

Hall of the House of Representatives
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of House Bill No. 2143

TO AUTHORIZE THE INSURANCE COMMISSIONER TO ENTER INTO AGREEMENTS WITH
OTHER JURISDICTIONS TO REGULATE TAXES ON SURPLUS LINES INSURERS.

Amendment No. 1 to House Bill No. 2143

Amend House Bill No. 2143 as originally introduced:

Delete the title in its entirety and substitute:

"AN ACT TO AUTHORIZE THE INSURANCE COMMISSIONER TO ENTER INTO AGREEMENTS WITH OTHER JURISDICTIONS TO AID IN THE ADMINISTRATION OF TAXES ON SURPLUS LINES INSURERS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:

"TO AUTHORIZE THE INSURANCE COMMISSIONER TO ENTER INTO AGREEMENTS WITH OTHER JURISDICTIONS TO AID IN THE ADMINISTRATION OF TAXES ON SURPLUS LINES INSURERS AND TO DECLARE AN EMERGENCY."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 23-65-103 is amended to read as follows:
23-65-103. Report and tax of independently procured coverages.

(a)(1) Every An insured or self-insured whose home state is this state who ~~in this state~~ directly procures, causes to be procured, ~~or~~ continues, or renews insurance in an unauthorized insurer, ~~upon a subject of insurance resident, located, or to be performed within this state,~~ including surplus line lines insurance when procured without use of a surplus lines broker pursuant to ~~the surplus lines law~~ the insurance laws of this state, within thirty (30) days after the date the insurance was ~~so~~ procured, continued, or renewed, shall file a written report with the Insurance Commissioner on forms designated by the commissioner and furnished to the insured upon request.

(2) The report shall show:

- (A) The name and address of each named insured;
- (B) The name and address of the insurer;
- (C) The subject of the insurance;
- (D) A general description of the coverage;
- (E) The amount of premium currently charged; and



(F) Such additional pertinent information as is reasonably requested by the commissioner.

(3) If ~~any~~ the insurance also covers subjects of insurance resident, located, or to be performed outside this state, a proper pro rata portion of the entire premium payable for ~~all~~ the insurance shall be allocated as to the subjects of insurance resident, located, or to be performed in this state, for the purposes of this section.

(b) ~~Any insurance~~ Insurance in an unauthorized insurer procured through negotiations or an application, in whole or in part, occurring or made within ~~or from within~~ this state, or for which premiums, ~~in whole or in part,~~ are remitted directly or indirectly from within this state, ~~shall be deemed to be~~ is insurance procured, ~~or~~ continued, or renewed in this state within the intent of subsection (a) of this section.

(c)(1) For the general support of the government of this state there is levied upon the obligation, chose in action, ~~or~~ right represented by the premium charged, or payable for the insurance a tax at the rate of two percent (2%) of the net direct amount of the premium.

(2) The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for the insurance, and within thirty (30) days after the insurance was so procured, continued, or renewed, and coincidentally with the filing of the report with the commissioner ~~of the report provided for in~~ required by subsection (a) of this section, the insured shall pay the amount of the tax to the Treasurer of State through the commissioner.

(d) If the insured fails to withhold from the premium the amount of tax levied ~~pursuant to~~ under this section, the insured ~~shall be~~ is liable for the amount ~~thereof~~ and shall pay the amount to the commissioner within the time stated in subsection (c) of this section.

(e) ~~The~~ If the tax imposed ~~pursuant to~~ under this section ~~if is~~ delinquent, it shall bear interest at the rate of six percent (6%) per annum, compounded annually.

(f) The tax ~~shall be~~ is collectible from the insured by civil action brought by the commissioner.

(g) This section does not abrogate or modify and shall not be construed or deemed to abrogate or modify ~~any provision of § 23-65-101, which is unauthorized insurance transactions prohibited, or § 23-65-102, which is suits by unauthorized insurers prohibited,~~ or any other provision of the Arkansas Insurance Code insurance laws of this state.

(h) This section does not apply to life or accident and health insurance.

(i)(1) The tax specified in subsection (c) of this section ~~shall not be~~ is not due and payable to this state ~~in the event~~ if the unlicensed or unauthorized insurer reports and pays premium tax to this state ~~pursuant to~~ under § 26-57-603 et seq., or other applicable premium tax laws for these independently procured coverages.

(2) Upon receipt of a duplicate payment of tax from the insured and the unlicensed or unauthorized insurer, this state shall refund to the insured the amount of the duplicate payment.

SECTION 2. Arkansas Code Title 23, Chapter 65, Subchapter 3 is amended to read as follows:

23-65-301. Title.

This subchapter ~~constitutes~~ shall be known and may be referred to cited as the "Surplus Lines Insurance Law".

23-65-302. Exceptions.

~~The provisions of this~~ This subchapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

- (1) Wet marine and foreign trade insurance;
- (2) Insurance on subjects that are:
 - (A) ~~located~~ Located, resident, or to be performed wholly outside of this state; or
 - (B) ~~on~~ On vehicles or aircraft ~~owned and~~ principally garaged outside this state;
- (3) Insurance on property or operation of railroads engaged in interstate commerce; and
- (4) Insurance of aircraft:
 - (A) ~~owned~~ Owned or operated by manufacturers of aircraft; ~~;~~
 - (B) ~~or aircraft operated~~ Operated in scheduled interstate flight; ~~;~~
 - (C) ~~or cargo of the aircraft,~~ Cargo; or
 - (D) ~~against~~ Against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of the aircraft.

23-65-303. Insurer not admitted.

(a) The permission granted in this law to place any insurance in a nonadmitted insurer shall not be deemed or construed to authorize that insurer to otherwise transact an insurance business in this state. Further, this limited permission shall not be deemed or construed so as to exempt nonadmitted insurers from the principles of the common law of insurance or from the same statutory and common law penalties ~~which~~ that may attach in favor of insureds in the event of disputes or litigation between insureds and admitted insurers.

(b) A contract of insurance carried out by an unauthorized insurer in violation of this subchapter is voidable at the instance of the insurer.

23-65-304. ~~Contracts effectuated by unauthorized insurer voidable~~ Definitions.

~~A contract of insurance effectuated by an unauthorized insurer in violation of the provisions of this subchapter shall be voidable except at the instance of the insurer. As used in this subchapter:~~

- (1) "Affiliated group" means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;
- (2) "Alien insurer" means an insurance company incorporated or formed under the laws of a country other than the United States;
- (3) "Authorized insurer" means an insurance company qualified and licensed to transact business under Arkansas Code Title 23, Subtitle 3;
- (4) "Control" means:
 - (A) To own, control, or have the power of an entity directly, indirectly, or acting through one (1) or more other persons to vote twenty-

five percent (25%) or more of any class of voting securities of another entity; or

(B) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(5)(A) "Exempt commercial purchaser" means a person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i)(a) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(b) A qualified risk manager with respect to a policyholder of commercial insurance means a person who meets the definition of qualified risk manager in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months; and

(iii) The person meets at least one (1) of the following criteria:

(a) The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as the amount is adjusted under subdivision (5)(B) of this section;

(b) The person generates annual revenue in excess of fifty million dollars (\$50,000,000), as the amount is adjusted under subdivision (5)(B) of this section;

(c) The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;

(d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), as the amount is adjusted under subdivision (5)(B) of this section; or

(e) The person is a municipal corporation with a population in excess of fifty thousand (50,000) inhabitants.

(B) Beginning on January 1, 2015, and one (1) time every five (5) years thereafter, the Insurance Commissioner shall by rule adjust the amounts in subdivisions (5)(A)(iii)(a)-(b) and (5)(A)(iii)(d) of this section to reflect the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period immediately preceding January 1 of the year of adjustment;

(6)(A) "Home state" means, except as provided in subdivision (6)(B) of this section, with respect to an insured:

(i)(a) The state in which an insured maintains its principal place of business; or the state that is an individual's principal residence.

(b) As used in subdivision (6)(A)(i)(a) of this section, "principal place of business" means the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured; or

(ii) If one hundred percent (100%) of the insured risk is located out-of-state as referred to in subdivision (6)(A)(i) of this section,

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

(B) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract as determined under subdivision (6)(A) of this section;

(7) "Nonadmitted insurance" or "surplus lines insurance" means property and casualty insurance policies permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance;

(8) "Premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for the insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance;

(9) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203, and the following requirements:

(A) The person is an employee of or third-party consultant retained by the commercial policyholder;

(B) The person provides skilled services in loss prevention, loss reduction, risk and insurance coverage analysis, or purchase of insurance; and

(C) The person has:

(i) A bachelor's degree or higher from an accredited college or university in:

(a) Risk management;

(b) Business administration;

(c) Finance;

(d) Economics; or

(e) Any other field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management;

(ii) Three (3) years of experience in:

(a) Risk financing;

(b) Claims administration;

(c) Loss prevention;

(d) Risk and insurance analysis; or

(e) Purchasing commercial lines of insurance;

(iii) A designation as:

(a) A Chartered Property and Casualty Underwriter issued by the American Institute for Chartered Property and Casualty Underwriters/Insurance Institute of America;

(b) An Associate in Risk Management issued by the American Institute for Chartered Property and Casualty Underwriters/Insurance Institute of America;

(c) A Certified Risk Manager issued by the National Alliance for Insurance Education & Research;

(d) A RIMS Fellow issued by the Global Risk Management Institute; or

(e) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(iv) At least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance and any one (1) of the designations specified in subsection (9)(C)(iii) of this section;

(v) At least ten (10) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(vi) A graduate degree from an accredited college or university in:

(a) Risk management;

(b) Business administration;

(c) Finance;

(d) Economics; or

(e) Any other field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management;

(10) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Marianas Islands, the Virgin Islands, and American Samoa;

(11) "Surplus lines broker" means an individual, firm, or corporation that is licensed in a state to sell, solicit, or negotiate insurance when this state is the home state of the insured;

(12) "Surplus lines insurer" means an unauthorized company in which nonadmitted insurance coverage may be placed; and

(13) "Unauthorized insurer" means an insurance company that is not licensed to engage in the business of insurance in this state.

23-65-305. Conditions of procurement.

(a) If certain insurance coverages cannot be procured from authorized insurers, ~~coverages, hereinafter~~ coverage designated "surplus lines", may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance ~~must~~ shall be procured through a licensed surplus lines broker;

(2) ~~The~~ If this state is the home state of the insured:

(A) ~~full~~ The full amount of insurance required ~~must~~ shall not be procurable, after diligent effort has been made ~~to do so~~, from among authorized insurers who are actually marketing that kind or class of insurance in this state; and

(B) ~~the~~ The amount of insurance placed in an unauthorized insurer is only the balance over the amount procurable from authorized insurers; and

(3) The soliciting agent or broker shall maintain written documentation of compliance with ~~these~~ the requirements of this section.

(b) Surplus lines insurance may be placed by a surplus lines broker if the nonadmitted insurer:

(1) Is authorized to write the type of insurance in its domiciliary jurisdiction; and

(2) Meets the following criteria:

(A) The nonadmitted insurer has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of:

(i) The minimum capital and surplus requirements under the laws of this state; or

(ii) Fifteen million dollars (\$15,000,000); and

(B) The nonadmitted insurer is a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers as maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(c)(1) The requirements of subsection (b) of this section may be satisfied by a nonadmitted insurer possessing less than the minimum capital and surplus if the commissioner makes an affirmative finding of acceptability.

(2) The commissioner shall consider the following factors to determine a finding of acceptability for the requirements of subsection (b) of this section:

(A) Quality of management;

(B) Capital and surplus of a parent company;

(C) Company underwriting profit and investment income

trends;

(D) Market availability; and

(E) Company record and reputation within the industry.

(3) The commissioner shall not make a finding of acceptability if the nonadmitted insurer's capital and surplus is less than four and a half million dollars (\$4,500,000).

(d) Subdivision (a)(2) of this section does not apply to a surplus lines broker seeking to procure or place nonadmitted insurance in this state for an exempt commercial purchaser if:

(1) 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 admitted market that would provide greater protection with more regulatory oversight; and

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

23-65-306. Brokers' affidavits.

(a) At the time of the procuring of the surplus lines insurance in this state, when this state is considered the home state of the insured, the surplus lines broker shall:

(1) ~~execute~~ Execute an affidavit on a form prescribed by the Insurance Commissioner;

(2) ~~and containing~~ Provide any information ~~which he or she~~ that the commissioner shall require;

(3) ~~as well as setting forth~~ State facts referred to in §§ 23-65-313 and 23-65-314; and

(4) ~~shall promptly file~~ File the affidavit with the commissioner within sixty (60) days following the end of the month in which the insurance was procured.

(b) Affidavits or reports filed under this section ~~shall not be~~ are ~~not~~ subject to public inspection, unless the commissioner determines that the public interest or the welfare of the filing broker requires otherwise.

23-65-307. Endorsement of contract.

~~Every~~ An insurance contract procured on behalf of an insured whose home state is this state and delivered as surplus ~~line~~ lines coverage ~~pursuant to~~ under this subchapter shall be initiated by or bear the name of the surplus lines broker who procured it and shall contain a conspicuous statement substantially similar to the following:

“This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law, and it may in some respects be different from contracts issued by insurers in the admitted markets, and, accordingly, it may, depending upon the circumstances, be more or less favorable to an insured than a contract from an admitted carrier might be. The protection of the Arkansas Property and Casualty Guaranty Act does not apply to this contract. A tax of four percent (4%) is required to be collected from the insured on all surplus lines premiums.”

23-65-308. Licensing of surplus lines broker.

(a) If an insured's home state is this state, a person shall not procure a contract of surplus lines insurance with a nonadmitted insurer unless the insurer possesses a current surplus lines broker's license issued by the Insurance Commissioner.

(b) ~~Any~~ A person, while licensed as a resident insurance producer of this state as to property, casualty, surety, and marine insurance, who has held the license in this or another state, or both, for three (3) years ~~prior to~~ before application for a surplus lines broker's license, and who is deemed by the ~~Insurance Commissioner~~ commissioner to be competent and trustworthy, or a nonresident applicant holding a surplus lines broker license in his or her country of residency, may be licensed as a surplus lines broker as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner;

(2) The license fee shall be:

(A) in ~~in~~ In the amount stated in § 23-61-401(10) for each license year during any part of which the license is in force; and

~~(B) shall be paid~~ Paid to the commissioner;

(3) The license year shall be from the date of issuance of the license to January 1 next after its issue;

~~(3)(A)(4)(A)~~ Prior to Before issuance of the license, a resident applicant shall file with the commissioner securities acceptable to the commissioner in favor of the State of Arkansas in the penal sum of fifty thousand dollars (\$50,000), aggregate liability, with unaffiliated entities approved by the commissioner. Thereafter for as long as the license remains in effect, the resident applicant shall keep the securities in force and unimpaired.

(B) The securities shall be conditioned that the broker ~~will~~ shall conduct business under the license ~~in accordance with~~ according to the provisions of this subchapter and that he or she will promptly remit the taxes provided by the law.

~~(C) No securities shall~~ Securities shall not be terminated unless ~~not less than at least~~ sixty (60) days' prior written notice thereof is filed with the commissioner.

~~(D) No security shall~~ Securities shall not be required of a nonresident applicant licensed in the applicant's state of residency;

~~(4)(A)(i)(5)(A)(i) Prior to~~ Before issuance of the license, the commissioner shall require the applicant ~~must to~~ pass a written examination as to his or her competence to act as a surplus lines broker, ~~which shall be required by the commissioner.~~

~~(ii) No examination shall~~ An examination shall not be required of a nonresident applicant duly licensed in the applicant's state of residency.

(B) The commissioner shall give, conduct, and grade all examinations, or he or she may arrange to have examinations administered and graded by an independent testing service as specified by contract in a fair and impartial manner and without unfair discrimination between individuals examined.

(C) The commissioner may require a reasonable waiting period before reexamination of an applicant who failed to pass a previous similar examination.

(D) The examination fee shall be the same as that charged an applicant for license as an agent, broker, or solicitor under § 23-61-401.

(c) The commissioner may utilize the national insurance producer database of the National Association of Insurance Commissioners or any other equivalent uniform national database for the licensure and renewal of an individual or entity as a surplus lines broker for the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, Pub. L. No. 111-203.

23-65-309. Acceptance of business from agents by surplus lines brokers. A licensed surplus lines broker may accept and place surplus lines business for ~~any~~ an insurance agent or broker licensed in this state for the kind and class of insurance involved and may compensate the agent or broker therefor.

23-65-310. Surplus lines in solvent insurers.

(a) A surplus lines broker shall place surplus lines insurance only with insurers ~~which~~ that have been approved by the Insurance Commissioner.

(b)(1) The commissioner may maintain a list of approved foreign and alien surplus lines insurers in addition to those alien insurers maintaining status on the current National Association of Insurance Commissioners' nonadmitted insurers' quarterly listing.

(2) The approved list shall not contain:

~~(1)(A) Any~~ An insurer ~~which~~ that is not licensed in at least one (1) state of the United States for the kind of insurance involved;

~~(2)(B) Any~~ A stock insurer having capital and surplus amounting to less than three million dollars (\$3,000,000);

~~(3)(C) Any~~ A type of insurer, other than stock insurers, having surplus of less than three million dollars (\$3,000,000);

~~(4)(D)(i)~~ An alien insurer, unless:

~~(a) the~~ The insurer ~~shall have~~ has an established and effective trust fund within the United States administered by a

recognized financial institution and held for the benefit of ~~all~~ its policyholders ~~wherever located in the United States,;~~ and

~~(b) the~~ The trust fund ~~to be~~ is in the amount of not less than one million dollars (\$1,000,000).

~~(ii)(a) However, the~~ The broker may place casualty insurance with an alien insurer or a pool of alien insurers having combined capital and surplus of five million dollars (\$5,000,000) or more, so long as the insured signs an affidavit accepting the insurance.

~~(b)~~ The affidavit shall include a statement that the insurance is not available to him or her elsewhere.

~~(iii)~~ The alien insurer shall:

~~(a) annually~~ Annually report the location and balance of the trust fund to the commissioner as the commissioner prescribes; and

~~(b) shall promptly report~~ Report to the commissioner any change in the location of the trust fund;

~~(5)(E) Any An~~ insurer owned or controlled by a political sovereign or ~~any an~~ an agency of a political sovereign; or

~~(6)(F) Any An~~ insurer ~~which that~~ does not maintain on deposit ~~in accordance with~~ pursuant to § 23-63-901 et seq. eligible securities having a market value at all times of not less than one hundred thousand dollars (\$100,000) conditioned on the payment of creditors, or obligees, of the insurer in this state and the prompt payment of all claims arising and accruing to any persons during the term of the securities under ~~any a~~ a policy issued by the insurer.

~~(b)(1)(c)(1)(A)~~ Annually on or before March 1 or within any extension of time that the commissioner for good cause may have granted, Each each foreign and alien surplus lines insurer on the approved list maintained by the commissioner shall, ~~annually on or before March 1 or within any extension of time therefor which the commissioner for good cause may have granted~~ file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding.

~~(B)~~ The statement shall be in ~~such~~ general form and context, as required or not disapproved by the commissioner, ~~as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported on, and as supplemented for additional information as~~ required by the commissioner.

~~(C)(i)~~ The statement shall be verified with an oath by the president or vice president of the insurer ~~oath of the insurer's president or vice president and secretary or actuary as applicable.~~

~~(2)(ii)~~ The statement of an alien insurer shall be verified by the United States manager or other officer of the alien insurer authorized to make an oath of the insurer's United States manager or other officer duly authorized and shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible.

~~(3)(2)~~ The commissioner may waive ~~any the~~ requirement under this subsection for verification under oath.

~~(4)(3)(A)~~ The insurer shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency.

~~(B) such~~ If the insurer fails to file its report on or before the due date, the penalty to shall be collected by the commissioner, if necessary, by a civil suit therefor brought by the commissioner in the Circuit Court of Pulaski County. The commissioner may waive unless the penalty is waived by the commissioner upon a showing by the insurer of good cause for its failure to file its report on or before the date due.

~~(5)(4)~~ At the time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by § 23-61-401.

~~(6)(5)~~ In addition to information called for and furnished in connection with its annual statement, Upon written request received from the commissioner, an insurer shall promptly furnish to the commissioner as soon as reasonably possible such information with respect to any of its transactions or affairs as the commissioner may from time to time request in writing.

23-65-311. Evidence of the insurance – Changes.

(a)(1) Upon placing a surplus lines coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, the surplus lines broker's certificate if the policy is not available.

(2)(A) The certificate shall be executed by the broker and show:
(i) the The subject, coverage, conditions, and term of the insurance;

(ii) the The premium charged;
(iii) and taxes Taxes collected from the insured,
and

(iv) the The name and address of the insurer.

(B) If the direct risk is assumed by more than one (1) insurer, the certificate shall state the name, and address, and proportion of the entire direct risk assumed by each such insurer.

(b) If there is a change to the identity of the insurers after the issuance and delivery of the certificate there is any change as to the identity of the insurers, or a change to the proportion of the direct risk assumed by the insurers as stated in the broker's original certificate, or a change in any other material respect as to the insurance coverage evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverages and the insurers responsible thereunder.

(c) If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his or her certificate as provided in subsection (a) of this section, upon request therefor by the insured, the broker shall promptly provide upon a request of the insured, as soon as reasonably possible, procure from the policy of the insurer its policy evidencing such the insurance and deliver the policy to the insured in replacement of the broker's certificate theretofore issued.

(d) Any A surplus lines broker who knowingly or negligently issues a false certificate of insurance, or who fails to promptly to notify the insured of any material change with respect to the insurance by delivery to the insured of a substitute certificate as provided in subsection (b) of this section, upon conviction of the surplus lines broker, shall be subject to the

penalties provided by § 23-60-108 or to ~~any~~ a greater applicable penalty otherwise provided by law.

(e)(1)(A) Upon written request, each approved but nonadmitted surplus lines insurer shall mail or deliver the policyholder's claim loss information to the policyholder or his or her surplus lines broker within thirty (30) days from the date of receipt of the request from the policyholder.

(B) If the claim loss information is provided to the surplus lines broker, the surplus lines broker shall deliver the claim loss information to the policyholder within seven (7) days from the date of receipt of the claim loss information from the surplus lines insurer.

(C) If the surplus lines broker generates the claim loss information for the surplus lines insurer, the claim loss information shall be provided to the policyholder within thirty (30) days from the date of receipt of the request from the policyholder.

(2)(A) "Claim loss information" as used in this subsection means the:

- (i) Date of loss;
- (ii) Property insured; and
- (iii) Amount paid.

(B) "Claim loss information" as used in this subsection does not include supporting claim file documentation, including without limitation copies of claim files, investigation reports, evaluation statements, insured's statements, and documents protected by a common law or statutory privilege.

(3) The surplus lines insurer or the surplus lines broker may charge a reasonable fee for providing the claim loss information as part of the expense of underwriting the policy.

(4) The surplus lines insurer and the surplus lines broker are not required to maintain claim loss information for more than five (5) years following the termination of coverage.

23-65-312. Liability of insurer as to losses and unearned premiums.

(a)(1) ~~As to~~ If a surplus lines risk ~~which~~ has been assumed by an unauthorized insurer ~~pursuant to~~ under this subchapter, and ~~if~~ the premium ~~thereon~~ has been received by the surplus lines broker who placed the insurance, ~~in all questions thereafter arising under the coverage as between the insurer and the insured,~~ the insurer shall be deemed to have received the premium due to it for the coverage.

(2) The insurer shall be liable to the insured ~~as to~~ for:

(A) ~~losses~~ Losses covered by the insurance; and
(B) ~~for unearned~~ Unearned premiums ~~which that~~ may become payable to the insured upon cancellation of the insurance, ~~whether or not in fact the broker is indebted to the insurer with respect to the insurance or for any other cause.~~

(b) Each unauthorized insurer assuming a surplus lines direct risk ~~under this surplus lines~~ the insurance law laws of this state shall be deemed ~~thereby~~ to have subjected itself to the terms of this section.

(c) ~~Nothing in this~~ This section shall not deprive the surplus lines insurer of any right of action against the surplus lines broker.

23-65-313. Records of brokers.

(a) Each surplus lines broker shall keep in his or her office a full and true record of each ~~Arkansas~~ of his or her surplus lines contract contracts procured within this state where this state is the home state of the insured by him or her, including a copy of the daily report, if any, and showing ~~such of~~ the following items as ~~may be~~ applicable:

- (1) Amount of the insurance;
- (2) Gross premium charged;
- (3) Return premium paid, if any;
- (4) Rate of premium charged upon the several items of property;
- (5) Effective date of the contract, and the contract terms

~~thereof;~~

- (6) Name and address of the insurer;
- (7) Name and address of the insured;
- (8) Brief general description of property insured and where

located; and

(9) Other information as ~~may be~~ required by the Insurance Commissioner.

(b) The records shall ~~at all times~~ be open to examination by the commissioner and shall be kept available and open to inspection by the commissioner for the next five (5) years ~~next~~ following the termination of the contracts.

23-65-314. ~~Annual statement~~ Quarterly statement.

(a) On or before March 1, June 1, September 1, and December 1 of each year ~~Each a~~ surplus lines broker shall ~~on or before March 1 of each year~~ file with the Insurance Commissioner a statement for the preceding ~~calendar year~~ period of the surplus lines insurance transactions of an insured whose home state is the state of Arkansas.

(b) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (1) The gross amount of each kind of insurance transacted;
- (2) The aggregate gross premiums charged, exclusive of sums collected to cover state or federal taxes;
- (3) The aggregate of returned premiums and taxes paid to insureds;
- (4) The aggregate of net premiums; and
- (5) Additional information as required by the commissioner.

23-65-315. Tax on brokers.

(a) No later than sixty (60) days following the end of the month in which surplus ~~line~~ lines insurance was procured, the surplus lines broker shall remit to the Treasurer of State, through the Insurance Commissioner, ~~as a tax imposed for the privilege of transacting business as a surplus lines broker in this state,~~ a tax of four percent (4%) on the direct premiums written, less return premiums and exclusive of sums collected to cover state or federal taxes, on surplus lines insurance subject to tax transacted by the surplus lines broker during the preceding months as shown by his or her affidavit filed with the commissioner for the privilege of transacting business as a surplus lines broker in this state.

(b) ~~If a surplus lines policy covers risks or exposures only partially in this state, the tax so payable shall be computed on the proportion of the premium which is properly allocable to the risks or exposures located in this~~

~~state~~ The commissioner may participate in a multistate agreement or enter into a compact for the purpose of reporting, collecting, and apportioning surplus lines insurance premium taxes.

(c) If a surplus lines insurance policy covers risks or exposures only partially in this state and the commissioner has entered into an agreement with other states for the apportionment of premium taxes for multistate risks, the tax payable by the surplus lines broker shall be computed and paid on the proportion of the premium that is properly allocable to the risks or exposures located in this state according to the terms of the agreement.

23-65-316. Penalty for failure to file ~~annual~~ quarterly statement or remit tax.

(a)(1) If ~~any~~ a surplus lines broker fails to file his or her ~~annual~~ quarterly statement by ~~March 1~~ the due dates in § 23-65-314, he or she shall be liable for a fine of fifty dollars (\$50.00) for each day of delinquency commencing with ~~March 1~~ the due date.

(2) ~~For good cause shown and after a written request, the~~ The Insurance Commissioner may grant a reasonable extension of time within which the statement may be filed for good cause shown and after a written request.

(3) The fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.

(4) The commissioner shall pay to the Treasurer of State any fine so collected.

(b)(1) If ~~any~~ a surplus lines broker fails to remit the tax as provided by law ~~when the tax is due~~ by the due date, the surplus lines broker shall be liable for a fine of fifty dollars (\$50.00) for each day of delinquency commencing with the sixty-first day after the end of the month in which surplus lines insurance was procured.

(2) ~~However, for good cause shown, the commissioner after a written request may grant a reasonable extension of time within which the tax may be paid.~~

(3) ~~The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.~~

(4) The commissioner shall pay to the Treasurer of State any fine so collected.

23-65-317. Revocation of broker's license.

(a) The Insurance Commissioner shall revoke ~~any~~ a surplus lines broker's license:

(1) If the broker fails to file his or her annual statement or to remit the tax as required by law;

(2) If the broker fails to maintain an office, ~~or to~~ keep records, or ~~to~~ allow the commissioner to examine his or her records as required by law; or

(3) For any ~~of the causes~~ cause for which an agent's license may be revoked.

(b) The commissioner may suspend or revoke ~~any or all licenses a~~ license whenever he or she deems the suspension or revocation to be for the best interest of the people of this state.

(c) The procedures provided by § 23-64-218 for the suspension or revocation of ~~an agents' licenses~~ agent's license shall be applicable to suspension or revocation of a surplus lines broker's license.

(d) ~~No~~ A broker whose license has been ~~so~~ revoked shall not ~~again~~ be ~~so~~ licensed within one (1) year thereafter, ~~nor~~ or until payment of any fines or delinquent taxes owed by him or her have been paid.

23-65-318. Action against insurer – Service of process.

(a) When this state is the home state of the insured, ~~An~~ an unauthorized insurer may be sued upon any cause of action arising in this state under any contract issued by it as a surplus lines contract, or certificate thereof issued by the surplus lines broker, ~~pursuant to~~ under the procedure provided in ~~Acts 1939, No. 181 [repealed]~~ § 23-65-203.

(b)(1) If this state is the home state of the insured, ~~An~~ an unauthorized insurer issuing the policy or accepting the risk shall be deemed to have authorized service of process against it ~~in the manner and to the effect~~ as provided in this section and to have appointed the Insurance Commissioner as its agent for service of process issuing upon any cause of action arising in this state under any policy.

(2) The policy shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process.

23-65-319. Withdrawal of approval.

(a) The Insurance Commissioner may remove an approved surplus lines insurer if, ~~at any time,~~ the commissioner has reason to believe that the insurer:

- (1) Is in unsound financial condition;
- (2) Is no longer eligible under § 23-65-310;
- (3) Has willfully violated the laws of this state;
- (4) Does not make reasonably prompt payment of just losses and claims in this state or elsewhere; or
- (5) Has failed to file its annual statement when due.

(b) The commissioner shall promptly mail notice of ~~all~~ removals to each surplus lines broker ~~which~~ that is currently licensed.

SECTION 3. Arkansas Code Title 23, Chapter 65, is amended to add an additional subchapter to read as follows:

23-65-401. Agreement authorized – Requirements.

(a) The Insurance Commissioner may enter into written multistate agreements or compacts with other state jurisdictions on behalf of the State of Arkansas to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed on multistate surplus lines insurance.

(b) A multistate agreement or compact authorized by this subchapter may provide for:

- (1) Determining the home state for surplus lines insurers and surplus lines brokers;
- (2) Establishing the record requirements for surplus lines brokers;
- (3) Audit procedures;
- (4) The exchange of information;

(5) Uniform criteria for eligibility of insurers and eligibility for licensing of surplus lines brokers;

(6) Reporting requirements and reporting periods;

(7) Methods for collecting and forwarding surplus lines taxes;

(8) Penalties to another jurisdiction; and

(9) Rules to facilitate the administration of the multistate agreement or compact.

(c) A multistate agreement or compact authorized by this subchapter:

(1) Shall not preclude the commissioner from auditing the records of a person subject to this subchapter;

(2) Is not effective until filed with the commissioner; and

(3) Shall have the same effect as enacted legislation.

23-65-402. Applicability of multistate agreement or compact.

On and after July 21, 2011, the effective date of the Nonadmitted Reinsurance and Reform Act of 2010, Pub. L. No. 111-203, in the event of a conflict, the terms of a multistate agreement or compact shall prevail over conflicting state law.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Insurance Commissioner is not able to enter into agreements with other jurisdictions to regulate taxes on surplus lines insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read _____

By: Representative Hyde
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Chief Clerk