

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 392
96TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 14, 2011, with recommendation that the Senate Committee Substitute do pass.

1857S.02C

TERRY L. SPIELER, Secretary.

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Section A. Sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 2 and 384.061, RSMo, are repealed and seven new sections enacted in lieu thereof, 3 to be known as sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 4 384.061, to read as follows:

384.015. As used in sections 384.011 to 384.071:

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

4 (2) "Capital" [means], funds paid in for stock or other evidence of 5 ownership;

6 (3) "Director" [means], the director of the department of insurance, 7 financial institutions and professional registration;

8 (4) "Eligible surplus lines insurer" [means], a nonadmitted insurer with 9 which a surplus lines licensee may place surplus lines insurance;

10 (5) **"Exempt commercial purchaser", any person purchasing** 11 **commercial insurance that, at the time of placement, meets the** 12 **following requirements:**

13 (a) **The person employs or retains a qualified risk manager to** 14 **negotiate insurance coverage;**

15 (b) **The person has paid aggregate nationwide commercial**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 **property and casualty insurance premiums in excess of one hundred**
17 **thousand dollars in the immediately preceding twelve months; and**

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

19 **i. The person possesses a net worth in excess of twenty million**
20 **dollars, as such amount is adjusted pursuant to subparagraph b. of this**
21 **paragraph;**

22 **ii. The person generates annual revenues in excess of fifty**
23 **million dollars, as such amount is adjusted pursuant to subparagraph**
24 **b. of this paragraph;**

25 **iii. The person employs more than five hundred full-time or full-**
26 **time equivalent employees per individual insured or is a member of an**
27 **affiliated group employing more than one thousand employees in the**
28 **aggregate;**

29 **iv. The person is a not-for-profit organization or public entity**
30 **generating annual budgeted expenditures of at least thirty million**
31 **dollars, as such amount is adjusted pursuant to subparagraph b. of this**
32 **paragraph; or**

33 **v. The person is a municipality with a population in excess of**
34 **fifty thousand persons.**

35 **b. Effective on the fifth January first occurring after the date of**
36 **the enactment of United States Public Law 111-203 and each fifth**
37 **January first occurring thereafter, the amounts in items i, ii, and iv of**
38 **subparagraph a. of this paragraph shall be adjusted to reflect the**
39 **percentage change for such five-year period in the consumer price**
40 **index for all urban consumers published by the United States Bureau**
41 **of Labor Statistic of the Department of Labor;**

42 **(6) "Export" [means], to place surplus lines insurance with a nonadmitted**
43 **insurer;**

44 **(7) "Home state":**

45 **(a) Except as provided in paragraph (b) of this subdivision, the**
46 **term "home state" means, with respect to an insured:**

47 **a. The state in which an insured maintains its principal place of**
48 **business or, in the case of an individual, the individual's principal**
49 **residence; or**

50 **b. If one hundred percent of the insured risk is located out of the**
51 **state referred to in subparagraph a. of this paragraph, the state to**
52 **which the greatest percentage of the insured's taxable premium for that**

53 **insurance contract is allocated;**

54 **(b) If more than one insured from an affiliated group are named**
55 **insureds on a single nonadmitted insurance contract, the term "home**
56 **state" means the home state, as determined pursuant to paragraph (a)**
57 **of this subdivision, of the member of the affiliated group that has the**
58 **largest percentage of premium attributed to it under such insurance**
59 **contract;**

60 **(c) The principal place of business is the state where the insured**
61 **maintains its headquarters and where the insured's high-level officers**
62 **direct, control and coordinate the business activities of the insured;**

63 **[(6)] (8) "Kind of insurance" [means], one of the types of insurance**
64 **required to be reported in the annual statement which must be filed with the**
65 **director by admitted insurers;**

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

69 **[(7)] (10) "Nonadmitted insurer" [means], an insurer not licensed to do**
70 **an insurance business in this state, including insurance exchanges authorized**
71 **under the laws of other states;**

72 **[(8)] (11) "Producing broker" [means], the individual broker or agent**
73 **dealing directly with the party seeking insurance;**

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

77 **[(9)] (13) "Surplus" [means], funds over and above liabilities and capital**
78 **of the company for the protection of policyholders;**

79 **[(10)] (14) "Surplus lines insurance" [means], any insurance of risks**
80 **resident, located or to be performed in this state, permitted to be placed through**
81 **a surplus lines licensee with a nonadmitted insurer eligible to accept such**
82 **insurance, other than reinsurance, [wet marine and transportation insurance**
83 **independently procured, and] life and health insurance and annuities;**

84 **[(11)] (15) "Surplus lines licensee" [means], a person licensed to place**
85 **insurance on risks resident, located or to be performed in this state with**
86 **nonadmitted insurers eligible to accept such insurance;**

87 **[(12)] (16) "Wet marine and transportation insurance" [means]:**

88 **(a) Insurance upon vessels, crafts, hulls and of interests therein or with**

89 relation thereto;

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

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

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

384.017. **Surplus lines** insurance may be [procured through] **placed by**
2 a surplus lines 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**
5 **its domiciliary jurisdiction;**

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

14 [(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
2 with a nonadmitted insurer, unless, at the time of placement, [such nonadmitted
3 insurer] **the surplus lines licensee has determined that the nonadmitted**
4 **insurer:**

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

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

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

11 sections 379.010 and 379.080; or

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

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

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

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

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

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

41 (4) In addition to meeting the requirements in subdivisions (1) to (3) of
42 this section, an insurer shall be an eligible surplus lines insurer if it] **or fifteen**
43 **million dollars, except that the requirements of this subdivision may be**
44 **satisfied by an insurer's possessing less than the minimum capital and**
45 **surplus upon an affirmative finding of acceptability by the director**
46 **provided that the finding shall be based upon such factors as quality**

47 **of management, capital and surplus of any parent company, company**
48 **underwriting profit and investment income trends, market availability**
49 **and company record and reputation within the industry, and in no**
50 **event shall the director make an affirmative finding of acceptability**
51 **when the nonadmitted insurer's capital and surplus is less than four**
52 **million five hundred thousand dollars; and**

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

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

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

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

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

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

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

8 (2) Submitted a completed license application on a form supplied by the

9 director; and

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

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

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

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

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

- 12 (1) The name and address of the insured or insureds;
- 13 (2) The name and address of the insurer or insurers;
- 14 (3) The subject of the insurance;
- 15 (4) A general description of the coverage;
- 16 (5) The amount of premium currently charged therefor;

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

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

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

30 4.] For the general support of the government of this state there is levied
31 upon the insured or self-insurer who procures insurance pursuant to [subsections
32 1 and 3] **subsection 1** of this section a tax at the rate of five percent of the [net]
33 **gross** amount of the premium [in respect of risks located in this state]. Before
34 April sixteenth of the year next succeeding the year in which the insurance was
35 so procured, continued or renewed, the insured shall remit to the department of
36 revenue the amount of the tax. The department of revenue shall notify the
37 director of the sums collected from each insured or self-insurer.

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

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

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

14 2. No later than within forty-five days after the end of each calendar
15 quarter ending March thirty-first, June thirtieth, September thirtieth, and

16 December thirty-first each surplus lines broker shall report under oath to the
17 director on forms prescribed by him or her a statement showing, with respect to
18 each respective calendar quarter **for nonadmitted insurance where the**
19 **home state of the insured is this state:**

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

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

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

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

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

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

Section B. Because immediate action is necessary to ensure the continued
2 application of Missouri law regulating and taxing surplus lines insurance in light
3 of United States Public Law 111-203, the repeal and reenactment of sections
4 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061 of section A of
5 this act are deemed necessary for the immediate preservation of the public
6 health, welfare, peace, and safety, and is hereby declared to be an emergency act

7 within the meaning of the constitution, and the repeal and reenactment of
8 sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061 of
9 section A of this act shall be in full force and effect upon its passage and
10 approval.

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Unofficial

Bill

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