

HOUSE BILL NO. 94

INTRODUCED BY K. FLYNN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NATURAL DISASTER MULTIPERIL INSURANCE TO BE SOLD AS SURPLUS LINES INSURANCE; AMENDING SECTIONS 33-2-301 AND 33-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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.

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

(e) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership,

1 a limited liability partnership, or other legal entity.

2 (ii) The term does not include an individual.

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

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

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

8 (g) "Eligible surplus lines insurer" means an unauthorized insurer that is eligible to issue surplus lines
9 insurance under 33-2-307.

10 (h) "Exempt commercial purchaser" has the meaning provided in 33-2-318.

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

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

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

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

17 (iii) if more than one insured from an affiliated group are named insureds on a single surplus lines
18 insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the
19 affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance
20 contract; or

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

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

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

28 (m) "Natural disaster multiperil insurance" means any bundled flood, earthquake, and landslide insurance
29 that may be sold as surplus lines insurance.

30 ~~(m)~~(n) "Principal place of business" means the state where the insured business maintains its

1 headquarters and where the insured's high-level officers direct, control, and coordinate the business activities
2 of the insured.

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

6 ~~(o)~~(p) "Producing insurance producer" means a Montana-licensed property and casualty insurance
7 producer dealing directly with a person seeking insurance.

8 ~~(p)~~(q) "Qualified risk manager" has the meaning provided in 33-2-319.

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

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

13 ~~(s)~~(t) (i) "Surplus lines insurance" means any property or casualty insurance permitted in a state to be
14 placed directly or through a surplus lines insurance producer with an unauthorized insurer eligible to accept the
15 insurance. The term includes independently procured insurance.

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

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

20 ~~(u)~~(v) "Unauthorized insurer" means, with respect to a state, an insurer not authorized to transact the
21 business of insurance in the state. The term includes an insurance exchange authorized under the laws of
22 another state. The term does not include a risk retention group, as that term is defined in the Liability Risk
23 Retention Act of 1986, 15 U.S.C. 3901(a)(4)."

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

26 **"33-2-302. Home state exclusive authority -- conditions precedent to sale of surplus lines**
27 **insurance.** (1) Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public
28 Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements
29 of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus
30 lines insurance transaction, the home state:

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

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

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

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

9 (i) the insurer is an eligible surplus lines insurer;

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

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

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

18 (C) the insurance is natural disaster multiperil insurance;

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

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

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

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

25 (b) A contract of insurance may not be placed with an unauthorized insurer under subsection (2)(a)(iii)(A)
26 unless the unauthorized insurer is eligible under 33-2-307 and the unauthorized insurer or the surplus lines
27 insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured
28 with disclosure information in a form and content approved by the commissioner.

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

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

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

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7 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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