

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 773
96TH GENERAL ASSEMBLY

1956L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061, RSMo, and to enact in lieu thereof seven new sections relating to the regulation of surplus lines insurance, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and
2 384.061, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061, to read as follows:
384.015. As used in sections 384.011 to 384.071, **the following terms shall mean:**

2 (1) "Admitted insurer" [means], an insurer licensed to do an insurance business in this
3 state;

4 (2) "Capital" [means], funds paid in for stock or other evidence of ownership;

5 (3) "Director" [means], the director of the department of insurance, financial institutions
6 and professional registration;

7 (4) "Eligible surplus lines insurer" [means], a nonadmitted insurer with which a surplus
8 lines licensee may place surplus lines insurance;

9 (5) **"Exempt commercial purchaser", any person purchasing commercial insurance
10 that, at the time of placement, meets the following requirements:**

11 (a) **The person employs or retains a qualified risk manager to negotiate insurance
12 coverage;**

13 (b) **The person has paid aggregate nationwide commercial property and casualty
14 insurance premiums in excess of one hundred thousand dollars in the immediately
15 preceding twelve months; and**

16 (c) **a. The person meets at least one of the following criteria:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 i. The person possesses a net worth in excess of twenty million dollars, as such
18 amount is adjusted under subparagraph b. of this paragraph;
- 19 ii. The person generates annual revenues in excess of fifty million dollars, as such
20 amount is adjusted under subparagraph b. of this paragraph;
- 21 iii. The person employs more than five hundred full-time or full-time equivalent
22 employees per individual insured or is a member of an affiliated group employing more
23 than one thousand employees in the aggregate;
- 24 iv. The person is a not-for-profit organization or public entity generating annual
25 budgeted expenditures of at least thirty million dollars, as such amount is adjusted under
26 subparagraph b. of this paragraph; or
- 27 v. The person is a municipality with a population in excess of fifty thousand
28 persons.
- 29 b. Effective on the fifth January first occurring after the date of the enactment of
30 United States Public Law 111-203 and each fifth January first occurring thereafter, the
31 amounts in items i, ii, and iv of subparagraph a. of this paragraph shall be adjusted to
32 reflect the percentage change for such five-year period in the consumer price index for all
33 urban consumers published by the United States Bureau of Labor Statistic of the
34 Department of Labor;
- 35 (6) "Export" [means] , to place surplus lines insurance with a nonadmitted insurer;
- 36 (7) "Home state":
- 37 (a) Except as provided in paragraph (b) of this subdivision, the term "home state"
38 means, with respect to an insured:
- 39 a. The state in which an insured maintains its principal place of business or, in the
40 case of an individual, the individual's principal residence; or
- 41 b. If one hundred percent of the insured risk is located out of the state referred to
42 in subparagraph a. of this paragraph, the state to which the greatest percentage of the
43 insured's taxable premium for that insurance contract is allocated;
- 44 (b) If more than one insured from an affiliated group are named insureds on a
45 single nonadmitted insurance contract, the term "home state" means the home state, as
46 determined under paragraph (a) of this subdivision, of the member of the affiliated group
47 that has the largest percentage of premium attributed to it under such insurance contract;
- 48 (c) The principal place of business is the state where the insured maintains its
49 headquarters and where the insured's high-level officers direct, control and coordinate the
50 business activities of the insured;
- 51 [(6)] (8) "Kind of insurance" [means] , one of the types of insurance required to be
52 reported in the annual statement which must be filed with the director by admitted insurers;

53 **(9) "Nonadmitted insurance", any property and casualty insurance permitted to**
54 **be placed directly or through a surplus lines licensee with a nonadmitted insurer eligible**
55 **to accept such insurance;**

56 [(7)] **(10) "Nonadmitted insurer" [means]** , an insurer not licensed to do an insurance
57 business in this state, including insurance exchanges authorized under the laws of other states;

58 [(8)] **(11) "Producing broker" [means]** , the individual broker or agent dealing directly
59 with the party seeking insurance;

60 **(12) "Qualified risk manager", shall have the same meaning prescribed in the**
61 **Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. Section 8206);**

62 [(9)] **(13) "Surplus" [means]**, funds over and above liabilities and capital of the company
63 for the protection of policyholders;

64 [(10)] **(14) "Surplus lines insurance" [means]** , any insurance of risks resident, located
65 or to be performed in this state, permitted to be placed through a surplus lines licensee with a
66 nonadmitted insurer eligible to accept such insurance, other than reinsurance, [wet marine and
67 transportation insurance independently procured,] and life and health insurance and annuities;

68 [(11)] **(15) "Surplus lines licensee" [means]** , a person licensed to place insurance on
69 risks resident, located or to be performed in this state with nonadmitted insurers eligible to accept
70 such insurance;

71 [(12)] **(16) "Wet marine and transportation insurance" [means]:**

72 (a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

73 (b) Insurance of marine builder's risks, marine war risks and contracts of marine
74 protection and indemnity insurance;

75 (c) Insurance of freights and disbursements pertaining to a subject of insurance coming
76 within this section; and

77 (d) Insurance of personal property and interests therein, in the course of exportation from
78 or importation into any country, or in the course of transportation coastwise or on inland waters,
79 including transportation by land, water or air from point of origin to final destination, in
80 connection with any and all risks or periods of navigation, transit or transportation, and while
81 being prepared for and while awaiting shipment, and during any delays, transshipment, or
82 reshipment incident thereto.

 384.017. **Surplus lines** insurance may be [procured through] **placed by** a surplus lines
2 licensee [from nonadmitted insurers] if:

3 (1) Each insurer is an eligible surplus lines insurer;

4 (2) **Each insurer is authorized to write the type of insurance in its domiciliary**
5 **jurisdiction;**

6 (3) The full amount or kind of insurance is not obtainable from admitted insurers who
7 are actually transacting in this state the class of insurance required by the insured. Insurance
8 shall be deemed "obtainable" within the meaning of this section if there is available a market
9 with admitted insurers that can supply the insured's requirements both as to type of coverage and
10 as to quality of service. "Type of coverage", as used in this section, refers to hazards covered and
11 limits of coverage. "Quality of security and service", as used in this section, refers to the rating
12 by a recognized financial service; and

13 ~~[(3)]~~ (4) All other requirements of sections 384.011 to 384.071 are met.

 384.021. ~~[No]~~ 1. A surplus lines licensee shall **not** place [any] coverage with a
2 nonadmitted insurer, unless, at the time of placement, [such nonadmitted insurer] **the surplus**
3 **lines licensee has determined that the nonadmitted insurer:**

4 (1) [Has established satisfactory evidence of good repute and financial integrity;

5 (2) Qualified under one of the following paragraphs:

6 (a) Has capital and surplus or its equivalent under the laws of its domiciliary
7 jurisdiction, which equals [this state's] **the greater of the** minimum capital and surplus
8 requirements under the laws of this state [as defined in sections 379.010 and 379.080; or

9 (b) In the case of Lloyd's or other similar groups including incorporated and individual
10 unincorporated underwriters, the incorporated members of which shall not be engaged in any
11 business other than underwriting as a member of the group and shall be subject to the same level
12 of solvency regulation and control by the group's domiciliary regulator as are the unincorporated
13 members, maintains a trust fund of not less than fifty million dollars as security to the full
14 amount thereof for all policyholders and creditors in the United States of each member of the
15 group, and such trust shall likewise comply with the terms and conditions established in
16 subdivision (1) of this section for alien insurers; and

17 (c) In the case of an "insurance exchange" created by the laws of individual states,
18 maintain capital and surplus, or the substantial equivalent thereof, of not less than fifteen million
19 dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all
20 insurance exchange policyholders, each individual syndicate shall maintain minimum capital and
21 surplus, or the substantial equivalent thereof, of not less than one million five hundred thousand
22 dollars. In the event the insurance exchange does not maintain funds for the protection of all
23 insurance exchange policyholders, each individual syndicate shall meet the minimum capital and
24 surplus requirements of paragraph (a) of this subdivision;

25 (3) Has caused to be provided to the director a copy of its current annual statement
26 certified by such insurer, such statement to be provided no more than six months after the close
27 of the period reported upon and which is either:

28 (a) Filed with and approved by the regulatory authority in the domicile of the
29 nonadmitted insurer; or

30 (b) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's
31 domicile; or

32 (c) In the case of an insurance exchange, the statement may be an aggregate combined
33 statement of all underwriting syndicates operating during the period reported;

34 (4) In addition to meeting the requirements in subdivisions (1) to (3) of this section, an
35 insurer shall be an eligible surplus lines insurer if it] **or fifteen million dollars, except that the**
36 **requirements of this subdivision may be satisfied by an insurer's possessing less than the**
37 **minimum capital and surplus upon an affirmative finding of acceptability by the director**
38 **provided that the finding shall be based upon such factors as quality of management,**
39 **capital and surplus of any parent company, company underwriting profit and investment**
40 **income trends, market availability and company record and reputation within the**
41 **industry, and in no event shall the director make an affirmative finding of acceptability**
42 **when the nonadmitted insurer's capital and surplus is less than four million five hundred**
43 **thousand dollars; and**

44 (2) Appears on the most recent list of eligible surplus lines insurers published by the
45 director from time to time but at least semiannually[. The director shall be required to place and
46 maintain the name of any nonadmitted insurer which is eligible and which makes a request to
47 be on the list of eligible surplus lines insurers] **or on the most recent quarterly listing of alien**
48 **insurers maintained by the international insurers department of the National Association**
49 **of Insurance Commissioners.**

50 **2. Notwithstanding any other provision of this chapter or rules adopted to**
51 **implement the provisions of this chapter, a surplus lines licensee seeking to procure or**
52 **place nonadmitted insurance in Missouri for an exempt commercial purchaser shall not**
53 **be required to satisfy any requirement to make a due diligence search to determine**
54 **whether the full amount or type of insurance sought by such exempt commercial purchaser**
55 **can be obtained from nonadmitted insurers if:**

56 (1) **The surplus lines licensee procuring or placing the surplus lines insurance has**
57 **disclosed to the exempt commercial purchaser that such insurance may or may not be**
58 **available from the admitted market that may provide greater protection with more**
59 **regulatory oversight; and**

60 (2) **The exempt commercial purchaser has subsequently requested in writing the**
61 **surplus lines licensee to procure or place such insurance from a nonadmitted insurer.**

384.043. 1. No insurance producer shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the director.

2. The director shall issue a surplus lines license to any qualified holder of a current resident or nonresident property and casualty insurance producer license but only when the licensee has:

(1) Remitted the one hundred dollar initial fee to the director;

(2) Submitted a completed license application on a form supplied by the director; and

(3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination.

3. Each surplus lines license shall be renewed for a term of two years on the biennial anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 384.065; except that if the biennial renewal fee for the license is not paid on or before the anniversary date, the license terminates. The biennial renewal fee is one hundred dollars.

4. Beginning on or before July 1, 2012, the director shall participate in the national insurance producer database of the National Association of Insurance Commissioners, or any other equivalent uniform national database, for the licensure of surplus lines licensees and the renewal of such licenses.

5. Notwithstanding any other provision of this chapter, a person selling, soliciting, or negotiating nonadmitted insurance with respect to an insured shall be required to obtain or possess a current surplus lines insurance license issued by the director only if this state is such insured's home state.

384.051. 1. Every insured [in] **whose home state is** this state who procures or causes to be procured or continues or renews insurance in any surplus lines insurer, or any self-insurer [in] **whose home state is** this state who so procures or continues with, any surplus lines insurer, excess of loss, catastrophe or other insurance, [upon a subject of insurance resident, located or to be performed within this state,] other than insurance procured through a surplus lines broker pursuant to sections 384.011 to 384.071, shall before March second of the year next succeeding the year in which the insurance was so procured, continued or renewed, file a written report of the same with the director on forms prescribed by the director and furnished to such an insured upon request. The report shall show:

(1) The name and address of the insured or insureds;

(2) The name and address of the insurer or insurers;

(3) The subject of the insurance;

(4) A general description of the coverage;

14 (5) The amount of premium currently charged therefor;

15 (6) Such additional pertinent information as may be reasonably requested by the director.

16 2. [If any such insurance covers also a subject of insurance resident, located or to be
17 performed outside this state, for the purposes of this section, a proper pro rata portion of the
18 entire premium payable for all such insurance shall be allocated as to the subjects of insurance
19 resident, located or to be performed in this state.

20 3. Any insurance in a surplus lines insurer procured through negotiations or an
21 application in whole or in part occurring or made within or from within this state, or for which
22 premiums in whole or in part are remitted directly or indirectly from within this state, shall be
23 deemed to be insurance procured or continued or renewed in this state within the intent of
24 subsection 1 of this section.

25 4.] For the general support of the government of this state there is levied upon the
26 insured or self-insurer who procures insurance pursuant to [subsections 1 and 3] **subsection 1**
27 of this section a tax at the rate of five percent of the [net] **gross** amount of the premium [in
28 respect of risks located in this state]. Before April sixteenth of the year next succeeding the year
29 in which the insurance was so procured, continued or renewed, the insured shall remit to the
30 department of revenue the amount of the tax. The department of revenue shall notify the director
31 of the sums collected from each insured or self-insurer.

384.057. 1. Before March second of each year, each surplus lines broker shall report
2 under oath to the director on forms prescribed by him or her a statement showing, with respect
3 to the year ending the immediately preceding December thirty-first **for nonadmitted insurance**
4 **where the home state of the insured is this state:**

5 (1) The gross amounts charged for surplus lines insurance [with respect to risks located
6 within this state], exclusive of sums collected for the payment of federal, state or local taxes;

7 (2) The amount of net premiums with respect to the insurance. For the purpose of this
8 section, "net premiums" means the gross amount of charges for surplus lines insurance [with
9 respect to risks located within this state], exclusive of sums collected for the payment of federal,
10 state and local taxes, less returned premiums.

11 2. No later than within forty-five days after the end of each calendar quarter ending
12 March thirty-first, June thirtieth, September thirtieth, and December thirty-first each surplus lines
13 broker shall report under oath to the director on forms prescribed by him or her a statement
14 showing, with respect to each respective calendar quarter **for nonadmitted insurance where**
15 **the home state of the insured is this state:**

16 (1) The gross amounts charged for surplus lines insurance [with respect to risks located
17 within this state], exclusive of sums collected for the payment of federal, state, or local taxes;

18 (2) The amount of net premiums with respect to the insurance. For the purpose of this
19 section, "net premiums" means the gross amount of charges for surplus lines insurance [with
20 respect to risks located within this state], exclusive of sums collected for the payment of federal,
21 state, and local taxes, less returned premiums.

384.061. **1. Notwithstanding any other provision of this chapter or regulation
2 implementing a provision of this chapter,** the five percent tax on net premiums imposed by
3 sections 384.051 and 384.059 shall be levied **upon and** only upon [risks or portions of risks
4 which are located within this state. If a surplus lines policy covers risks only partially located
5 in this state, the tax payable shall be computed on the portions of the premium properly allocable
6 to that portion of the risks located in this state and no Missouri tax shall be charged for that
7 portion of risk which is located outside of the state of Missouri] **the entire gross premium for
8 nonadmitted or surplus lines insurance policies for which the home state of the insured is
9 Missouri.**

**2. Notwithstanding any other provision of this chapter or regulation implementing
11 a provision of this chapter:**

12 (1) **The placement of nonadmitted insurance shall be subject to the statutory and
13 regulatory requirements of this chapter only if this state is the insured's home state; and**

14 (2) **A surplus lines broker is required to be licensed as a surplus lines licensee under
15 the provisions of this chapter only if this state is the insured's home state.**

Section B. Because immediate action is necessary to ensure the continued application
2 of Missouri law regulating and taxing surplus lines insurance in accordance with Public Law
3 111-203, section A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and section A of this act shall be in full force and effect upon its
6 passage and approval.