

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE

FOR

HOUSE BILL NO. 1361

1 AN ACT

2 To repeal sections 384.015, 384.017, 384.021, and
3 384.023, RSMo, and to enact in lieu thereof five new
4 sections relating to domestic surplus lines insurers.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
6 AS FOLLOWS:

7 Section A. Sections 384.015, 384.017, 384.021, and 384.023,
8 RSMo, are repealed and five new sections enacted in lieu thereof,
9 to be known as sections 384.015, 384.017, 384.018, 384.021, and
10 384.023, to read as follows:

11 384.015. As used in sections 384.011 to 384.071, the
12 following terms shall mean:

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

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

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

19 (4) "Domestic surplus lines insurer", a nonadmitted insurer
20 that is domiciled in this state with which a surplus lines
21 licensee may place only surplus lines insurance;

22 (5) "Eligible surplus lines insurer", a nonadmitted insurer
23 with which a surplus lines licensee may place surplus lines

1 insurance;

2 [(5)] (6) "Exempt commercial purchaser", any person
3 purchasing commercial insurance that, at the time of placement,
4 meets the following requirements:

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

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

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

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

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

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

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

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

28 b. Effective on the fifth January first occurring after the

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

8 [(6)] (7) "Export", to place surplus lines insurance with a
9 nonadmitted insurer;

10 [(7)] (8) "Home state":

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

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

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

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

28 (c) The principal place of business is the state where the

1 insured maintains its headquarters and where the insured's
2 high-level officers direct, control and coordinate the business
3 activities of the insured;

4 [(8)] (9) "Kind of insurance", one of the types of
5 insurance required to be reported in the annual statement which
6 must be filed with the director by admitted insurers;

7 [(9)] (10) "Nonadmitted insurance", any property and
8 casualty insurance permitted to be placed directly or through a
9 surplus lines licensee with a nonadmitted insurer eligible to
10 accept such insurance;

11 [(10)] (11) "Nonadmitted insurer", an insurer not licensed
12 to do an insurance business in this state, including insurance
13 exchanges authorized under the laws of other states, but does not
14 include a risk retention group, as that term is defined in the
15 Liability Risk Retention Act of 1986 (15 U.S.C. Section
16 3901(a)(4));

17 [(11)] (12) "Producing broker", the individual broker or
18 agent dealing directly with the party seeking insurance;

19 [(12)] (13) "Qualified risk manager", shall have the same
20 meaning prescribed in the Nonadmitted and Reinsurance Reform Act
21 of 2010 (15 U.S.C. Section 8206);

22 [(13)] (14) "Surplus", funds over and above liabilities and
23 capital of the company for the protection of policyholders;

24 [(14)] (15) "Surplus lines insurance", any insurance of
25 risks resident, located or to be performed in this state,
26 permitted to be placed through a surplus lines licensee with a
27 nonadmitted insurer eligible to accept such insurance, other than
28 reinsurance, and life and health insurance and annuities;

1 [(15)] (16) "Surplus lines licensee", a person licensed to
2 place insurance on risks resident, located or to be performed in
3 this state with nonadmitted insurers eligible to accept such
4 insurance;

5 [(16)] (17) "Wet marine and transportation insurance":

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

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

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

12 (d) Insurance of personal property and interests therein,
13 in the course of exportation from or importation into any
14 country, or in the course of transportation coastwise or on
15 inland waters, including transportation by land, water or air
16 from point of origin to final destination, in connection with any
17 and all risks or periods of navigation, transit or
18 transportation, and while being prepared for and while awaiting
19 shipment, and during any delays, transshipment, or reshipment
20 incident thereto.

21 384.017. Surplus lines insurance may be placed by a surplus
22 lines licensee if:

23 (1) Each insurer is an eligible surplus lines insurer;

24 (2) [Each insurer is authorized to write the type of
25 insurance in its domiciliary jurisdiction;

26 (3)] The full amount or kind of insurance is not obtainable
27 from admitted insurers who are actually transacting in this state
28 the class of insurance required by the insured. Insurance shall

1 be deemed obtainable within the meaning of this section if there
2 is available a market with admitted insurers that can supply the
3 insured's requirements both as to type of coverage and as to
4 quality of service. "Type of coverage", as used in this section,
5 refers to hazards covered and limits of coverage. "Quality of
6 security and service", as used in this section, refers to the
7 rating by a recognized financial service; and

8 [(4)] (3) All other requirements of sections 384.011 to
9 384.071 are met.

10 384.018. 1. A nonadmitted insurer that is domiciled in
11 this state will be deemed a domestic surplus lines insurer if all
12 of the following are satisfied:

13 (1) The insurer possesses policyholder surplus of at least
14 twenty million dollars;

15 (2) The insurer is an approved or eligible surplus lines
16 insurer in at least one jurisdiction other than this state;

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

20 (4) The director has given written approval for the insurer
21 to be a domestic surplus lines insurer.

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

27 3. A domestic surplus lines insurer is deemed an eligible
28 surplus lines insurer authorized to write any kind of insurance

1 that a nonadmitted insurer not domiciled in this state is
2 eligible to write.

3 4. Notwithstanding any other statute, the policies issued
4 in this state by a domestic surplus lines insurer shall be
5 subject to taxes assessed upon surplus lines policies issued by
6 nonadmitted insurers, including the surplus lines premium tax
7 under section 384.059, but will not be subject to other taxes
8 levied upon admitted insurers whether domestic or foreign,
9 including, but not limited to, taxes imposed by section 148.320.

10 5. Policies issued by a domestic surplus lines insurer are
11 not subject to protections of, or other provisions of the
12 Missouri property and casualty insurance guarantee association
13 act, or the Missouri life and health insurance guaranty
14 association act.

15 6. All financial and solvency requirements imposed by
16 chapters 374, 375, 379, and 382 upon domestic admitted insurers
17 shall apply to domestic surplus lines insurers unless domestic
18 surplus lines insurers are otherwise specifically exempted.

19 7. A domestic surplus lines insurer shall not be subject to
20 and shall be exempt from all statutory requirements relating to
21 insurance rating plans, policy forms, policy cancellation and
22 nonrenewal, and premium charged to the insured in the same manner
23 and to the same extent as a nonadmitted insurer domiciled in
24 another state.

25 8. The director may promulgate rules under section 374.045
26 and amend such rules relating to domestic surplus lines insurers
27 as are necessary to enable the director to carry out the
28 provisions of chapter 384.

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

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

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

22 [(2)] (b) Appears on the most recent list of eligible
23 surplus lines insurers published by the director from time to
24 time but at least semiannually or on the most recent quarterly
25 listing of alien insurers maintained by the international
26 insurers department of the National Association of Insurance
27 Commissioners.

28 2. Notwithstanding any other provision of this chapter or

1 rules adopted to implement the provisions of this chapter, a
2 surplus lines licensee seeking to procure or place nonadmitted
3 insurance in Missouri for an exempt commercial purchaser shall
4 not be required to satisfy any requirement to make a due
5 diligence search to determine whether the full amount or type of
6 insurance sought by such exempt commercial purchaser can be
7 obtained from nonadmitted insurers if:

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

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

16 384.023. **[Only that portion of any]** Risk eligible for export
17 **[for which the full amount of coverage is not procurable from**
18 **eligible surplus lines insurers]** may be placed with any other
19 nonadmitted insurer which does not appear on the list of eligible
20 surplus lines insurers published by the director pursuant to
21 paragraph (b) of subdivision [(4)] (1) of subsection 1 of section
22 384.021 but nonetheless meets the requirements set forth in
23 **[subdivisions (1) to (3)]** paragraph (a) of subdivision (1) of
24 subsection 1 of section 384.021 and **[any]** related complying
25 regulations of the director. The surplus lines licensee seeking
26 to provide coverage through an unlisted nonadmitted insurer shall
27 make a filing specifying the amount and percentage of each risk
28 to be placed, and naming the nonadmitted insurer with which

1 placement is intended and shall pay the tax due pursuant to
2 section 384.059. Within twenty days after placing the coverage,
3 the surplus lines licensee shall also send written notice to the
4 insured or the producing broker that the insurance, or a portion
5 thereof, has been placed with such nonadmitted insurer.

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