As Introduced

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Representative LaTourette
Cosponsors: Representatives Holmes, Lang, Lipps

A BILL

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

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

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

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

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

(a) If one hundred per cent of the insured risk is located out of the state in which an insured maintains its principal place of business or principal residence as described in division (A)(1)(a) of this section, "home state" means the state
to which the greatest percentage of the insured's taxable
premium for that insurance contract is allocated.

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

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

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

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

(a) Insurers not authorized to transact business in this
state;

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

(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.

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.

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:

(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.

(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.
(3) The insurer has been designated as a domestic surplus lines insurer pursuant to section 3905.332 of the Revised Code.

(B)(1) No surplus lines broker shall solicit, procure, place, or renew any insurance with an unauthorized insurer unless an agent or the surplus lines broker has complied with the due diligence requirements of this section and is unable to procure the requested insurance from an authorized insurer.

Due diligence requires an agent to contact at least five of the authorized insurers the agent represents, or as many insurers as the agent represents, that customarily write the kind of insurance required by the insured. Due diligence is presumed if declinations are received from each authorized insurer contacted. If any authorized insurer fails to respond within ten days after the initial contact, the agent may assume the insurer has declined to accept the risk.

(2) Due diligence shall only be performed by an agent licensed in this state that holds an active property and casualty insurance agent license.

(3) An insurance agent or surplus lines broker is exempt from the due diligence requirements of this section if the agent or surplus lines broker is procuring insurance from a risk purchasing group or risk retention group as provided in Chapter 3960. of the Revised Code.

(4) An insurance agent or surplus lines broker is exempt from the due diligence requirements of this section if the agent or surplus lines broker is seeking to procure or place unauthorized insurance for a person that qualifies as an exempt commercial purchaser under section 3905.331 of the Revised Code and both of the following are true:
(a) The surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight.

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

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

The surplus lines broker shall maintain the original signed statement or a copy of the statement, and the originating agent shall keep a copy of the statement, for at least five years after the effective date of the policy to which the statement pertains. A copy of the signed statement shall be
given to the insured at the time the insurance is bound or a policy is delivered.

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

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

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

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

(1) The domestic insurer possesses minimum capital and surplus of at least fifteen million dollars.
(2) The domestic insurer is seeking to become a domestic surplus lines insurer pursuant to a resolution adopted by its board of directors.

(3) The superintendent of insurance has authorized the designation of the insurer as a domestic surplus lines insurer in writing.

(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.

(D)(1) A domestic surplus lines insurer shall only write surplus lines insurance in this state in accordance with the requirements of this chapter.

(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.

(E) A domestic surplus lines insurer shall not engage in the business of insurance in this state on an admitted basis.

(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.

(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.

(H) Surplus lines insurance policies issued in this state
by a domestic surplus lines insurer are not subject to the
provisions of Chapter 3955. of the Revised Code nor are they
subject to the protection of either Ohio insurance guaranty
association account established pursuant to section 3955.06 of
the Revised Code.

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

(1) Insurance rating and rating plans;

(2) Policy forms;

(3) Policy cancellation and renewal.

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

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

(A) Title insurance;

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

(C) Credit insurance, vendors' single interest insurance,
collateral protection insurance, or any similar insurance
protecting the interests of a creditor arising out of a
creditor-debtor transaction;
(D) Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks;

(E) Ocean marine insurance;

(F) Any insurance provided by or guaranteed by government, including, but not limited to, any department, board, office, commission, agency, institution, or other instrumentality or entity of any branch of state government, any political subdivision of this state, the United States or any agency of the United States, or any separate or joint governmental self-insurance or risk-pooling program, plan, or pool;

(G) Contracts of any corporation by which health services are to be provided to its subscribers;

(H) Life, annuity, health, or disability insurance, including sickness and accident insurance written pursuant to Chapter 3923. of the Revised Code;

(I) Fraternal benefit insurance;

(J) Mutual protective insurance of persons or property;

(K) Reciprocal or interinsurance contracts written pursuant to Chapter 3931. of the Revised Code for medical malpractice insurance if the reciprocal exchange or interinsurance exchange is not subject to the risk-based capital requirements in effect in the state of domicile of the reciprocal exchange or interinsurance exchange. As used in this division, "medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death, disease, or injury of any person as the result of negligence or malpractice in rendering professional service by
any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.

(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;

(M) Warranty or service contracts, or the insurance of those contracts;

(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;

(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;

(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;

(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;

(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees;

(S) Surplus lines insurance issued under section 3905.332 of the Revised Code.

Sec. 3960.11. (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.
(B) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance agent or broker in accordance with Chapter 3905. of the Revised Code.

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

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

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