

2011 -- H 5953 SUBSTITUTE A

LC01777/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO INSURANCE

Introduced By: Representative Michael J. Marcello

Date Introduced: March 17, 2011

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 27-3 of the General Laws entitled "Agents, Brokers,
2 and Solicitors" is hereby amended to read as follows:

3 ~~CHAPTER 27-3~~

4 ~~Agents, Brokers, and Solicitors~~

5 CHAPTER 27-3

6 SURPLUS LINES INSURANCE

7 SECTION 2. Sections 27-3-38, 27-3-38.1, 27-3-39 and 27-3-40 of the General Laws in
8 Chapter 27-3 entitled "Agents, Brokers, and Solicitors" are hereby amended to read as follows:

9 27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance -
10 - Reports and records -- Premium tax -- Notice to purchasers. -- (a) The insurance
11 commissioner may issue a surplus line broker's license to any person ~~who or which is licensed as~~
12 ~~a property and casualty insurance producer in this state~~, authorizing the licensee to procure,
13 subject to the restrictions provided in this section, policies of insurance, except life and health and
14 accident, from eligible surplus lines insurers ~~which are on the commissioner's list of approved~~
15 ~~surplus insurers in this state~~ residents of this state must hold a property and casualty insurance
16 producer license to qualify for a surplus lines broker license. This license may be denied,
17 suspended or revoked by the insurance commissioner whenever, in the commissioner's judgment,
18 ~~a suspension or revocation will best promote the interest of the people of this state~~ any of the
19 bases under section 27-2.4-14 exist. Before any license is issued by the insurance commissioner

1 and before each renewal of a license, there shall be filed in his or her office a written application
2 by the person desiring the license in the form ~~or forms and supplements to the form~~, and
3 containing any information, that the insurance commissioner may prescribe. For the purposes of
4 carrying out the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, the
5 commissioner is authorized to utilize the national insurance producer database of the NAIC, or
6 any other equivalent uniform national database, for the licensure of a person as a surplus lines
7 producer and for renewal of such license. For insureds whose home state is this state, a person
8 shall not procure a contract of surplus lines insurance with a nonadmitted insurer unless the
9 person possesses a current surplus lines insurance license issued by the commissioner.

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

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

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

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

31 (d) The licensee shall keep a complete and separate record of all policies procured from
32 approved surplus lines insurers under the license and these records shall be open to the
33 examination of both the insurance commissioner and tax administrator at all reasonable times,
34 and shall show the exact amount of each kind of insurance permitted under this section which has

1 been procured for each insured, the gross premiums charged by the insurers for each kind of
2 insurance permitted under this section which were returned to each insured, the name of the
3 insurer or insurers which issued each of these policies, the effective dates of these policies, and
4 the terms for which these policies were issued. The licensee shall file a yearly report with the
5 insurance commissioner on a form prescribed by the insurance commissioner showing the
6 business procured under the surplus line license for the preceding calendar year, and the report
7 shall be due annually on or before April 1.

8 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section
9 shall file with the insurance commissioner, at the time of the insurance producer license renewal,
10 sufficient information as determined by the insurance commissioner whether a licensee or a
11 person acting on the licensee's behalf, has paid to the tax administrator, for all policies procured
12 by the licensee pursuant to the license during the next preceding calendar year, a tax, computed at
13 the rate of four percent (4%) on the gross premiums charged the insured by the insurers, less the
14 amount of premiums returned to the insured.

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

18 NOTICE

19 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT
20 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS
21 A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE
22 ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME
23 INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS
24 INSOLVENCY FUND ARE NOT AVAILABLE.

25 **27-3-38.1. Insurance independently procured -- Duty to report and pay tax.** -- (a) (+)
26 Each insured in this state who procures or continues or renews insurance with an insurer not
27 licensed to do an insurance business in this state on properties, risks or exposures located or to be
28 performed in whole or in part in this state, other than insurance procured through a surplus lines
29 licensee, shall, within thirty (30) days after the date the insurance was so procured, continued or
30 renewed, file a written report with the tax administrator, upon forms prescribed by the tax
31 administrator, showing the name and address of the insured or insured's, name and address of the
32 insurer, the subject of the insurance, a general description of the coverage, the amount of
33 premium currently charged and additional pertinent information reasonably requested by the tax
34 administrator.

1 ~~(2) For the purposes of this subsection, properties, risks or exposures only partially~~
2 ~~located or to be performed in this state, which are covered under a multi state policy placed by a~~
3 ~~surplus lines licensee in another state, shall be deemed to be insurance independently procured~~
4 ~~unless the insurer is licensed to do business in this state.~~

5 (b) Where the insurance covers properties, risks or exposures located or to be performed
6 both in and out of this state, the sum payable shall be computed based on: (1) An amount equal to
7 four percent (4%) on that portion of the gross premiums allocated to this state pursuant to section
8 27-3-38.3; plus (2) An amount equal to the portion of the premiums allocated to other states or
9 territories on the basis of the tax rates and fees applicable to properties, risks or exposures located
10 or to be performed outside of this state.

11 (c) Pursuant to applicable sections of the general laws, the commissioner shall participate
12 in a multi-state surplus lines compact or agreement for the purpose of collecting and disbursing to
13 reciprocal states any funds collected pursuant to subdivision (b)(2) of this section applicable to
14 other properties, risks or exposures located or to be performed outside of this state. To the extent
15 that other states where portions of the properties, risks or exposures reside have failed to enter
16 into compact or reciprocal allocation procedure with this state, the net premium tax collected
17 shall be retained by this state.

18 ~~(b)~~(d) Gross premiums charged for the insurance, less any return premiums, are subject
19 to a tax at the rate of ~~three percent (3%)~~ four percent (4%). At the time of filing the report
20 required in subsection (a) of this section, the insured shall file with the tax administrator, in the
21 form that he or she may prescribe, a return under oath or affirmation containing information that
22 may be deemed necessary for the determination of the tax imposed by this section. The insured
23 shall at the same time pay the tax due to the tax administrator.

24 ~~(e)~~(e) If an independently procured policy covers properties, risks or exposures only
25 partially located or to be performed in this state, the tax payable by the insured shall be computed
26 on the portion of the premium properly attributable to the properties, risks or exposures located or
27 to be performed in this state in the manner provided in section 27-3-38.3.

28 ~~(f)~~(f) This section does not abrogate or modify chapter 16 of this title (Unauthorized
29 Insurance Business), or any other provision of this title.

30 **27-3-39. Surplus line broker's bond.** -- (a) No license to act as a resident surplus line
31 broker in this state shall be issued until a certificate of the general treasurer is deposited with the
32 insurance commissioner on a blank furnished by the insurance commissioner, stating that the
33 licensee has filed with the general treasurer a bond in the penal sum of twenty-five thousand
34 dollars (\$25,000) executed by the licensee as principal and by a surety company authorized to

1 transact business in this state as surety, and conditioned upon the licensee faithfully complying
2 with all of the requirements of section 27-3-38.

3 (b) Any bond required by this section shall be continuous while the principal is licensed
4 to 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.
9 The 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
12 under any bond shall in no event exceed the amount of the penal sum of the bond. The
13 commissioner may promulgate standards and procedures for collecting under bonds issued
14 pursuant to this section.

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

18 **27-3-40. Limitations on placing insurance with approved surplus lines insurers. --**

19 ~~No person licensed to act as a surplus line broker in the state shall place any insurance with an
20 approved surplus lines insurer unless that insurer has furnished the commissioner with a certified
21 copy of its current annual statement or documentary evidence that it has investments in the
22 amount of at least two hundred fifty thousand dollars (\$250,000) market value of bonds of the
23 United States, or of any state, county, or municipality of the United States, and in the event of an
24 alien insurer, a trust fund must be established and maintained in the United States in the amount
25 of not less than five million dollars (\$5,000,000), for the protection of all of its policyholders in
26 the United States; and met any other requirements as determined by the insurance commissioner
27 to be placed on Rhode Island's list of approved surplus lines insurers. If at any time the
28 commissioner determines, in his or her judgment, that an approved surplus lines insurer is not in a
29 safe or solvent financial condition, or has refused to pay just claims, the commissioner shall direct
30 that no insurance shall be placed with that insurer; upon the commissioner's written notice to that
31 effect mailed to licensees under this chapter, no insurance shall be placed with that insurer.~~

32 (a) Surplus lines insurance may be placed by a surplus lines broker if each insurer is
33 authorized to write the type of insurance in its domiciliary jurisdiction;

34 (b) A surplus lines licensee shall not place coverage with a nonadmitted insurer, unless, at

1 the time of placement, the nonadmitted insurer:

2 (1) Has established satisfactory evidence of good repute and financial integrity; and

3 (2) Qualifies under one of the following subparagraphs:

4 (i) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction

5 which equals the greater of:

6 (A) The minimum capital and surplus requirements under the law of this state; or

7 (B) Fifteen million dollars (\$15,000,000); or

8 (ii) For an insurer not domiciled in the United States or its territories, the insurer is listed

9 on the quarterly listing of alien insurers maintained by the NAIC international insurers

10 department or its equivalent

11 (c) The capital and surplus requirements of paragraph (b)(2)(i) above may be satisfied by

12 an insurer possessing less than the minimum capital and surplus upon an affirmative finding of

13 acceptability by the commissioner. The finding shall be based upon such factors as quality of

14 management, capital and surplus of any parent company, company underwriting profit and

15 investment income trends, market availability and company record and reputation within the

16 industry. In no event shall the commissioner make an affirmative finding of acceptability when

17 the nonadmitted insurer's capital and surplus is less than four million five hundred thousand

18 dollars (\$4,500,000);

19 (d) The commissioner is authorized to enter into a multi-state surplus lines agreement to

20 establish additional and alternative nationwide uniform eligibility requirements that shall be

21 applicable to nonadmitted insurers domiciled in another state or territory of the United States.

22 SECTION 3. Chapter 27-3 of the General Laws entitled "Agents, Brokers, and Solicitors"

23 is hereby amended by adding thereto the following section:

24 **27-3-38.2. Definitions. -- As used in this chapter:**

25 (1) "Admitted insurer" means an insurer licensed to do an insurance business in this state.

26 (2) "Capital" as used in the financial requirements of section 27-3-40, means funds paid

27 in for stock or other evidence of ownership.

28 (3) "Commissioner" means the insurance commissioner of Rhode Island or his or her

29 designee, deputies or staff, or the commissioner, director or superintendent of insurance in any

30 other state.

31 (4) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus

32 lines licensee may place surplus lines insurance pursuant to section 27-3-38.

33 (5) "Home State" means,

34 (i) With respect to an insured:

1 (A) The state in which an insured maintains its principal place of business or, in the case
2 of an individual, the individual's principal residence; or

3 (B) If one hundred percent (100%) of the insured risk is located out of the state referred
4 to in subparagraph (i), the state to which the greatest percentage of the insured's taxable premium
5 for that insurance contract is allocated.

6 (ii) "Principal place of business" means, with respect to determining the home state of the
7 insured.

8 (A) the state where the insured maintains its headquarters and where the insured's high-
9 level officers direct, control and coordinate the business activities; or

10 (B) if the insured's high-level officers direct, control and coordinate the business
11 activities in more than one state, the state in which the greatest percentage of the insured's taxable
12 premium for that insurance contract is allocated; or

13 (C) if the insured maintains its headquarters or the insured's high-level officers direct,
14 control and coordinate the business activities outside any state, the state to which the greatest
15 percentage of the insured's taxable premium for that insurance contract is allocated.

16 (iii) "Principal residence" means, with respect to determining the home state of the
17 insured, (i) the state where the insured resides for the greatest number of days during a calendar
18 years; or (ii) if the insured's principal residence is located outside any state, the state to which the
19 greatest percentage of the insured's taxable premium for that insurance contract is allocated.

20 (iv) Affiliated groups. If more than one insured from an affiliated group are named
21 insureds on a single nonadmitted insurance contract, the term "home state" means the home state,
22 as determined above, of the member of the affiliated group that has the largest percentage of
23 premium attributed to it under such insurance contract.

24 (v) Group insurance. When the group policyholder pays one hundred percent (100%) of
25 the premium from its own funds, the term "home state" means the home state, as determined
26 above, of the group policyholder. When the group policyholder does not pay one hundred percent
27 (100%) of the premium from its own funds, the term "home state" means the home state, as
28 determined above, of the group member.

29 (6) "Insurer" means any person, corporation, association, partnership, reciprocal
30 exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society,
31 and any other legal entity engaged in the business of insurance.

32 (7) "NAIC" means the National Association of Insurance Commissioners.

33 (8) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in
34 this state.

1 (9) "Person" means any natural person or other entity, including, but not limited to,
2 individuals, partnerships, associations, trusts or corporations.

3 (10) "Surplus" as used in the financial requirements of section 27-3-40, means funds over
4 and above liabilities and capital of the company for the protection of policyholders.

5 (11) "Surplus lines insurance" means any property and casualty insurance in this state on
6 properties, risks or exposures, located or to be performed in this state, permitted to be placed
7 through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance,
8 pursuant to section 27-3-40.

9 (12) "Surplus lines licensee" means an individual, firm or corporation licensed under
10 section 27-3-38 to place insurance on properties, risks or exposures located or to be performed in
11 this state with nonadmitted insurers eligible to accept such insurance.

12 SECTION 4. This act shall take effect upon passage.

=====
LC01777/SUB A/2
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE

1 This act would provide the authority necessary to bring Rhode Island into compliance
2 with the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA") enacted as part of the
3 Dodd/Frank Wall Street Reform and Consumer Protection Act of 2010. The NRRA requires
4 changes to state laws to adopt the national standards specified in the NRRA.

5 This act would take effect upon passage.

=====
LC01777/SUB A/2
=====