

HB142 INTRODUCED



1 HB142
2 RRT1YNN-1
3 By Representative Ellis
4 RFD: Insurance
5 First Read: 07-Feb-24



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SYNOPSIS:

Under existing law, a person may not act as an agent for an insurance company unless the agent is licensed. The law allows an exception for surplus line brokers who issue policies under certain conditions when policies may not be available for certain coverages.

This bill would update the laws relating to surplus line brokers to adopt revisions to the Nonadmitted Insurance Model Act by the National Association of Insurance Commissioners (NAIC).

This bill would also adopt the federal exemption requirement for diligent search efforts, allow surplus line brokers to file reports on placed coverage quarterly rather than on a 30 day rolling basis, ensure nonresident surplus line brokers comply with the same requirements as resident surplus line brokers, codify broker fees while requiring disclosure in the policy for consumer protection, eliminate zero premium reporting, adopt the federal definition of home state, and repeal the Surplus Lines Insurance Multi-State Compliance Compact Act in this state.



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29 A BILL
30 TO BE ENTITLED
31 AN ACT

32
33 Relating to the Department of Insurance; to amend
34 Sections 27-10-1 and 27-10-2 of the Code of Alabama 1975,
35 relating to unauthorized insurers and exceptions; to amend
36 Sections 27-10-20 through 27-10-26, 27-10-30, and 27-10-31 of
37 the Code of Alabama 1975, relating to surplus line brokers and
38 surplus line insurance; and to repeal Chapter 61 of Title 27,
39 Code of Alabama 1975, providing for membership by this state
40 in the Surplus Lines Insurance Multi-State Compliance Compact
41 Act.

42 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

43 Section 1. Sections 27-10-1 and 27-10-2 of the Code of
44 Alabama 1975, are amended to read as follows:

45 "§27-10-1

46 (a) ~~No~~ In this state, no person shall ~~in this state,~~
47 ~~directly or indirectly,~~ act as agent for, or otherwise
48 represent, directly or indirectly, ~~or aid on behalf of~~
49 ~~another,~~ any insurer not ~~then~~ authorized to transact such
50 insurance in this state in the solicitation, negotiation, or
51 effectuation of insurance or annuity contracts, forwarding of
52 applications, delivery of policies or contracts, inspection of
53 risks, fixing of rates, investigation or adjustment of losses,
54 collection of premiums, or in any other manner in the
55 transaction of insurance with respect to subjects of insurance
56 ~~resident,~~ located or ~~to be~~ performed in this state.



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57 (b) This section shall not apply to:

58 (1) Acceptance of service of process by the
59 commissioner under Section 27-10-52;

60 (2) Surplus lines insurance or coverage specified in
61 Section 27-10-34 ~~and other transactions as to which a~~
62 ~~certificate of authority is not required of an insurer;~~

63 (3) Adjustment of losses as authorized in Section
64 27-10-35;

65 (4) Transactions for which a certificate of authority
66 to do business is not required of an insurer under the laws of
67 this state;

68 (5) Reinsurance effectuated in accordance with this
69 title; or

70 (6) The property and operations of the shipbuilding
71 ~~and/or~~ ship repair industry engaged in interstate or foreign
72 commerce and vessels, cargoes, watercraft, piers, wharves,
73 graven docks, dry docks, marine railways, and building ways,
74 commonly known as wet marine.

75 (c) ~~This section shall not be deemed to render invalid,~~
76 ~~as between the parties thereto, any insurance contract entered~~
77 ~~into in violation of this section.~~ No insurance contract entered
78 into in violation of this section shall preclude the insured
79 from enforcing his or her rights under the contract in
80 accordance with the terms and provisions of the contract and
81 the laws of this state to the same degree those rights would
82 have been enforceable had the contract been lawfully
83 procured."

84 "§27-10-2



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85 (a) Any person who ~~in this state~~ willfully represents
86 or aids an unauthorized insurer in violation of Section
87 27-10-1 ~~shall~~, in addition to any other applicable penalty,
88 shall be liable for the full amount of any loss sustained by
89 the insured under any such contract and for ~~the amount of~~ any
90 premium taxes which may be payable under Section 27-10-35 by
91 reason of such contract.

92 (b) Any independent adjuster who, directly or
93 indirectly, ~~enters into an investigation~~ investigates ~~or~~
94 ~~adjustment of~~ any loss arising under ~~a contract of an~~
95 insurance or annuity contract issued by an unauthorized
96 insurer and covering ~~at time of issuance~~ a subject of
97 insurance ~~resident~~, located or ~~to be~~ performed in this state
98 shall be liable for the full amount of any loss suffered by
99 the insured under such contract. The commissioner ~~may~~, after a
100 hearing, may revoke the license of such an independent
101 adjuster. This subsection does not apply as to surplus lines
102 contracts lawfully written under this chapter, or exempted
103 under Section 27-10-34, or to insurance contracts procured by
104 the insured on his or her own behalf and on which the tax is
105 paid as required by Section 27-10-35, or to transactions as to
106 which the insurer is not required to have a certificate of
107 authority."

108 Section 2. Sections 27-10-20 through 27-10-26,
109 27-10-30, and 27-10-31 of the Code of Alabama 1975, are
110 amended to read as follows:

111 "§27-10-20

112 If certain insurance coverages cannot be procured on



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113 terms acceptable to the insureds from authorized insurers,
114 such coverages, designated "surplus lines," may be procured
115 from unauthorized insurers subject to the terms and conditions
116 of either subdivisions (1) or (2) of this section:

117 (1)a. The insurance must be procured through a licensed
118 surplus line broker;

119 b. The full amount of insurance required must not be
120 procurable, after diligent effort has been made to do so, from
121 among the insurers authorized to transact and actually
122 transacting that kind and class of insurance in this state or
123 has been procured to the full extent such insurers are willing
124 to insure;

125 c. A surplus line transaction conducted in accordance
126 with 15 U.S.C. § 8205 may be exempt from the diligent effort
127 requirement;

128 ~~e.d.~~ The insurance must not be procured for the purpose
129 of securing advantages as to a lower premium rate than would
130 be accepted by an authorized insurer; and

131 ~~d.e.~~ This section, and this surplus line law, does not
132 apply as to life insurance or disability insurance.

133 (2) The insurance ~~contracts-of-insurance~~ are issued to
134 an industrial insured, defined as an insured:

135 a. Which procures the insurance of any risk by use of
136 services of a full-time employee acting as an insurance
137 manager or buyer or the services of a regularly and
138 continuously retained, qualified insurance consultant;

139 b. Whose aggregate annual premiums for insurance on all
140 risks other than workmen's compensation and group insurance



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141 total at least twenty-five thousand dollars (\$25,000.00); and
142 c. Which has at least 25 employees."

143 "§27-10-21

144 ~~Within 30 days after the effective date of any such~~
145 ~~insurance, If surplus line insurance was transacted in the~~
146 ~~preceding calendar quarter, the surplus line broker shall file~~
147 ~~a written quarterly report ~~with~~ as prescribed by the~~
148 commissioner setting forth facts from which it can be
149 determined whether ~~under Section 27-10-20~~ the coverage has
150 been lawfully placed as a surplus line. ~~If so required by the~~
151 ~~commissioner, the report shall be in the form of the broker's~~
152 ~~affidavit.~~ If ~~so~~ required by the commissioner, the report
153 shall be accompanied by a written statement signed by the
154 insured ~~to the effect that~~ acknowledging the coverage was
155 placed ~~in~~ with an unauthorized insurer with the insured's
156 knowledge and consent."

157 "§27-10-22

158 Every insurance contract procured and delivered as a
159 surplus line coverage pursuant to this article shall ~~be~~
160 ~~initialed by, or~~ bear the name and license number of, the
161 surplus line broker who procured it and shall have stamped
162 upon it the following:

163 "This contract is registered and delivered as a surplus
164 line coverage under the Alabama Surplus Line Insurance Law."

165 "§27-10-23

166 Insurance contracts procured as "surplus line"
167 coverages from unauthorized insurers in accordance with this
168 article shall be ~~fully~~ valid and enforceable as to all parties



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169 and shall be ~~given acceptance and recognition~~ recognized in
170 all matters ~~and respects~~ to the same effect and extent as like
171 contracts issued by authorized insurers."

172 "§27-10-24

173 (a) Any person, ~~while~~ licensed as a resident insurance
174 producer in this state for the property and casualty lines of
175 authority and ~~who is~~ deemed by the commissioner ~~to have had~~
176 ~~sufficient~~ sufficiently ~~experience~~ experienced in the
177 insurance business ~~to be competent for the purpose~~ may be
178 licensed as a surplus line broker for the same types ~~and kinds~~
179 of insurance that he or she ~~as a resident producer~~ is
180 currently licensed to handle as follows:

181 (1) Application ~~to the commissioner for the license~~
182 shall be made on forms ~~as~~ designated and furnished by the
183 commissioner.

184 (2) License fee ~~in the amount stated in~~ required by
185 Section 27-4-2 shall be paid to the commissioner. The license
186 shall expire on December 31 next after its issue.

187 (3) Prior to the issuance of the license, the applicant
188 shall file with the commissioner, ~~and thereafter for as long~~
189 ~~as any license remains in effect he or she shall keep in force~~
190 ~~and unimpaired,~~ a bond in favor of the State of Alabama in the
191 penal sum of at least fifty thousand dollars (\$50,000),
192 aggregate liability, with authorized corporate sureties
193 approved by the commissioner to remain in force for the
194 duration of the license or any renewal. The amount of the bond
195 may be increased if deemed necessary by the commissioner,
196 considering the amount of surplus lines tax paid in previous



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197 years. The bond shall be conditioned that the broker will
198 conduct business under the license in accordance with the
199 provisions of the surplus line insurance law and ~~that he or~~
200 ~~she~~ will promptly remit the taxes as provided by the law. No
201 bond shall be terminated unless at least 30 days' prior
202 written notice thereof is given to the broker and the
203 commissioner.

204 (b) A business entity acting as a surplus line broker
205 shall designate each licensed individual producer acting under
206 the license, each of whom shall be responsible for the
207 business entity's compliance with the insurance laws, rules,
208 and regulations of this state. A separate fee shall be paid
209 for each individual producer acting under a business entity
210 license as surplus line broker, as ~~set forth~~ in Section
211 27-4-2.

212 (c) A nonresident person may be licensed as a surplus
213 line broker for the same types of insurance that he or she is
214 currently licensed in good standing to handle in his or her
215 domiciled state, as follows:

216 (1) The nonresident shall comply with the requirements
217 established in subsection (a).

218 ~~(c)-(1)~~ (2) Each licensed nonresident surplus line broker
219 shall be considered to have performed acts equivalent to and
220 constituting an appointment of the commissioner ~~as his or her~~
221 ~~attorney~~ to receive service of legal process issued against
222 the nonresident in this state upon causes of action arising
223 within this state out of transactions under the nonresident's
224 surplus line broker license. Service upon the commissioner ~~as~~



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225 ~~such attorney~~ shall constitute effective legal service upon
226 the nonresident.

227 ~~(2)~~ (3) The appointment shall be irrevocable for as long
228 as there may be any such cause of action in this state against
229 the nonresident.

230 ~~(3)~~ (4) Service of process under this section shall be
231 made by leaving three copies of the summons and complaint, or
232 other process, with the commissioner, along with payment of
233 the fee prescribed in Section 27-4-2, and the service shall be
234 sufficient service upon the nonresident if notice of the
235 service and a copy of the summons and complaint or other
236 process are sent by registered or certified mail to the
237 defendant by the commissioner; and the defendant's return and
238 the certificate of the commissioner certifying compliance
239 herewith shall be filed in the office of the clerk of court,
240 or in the court or tribunal wherein the action is pending. The
241 certificate of the commissioner shall show the date of the
242 mailing by registered or certified mail of the notice of the
243 service and copy of the summons and complaint, or other
244 process, to the nonresident defendant and the date of the
245 receipt of the return card and shall be signed by the
246 commissioner. The commissioner may give the nonresident
247 defendant notice of the service upon him or her, in lieu of
248 the notice of service provided for herein to be given by
249 registered or certified mail, in the following manner:

250 a. By having a notice of service and a copy of the
251 summons and complaint, or other process, served upon the
252 nonresident defendant, if found within the State of Alabama,



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253 by any officer duly qualified to serve legal process within
254 the State of Alabama or, if the nonresident defendant is found
255 to be outside of the State of Alabama, by a sheriff, deputy
256 sheriff, or United States marshal or deputy United States
257 marshal, or any duly constituted officer qualified to serve
258 like process in the state or the jurisdiction where the
259 nonresident defendant is found.

260 b. The officer's return showing service, when made,
261 shall be filed in the office of the clerk of the court, or in
262 the court or tribunal wherein the action is pending, on or
263 before the return day of the process or as the court or
264 tribunal may allow, and the court or tribunal in which the
265 action is pending may order a continuance, or continuances, as
266 may be necessary to afford the nonresident defendant
267 reasonable opportunity to defend the action.

268 ~~(4)~~ (5) The commissioner shall keep on file for a period
269 of not less than three years a copy of the summons and
270 complaint or other process served upon the commissioner,
271 together with a record of all such process and of the day,
272 hour, and manner of service."

273 "§27-10-25

274 (a) A licensed surplus line broker may accept and place
275 surplus line business for any insurance producer licensed in
276 this state for the kind and class of insurance involved and
277 may compensate the producer therefor. No producer shall
278 knowingly misrepresent to the broker any material fact
279 involved in any insurance or in the eligibility thereof for
280 placement with an unauthorized insurer.



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281 (b) Notwithstanding Section 27-12-17(b), a reasonable
282 fee for each policy may be charged by the filing surplus lines
283 broker for each policy placed in lawful compliance with
284 Section 27-10-20. This per-policy fee shall be itemized
285 separately to the customer before purchase, enumerated in the
286 policy or a notice delivered with the policy, and is subject
287 to the surplus line broker tax required under Section
288 27-10-31."

289 "§27-10-26

290 (a) A surplus line broker shall not knowingly place
291 surplus line insurance with an insurer that is unsound
292 financially, or that is ineligible under this section. The
293 broker shall ascertain the financial condition of the
294 unauthorized insurer before placing insurance therewith.

295 (b) The broker ~~shall not so insure~~ may only place
296 insurance with ~~any~~ an insurer meeting one of the following:

297 (1) ~~With any~~ An insurer ~~which is not an~~ authorized
298 ~~insurer~~ in at least one state of the United States for the
299 kind of insurance involved, and with capital or surplus, or
300 both, amounting to at least five million dollars (\$5,000,000);
301 or guaranteed trust fund amounting to at least five million
302 dollars (\$5,000,000).

303 (2) ~~With an~~ An alien insurer ~~not~~ authorized to transact
304 insurance in at least one state of the United States, ~~or an~~
305 unauthorized insurer listed on the Quarterly Listing of Alien
306 Insurers maintained by the International Insurers Department
307 of the National Association of Insurance Commissioners and
308 ~~unless~~ the insurer shall have established an effective trust



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309 fund of at least two million five hundred thousand dollars
310 (\$2,500,000) within the United States administered by a
311 recognized financial institution and held for the benefit of
312 all its policyholders or policyholders and creditors in the
313 United States, and with capital or surplus, or both, amounting
314 to at least fifteen million dollars (\$15,000,000).

315 (3) ~~With a~~A foreign or alien insurer which has
316 transacted insurance as an authorized insurer in its domicile
317 state or country ~~of domicile~~ for not less than five years,
318 unless it is a wholly owned subsidiary of an insurer
319 authorized to transact insurance in this state or unless it
320 makes a deposit in this state as may be permitted under
321 subsection (c).

322 (4) ~~With an~~An insurer ~~the voting control of which is~~
323 ~~held controlled,~~ in whole or substantial part, by any
324 government or governmental agency.

325 (5) ~~In any~~Any insurer made ineligible as a surplus line
326 insurer by order of the commissioner received by or known to
327 the broker. The commissioner may issue an order of
328 ineligibility if he or she finds that the insurer:

329 a. Does not meet the financial requirements of this
330 section;

331 b. Has without just cause refused to pay valid claims
332 arising under its contracts in this state or has otherwise
333 conducted its affairs in a manner as to result in injury or
334 loss to the insuring public of this state; or

335 c. Has conducted its affairs in a manner as to result
336 in the avoidance of payment of tax as required by Sections



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337 27-10-31 and 27-10-35.

338 (c) When it appears after a search of surplus lines
339 insurers that any particular insurance risk which is eligible
340 to be placed in accordance with the surplus line law but on
341 which insurance coverage, in whole or in part, is not
342 procurable from foreign or alien insurers meeting all of the
343 requirements of subsection (b) but is procurable from a
344 foreign or alien insurer meeting all of the requirements of
345 subsection (b) except for ~~paragraph~~ subdivision (3), then the
346 surplus line broker may file a supplemental signed statement
347 setting forth the facts and advising the department that the
348 part of the risk as shall be unprocurable, as aforesaid, is
349 being placed with named unauthorized insurers which meet all
350 of the requirements of subsection (b) except for ~~paragraph~~
351 subdivision (3), in the amounts and percentages set forth in
352 the statement. These named unauthorized insurers, before
353 accepting any risk in this state, shall deposit with the
354 department cash or securities acceptable to the commissioner
355 and with a market value of not less than one million dollars
356 (\$1,000,000), which deposit shall be held by the department
357 for the benefit of Alabama policyholders only. The deposit
358 shall be held in the same manner as other deposits as
359 described in Section 27-3-11. The commissioner may adopt
360 reasonable rules for the implementation and administration of
361 this section."

362 "§27-10-30

363 (a) Each surplus line broker shall, on or before the
364 first day of March of each year, file with the commissioner a



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365 verified statement of all surplus line insurance transacted by
366 him or her during the preceding calendar year. If no surplus
367 line insurance was transacted in the preceding calendar year,
368 no statement is required.

369 (b) The statement shall be on forms as prescribed and
370 furnished by the commissioner and shall show:

371 (1) Gross amount of each kind of insurance transacted;

372 (2) Aggregate gross premiums charged, exclusive of sums
373 collected to cover state or federal taxes;

374 (3) Aggregate of returned premiums and taxes paid to
375 insureds;

376 (4) Aggregate of net premiums; and

377 (5) Additional information as required by the
378 commissioner."

379 "§27-10-31

380 (a) On or before the first day of March each year, the
381 surplus line broker shall remit to the State Treasurer through
382 the commissioner, as a tax imposed for the privilege of
383 transacting business as a surplus line broker in this state, a
384 tax of six percent on the direct premiums, less return
385 premiums and exclusive of sums collected to cover state or
386 federal taxes, on surplus line insurance issued to insureds
387 whose home state is this state as the term "home state" is
388 defined in 15 U.S.C. § 8206, subject to tax transacted by the
389 broker during the preceding calendar year as shown by the
390 annual statement filed with the commissioner.

391 (b) The tax under the provisions of this section shall
392 be subject to deduction of the full amount of all expenses of



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393 examination of the surplus line broker by the commissioner in
394 the same manner as that allowed for domestic insurers for
395 examination expenses under the provisions of subdivision (5)
396 of subsection (c) of Section 27-4A-3. All taxes collected
397 under this section shall be deposited in the State Treasury to
398 the credit of the State General Fund.

399 ~~(c) This section shall not be effective if the Surplus~~
400 ~~Lines Insurance Multi-State Compliance Compact is not enacted~~
401 ~~into law by two compacting states."~~

402 Section 3. Chapter 61 of Title 27 of the Code of
403 Alabama 1975, is repealed.

404 Section 4. This act shall become effective on July 1,
405 2024.