

SURPLUS LINES INSURANCE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code to address surplus lines of insurance.

Highlighted Provisions:

This bill:

- ▶ addresses audits conducted by a surplus lines insurer; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-15-103, as last amended by Laws of Utah 2011, Chapter 62

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-15-103** is amended to read:

31A-15-103. Surplus lines insurance -- Unauthorized insurers.

(1) Notwithstanding Section **31A-15-102**, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section **31A-14-202** may negotiate for and make an insurance contract with a person in this state and on a risk located in this state,



28 subject to the limitations and requirements of this section.

29 (2) (a) For a contract made under this section, the insurer may, in this state:

30 (i) inspect the risks to be insured;

31 (ii) collect premiums;

32 (iii) adjust losses; and

33 (iv) do another act reasonably incidental to the contract.

34 (b) An act described in Subsection (2)(a) may be done through:

35 (i) an employee; or

36 (ii) an independent contractor.

37 (3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on
38 behalf of an insurer that has no certificate of authority.

39 (b) Insurance placed with a nonadmitted insurer shall be placed with a surplus lines
40 producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,
41 and Reinsurance Intermediaries.

42 (c) The commissioner may by rule prescribe how a surplus lines producer may:

43 (i) pay or permit the payment, commission, or other remuneration on insurance placed
44 by the surplus lines producer under authority of the surplus lines producer's license to one
45 holding a license to act as an insurance producer; and

46 (ii) advertise the availability of the surplus lines producer's services in procuring, on
47 behalf of a person seeking insurance, a contract with a nonadmitted insurer.

48 (4) For a contract made under this section, a nonadmitted insurer is subject to Sections
49 [31A-23a-402](#), [31A-23a-402.5](#), and [31A-23a-403](#) and the rules adopted under those sections.

50 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
51 an employer located in this state, except for stop loss coverage issued to an employer securing
52 workers' compensation under Subsection [34A-2-201\(3\)](#).

53 (6) (a) The commissioner may by rule prohibit making a contract under Subsection (1)
54 for a specified class of insurance if authorized insurers provide an established market for the
55 class in this state that is adequate and reasonably competitive.

56 (b) The commissioner may by rule place a restriction or a limitation on and create
57 special procedures for making a contract under Subsection (1) for a specified class of insurance
58 if:

- 59 (i) there have been abuses of placements in the class; or
60 (ii) the policyholders in the class, because of limited financial resources, business
61 experience, or knowledge, cannot protect their own interests adequately.
- 62 (c) The commissioner may prohibit an individual insurer from making a contract under
63 Subsection (1) and all insurance producers from dealing with the insurer if:
- 64 (i) the insurer willfully violates:
- 65 (A) this section;
66 (B) Section [31A-4-102](#), [31A-23a-402](#), [31A-23a-402.5](#), or [31A-26-303](#); or
67 (C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);
- 68 (ii) the insurer fails to pay the fees and taxes specified under Section [31A-3-301](#); or
69 (iii) the commissioner has reason to believe that the insurer is:
- 70 (A) in an unsound condition;
71 (B) operated in a fraudulent, dishonest, or incompetent manner; or
72 (C) in violation of the law of its domicile.
- 73 (d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers
74 whose:
- 75 (A) solidity the commissioner doubts; or
76 (B) practices the commissioner considers objectionable.
- 77 (ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the
78 commissioner considers to be reliable and solid.
- 79 (iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner
80 may issue other relevant evaluations of unauthorized insurers.
- 81 (iv) An action may not lie against the commissioner or an employee of the department
82 for a written or oral communication made in, or in connection with the issuance of, a list or
83 evaluation described in this Subsection (6)(d).
- 84 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list
85 only if the unauthorized insurer:
- 86 (i) delivers a request to the commissioner to be on the list;
87 (ii) establishes satisfactory evidence of good reputation and financial integrity;
88 (iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current
89 annual statement certified by the insurer; and

90 (B) continues each subsequent year to file its annual statements with the commissioner
91 within 60 days of the day on which it is filed with the insurance regulatory authority where the
92 insurer is domiciled;

93 (iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part
94 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is
95 greater; and

96 (II) maintains in the United States an irrevocable trust fund in either a national bank or
97 a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit
98 requirements for insurers in the state where it is made, which trust fund or deposit:

99 (Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the
100 insurer's policyholders in the United States;

101 (Bb) may consist of cash, securities, or investments of substantially the same character
102 and quality as those which are "qualified assets" under Section 31A-17-201; and

103 (Cc) may include as part of the trust arrangement a letter of credit that qualifies as
104 acceptable security under Section 31A-17-404.1; or

105 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group
106 of alien individual insurers, maintains a trust fund that:

107 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
108 policyholders and creditors in the United States of each member of the group;

109 (II) may consist of cash, securities, or investments of substantially the same character
110 and quality as those which are "qualified assets" under Section 31A-17-201; and

111 (III) may include as part of this trust arrangement a letter of credit that qualifies as
112 acceptable security under Section 31A-17-404.1; and

113 (v) for an alien insurer not domiciled in the United States or a territory of the United
114 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National
115 Association of Insurance Commissioners International Insurers Department.

116 (7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly
117 or without reasonable investigation of the financial condition and general reputation of the
118 insurer, place insurance under this section with:

119 (i) a financially unsound insurer;

120 (ii) an insurer engaging in unfair practices; or

121 (iii) an otherwise substandard insurer.

122 (b) A surplus line producer may place insurance under this section with an insurer
123 described in Subsection (7)(a) if the surplus line producer:

124 (i) gives the applicant notice in writing of the known deficiencies of the insurer or the
125 limitations on the surplus line producer's investigation; and

126 (ii) explains the need to place the business with that insurer.

127 (c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the
128 surplus line producer for at least five years.

129 (d) To be financially sound, an insurer shall satisfy standards that are comparable to
130 those applied under the laws of this state to an authorized insurer.

131 (e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an
132 insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed
133 substandard.

134 (8) (a) A policy issued under this section shall:

135 (i) include a description of the subject of the insurance; and

136 (ii) indicate:

137 (A) the coverage, conditions, and term of the insurance;

138 (B) the premium charged the policyholder;

139 (C) the premium taxes to be collected from the policyholder; and

140 (D) the name and address of the policyholder and insurer.

141 (b) If the direct risk is assumed by more than one insurer, the policy shall state:

142 (i) the names and addresses of all insurers; and

143 (ii) the portion of the entire direct risk each assumes.

144 (c) A policy issued under this section shall have attached or affixed to the policy the
145 following statement: "The insurer issuing this policy does not hold a certificate of authority to
146 do business in this state and thus is not fully subject to regulation by the Utah insurance
147 commissioner. This policy receives no protection from any of the guaranty associations created
148 under Title 31A, Chapter 28."

149 (9) Upon placing a new or renewal coverage under this section, a surplus lines
150 producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the
151 insurance consisting either of:

152 (a) the policy as issued by the insurer; or
153 (b) if the policy is not available upon placing the coverage, a certificate, cover note, or
154 other confirmation of insurance complying with Subsection (8).

155 (10) If the commissioner finds it necessary to protect the interests of insureds and the
156 public in this state, the commissioner may by rule subject a policy issued under this section to
157 as much of the regulation provided by this title as is required for a comparable policy written
158 by an authorized foreign insurer.

159 (11) (a) A surplus lines transaction in this state shall be examined to determine whether
160 it complies with:

- 161 (i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;
- 162 (ii) the solicitation limitations of Subsection (3);
- 163 (iii) the requirement of Subsection (3) that placement be through a surplus lines
164 producer;
- 165 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and
- 166 (v) the policy form requirements of Subsections (8) and (10).

167 (b) The examination described in Subsection (11)(a) shall take place as soon as
168 practicable after the transaction. The surplus lines producer shall submit to the examiner
169 information necessary to conduct the examination within a period specified by rule.

170 (c) (i) The examination described in Subsection (11)(a) may be conducted by the
171 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
172 by the commissioner to conduct these examinations. The commissioner is not required to
173 authorize an additional advisory organization to conduct an examination under this Subsection
174 (11)(c).

175 (ii) The commissioner's authorization of one or more advisory organizations to act as
176 examiners under this Subsection (11)(c) shall be:

- 177 (A) by rule; and
- 178 (B) evidenced by a contract, on a form provided by the commissioner, between the
179 authorized advisory organization and the department.

180 (d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall
181 collect a stamping fee of an amount not to exceed 1% of the policy premium payable in
182 connection with the transaction.

183 (B) A stamping fee collected by the commissioner shall be deposited in the General
184 Fund.

185 (C) The commissioner shall establish a stamping fee by rule.

186 (ii) A stamping fee collected by an advisory organization is the property of the advisory
187 organization to be used in paying the expenses of the advisory organization.

188 (iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1)
189 for taxes imposed under Section 31A-3-301.

190 (iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If
191 a stamping fee is not paid when due, the commissioner or advisory organization may impose a
192 penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until
193 full payment of the stamping fee.

194 (v) A stamping fee relative to a policy covering a risk located partially in this state
195 shall be allocated in the same manner as under Subsection 31A-3-303(4).

196 (e) The commissioner, representatives of the department, advisory organizations,
197 representatives and members of advisory organizations, authorized insurers, and surplus lines
198 insurers are not liable for damages on account of statements, comments, or recommendations
199 made in good faith in connection with their duties under this Subsection (11)(e) or under
200 Section 31A-15-111.

201 (f) An examination conducted under this Subsection (11) and a document or materials
202 related to the examination are confidential.

203 (12) (a) For a surplus lines insurance transaction in the state entered into on or after
204 May 13, 2014, if an audit is required by the surplus lines insurance transaction, a surplus lines
205 insurer:

206 (i) shall exercise due diligence to initiate an audit of an insured to determine whether
207 additional premium is owed by the insured by no later than six months after the expiration of
208 the term for which premium is paid; and

209 (ii) may not audit an insured more than three years after the surplus lines insurance
210 transaction expires.

211 (b) A surplus lines insurer that does not comply with this Subsection (12) is not
212 entitled to charge or collect additional premium in excess of the premium agreed to under the
213 surplus lines insurance transaction.

214

(c) This Subsection (12) applies to the extent permitted by federal law.

Legislative Review Note

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Office of Legislative Research and General Counsel