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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO INSURANCE - SURPLUS LINES INSURANCE

Introduced By: Representatives Solomon, Kennedy, and Casey

Date Introduced: February 24, 2021

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 27-3-38 of the General Laws in Chapter 27-3 entitled "Surplus Lines
2 Insurance" is hereby amended to read as follows:

3 **27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance --**
4 **Reports and records -- Premium tax -- Notice to purchasers.**

5 (a) The insurance commissioner may issue a surplus line broker's license to any person
6 authorizing the licensee to procure, subject to the restrictions provided in this section, policies of
7 insurance, except life and health and accident, [except as allowed under § 27-3-38.3](#), from eligible
8 surplus lines insurers. Residents of this state must hold ~~a property and casualty~~ [an](#) insurance
9 producer license to qualify for a surplus lines broker license. This license may be denied,
10 suspended, or revoked by the insurance commissioner whenever, in the commissioner's judgment,
11 any of the bases under § 27-2.4-14 exist. Before any license is issued by the insurance commissioner
12 and before each renewal of a license, there shall be filed in his or her office a written application
13 by the person desiring the license in the form, and containing any information, that the insurance
14 commissioner may prescribe. For the purposes of carrying out the provisions of the Nonadmitted
15 and Reinsurance Reform Act of 2010, the commissioner is authorized to utilize the national
16 insurance producer database of the National Association of Insurance Commissioners (NAIC), or
17 any other equivalent uniform national database, for the licensure of a person as a surplus lines
18 producer and for renewal of such license. For insureds whose home state is this state, a person shall
19 not procure a contract of surplus lines insurance with a nonadmitted insurer unless the person

1 possesses a current surplus lines insurance license issued by the commissioner.

2 (b) A Rhode Island resident business entity acting as a surplus line broker may elect to
3 obtain a surplus line broker license. Application shall be made using the uniform business entity
4 application. Prior to approving the application, the commissioner shall find both of the following:

5 (1) The business entity has paid the appropriate fees.

6 (2) The business entity has designated a licensed surplus line broker responsible for the
7 business entity's compliance with the insurance laws and rules of this state.

8 (c) When any policy of insurance is procured under the authority of that license, there shall
9 be executed, both by the licensee and by the insured, affidavits setting forth facts showing that the
10 insured, or a licensed Rhode Island producer, were unable, after diligent effort, to procure from no
11 less than three (3) admitted insurers the full amount of insurance required to protect the property
12 owned or controlled by the insured or the risks insured. Provided, however, the aforementioned
13 affidavit shall not be required when insuring the following interest: amusement parks and devices,
14 environmental improvement and/or remediation sites, vacant property or property under
15 renovation, demolition operations, event cancellation due to weather, railroad liability,
16 discontinued products, fireworks and pyrotechnics, warehouseman's legal liability, excess property
17 coverage, private flood, and contingent liability. In addition, no such affidavit is required for
18 exempt commercial purchasers as defined by the Nonadmitted and Reinsurance Reform Act of
19 2010. For purposes of this section, residual market mechanisms shall not be considered authorized
20 insurers. Prior to renewing, continuing, or extending any policy, the licensed surplus line broker
21 must confirm that the insurer is on the insurance commissioner's list of approval surplus line
22 insurers in this state.

23 (d) The licensee shall keep a complete and separate record of all policies procured from
24 approved surplus lines insurers under the license and these records shall be open to the examination
25 of both the insurance commissioner and tax administrator at all reasonable times and shall show
26 the exact amount of each kind of insurance permitted under this section which has been procured
27 for each insured; the gross premiums charged by the insurers for each kind of insurance permitted
28 under this section which were returned to each insured; the name of the insurer or insurers which
29 issued each of these policies; the effective dates of these policies; and the terms for which these
30 policies were issued. The licensee shall file a yearly report with the insurance commissioner on a
31 form prescribed by the insurance commissioner showing the business procured under the surplus
32 line license for the preceding calendar year, and the report shall be due annually on or before April
33 1.

34 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section

1 shall file with the insurance commissioner, at the time of the insurance producer license renewal,
2 sufficient information, as determined by the insurance commissioner, whether a licensee or a person
3 acting on the licensee's behalf, has paid to the tax administrator, for all policies procured by the
4 licensee pursuant to the license during the next preceding calendar year, a tax, computed at the rate
5 of four percent (4%) on the gross premiums charged the insured by the insurers, less the amount of
6 premiums returned to the insured.

7 (f) Every application form for insurance from a surplus lines insurer, every affidavit form
8 executed by the insured, and every policy (on its front and declaration pages) issued by the surplus
9 lines insurer, shall contain in ten-point (10) type the following notice:

10 NOTICE

11 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT
12 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A
13 SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND
14 INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE
15 PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND
16 ARE NOT AVAILABLE.

17 SECTION 2. Section 27-7.1-11.1 of the General Laws in Chapter 27-7.1 entitled "Workers'
18 Compensation Insurance" is hereby amended to read as follows:

19 **27-7.1-11.1. Challenge and review of application of rating system.**

20 (a) An advisory organization and every insurer subject to this chapter which makes its own
21 rate shall provide within this state reasonable means where any person aggrieved by the application
22 of its rating system may upon that person's ~~written request be heard in person~~ or ~~by~~ the person's
23 authorized ~~representative to~~ representative's written request review the manner in which the rating
24 system has been applied in connection with the insurance afforded the aggrieved person.

25 (b) Any party affected by the action of an advisory organization or the insurer may, within
26 thirty (30) days after written notice of that action, make application, in writing, for an appeal to the
27 director, setting forth the basis for the appeal and the grounds to be relied upon by the applicant. If
28 the advisory organization or insurer fails to grant or reject the request within thirty (30) days after
29 it is made, the applicant may proceed in the same manner as if the application has been rejected.

30 (c) The director shall review the application and, if the director finds that the application is
31 made in good faith and that it sets forth on its face grounds which reasonably justify holding a
32 hearing, the director shall conduct a hearing held not less than ten (10) days after written notice to
33 the applicant and to an advisory organization or insurer. The director, after a hearing, shall affirm
34 or reverse the action of an advisory organization or insurer.

1 (d) If, after a hearing held under this section, it is determined that the rates charged by an
2 insurer are in excess of the appropriate rate, the overcharge shall be refunded to the insured.

3 SECTION 3. Section 27-65-1 of the General Laws in Chapter 27-65 entitled "Commercial
4 Special Risks" is hereby amended to read as follows:

5 **27-65-1. Commercial special risks.**

6 (a) Commercial special risks. Notwithstanding any other provisions of this title to the
7 contrary and except as limited in subsection (b) of this section, insurers shall not be required to file
8 with, nor to receive approval from, the insurance division of the department of business regulation
9 for policy forms or rates used in the insurance of commercial special risks located in this state.

10 Commercial special risks are defined as:

11 (1) Risks written as commercial lines insurance, defined as insurance issued for purposes
12 other than for personal, family or household and that are written on an excess or umbrella basis;

13 (2) Those risks, or portions of them, written as commercial lines insurance, defined as
14 insurance issued for purposes other than for personal, family or household and that are not rated
15 according to manuals, rating plans, or schedules including "A" rates;

16 (3) Risks written as commercial lines insurance that employ or retain the services of a "risk
17 manager" and that also meet any one of the following criteria:

18 (i) Net worth over ten million dollars (\$10,000,000);

19 (ii) Net revenue/sales of over five million dollars (\$5,000,000);

20 (iii) More than twenty-five (25) employees per individual company or fifty (50) employees
21 per holding company in the aggregate;

22 (iv) Aggregates premiums of over thirty thousand dollars (\$30,000), excluding group life,
23 group health, workers' compensation and professional liability (including, but not limited to, errors
24 and omissions and directors and officers liability);

25 (v) Is a not for profit or public entity with an annual budget or assets of at least twenty-five
26 million dollars (\$25,000,000); or

27 (vi) Is a municipality with a population of over twenty thousand (20,000);

28 (4) Specifically designated commercial special risks including:

29 (i) All risks classified as highly protected risks.

30 "Highly protected risk" means a fire resistive building that meets the highest standards of
31 fire safety according to insurance company underwriting requirements;

32 (ii) All commercial insurance aviation risks;

33 (iii) All credit property insurance risks that are defined as "insurance of personal property
34 of a commercial debtor against loss, with the creditor as sole beneficiary" or "insurance of personal

1 property of a commercial debtor, with the creditor as primary beneficiary and the debtor as
2 beneficiary of proceeds not paid to the creditor." For the purposes of this definition, "personal
3 property" means furniture, fixtures, furnishings, appliances, and equipment designed for use in a
4 business trade or profession and not used by a debtor for personal or household use;

5 (iv) All boiler, ~~and~~ machinery [and equipment breakdown](#) risks;

6 (v) All inland marine risks written as commercial lines insurance defined as insurance
7 issued for purposes other than for personal, family, or household;

8 (vi) All fidelity and surety risks;

9 (vii) All crime and burglary and theft risks; and

10 (viii) All directors and officers, [fiduciary liability, employment practices liability, kidnap](#)
11 [and ransom, and management liability](#) risks.

12 (b) Notwithstanding subsection (a) of this section, the following lines of business shall
13 remain subject to all filing and approval requirements contained in this title even if written for risks
14 which qualify as commercial special risks:

15 (1) Life insurance;

16 (2) Annuities;

17 (3) Accident and health insurance;

18 (4) Automobile insurance that is mandated by statute;

19 (5) Workers' compensation and employers' liability insurance; and

20 (6) Issuance through residual market mechanisms.

21 (c) Any insurer that provides coverage to a commercial special risk shall disclose to the
22 insured that forms used and rates charges are exempt from filing and approval requirements by this
23 subsection. Records of all such disclosures shall be maintained by the insurer.

24 (d) Brokers for exempt commercial policyholders as defined in subdivision (a)(3) of this
25 section shall be exempt from the due diligence requirements of § 27-3-38(b).

26 (e) Notwithstanding any other provisions of this title, the requirements of § 27-5-2 shall
27 not apply to any policy insuring one or more commercial special risks located in this state.

28 SECTION 4. Section 27-3-39 of the General Laws in Chapter 27-3 entitled "Surplus Lines
29 Insurance" is hereby repealed.

30 ~~**27-3-39. Surplus line broker's bond.**~~

31 ~~(a) No license to act as a resident surplus line broker in this state shall be issued until a~~
32 ~~certificate of the general treasurer is deposited with the insurance commissioner on a blank~~
33 ~~furnished by the insurance commissioner, stating that the licensee has filed with the general~~
34 ~~treasurer a bond in the penal sum of twenty five thousand dollars (\$25,000) executed by the licensee~~

1 ~~as principal and by a surety company authorized to transact business in this state as surety, and~~
2 ~~conditioned upon the licensee faithfully complying with all of the requirements of § 27-3-38.~~

3 ~~(b) Any bond required by this section shall be continuous while the principal is licensed to~~
4 ~~act as a surplus line broker in this state; provided, that before the bond may be cancelled, the~~
5 ~~insurance commissioner must have been notified in writing by the surety of the proposed~~
6 ~~cancellation at least thirty (30) days prior to the date cancellation is to become effective; and,~~
7 ~~provided, that in the event of cancellation, any license covered by the bond shall be suspended by~~
8 ~~the insurance commissioner pending the substitution of a similar bond for the cancelled bond. The~~
9 ~~surety shall be released from further liability under any bond covering a license revoked,~~
10 ~~terminated, or expired as to any acts committed after the date that license is revoked, terminated,~~
11 ~~or expired. The aggregate liability of the surety for any and all claims or recoveries that arise under~~
12 ~~any bond shall in no event exceed the amount of the penal sum of the bond. The commissioner may~~
13 ~~promulgate standards and procedures for collecting under bonds issued pursuant to this section.~~

14 ~~(c) Authorized surplus line agents or brokers of a licensed firm may meet the requirements~~
15 ~~of this section with a bond in the name of the licensed firm, continuous in form and in the amounts~~
16 ~~set forth in subsection (a).~~

17 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO INSURANCE - SURPLUS LINES INSURANCE

1 This act would clarify surplus lines licensing and eliminate an unnecessary bond
2 requirement, eliminate the need for an "in person" hearing in an appeal of a classification and add
3 additional lines of insurance to the Commercial Special Risks statute.

4 This act would take effect upon passage.

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