

Regular Session, 2013

ACT No. 203

HOUSE BILL NO. 543

BY REPRESENTATIVE PIERRE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

AN ACT

To amend and reenact R.S. 22:46(2) and (17), 431, 432, 433, 435, 436, 438, and 439(F) and to enact R.S. 22:46(7.1) and (8.1), relative to surplus lines insurance; to authorize placement of insurance with a surplus lines insurer without regard to the availability of authorized insurance; to provide relative to capital, surplus, bond, and deposit requirements; to provide with respect to the list of surplus lines insurers maintained by the commissioner of insurance; to provide relative to certain notices to applicants for insurance regarding placement of personal lines policies with surplus lines insurers; to provide for applicability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:46(2) and (17), 431, 432, 433, 435, 436, 438, and 439(F) are hereby amended and reenacted and R.S. 22:46(7.1) and (8.1) are hereby enacted to read as follows:

§46. General definitions

In this Code, unless the context otherwise requires, the following definitions shall be applicable:

* * *

(2) "Approved unauthorized insurer" means an insurer without a certificate of authority, or otherwise qualified under the provisions of this Code, ~~and which that~~ meets the eligibility criteria of R.S. 22:435(A)(2) and (B) and is on the list of approved unauthorized insurers under the provisions of R.S. 22:436, and from which

1 a licensed surplus lines broker may procure insurance under the provisions of R.S.
2 22:432.

3 * * *

4 (7.1) "Eligible unauthorized insurer" means an insurer without a certificate
5 of authority, or otherwise qualified under the provisions of this Code, that meets the
6 eligibility criteria of R.S. 22:435(A)(2) and (B) and from which a licensed surplus
7 lines broker may procure insurance under the provisions of R.S. 22:432.

8 * * *

9 (8.1)(a) "Home state" means, with respect to an insured on a surplus lines
10 insurance policy, one of the following:

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

13 (ii) If one hundred percent of the insured risk is located out of the state
14 referred to in Item (i) of this Subparagraph, the state to which the greatest percentage
15 of the insured's taxable premium for that insurance contract is allocated.

16 (iii) If more than one insured from an affiliated group are named insureds on
17 a single surplus lines insurance contract, the state, as determined pursuant to Item (i)
18 or (ii) of this Subparagraph, of the member of the affiliated group that has the largest
19 percentage of premium attributed to it under the surplus lines insurance contract.

20 (b) The home state as determined in Subparagraph (a) of this Paragraph is
21 the state that has sole statutory and regulatory jurisdiction over the placement of
22 surplus lines insurance pursuant to 15 U.S.C. 8202 and the exclusive authority to
23 require the payment of any premium tax on surplus lines insurance pursuant to 15
24 U.S.C. 8201.

25 * * *

26 (17) "Surplus lines insurance" means any property and casualty insurance
27 in this state on ~~properties, risks, or exposures~~ property, risk, or exposure located or
28 to be performed in this state, permitted to be placed through a licensed surplus lines
29 broker with an approved unauthorized insurer or eligible unauthorized insurer.

30 * * *

1 §431. Purpose; necessity for regulation

2 This Subpart shall be liberally construed and applied to promote its
3 underlying purposes which include:

4 (1) Protecting persons seeking insurance in this state.

5 (2) ~~Permitting~~ Facilitating the placement of surplus lines insurance ~~to be~~
6 ~~placed~~ with reputable and financially sound unauthorized insurers under the
7 provisions of this Subpart.

8 (3) Establishing a system of regulation ~~which will permit~~ that permits
9 orderly access to surplus lines insurance in this state and ~~encourage~~ encourages
10 authorized insurers to ~~provide~~ make new and innovative types of insurance available
11 to consumers in this state.

12 (4) Providing a system through which persons may purchase insurance ~~other~~
13 ~~than surplus lines insurance~~, from approved unauthorized insurers or eligible
14 unauthorized insurers pursuant to this Subpart.

15 (5) Protecting the revenues of this state.

16 (6) Providing a system pursuant to this Subpart ~~which~~ that subjects
17 unauthorized insurance activities in this state to the jurisdiction of the ~~insurance~~
18 commissioner of insurance and state and federal courts in suits by or on behalf of the
19 state.

20 §432. Surplus lines insurance from unauthorized insurers

21 ~~If certain insurance coverages cannot be procured from authorized insurers,~~
22 ~~such coverages, hereinafter designated as "surplus~~ Surplus lines", ~~insurance, as~~
23 defined in R.S. 22:46(17), may be procured from approved unauthorized insurers or
24 eligible unauthorized insurers, provided that the insurance is as defined in R.S.
25 22:46(2) and (7.1) and sometimes referred to in this Title as "surplus lines insurers".
26 It shall be procured through a licensed surplus lines ~~broker.~~ brokers and may be
27 procured without regard to the availability of coverage from authorized insurers.

28 §433. Endorsement of contract

29 A. ~~Every~~ Each insurance policy or contract procured and delivered as surplus
30 lines coverage pursuant to this Subpart shall have ~~stamped or printed upon it and be~~

1 signed by the surplus lines broker who procured it, in bold type and the face of which
2 shall not be less than ten-point type, the following: notice:

3 _____

4 **NOTICE**

5 **This insurance policy is delivered as surplus lines coverage under the Louisiana**
6 **Insurance Code, of the State of Louisiana.**

7 **In the event of insolvency of the company issuing this contract, the policyholder**
8 **or claimant is not covered by the Louisiana Insurance Guaranty Association which**
9 **guarantees only specific types of policies issued by an insurance company companies**
10 **authorized to do business in Louisiana.**

11 **This surplus lines policy has been procured by the following licensed Louisiana**
12 **surplus lines broker:**

13 _____

14 **Signature of Licensed Louisiana Surplus Lines Broker**
or Authorized Representative

15 _____

16 **Printed Name of Licensed Louisiana Surplus Lines Broker**

17 B. The notice required ~~under~~ pursuant to Subsection A of this Section shall;
18 ~~whether stamped or printed, be; distinguished in either one of the following ways:~~

19 (1) ~~The notice shall be prominently~~ Prominently displayed in the color red;
20 ~~or prominently offset by a black border.~~

21 (2) ~~If the notice is printed~~ Printed or stamped in the color black, it shall be
22 ~~prominently offset by a black border. on the policy or contract in bold and in not less~~
23 ~~than ten-point type.~~

24 (3) Signed by the surplus lines broker who procured the policy or contract.

25 * * *

26 §435. ~~Surplus lines in solvent insurers; capital and surplus requirements; deposits~~
27 ~~and bond requirements~~ Solvency and eligibility requirements

28 A.(4) A surplus lines broker shall ~~not knowingly~~ place surplus lines
insurance only with surplus lines insurers ~~unsound financially. that are:~~

1 (1) Financially sound.

2 (2) Each insurer is authorized Authorized to write the type of insurance in
3 its their domiciliary jurisdiction: jurisdictions to write the type of insurance placed.

4 (3) ~~The full amount or type of insurance cannot be obtained from insurers
5 who are authorized to do business in this state. In addition to the other requirements
6 of this Subpart, including but not limited to R.S. 22:432 and 438, the full amount or
7 type of insurance may be procured from an approved unauthorized insurer, provided
8 that a diligent search is made among the insurers who are authorized to transact
9 business and are actually writing the particular type of insurance in this state if any
10 are writing it.~~

11 B. ~~The surplus lines broker shall not so insure with any insurer unless the
12 insurer has met the requirements of R.S. 22:436, unless otherwise provided by law,
13 has established satisfactory evidence of good repute and financial integrity, and has
14 done the following: A surplus lines broker shall not place coverage with a surplus
15 lines insurer, unless, at the time of placement, the surplus lines broker has
16 determined that the surplus lines insurer qualifies under one of the following
17 Paragraphs:~~

18 (1)(a) If it is a foreign insurer that it has capital and surplus or its equivalent
19 under the laws of its domiciliary jurisdiction which equals the greater of:

20 (a) ~~Has capital and surplus of not less than fifteen million dollars exclusive
21 of either surplus debentures or subordinated notes if a stock insurer, or surplus of not
22 less than fifteen million dollars exclusive of either surplus debentures or
23 subordinated notes if any other type insurer, and has on deposit with the
24 commissioner of insurance a safekeeping or trust receipt from a bank or a savings
25 and loan association doing business within Louisiana, indicating that one hundred
26 thousand dollars in money, or approved bonds of the United States government, the
27 state of Louisiana, or any political subdivision thereof, or in lieu of such deposit has
28 delivered to the commissioner of insurance a bond in the amount of one hundred
29 thousand dollars issued by an authorized surety company doing business in this state
30 and approved by the commissioner of insurance.~~

1 ~~(b) Such deposit or surety bond shall be conditioned for the prompt payment~~
2 ~~of all claims arising and accruing to any person by virtue of any policy issued by any~~
3 ~~such unauthorized insurer upon any property or other risk situated in this state, and~~
4 ~~to be held subject to any claims, liens or judgments that may be judicially obtained~~
5 ~~against any such company in the courts of this state, or arising from any contract of~~
6 ~~insurance, or indemnity, or fidelity, or guaranty entered into in this state, and shall~~
7 ~~be liable to seizure and sale at the instance of any judgment creditor of such insurer,~~
8 ~~under judgment obtained in any of the courts of this state or in any of the federal~~
9 ~~courts of this state.~~

10 ~~(c) No surety bond furnished as provided herein shall be cancelled unless a~~
11 ~~new bond or deposit has been substituted or satisfactory evidence has been submitted~~
12 ~~to the commissioner of insurance that the insurer has discharged all of its assured~~
13 ~~obligations and liabilities in this state, and that it has no assessed liabilities whatever~~
14 ~~remaining in this state. The term of these bonds shall be for one year ending March~~
15 ~~first, but the last bond filed shall always remain in effect until a new bond is filed or~~
16 ~~a deposit is made as a substitution therefor. Withdrawal of any bond or deposit~~
17 ~~required herein may be made only upon the approval by the commissioner of~~
18 ~~insurance.~~

19 (i) The minimum capital and surplus requirements under the laws of this
20 state.

21 (ii) Fifteen million dollars.

22 ~~(d) (b) The requirements of Subparagraph (a) of this Paragraph, with respect~~
23 ~~only to capital and surplus, may be satisfied by an insurer's possessing less than the~~
24 ~~minimum capital and surplus upon an affirmative finding of acceptability by the~~
25 ~~commissioner. If the commissioner finds such acceptable, the finding shall be in~~
26 ~~effect for a one-year period and shall be applied for annually thereafter to be renewed~~
27 ~~on an annual basis, unless the finding is revoked by the commissioner. The finding~~
28 ~~shall be based upon such factors as quality of management, capital and surplus of~~
29 ~~any parent company, company underwriting profit and investment income trends,~~
30 ~~market availability, and company record and reputation within the industry. In no~~

1 event shall the commissioner make an affirmative finding of acceptability when the
2 ~~nonadmitted~~ an unauthorized insurer's capital and surplus is less than four million
3 five hundred thousand dollars.

4 ~~(e) In the case of an insurance exchange created by the laws of a state other~~
5 ~~than this state:~~

6 ~~(i) The syndicates of the exchange shall maintain under terms acceptable to~~
7 ~~the commissioner capital and surplus, or its equivalent under the laws of its~~
8 ~~domiciliary jurisdiction, of not less than seventy-five million dollars in the aggregate:~~

9 ~~(ii) The exchange shall maintain under terms acceptable to the commissioner~~
10 ~~not less than fifty percent of the policyholder surplus of each syndicate in a custodial~~
11 ~~account accessible to the exchange or its domiciliary commissioner in the event of~~
12 ~~insolvency or impairment of the individual syndicate.~~

13 ~~(iii) In addition, each individual syndicate to be eligible to accept surplus~~
14 ~~lines insurance placements from this state shall meet either of the following~~
15 ~~requirements: For insurance exchanges which maintain funds in an amount of not~~
16 ~~less than fifteen million dollars for the protection of all exchange policyholders, the~~
17 ~~syndicate shall maintain under terms acceptable to the commissioner minimum~~
18 ~~capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction,~~
19 ~~of not less than five million dollars; or for insurance exchanges which do not~~
20 ~~maintain funds in an amount of not less than fifteen million dollars for the protection~~
21 ~~of all exchange policyholders, the syndicate shall maintain under terms acceptable~~
22 ~~to the commissioner minimum capital and surplus, or its equivalent under the laws~~
23 ~~of its domiciliary jurisdiction, of not less than the minimum capital and surplus~~
24 ~~requirements under the laws of its domiciliary jurisdiction or fifteen million dollars,~~
25 ~~whichever is greater.~~

26 ~~(2) If it is an alien Lloyd's plan or other similar group of insurers, which~~
27 ~~consists of unincorporated individual insurers, or a combination of both~~
28 ~~unincorporated and incorporated insurers:~~

29 ~~(a) The plan or group maintains in the United States a trust or trusts equal to~~
30 ~~thirty percent of the group's United States surplus lines gross liabilities excluding~~

1 those types of insurance liabilities set forth in R.S. 22:1903(C)(4), not to exceed five
2 hundred million dollars; however, after notice and an opportunity to be heard, the
3 commissioner may require that the trust or trusts equal an amount in excess of five
4 hundred million dollars if he finds such higher amount to be reasonably necessary
5 to protect the interests of the public and policyholders of this state.

6 (b) In addition, the group shall maintain in trust a surplus in the amount of
7 one hundred million dollars, which shall be available for the benefit of United States
8 surplus lines policyholders of any member of the group.

9 (c) The incorporated members of the group shall not be engaged in any
10 business other than underwriting as a member of the group and shall be subject to the
11 same level of solvency regulation and control by the group's domiciliary regulator
12 as are the unincorporated members.

13 (d) The trust funds shall be maintained in an irrevocable trust account in the
14 United States in a qualified financial institution, consisting of cash, securities, letters
15 of credit, or investments of substantially the same character and quality as those
16 which are eligible investments for the capital and statutory reserves of authorized
17 insurers to write like kinds of insurance in this state and, in addition, the trust
18 required by Subparagraph (b) of this Paragraph shall satisfy the requirements of the
19 standard trust agreement required for listing with the International Insurers
20 Department of the National Association of Insurance Commissioners.

21 (3) In the case of a group of incorporated alien insurers under common
22 administration, which has continuously transacted an insurance business outside the
23 United States for at least three years immediately prior to December 31, 1997, and
24 which submits to this state's authority to examine its books and records and bears the
25 expense of the examination:

26 (a) The group shall maintain an aggregate policyholders' surplus of ten
27 billion dollars.

28 (b) The group shall maintain in trust a surplus in the amount of one hundred
29 million dollars. The surplus shall be available for the benefit of United States
30 surplus lines policyholders of any member of the group.

1 ~~(c) Each insurer shall individually maintain capital and surplus of not less~~
 2 ~~than twenty-five million dollars per company.~~

3 ~~(d) The trust funds shall satisfy the requirements of the Standard Trust~~
 4 ~~Agreement requirement for listing with the International Insurers Department of the~~
 5 ~~National Association of Insurance Commissioners and shall be maintained in an~~
 6 ~~irrevocable trust account in the United States in a qualified financial institution, and~~
 7 ~~shall consist of cash, securities, letters of credit, or investments of substantially the~~
 8 ~~same character and quality as those which are eligible investments for the capital and~~
 9 ~~statutory reserves of admitted insurers to write like kinds of insurance in this state.~~

10 ~~(e) Additionally, each member of the group shall make available to the~~
 11 ~~commissioner an annual certification of the solvency of the member by the~~
 12 ~~domiciliary regulator of the member and its independent public accountant.~~

13 ~~(4) Except for an exchange or plan complying with Subparagraph (B)(1)(e)~~
 14 ~~or Paragraph (B)(2) or (B)(3) of this Section, an alien insurer shall satisfy the capital~~
 15 ~~and surplus requirements of Subparagraphs (B)(1)(a) through (d) of this Section and~~
 16 ~~shall have in force a trust fund of not less than the greater of:~~

17 ~~(a) Five million four hundred thousand dollars.~~

18 ~~(b) Thirty percent of the United States surplus lines gross liabilities, which~~
 19 ~~does not include those types of insurance liabilities set forth in R.S. 22:1903(C)(4),~~
 20 ~~not to exceed sixty million dollars, to be determined annually on the basis of~~
 21 ~~accounting practices and procedures substantially equivalent to those promulgated~~
 22 ~~by this state, as of December thirty-first next preceding the date of determination,~~
 23 ~~where:~~

24 ~~(f) The liabilities are maintained in an irrevocable trust account in the United~~
 25 ~~States in a qualified financial institution, on behalf of United States policyholders~~
 26 ~~consisting of cash, securities, letters of credit, or other investments of substantially~~
 27 ~~the same character and quality as those which are eligible investments pursuant to~~
 28 ~~R.S. 22:584 et seq. for the capital and statutory reserves of admitted insurers to write~~
 29 ~~like kinds of insurance in this state. The trust fund, which shall be included in any~~
 30 ~~calculation of capital and surplus or its equivalent, shall satisfy the requirements of~~

~~the Standard Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners.~~

~~(ii) The insurer may request approval from the commissioner to use the trust fund to pay valid surplus lines claims. The balance of the trust fund shall never be less than the greater of five million four hundred thousand dollars or thirty percent of the current gross United States surplus lines liabilities of the insurer, excluding those types of liabilities set forth in R.S. 22:1903(C)(4).~~

~~(iii) In calculating the trust fund amount required by this Paragraph, credit shall be given for surplus lines deposits separately required and maintained for a particular state or United States territory, not to exceed the amount of the loss and loss adjustment reserves of the insurer in the particular state or territory.~~

~~(6) (2)(a) In addition to all of the other requirements of this Section, If it is an alien insurer, not domiciled in the United States or its territories it shall be listed by the International Insurers Department of the National Association of Insurance Commissioners: on its Quarterly Listing of Alien Insurers.~~

~~(b) The commissioner may waive the requirement in Subparagraph (a) of this Paragraph or the requirements of Subparagraph (B)(4)(b) of this Section upon an affirmative finding of the insurer's meeting the requirements for capital and surplus or acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as: pursuant to Paragraph (1) of this Subsection.~~

~~(a) The interests of the public and policyholders.~~

~~(b) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere.~~

~~(c) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this Section.~~

~~(d) The size of the company as calculated by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria; the kinds~~

1 of business the company writes, its net exposure and the extent to which the business
 2 of the company is diversified among several lines of insurance and geographic
 3 locations.

4 ~~(e) The past and projected trend in the size of the company's capital and~~
 5 ~~surplus of the company considering such factors as premium growth, operating~~
 6 ~~history, loss and expense ratios, or other appropriate criteria.~~

7 ~~(7) Has caused to be provided to the commissioner a copy of its current~~
 8 ~~annual statement certified by the insurer and an actuarial opinion as to the adequacy~~
 9 ~~of, and methodology used to determine, the loss reserves of the insurer. The~~
 10 ~~statement shall be provided at the same time it is provided to the insurer's domicile,~~
 11 ~~but in no event more than eight months after the close of the period reported upon,~~
 12 ~~and shall be certified as a true and correct copy by an accounting or auditing firm~~
 13 ~~licensed in the jurisdiction of the insurer's domicile and certified by a senior officer~~
 14 ~~of the unauthorized insurer as a true and correct copy of the statement filed with the~~
 15 ~~regulatory authority in the domicile of the unauthorized insurer. In the case of an~~
 16 ~~insurance exchange qualifying under Subparagraph (B)(1)(e) of this Section, the~~
 17 ~~statement may be an aggregate combined statement of all underwriting syndicates~~
 18 ~~operating during the period reported.~~

19 D. C. In addition to any other statements or reports required by this Subpart,
 20 the commissioner of insurance may request from any surplus lines broker full and
 21 complete information respecting the financial stability, reputation, and integrity of
 22 any unauthorized insurer with whom any such surplus lines broker has dealt, or
 23 proposes to deal, in the transaction of insurance business. The surplus lines broker
 24 shall promptly furnish in written or printed form so much of the information
 25 requested as he can produce. ~~The commissioner of insurance, if he believes it to be~~
 26 ~~in the public interest, may order such surplus lines broker in writing to place no~~
 27 ~~further insurance business on Louisiana risks through such unauthorized company.~~

28 ~~H.(1) Notwithstanding any law to the contrary, no person shall act in this~~
 29 ~~state as producer for or broker to any unauthorized insurer which has not been~~

1 approved by the Department of Insurance in accordance with this Section and R.S.
2 22:436, unless the following criteria are met:

3 (a) ~~The insurance is limited to commercial property and liability, including~~
4 ~~commercial marine.~~

5 (b) ~~The insurance coverage is excess coverage and the attachment point is~~
6 ~~at least twenty five million dollars for property and ten million dollars for liability~~
7 ~~or such other amount as the Department of Insurance in its discretion shall require.~~

8 (c) ~~Approval from the Department of Insurance is required for each policy.~~

9 (d) ~~The insured has been informed in writing by the agent or broker that the~~
10 ~~insurer has not been approved by the Department of Insurance.~~

11 (2) ~~The commissioner by regulation or directive, may require that the insured~~
12 ~~meet minimum financial requirements and may require certification from the~~
13 ~~producer or broker that the insurer meets the financial and any other requirements~~
14 ~~promulgated by the Department of Insurance for insurance coverage by an~~
15 ~~unauthorized insurer which has not been approved by the Department of Insurance~~
16 ~~under this Section and R.S. 22:436.~~

17 §436. Approved unauthorized insurers; list; requirements; removal

18 A. ~~No surplus lines broker shall place surplus lines insurance with an insurer~~
19 ~~who is not on the list of approved unauthorized insurers as compiled and maintained~~
20 ~~by the commissioner of insurance. The commissioner of insurance shall maintain a~~
21 ~~list of approved unauthorized insurers from those eligible unauthorized insurers that~~
22 ~~apply for approval and satisfy the criteria established by the commissioner.~~
23 ~~Placement on the list of approved unauthorized insurers shall be prima facie evidence~~
24 ~~that an unauthorized insurer meets the financial and eligibility criteria of R.S.~~
25 ~~22:435(A) and (B).~~

26 B.(1) To obtain and maintain placement on the list of approved unauthorized
27 insurers, a ~~foreign~~ an unauthorized insurer shall comply with the provisions of R.S.
28 22:435 applicable to foreign or alien insurers, respectively, and shall annually file
29 with the commissioner the following , unless available to the commissioner through
30 the NAIC or from public sources:

1 ~~(a) (1)~~ A copy of the insurer's annual statement, ~~signed and sworn to by its~~
 2 ~~president and secretary as to its condition~~ as of the preceding December thirty-first,
 3 evidencing that the insurer has ~~capital and surplus of not less than fifteen million~~
 4 ~~dollars exclusive of either surplus debentures or subordinated notes,~~ and complied
 5 with the provisions of R.S. 22:435~~(B)(7)~~.

6 ~~(b)~~ Evidence that the amount of net premiums written does not exceed four
 7 ~~times the insurer's capital and surplus.~~

8 ~~(c)~~ (2) Evidence that, if the insurer issues workers' compensation insurance
 9 in this state, it has established and maintained a workers' compensation claims office
 10 pursuant to R.S. 23:1161.1 or has retained a licensed claims adjuster.

11 ~~(d)~~ (3) A copy of the producer production report in a form required by the
 12 commissioner listing all business placed with the company by licensed surplus lines
 13 brokers. The report shall be filed with the ~~Department of Insurance~~ commissioner
 14 no later than April fifteenth of each year.

15 ~~(2)~~ An insurer that fails to file a copy of its annual statement on or before
 16 March first of each year shall be removed from the list of approved unauthorized
 17 insurers. The commissioner may grant an extension, not to exceed thirty days, if
 18 presented with satisfactory evidence showing the reasonableness of the extension.

19 ~~C.~~ To obtain and maintain placement on the list of approved unauthorized
 20 insurers, an alien insurer shall comply with the provisions of R.S. 22:435 applicable
 21 to alien insurers including but not limited to the provisions of R.S. 22:435(B)(7), and
 22 the commissioner may require an alien insurer to file a copy of the producer
 23 production report in a form prescribed by the commissioner listing all business
 24 placed with the company by licensed surplus lines brokers. The report shall be filed
 25 with the Department of Insurance no later than April fifteenth of each year. The
 26 commissioner shall remove any alien insurer from the list of approved unauthorized
 27 insurers if it ceases to comply with the provisions of R.S. 22:435 applicable to alien
 28 insurers, or if he determines that continued placement of surplus lines insurance with
 29 the insurer would not be in the best interest of the policyholders or citizens of
 30 Louisiana.

1 ~~D. The commissioner shall remove a foreign insurer from the list of~~
 2 ~~approved unauthorized insurers if:~~

3 ~~(1) The insurer does not have capital and surplus of at least fifteen million~~
 4 ~~dollars exclusive of surplus debentures and subordinated notes, as determined by his~~
 5 ~~examiners.~~

6 ~~(2) It is determined that the continued placement of surplus lines insurance~~
 7 ~~with the insurer would not be in the best interest of the policyholders or the citizens~~
 8 ~~of Louisiana.~~

9 E. C. The commissioner may remove a foreign insurer from the list of an
 10 approved unauthorized insurers insurer from the list if:

11 ~~(1) The amount of net premiums written exceeds four times the insurer's~~
 12 ~~capital and surplus. The insurer fails to pay any required fee.~~

13 ~~(2) The insurer fails to deliver any information requested by the~~
 14 ~~commissioner within thirty days.~~

15 ~~(3) The insurer issues workers' compensation insurance within the state, and~~
 16 ~~fails to establish and maintain a workers' compensation claims office pursuant to~~
 17 ~~R.S. 23:1161.1 or fails to retain a licensed claims adjuster.~~

18 ~~F.(1) The commissioner may declare an approved unauthorized insurer~~
 19 ~~ineligible if at anytime he determines any of the following:~~

20 ~~(a) (4) The insurer is in unsound financial condition or has acted in an~~
 21 ~~untrustworthy manner.~~

22 ~~(b) (5) The insurer no longer satisfies the requirements set forth in R.S.~~
 23 ~~22:435.~~

24 ~~(c) (6) The insurer has willfully violated the laws of this state.~~

25 ~~(d) (7) The insurer does not conduct a proper conducts improper claims~~
 26 ~~practice. practices, including but not limited to unfair trade practices as defined in~~
 27 ~~Part IV of Chapter 7 of this Title, R.S. 22:1961 et seq.~~

28 G. D. Upon removing an insurer from the list of approved unauthorized
 29 insurers, the commissioner shall notify the insurer and all licensed surplus lines
 30 brokers of such action in writing. Such notice to licensed surplus lines brokers may,

1 at the option of the surplus lines broker, be sent by the commissioner via electronic
2 mail.

3 H. E. The commissioner shall have the authority to adopt and promulgate
4 such rules and regulations as are necessary to carry out the provisions of this Section
5 in accordance with the Administrative Procedure Act.

6 * * *

7 §438. ~~Proof of uninsurability; affidavit~~ Acknowledgment of applicant for insurance

8 A. Any licensed surplus lines broker that procures a personal lines policy
9 with an approved unauthorized insurer or eligible unauthorized insurer shall obtain
10 from the ~~duly licensed submitting producer or broker within thirty days of applicant~~
11 for insurance no later than the date of binding an affidavit coverage, an
12 acknowledgment on a standardized form promulgated by the commissioner of
13 insurance which shall be maintained by the licensed surplus lines broker, ~~that attests~~
14 ~~to the diligent efforts of the producer or broker to place insurance coverage with~~
15 ~~admitted insurers and the results thereof.~~ The ~~affidavit~~ acknowledgment shall affirm
16 verify that:

17 (1) ~~the insured applicant for insurance~~ The applicant for insurance was
18 expressly advised prior to placement of the surplus lines insurance.

19 (2) ~~that the surplus lines insurer with whom the~~ The insurance is being may
20 be placed is with an approved unauthorized insurer or eligible unauthorized insurer.

21 (3) ~~and that in~~ In the event of insolvency of the insurer, losses shall not be
22 paid by the ~~state insurance guaranty fund,~~ Louisiana Insurance Guaranty Association.

23 (4) The applicant for insurance expressly authorizes the procurement of
24 surplus lines insurance coverage.

25 (5) ~~and that the~~ The coverage is being procured through a duly licensed
26 Louisiana surplus lines broker.

27 B. As long as the personal lines policy continues to be renewed by the same
28 approved unauthorized insurer or eligible unauthorized insurer, there shall not be a
29 need for new ~~affidavits~~ acknowledgments at each renewal. At renewal, if the
30 personal lines policy is placed with a different approved unauthorized insurer or

1 eligible unauthorized insurer, then ~~the procurement~~ of a new affidavit will
2 acknowledgment shall be ~~secured~~ obtained in the manner outlined in Subsection A
3 of this Section.

4 * * *

5 §439. Tax on surplus lines

6 * * *

7 F. The home state of the insured for purposes of this Section shall be as
8 defined in R.S. 22:46(8.1) ~~the Nonadmitted and Reinsurance Reform Act of 2010 (15~~
9 ~~U.S.C. 8206(6))~~.

10 * * *

11 Section 2. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____