders regarding the reporting and collection of premium taxes on multistate risks;

(f) an allocation methodology and resulting collection of premium tax revenue, less costs of administration and collection, that generate premium tax revenue not less than the premium tax revenue collected

under 33-2-311;

(g) minimizing the data collection and reporting burden on insureds and surplus lines insurance producers;

(h) a withdrawal process that minimizes instability among the participating states and the surplus lines and insurance industries;

(i) regulatory provisions that provide certainty regarding compliance to all persons having an interest in surplus lines insurance transactions, including but not limited to insureds, regulators, surplus lines insurance producers, other insurance producers, and surplus lines insurers; and

(j) continued collection of premium taxes under 33-2-311 until the collection infrastructure under the agreement is fully operational and the provisions of the agreement are fully implemented.

(3) If the commissioner has entered into an agreement under subsection (1) for multistate risks and the agreement provides that each participating state develop a single, blended tax rate for multistate risks:

(a) the provisions of 50-3-109 are not applicable to the collection of premium taxes;

(b) the single, blended tax rate must be 3.3% on premiums and must be computed in the manner provided in 33-2-705(1) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes and in excess of the premium otherwise required are not considered to be part of the premium for the purposes of the computation; and

(c) the 3.3% tax collected must be distributed as follows:

(i) 2.75% must be considered premium taxes as provided in 33-2-705 and paid to the state general fund; and

(ii) 0.55% must be considered fire premium taxes as provided in 50-3-109 and paid to the state general fund.

(4) If a single-state risk is involved and Montana is the home state of the insured, the surplus lines transaction must be submitted to the commissioner and the commissioner shall collect the tax at the same rate and in the same manner as provided in 33-2-705.

(5) If the commissioner has entered into a cooperative or reciprocal agreement under subsection (1), the commissioner may contract with the designated clearinghouse to process multistate risks and allocate and distribute taxes and fees collected.

(6) As used in this section, "readily available data" means Montana-specific data, if any, used to rate a

surplus lines insurance policy.

**Section 18. Codification instruction.** [Sections 3, 4, 16, and 17] are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [sections 3, 4, 16, and 17].

**Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 20. Effective date.** [This act] is effective on passage and approval.

**Section 21. Applicability.** [This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011.

- END -

I hereby certify that the within bill,  
SB 0331, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 331

INTRODUCED BY L. JENT

AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAW; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ENTER INTO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES OR A CLEARINGHOUSE FOR THE PURPOSE OF COLLECTING, ALLOCATING, AND DISBURSING PREMIUM TAXES AND FEES ATTRIBUTABLE TO MULTISTATE RISKS; REVISING DEFINITIONS; DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER"; PROVIDING EXCLUSIVE REGULATORY AND TAXING AUTHORITY TO THE HOME STATE OF THE INSURED; EXEMPTING SURPLUS LINES INSURANCE PRODUCERS FROM DILIGENT SEARCH REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CERTAIN LICENSING REQUIREMENTS; REVISING REQUIREMENTS PERTAINING TO UNAUTHORIZED INSURERS; ESTABLISHING REPORTING REQUIREMENTS; ESTABLISHING A TAX RATE ON SURPLUS LINES PREMIUMS; EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; REVISING EXEMPTIONS TO BE CONSISTENT WITH THE EXCLUSIVE REGULATORY JURISDICTION OF THE HOME STATE OF THE INSURED; ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION; AMENDING SECTIONS 2-9-211, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-307, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-317, AND 33-2-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.