

SECOND REGULAR SESSION

HOUSE BILL NO. 1361

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOSEN (Sponsor) AND WIELAND (Co-sponsor).

514IH.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 379.316, 384.015, 384.017, 384.021, and 384.023, RSMo, and to enact in lieu thereof six new sections relating to domestic surplus lines insurers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 379.316, 384.015, 384.017, 384.021, and 384.023, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 379.316, 384.015,
3 384.017, 384.018, 384.021, and 384.023, to read as follows:

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance
2 companies incorporated pursuant to sections 379.035 to 379.355, section 379.080, sections
3 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance
4 companies of a similar type incorporated pursuant to the laws of any other state of the United
5 States, and alien insurers licensed to do business in this state, which transact fire and allied lines,
6 marine and inland marine insurance, to any and all combinations of the foregoing or parts
7 thereof, and to the combination of fire insurance with other types of insurance within one policy
8 form at a single premium, on risks or operations in this state, except:

- 9 (1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;
10 (2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection
11 and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland
12 marine, insurance policies;
13 (3) Insurance against loss or damage to aircraft;
14 (4) All forms of motor vehicle insurance; [and]
15 (5) All forms of life, accident and health, and workers' compensation insurance; **and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **(6) All insurance issued by a domestic surplus lines insurer as set forth in section**
 17 **384.018.**

18 2. Inland marine insurance shall be deemed to include insurance now or hereafter defined
 19 by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the
 20 director, or as established by general custom of the business, as inland marine insurance.

21 3. Commercial property and commercial casualty insurance policies are subject to rate
 22 and form filing requirements as provided in section 379.321.

384.015. As used in sections 384.011 to 384.071, the following terms shall mean:

2 (1) "Admitted insurer", an insurer licensed to do an insurance business in this state;

3 (2) "Capital", funds paid in for stock or other evidence of ownership;

4 (3) "Director", the director of the department of insurance, financial institutions and
 5 professional registration;

6 (4) **"Domestic surplus lines insurer", a nonadmitted insurer that is domiciled in this**
 7 **state with which a surplus lines licensee may place surplus lines insurance;**

8 (5) "Eligible surplus lines insurer", a nonadmitted insurer with which a surplus lines
 9 licensee may place surplus lines insurance;

10 [(5)] **(6) "Exempt commercial purchaser", any person purchasing commercial insurance**
 11 **that, at the time of placement, meets the following requirements:**

12 (a) The person employs or retains a qualified risk manager to negotiate insurance
 13 coverage;

14 (b) The person has paid aggregate nationwide commercial property and casualty
 15 insurance premiums in excess of one hundred thousand dollars in the immediately preceding
 16 twelve months; and

17 (c) a. The person meets at least one of the following criteria:

18 (i) The person possesses a net worth in excess of twenty million dollars, as such amount
 19 is adjusted under subparagraph b. of this paragraph;

20 (ii) The person generates annual revenues in excess of fifty million dollars, as such
 21 amount is adjusted under subparagraph b. of this paragraph;

22 (iii) The person employs more than five hundred full-time or full-time equivalent
 23 employees per individual insured or is a member of an affiliated group employing more than one
 24 thousand employees in the aggregate;

25 (iv) The person is a not-for-profit organization or public entity generating annual
 26 budgeted expenditures of at least thirty million dollars, as such amount is adjusted under
 27 subparagraph b. of this paragraph; or

28 (v) The person is a municipality with a population in excess of fifty thousand persons.

29 b. Effective on the fifth January first occurring after the date of the enactment of United

30 States Public Law 111-203 and each fifth January first occurring thereafter, the amounts in items
31 (i), (ii), and (iv) of subparagraph a. of this paragraph shall be adjusted to reflect the percentage
32 change for such five-year period in the Consumer Price Index for All Urban Consumers
33 published by the United States Bureau of Labor Statistic of the Department of Labor;

34 [(6)] (7) "Export", to place surplus lines insurance with a nonadmitted insurer;

35 [(7)] (8) "Home state":

36 (a) Except as provided in paragraph (b) of this subdivision, the term "home state" means,
37 with respect to an insured:

38 a. The state in which an insured maintains its principal place of business or, in the case
39 of an individual, the individual's principal residence; or

40 b. If one hundred percent of the insured risk is located out of the state referred to in
41 subparagraph a. of this paragraph, the state to which the greatest percentage of the insured's
42 taxable premium for that insurance contract is allocated;

43 (b) If more [than one insured] **insureds than one** from an affiliated group are named
44 insureds on a single nonadmitted insurance contract, the term "home state" means the home state,
45 as determined under paragraph (a) of this subdivision, of the member of the affiliated group that
46 has the largest percentage of premium attributed to it under such insurance contract;

47 (c) The principal place of business is the state where the insured maintains its
48 headquarters and where the insured's high-level officers direct, control and coordinate the
49 business activities of the insured;

50 [(8)] (9) "Kind of insurance", one of the types of insurance required to be reported in the
51 annual statement which must be filed with the director by admitted insurers;

52 [(9)] (10) "Nonadmitted insurance", any property and casualty insurance permitted to be
53 placed directly or through a surplus lines licensee with a nonadmitted insurer eligible to accept
54 such insurance;

55 [(10)] (11) "Nonadmitted insurer", an insurer not licensed to do an insurance business
56 in this state, including insurance exchanges authorized under the laws of other states, **but does**
57 **not include a risk retention group, as that term is defined in the Liability Risk Retention**
58 **Act of 1986 (15 U.S.C. Section 3901(a)(4));**

59 [(11)] (12) "Producing broker", the individual broker or agent dealing directly with the
60 party seeking insurance;

61 [(12)] (13) "Qualified risk manager", shall have the same meaning prescribed in the
62 Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. Section 8206);

63 [(13)] (14) "Surplus", funds over and above liabilities and capital of the company for the
64 protection of policyholders;

65 [(14)] (15) "Surplus lines insurance", any insurance of risks resident, located or to be
 66 performed in this state, permitted to be placed through a surplus lines licensee with a
 67 nonadmitted insurer eligible to accept such insurance, other than reinsurance, and life and health
 68 insurance and annuities;

69 [(15)] (16) "Surplus lines licensee", a person licensed to place insurance on risks
 70 resident, located or to be performed in this state with nonadmitted insurers eligible to accept such
 71 insurance;

72 [(16)] (17) "Wet marine and transportation insurance":

73 (a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

74 (b) Insurance of marine builder's risks, marine war risks and contracts of marine
 75 protection and indemnity insurance;

76 (c) Insurance of freights and disbursements pertaining to a subject of insurance coming
 77 within this section; and

78 (d) Insurance of personal property and interests therein, in the course of exportation from
 79 or importation into any country, or in the course of transportation coastwise or on inland waters,
 80 including transportation by land, water or air from point of origin to final destination, in
 81 connection with any and all risks or periods of navigation, transit or transportation, and while
 82 being prepared for and while awaiting shipment, and during any delays, transshipment, or
 83 reshipment incident thereto.

384.017. Surplus lines insurance may be placed by a surplus lines licensee if:

- 2 (1) Each insurer is an eligible surplus lines insurer;
- 3 (2) [Each insurer is authorized to write the type of insurance in its domiciliary
- 4 jurisdiction;
- 5 (3)] The full amount or kind of insurance is not obtainable from admitted insurers who
- 6 are actually transacting in this state the class of insurance required by the insured. Insurance
- 7 shall be deemed obtainable within the meaning of this section if there is available a market with
- 8 admitted insurers that can supply the insured's requirements both as to type of coverage and as
- 9 to quality of service. "Type of coverage", as used in this section, refers to hazards covered and
- 10 limits of coverage. "Quality of security and service", as used in this section, refers to the rating
- 11 by a recognized financial service; and

12 [(4)] (3) All other requirements of sections 384.011 to 384.071 are met.

**384.018. 1. A nonadmitted insurer that is domiciled in this state will be deemed a
 2 domestic surplus lines insurer if all of the following are satisfied:**

- 3 (1) **The insurer possesses policyholder surplus of at least twenty million dollars;**
- 4 (2) **The insurer is an approved or eligible surplus lines insurer in at least one**
- 5 **jurisdiction other than this state;**

6 **(3) The board of directors of the insurer has passed a resolution seeking to be a**
7 **domestic surplus lines insurer in this state; and**

8 **(4) The director has given written approval for the insurer to be a domestic surplus**
9 **lines insurer.**

10 **2. For the purposes of the federal Nonadmitted and Reinsurance Act of 2010 (15**
11 **U.S.C. Section 8201), a domestic surplus lines insurer shall be considered a nonadmitted**
12 **insurer as the term is defined in the Act with respect to risks insured in this state.**

13 **3. A domestic surplus lines insurer is deemed an eligible surplus lines insurer**
14 **authorized to write any kind of insurance that a nonadmitted insurer not domiciled in this**
15 **state is eligible to write.**

16 **4. Notwithstanding any other statute, the policies issued in this state by a domestic**
17 **surplus lines insurer shall be subject to taxes assessed upon surplus lines policies issued by**
18 **nonadmitted insurers, including the surplus lines premium tax under section 384.059, but**
19 **will not be subject to other taxes levied upon admitted insurers whether domestic or**
20 **foreign, including, but not limited to, taxes imposed by section 148.320.**

21 **5. Policies issued by a domestic surplus lines insurer are not subject to protections**
22 **of, or other provisions of the Missouri property and casualty insurance guarantee**
23 **association act, or the Missouri life and health insurance guaranty association act.**

24 **6. All financial and solvency requirements imposed by this state's law upon**
25 **domestic admitted insurers shall apply to domestic surplus lines insurers unless domestic**
26 **surplus lines insurers are otherwise specifically exempted.**

 384.021. 1. A surplus lines licensee shall not place coverage with a nonadmitted insurer,
2 unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted
3 insurer:

4 **(1) Is authorized to write the kind of insurance in its domiciliary jurisdiction and**
5 **meets one of these criteria:**

6 **(a) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction,**
7 **which equals the greater of the minimum capital and surplus requirements under the laws of this**
8 **state or fifteen million dollars, except that the requirements of this subdivision may be satisfied**
9 **by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding**
10 **of acceptability by the director provided that the finding shall be based upon such factors as**
11 **quality of management, capital and surplus of any parent company, company underwriting profit**
12 **and investment income trends, market availability and company record and reputation within the**
13 **industry, and in no event shall the director make an affirmative finding of acceptability when the**
14 **nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars;**
15 **[and] or**

16 [(2)] (b) Appears on the most recent list of eligible surplus lines insurers published by
17 the director from time to time but at least semiannually or on the most recent quarterly listing of
18 alien insurers maintained by the international insurers department of the National Association
19 of Insurance Commissioners.

20 2. Notwithstanding any other provision of this chapter or rules adopted to implement the
21 provisions of this chapter, a surplus lines licensee seeking to procure or place nonadmitted
22 insurance in Missouri for an exempt commercial purchaser shall not be required to satisfy any
23 requirement to make a due diligence search to determine whether the full amount or type of
24 insurance sought by such exempt commercial purchaser can be obtained from nonadmitted
25 insurers if:

26 (1) The surplus lines licensee procuring or placing the surplus lines insurance has
27 disclosed to the exempt commercial purchaser that such insurance may or may not be available
28 from the admitted market that may provide greater protection with more regulatory oversight;
29 and

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

384.023. [Only that portion of any] Risk eligible for export [for which the full amount
2 of coverage is not procurable from eligible surplus lines insurers] may be placed with any other
3 nonadmitted insurer which does not appear on the list of eligible surplus lines insurers published
4 by the director pursuant to **paragraph (b) of subdivision [(4)] (1) of subsection 1** of section
5 384.021 but nonetheless meets the requirements set forth in **paragraph (a) of [subdivisions (1)**
6 **to (3)] subdivision (1) of subsection 1** of section 384.021 and [any] **related complying**
7 regulations of the director. The surplus lines licensee seeking to provide coverage through an
8 unlisted nonadmitted insurer shall make a filing specifying the amount and percentage of each
9 risk to be placed, and naming the nonadmitted insurer with which placement is intended. Within
10 twenty days after placing the coverage, the surplus lines licensee shall also send written notice
11 to the insured or the producing broker that the insurance, or a portion thereof, has been placed
12 with such nonadmitted insurer.

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