

**As Introduced**

**132nd General Assembly**

**Regular Session**

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**H. B. No. 749**

**Representative LaTourette**

**Cosponsors: Representatives Holmes, Lang, Lipps**

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**A BILL**

To amend sections 3905.30, 3905.33, 3955.05, and 1  
3960.11 and to enact section 3905.332 of the 2  
Revised Code to authorize domestic surplus lines 3  
insurers. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3905.30, 3905.33, 3955.05, and 5  
3960.11 be amended and section 3905.332 of the Revised Code be 6  
enacted to read as follows: 7

**Sec. 3905.30.** (A) As used in sections 3905.30 to 3905.38 8  
of the Revised Code: 9

(1) Notwithstanding section 3905.01 of the Revised Code, 10  
"home state" means the state in which an insured maintains its 11  
principal place of business or, in the case of an individual, 12  
the individual's principal residence except in the case of 13  
either of the following: 14

(a) If one hundred per cent of the insured risk is located 15  
out of the state in which an insured maintains its principal 16  
place of business or principal residence as described in 17  
division (A)(1)(a) of this section, "home state" means the state 18

to which the greatest percentage of the insured's taxable 19  
premium for that insurance contract is allocated. 20

(b) If more than one insured from an affiliated group are 21  
named insureds on a single unauthorized insurance contract, 22  
"home state" means the state in which the member of the 23  
affiliated group that has the largest percentage of premium 24  
attributed to it under such insurance contract. 25

(2) "Principal place of business" means the state where 26  
the insured maintains the insured's headquarters and where the 27  
insured's high-level officers direct, control, and coordinate 28  
the business activities of the insured. 29

(B) The superintendent of insurance may issue a surplus 30  
lines broker's license to any natural person who is a resident 31  
of this or any other state or to a business entity that is 32  
organized under the laws of this or any other state. To be 33  
eligible for a resident surplus lines broker's license, a person 34  
must have both a property license and a casualty license. To be 35  
eligible for a nonresident surplus lines broker's license, a 36  
person must hold an active surplus lines broker license in the 37  
person's home state. A nonresident surplus lines broker shall 38  
obtain a nonresident license with a property and casualty line 39  
of authority in this state if the broker is or will be 40  
personally performing the due diligence requirements under 41  
section 3905.33 of the Revised Code. 42

(C) (1) A surplus lines broker's license permits the person 43  
named in the license to negotiate for and obtain insurance, 44  
other than life insurance, on property or persons in this state 45  
from ~~insurers~~ both of the following: 46

(a) Insurers not authorized to transact business in this 47

state; 48

(b) An insurer designated as a domestic surplus lines insurer pursuant to section 3905.332 of the Revised Code. 49 50

(2) Each such license expires on the thirty-first day of January next after the year in which it is issued, and may be then renewed. 51 52 53

**Sec. 3905.33.** (A) No person licensed under section 3905.30 of the Revised Code shall solicit, procure an application for, bind, issue, renew, or deliver a policy with any insurer that is not eligible to write insurance on an unauthorized basis in this state. 54 55 56 57 58

Pursuant to the "Nonadmitted and Reinsurance Reform Act of 2010," 15 U.S.C. 8201 et seq., 124 Stat. 1589, or any successor or replacement law, where this state is the home state of the insured, an insurer shall be considered eligible to write insurance on an unauthorized basis in this state if ~~either~~any of the following are true: 59 60 61 62 63 64

(1) The insurer meets the requirements and criteria in sections 5A(2) and 5C(2)(a) of the nonadmitted insurance model act adopted by the national association of insurance commissioners, or alternative nationwide uniform eligibility requirements adopted by this state through participation in a compact or other nationwide system pursuant to 15 U.S.C. 8201 et seq., 124 Stat. 1589. 65 66 67 68 69 70 71

(2) For unauthorized insurance placed with, or procured from an unauthorized insurer domiciled outside the United States, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners. 72 73 74 75 76

<u>(3) The insurer has been designated as a domestic surplus</u>	77
<u>lines insurer pursuant to section 3905.332 of the Revised Code.</u>	78
(B) (1) No surplus lines broker shall solicit, procure,	79
place, or renew any insurance with an unauthorized insurer	80
unless an agent or the surplus lines broker has complied with	81
the due diligence requirements of this section and is unable to	82
procure the requested insurance from an authorized insurer.	83
Due diligence requires an agent to contact at least five	84
of the authorized insurers the agent represents, or as many	85
insurers as the agent represents, that customarily write the	86
kind of insurance required by the insured. Due diligence is	87
presumed if declinations are received from each authorized	88
insurer contacted. If any authorized insurer fails to respond	89
within ten days after the initial contact, the agent may assume	90
the insurer has declined to accept the risk.	91
(2) Due diligence shall only be performed by an agent	92
licensed in this state that holds an active property and	93
casualty insurance agent license.	94
(3) An insurance agent or surplus lines broker is exempt	95
from the due diligence requirements of this section if the agent	96
or surplus lines broker is procuring insurance from a risk	97
purchasing group or risk retention group as provided in Chapter	98
3960. of the Revised Code.	99
(4) An insurance agent or surplus lines broker is exempt	100
from the due diligence requirements of this section if the agent	101
or surplus lines broker is seeking to procure or place	102
unauthorized insurance for a person that qualifies as an exempt	103
commercial purchaser under section 3905.331 of the Revised Code	104
and both of the following are true:	105

(a) The surplus lines broker procuring or placing the 106  
surplus lines insurance has disclosed to the exempt commercial 107  
purchaser that the insurance may or may not be available from 108  
the authorized market that may provide greater protection with 109  
more regulatory oversight. 110

(b) After receipt of the disclosure required under 111  
division (B) (4) (a) of this section, the exempt commercial 112  
purchaser has requested in writing that the insurance agent or 113  
broker procure or place the insurance from an unauthorized 114  
insurer. 115

(C) Except when exempt from due diligence requirements 116  
under division (B) of this section, an insurance agent who 117  
procures or places insurance through a surplus lines broker 118  
shall obtain a signed statement from the insured acknowledging 119  
that the insurance policy is to be placed with a company or 120  
insurer not authorized to do business in this state and 121  
acknowledging that, in the event of the insolvency of the 122  
insurer, the insured is not entitled to any benefits or proceeds 123  
from the Ohio insurance guaranty association. The statement must 124  
be on a form prescribed by the superintendent and need not be 125  
notarized. The agent shall submit the original signed statement 126  
to the surplus lines broker within thirty days after the 127  
effective date of the policy. If no other agent is involved, the 128  
surplus lines broker shall obtain the statement from the 129  
insured. 130

The surplus lines broker shall maintain the original 131  
signed statement or a copy of the statement, and the originating 132  
agent shall keep a copy of the statement, for at least five 133  
years after the effective date of the policy to which the 134  
statement pertains. A copy of the signed statement shall be 135

given to the insured at the time the insurance is bound or a 136  
policy is delivered. 137

(D) For the purpose of carrying out the "Nonadmitted and 138  
Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 139  
et seq., or any successor or replacement law, the superintendent 140  
shall conduct a fiscal analysis of the impact of entering into a 141  
multistate agreement or compact for determining eligibility for 142  
placement of unauthorized insurance and for payment, reporting, 143  
collection, and allocation of the tax on unauthorized insurance. 144  
If the fiscal analysis indicates that entering into a multistate 145  
agreement or compact is advantageous to this state, the 146  
superintendent may enter into the surplus lines insurance 147  
multistate compliance compact adopted by the national conference 148  
of insurance legislators and known as "SLIMPACT," as amended on 149  
December 21, 2010, and including any subsequent amendment; or, 150  
if it is in this state's financial best interest, the 151  
superintendent shall request that the general assembly authorize 152  
the superintendent to enter into a different multistate 153  
agreement or compact. 154

(E) The superintendent may adopt rules in accordance with 155  
Chapter 119. of the Revised Code to carry out the purposes of 156  
sections 3905.30 to 3905.38 of the Revised Code. 157

Sec. 3905.332. (A) Notwithstanding any other provision of 158  
the Revised Code, a domestic insurer may be designated a 159  
domestic surplus lines insurer pursuant to this section. 160

(B) A domestic insurer shall not be designated a domestic 161  
surplus lines insurer unless all of the following are met: 162

(1) The domestic insurer possesses minimum capital and 163  
surplus of at least fifteen million dollars. 164

(2) The domestic insurer is seeking to become a domestic surplus lines insurer pursuant to a resolution adopted by its board of directors. 165  
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(3) The superintendent of insurance has authorized the designation of the insurer as a domestic surplus lines insurer in writing. 168  
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(C) A domestic surplus lines insurer shall be considered an unauthorized insurer for the purposes of writing surplus lines insurance coverage pursuant to the requirements of this chapter. 171  
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(D) (1) A domestic surplus lines insurer shall only write surplus lines insurance in this state in accordance with the requirements of this chapter. 175  
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(2) A domestic surplus lines insurer may write surplus lines insurance in any other jurisdiction in which the insurer is eligible to write surplus lines insurance, provided that the domestic surplus lines insurer complies with any requirements of that jurisdiction. 178  
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(E) A domestic surplus lines insurer shall not engage in the business of insurance in this state on an admitted basis. 183  
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(F) Surplus lines insurance written by a domestic surplus lines insurer is subject to the tax on premiums as required in section 3905.36 of the Revised Code and is exempt from the tax on premiums required in section 5725.18 of the Revised Code. 185  
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(G) A domestic surplus lines insurer shall be considered a nonadmitted insurer as defined in 15 U.S.C. 8206 with respect to surplus lines insurance issued in this state. 189  
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(H) Surplus lines insurance policies issued in this state 192

by a domestic surplus lines insurer are not subject to the 193  
provisions of Chapter 3955. of the Revised Code nor are they 194  
subject to the protection of either Ohio insurance guaranty 195  
association account established pursuant to section 3955.06 of 196  
the Revised Code. 197

(I) Surplus lines insurance policies issued in this state 198  
by a domestic surplus lines insurer are not subject to and are 199  
exempt, in the same manner and to the same extent as surplus 200  
lines insurance policies issued by an insurer domiciled in 201  
another state, from all statutory requirements relating to all 202  
of the following: 203

(1) Insurance rating and rating plans; 204

(2) Policy forms; 205

(3) Policy cancellation and renewal. 206

(J) Unless otherwise specified in this section or 207  
specifically exempted under this chapter, a domestic surplus 208  
lines insurer shall be subject to all financial, reserve, and 209  
solvency requirements under this title that are imposed on 210  
domestic admitted insurers, as applicable. 211

**Sec. 3955.05.** Sections 3955.01 to 3955.19 of the Revised 212  
Code apply to all kinds of direct insurance, except: 213

(A) Title insurance; 214

(B) Fidelity or surety bonds, or any other bonding 215  
obligations; 216

(C) Credit insurance, vendors' single interest insurance, 217  
collateral protection insurance, or any similar insurance 218  
protecting the interests of a creditor arising out of a 219  
creditor-debtor transaction; 220



(D) Mortgage guaranty, financial guaranty, residual value,	221
or other forms of insurance offering protection against	222
investment risks;	223
(E) Ocean marine insurance;	224
(F) Any insurance provided by or guaranteed by government,	225
including, but not limited to, any department, board, office,	226
commission, agency, institution, or other instrumentality or	227
entity of any branch of state government, any political	228
subdivision of this state, the United States or any agency of	229
the United States, or any separate or joint governmental self-	230
insurance or risk-pooling program, plan, or pool;	231
(G) Contracts of any corporation by which health services	232
are to be provided to its subscribers;	233
(H) Life, annuity, health, or disability insurance,	234
including sickness and accident insurance written pursuant to	235
Chapter 3923. of the Revised Code;	236
(I) Fraternal benefit insurance;	237
(J) Mutual protective insurance of persons or property;	238
(K) Reciprocal or interinsurance contracts written	239
pursuant to Chapter 3931. of the Revised Code for medical	240
malpractice insurance if the reciprocal exchange or	241
interinsurance exchange is not subject to the risk-based capital	242
requirements in effect in the state of domicile of the	243
reciprocal exchange or interinsurance exchange. As used in this	244
division, "medical malpractice insurance" means insurance	245
coverage against the legal liability of the insured and against	246
loss, damage, or expense incident to a claim arising out of the	247
death, disease, or injury of any person as the result of	248
negligence or malpractice in rendering professional service by	249

any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.	250 251
(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;	252 253 254
(M) Warranty or service contracts, or the insurance of those contracts;	255 256
(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;	257 258
(O) Any transaction, or combination of transactions, between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, that involves the transfer of investment or credit risk unaccompanied by a transfer of insurance risk;	259 260 261 262 263
(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;	264 265
(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;	266 267
(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees;	268 269 270
<u>(S) Surplus lines insurance issued under section 3905.332</u> <u>of the Revised Code.</u>	271 272
<b>Sec. 3960.11.</b> (A) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker in accordance with Chapter 3905. of the Revised Code.	273 274 275 276 277

(B) No person shall act or aid in any manner in 278  
soliciting, negotiating, or procuring liability insurance in 279  
this state for a purchasing group from an authorized insurer or 280  
a risk retention group chartered in a state unless the person is 281  
licensed as an insurance agent or broker in accordance with 282  
Chapter 3905. of the Revised Code. 283

(C) No person shall act or aid in any manner in 284  
soliciting, negotiating, or procuring liability insurance 285  
coverage in this state for any member of a purchasing group 286  
under a purchasing group's policy unless the person is licensed 287  
as an insurance agent or broker in accordance with Chapter 3905. 288  
of the Revised Code. 289

(D) No person shall act or aid in any manner in 290  
soliciting, negotiating, or procuring liability insurance from 291  
an insurer not authorized to do business in this state, or from 292  
a domestic insurer designated as a domestic surplus lines 293  
insurer pursuant to section 3905.332 of the Revised Code, on 294  
behalf of a purchasing group located in this state unless the 295  
person is licensed as a surplus line broker in accordance with 296  
section 3905.30 of the Revised Code. 297

**Section 2.** That existing sections 3905.30, 3905.33, 298  
3955.05, and 3960.11 of the Revised Code are hereby repealed. 299