

SENATE BILL NO. 39

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAWS; REVISING THE DEFINITION OF "NATURAL DISASTER MULTIPERIL INSURANCE" TO INCLUDE A COMBINATION OF FLOOD, EARTHQUAKE, OR LANDSLIDE INSURANCE; REVISING THE DEFINITION OF "SURPLUS LINES INSURANCE" TO INCLUDE MARINE INSURANCE; REVISING LAWS RELATING TO PROCUREMENT OF SURPLUS LINES INSURANCE BY PRODUCING INSURANCE PRODUCERS; AMENDING SECTIONS 2-9-211, 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 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(2)(a)(ii) through ~~(2)(a)(iv)~~ (2)(a)(iii). 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(2)(a)(ii) through ~~(2)(a)(iv)~~ (2)(a)(iii) 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~~ unauthorized 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, 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.

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

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

(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) "Natural disaster multiperil insurance" means any ~~bundle~~ combination of flood, earthquake, and landslide insurance that may be sold as surplus lines insurance.

(n) "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.

(o) "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.

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

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

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

(s) "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.

(t) (i) "Surplus lines insurance" means any property, ~~or~~ casualty, or inland marine insurance permitted in a state to be placed directly or 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.

(u) "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.

(v) "Unauthorized insurer" means, 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. Section 33-2-302, MCA, is amended to read:

"33-2-302. Home state exclusive authority -- 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:

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

(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:

(A) the producing insurance producer 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; or

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

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

~~——— (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~~

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

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

(b) ~~A contract of insurance may not be placed with an unauthorized insurer under subsection (2)(a)(iii)(A) unless~~ A producing insurance producer is not required to satisfy the search requirements in subsection (2)(a)(ii) if:

(i) the premium rate quoted by an authorized insurer is at least 10% higher than the premium rate quoted by an unauthorized insurer;

(ii) the unauthorized insurer is eligible under 33-2-307; and

(iii) 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 producing insurance producer 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)(ii) if:

(i) the insured is an exempt commercial purchaser;

(ii) the surplus lines producing 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

(iii)(iii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines

producing insurance producer that the coverage be placed with the surplus lines insurer."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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