

2021 -- H 5779 SUBSTITUTE A

LC002063/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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 27-4.4-4 of the General Laws in Chapter 27-4.4 entitled "The
18 Standard Nonforfeiture Law for Individual Deferred Annuities" is hereby amended to read as
19 follows:

20 **27-4.4-4. Minimum values.**

21 (a) The minimum values as specified in §§ 27-4.4-5 -- 27-4.4-8 and 27-4.4-10 of any paid-
22 up annuity, cash surrender, or death benefits available under an annuity contract shall be based
23 upon minimum nonforfeiture amounts as defined in this section.

24 (b) The minimum nonforfeiture amount at any time at or prior to the commencement of
25 any annuity payments shall be equal to an accumulation up to that time at rates of interest as
26 provided in subsection (d) of this section, the net considerations as defined in this section paid prior
27 to that time, decreased by the sum of:

28 (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates
29 of interest as provided in subsection (d) of this section; and

30 (2) The amount of any indebtedness to the company on the contract, including interest due
31 and accrued;

32 (3) An annual contract charge of fifty dollars (\$50.00), accumulated at rates of interest as
33 provided in subsection (d) of this section; and

34 (4) Any premium tax paid by the company for the contract, accumulated at rates of interest

1 as provided in subsection (d) of this section.

2 (c) The net considerations for a given contract year used to define the minimum
3 nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of the
4 gross considerations credited to the contract during that contract year.

5 (d) The interest rate used in determining minimum nonforfeiture amounts shall be an
6 annual rate of interest determined as the lesser of three percent (3%) per annum and the following,
7 which shall be specified in the contract if the interest rate will be reset:

8 (1) The five (5) year Constant Maturity Treasury Rate reported by the Federal Reserve as
9 of a date, or average over a period, rounded to the nearest one twentieth of one percent (1/20%),
10 specified in the contract no longer than fifteen (15) months prior to the contract issue date or
11 redetermination date under subdivision (4) of this subsection;

12 (2) Reduced by one hundred twenty-five (125) basis points;

13 (3) Where the resulting interest rate is not less than ~~one percent (1%)~~ fifteen (15) basis
14 points (0.15%); and

15 (4) The interest rate shall apply for an initial period and may be redetermined for additional
16 periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis
17 is the date or average over a specified period that produces the value of the five (5) year Constant
18 Maturity Treasury Rate to be used at each redetermination date.

19 (e) During the period or term that a contract provides substantive participation in an equity
20 indexed benefit, it may increase the reduction described in subsection (d)(2) of this section above
21 by up to an additional one hundred (100) basis points to reflect the value of the equity index benefit.
22 The present value at the contract issue date, and at each redetermination date thereafter, of the
23 additional reduction shall not exceed the market value of the benefit. The commissioner of
24 insurance may require a demonstration that the present value of the reduction does not exceed the
25 market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner,
26 the commissioner may disallow or limit the additional reduction.

27 (f) The commissioner of insurance may adopt rules to implement the provisions of
28 subsection (e) of this section and to provide for further adjustments to the calculation of minimum
29 nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit
30 and for other contracts that the commissioner determines adjustments are justified.

31 **SECTION 3. Section 27-7.1-11.1 of the General Laws in Chapter 27-7.1 entitled "Workers'**
32 **Compensation Insurance" is hereby amended to read as follows:**

33 **27-7.1-11.1. Challenge and review of application of rating system.**

34 (a) An advisory organization and every insurer subject to this chapter which makes its own

1 rate shall provide within this state reasonable means where any person aggrieved by the application
2 of its rating system may upon that person's ~~written request be heard in person~~ or by the person's
3 authorized ~~representative to~~ representative's written request review the manner in which the rating
4 system has been applied in connection with the insurance afforded the aggrieved person.

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

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

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

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

19 **27-65-1. Commercial special risks.**

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

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

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

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

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

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

34 (iii) More than twenty-five (25) employees per individual company or fifty (50) employees

1 per holding company in the aggregate;

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

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

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

8 (4) Specifically designated commercial special risks including:

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

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

12 (ii) All commercial insurance aviation risks;

13 (iii) All credit property insurance risks that are defined as "insurance of personal property
14 of a commercial debtor against loss, with the creditor as sole beneficiary" or "insurance of personal
15 property of a commercial debtor, with the creditor as primary beneficiary and the debtor as
16 beneficiary of proceeds not paid to the creditor." For the purposes of this definition, "personal
17 property" means furniture, fixtures, furnishings, appliances, and equipment designed for use in a
18 business trade or profession and not used by a debtor for personal or household use;

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

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

22 (vi) All fidelity and surety risks;

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

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

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

29 (1) Life insurance;

30 (2) Annuities;

31 (3) Accident and health insurance;

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

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

34 (6) Issuance through residual market mechanisms.

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

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

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

8 SECTION 5. Section 27-3-39 of the General Laws in Chapter 27-3 entitled "Surplus Lines
9 Insurance" is hereby repealed.

10 ~~27-3-39. Surplus line broker's bond.~~

11 ~~(a) No license to act as a resident surplus line broker in this state shall be issued until a~~
12 ~~certificate of the general treasurer is deposited with the insurance commissioner on a blank~~
13 ~~furnished by the insurance commissioner, stating that the licensee has filed with the general~~
14 ~~treasurer a bond in the penal sum of twenty five thousand dollars (\$25,000) executed by the licensee~~
15 ~~as principal and by a surety company authorized to transact business in this state as surety, and~~
16 ~~conditioned upon the licensee faithfully complying with all of the requirements of § 27-3-38.~~

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

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

31 SECTION 6. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
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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