

New law provides relative to the regulation of surplus lines insurance (property and casualty insurance coverage procured from insurers that do not have certificates of authority to sell insurance in this state), as follows:

- (1) Prior law defined an "approved unauthorized insurer" as an insurer without a certificate of authority that is on the list of approved unauthorized insurers maintained by the commissioner of insurance pursuant to existing law and from which a licensed surplus lines broker may procure insurance.

New law retains prior law but additionally stipulates that such an insurer shall meet the eligibility criteria of authorization in its domiciliary jurisdiction to write the type of insurance placed and of certain capital and surplus requirements as provided in (7) below of new law.

- (2) New law adds the definition of an "eligible unauthorized insurer" as an insurer which meets all provisions of (1) above of new law with the exception that it is not on the list of approved unauthorized insurers maintained by the commissioner of insurance.
- (3) New law adds the definition of "home state", with respect to an insured on a surplus lines insurance policy, as a state which may be identified as any one of the following:
  - (a) The state in which an insured maintains its principal place of business or, with respect to an individual, that individual's place of residence.
  - (b) When 100% of the insured risk is located outside of the state wherein the insured's principal place of business or residence is located, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
  - (c) When more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the state shall be determined according to the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines contract. Such member's home state shall be either the state wherein that member's principal place of business or residence is located or, in cases where 100% of that member's insured risk is located out of the state which is his principal place of business or residence, the state to which the greatest percentage of such member's taxable premium is allocated.

New law further provides that an insured's home state, as determined in accordance with new law, shall be the state to have sole statutory and regulatory jurisdiction over the placement of surplus lines insurance pursuant to federal law.

New law additionally provides that the insured's home state shall have exclusive authority to require the payment of any premium tax on surplus lines insurance pursuant to federal law.

- (4) Existing law defined "surplus lines insurance" as a type of property and casualty insurance on property, risk, or exposure located or to be performed in this state, permitted to be placed through a licensed surplus lines broker with an approved unauthorized insurer.

New law includes such insurance placed with an eligible unauthorized insurer as surplus lines insurance.

- (5) Prior law provided that the placement of insurance coverage with a surplus lines insurer (otherwise referred to as an approved unauthorized insurer or a non-admitted insurer) through a surplus lines broker may occur only if such coverage is not available from an authorized insurer (otherwise known as an admitted insurer).

New law removes the requirement that insurance not be available from an authorized insurer, thus authorizing placement of insurance with a surplus lines insurer without regard to the availability of authorized insurance. Further specifically includes eligible unauthorized insurers as surplus lines insurers and authorizes such placement with those insurers.

- (6) Prior law required that a list of approved authorized insurers be maintained by the commissioner and prohibits placement of surplus lines insurance with an insurer which is not on such list.

New law specifies that the commissioner maintain a list of approved unauthorized insurers from those eligible unauthorized insurers that apply for approval and satisfy the criteria established by the commissioner. Stipulates that placement on the list of approved unauthorized insurers shall be prima facie evidence that an unauthorized insurer meets the financial and eligibility criteria of new law.

New law further makes such requirements for approval less administratively burdensome by eliminating certification of documents available through online systems for regulators accessible to the Dept. of Insurance. Deletes provisions for mandatory removal from the list for failure to timely file an annual statement. Consolidates the causes for removal from the approved list and makes removal discretionary with the commissioner.

- (7) Prior law provided extensive eligibility requirements for surplus lines insurers, including specific capital, surplus, bond, and deposit requirements.

New law deletes many of these eligibility requirements in order to conform to the federal Nonadmitted and Reinsurance Reform Act (NRRA) of 2010 which preempts numerous state laws and regulations regarding surplus lines insurance. Establishes new minimum capital and surplus requirements that conform to the NRRA for foreign surplus lines insurers, specifically requiring that they have either the minimum capital and surplus required in this state or \$15 million. Gives the commissioner of insurance the discretion to approve a surplus lines insurer with a smaller capital and surplus but at least \$4.5 million upon a finding that the insurer is acceptable after considering factors listed in new law. Further provides that alien insurers that are on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners (NAIC) or that meet the requirements for foreign insurers may be approved by the commissioner. Retains requirements for surplus lines brokers to submit reports and information requested by the commissioner of insurance.

- (8) Prior law authorized the commissioner, by regulation or directive, to require that the insured met minimum financial requirements and to require certification from the producer or broker that the insurer met the financial and any other requirements promulgated by the Dept. of Insurance for insurance coverage by an unauthorized insurer which had not been approved by the department pursuant to prior law.

New law deletes this authorization.

- (9) Prior law prohibited persons from acting as producers or brokers to unauthorized insurers that had not been approved by the Dept. of Insurance unless each of the following criteria were met:

- (a) The insurance was limited to commercial property and liability, including commercial marine.
- (b) The insurance coverage was excess coverage with an attachment point of at least \$25 million for property and \$10 million for liability, unless the department required a different amount.
- (c) The producer or broker had obtained approval from the department for each policy.

- (d) The producer or broker had informed the insured in writing that the insurer has not been approved by the department.

New law deletes this prohibition.

- (10) Prior law required a submitting producer (agent) to submit an affidavit to the surplus lines broker prior to obtaining surplus lines coverage affirming that the applicant for insurance is not able to obtain authorized personal lines insurance after diligent efforts by the producer. Also prescribed the content of the affidavit, including that in the event of insolvency of the surplus lines insurer, losses would not be paid by the Insurance Guaranty Association.

New law eliminates the requirement for an affidavit for personal lines policies, including the requirement that the applicant for insurance is not able to obtain authorized personal lines insurance after diligent efforts by the producer. Instead requires that a producer obtain an acknowledgment from the applicant for personal lines insurance prior to obtaining surplus lines coverage, whether from an approved or an eligible unauthorized insurer. Makes contents of the certificate those of the acknowledgment, but adds a statement that the applicant of insurance expressly authorizes the procurement of surplus lines insurance coverage.

Effective upon signature of governor (June 10, 2013).

(Amends R.S. 22:46(2) and (17), 431, 432, 433, 435, 436, 438, and 439(F); Adds R.S. 22:46(7.1) and (8.1))