

Regular Session, 2013

HOUSE BILL NO. 543

BY REPRESENTATIVE PIERRE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/SURPLUS LINE: Provides relative to regulation of surplus lines insurance

1 AN ACT

2 To amend and reenact R.S. 22:431, 432, 433, 435, 436, and 438, relative to surplus lines
3 insurance; to authorize placement of insurance with a surplus lines insurer without
4 regard to the availability of authorized insurance; to provide relative to capital,
5 surplus, bond, and deposit requirements; to provide with respect to the list of surplus
6 lines insurers maintained by the commissioner of insurance; to provide relative to
7 certain notices to applicants for insurance regarding placement of personal lines
8 policies with surplus lines insurers; to provide for applicability; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:431, 432, 433, 435, 436, and 438 are hereby amended and
12 reenacted to read as follows:

13 §431. Purpose; necessity for regulation

14 This Subpart shall be liberally construed and applied to promote its
15 underlying purposes which include:

- 16 (1) Protecting persons seeking insurance in this state.
- 17 (2) Permitting surplus lines insurance to be placed with reputable and
- 18 financially sound unauthorized insurers under the provisions of this Subpart.

1 (3) Establishing a system of regulation which will permit orderly access to
2 surplus lines insurance in this state and encourage authorized insurers to ~~provide~~
3 make new and innovative types of insurance available to consumers in this state.

4 (4) Providing a system through which persons may purchase insurance ~~other~~
5 ~~than surplus lines insurance~~, from approved unauthorized insurers pursuant to this
6 Subpart. However, nothing in this Subpart shall be construed to apply to the
7 provisions and requirements of R.S. 32:793(D) and contingent liability insurance in
8 a rent with option-to-purchase program.

9 (5) Protecting the revenues of this state.

10 (6) Providing a system pursuant to this Subpart ~~which~~ that subjects
11 unauthorized insurance activities in this state to the jurisdiction of the ~~insurance~~
12 commissioner of insurance and state and federal courts in suits by or on behalf of the
13 state.

14 §432. Surplus lines insurance from unauthorized insurers

15 ~~If certain insurance coverages cannot be procured from authorized insurers,~~
16 ~~such coverages, hereinafter designated as "surplus Surplus lines", insurance, as~~
17 ~~defined in R.S. 22:46(17), may be procured from approved unauthorized insurers,~~
18 ~~provided that the insurance is as defined in R.S. 22:46(2) and sometimes referred to~~
19 ~~in this Title as "surplus lines insurers", shall be procured through a licensed surplus~~
20 ~~lines broker. brokers and may be procured without regard to the availability of~~
21 ~~coverage from authorized insurers. However, nothing in this Subpart shall be~~
22 ~~construed to apply to the provisions and requirements of R.S. 32:793(D) and~~
23 ~~contingent liability insurance in a rent with option-to-purchase program.~~

24 §433. Endorsement of contract

25 A. ~~Every~~ Each insurance policy or contract procured and delivered as surplus
26 lines coverage pursuant to this Subpart shall have ~~stamped or printed upon it and be~~
27 ~~signed by the surplus lines broker who procured it, in bold type and the face of which~~
28 ~~shall not be less than ten-point type~~, the following: notice:

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NOTICE

This insurance policy is delivered as surplus lines coverage under the Louisiana Insurance Code, ~~of the State of Louisiana.~~

In the event of insolvency of the company issuing this contract, the policyholder or claimant is not covered by the Louisiana Insurance Guaranty Association which guarantees only specific types of policies issued by an insurance company companies authorized to do business in Louisiana.

This surplus lines policy has been procured by the following licensed Louisiana surplus lines broker:

**Signature of Licensed Louisiana Surplus Lines Broker
or Authorized Representative**

Printed Name of Licensed Louisiana Surplus Lines Broker

B. The notice required ~~under~~ pursuant to Subsection A of this Section shall; ~~whether stamped or printed, be; distinguished in either one of the following ways:~~

(1) ~~The notice shall be prominently~~ Prominently displayed in the color red; ~~or prominently offset by a black border.~~

(2) ~~If the notice is printed~~ Printed or stamped in the color black, it shall be ~~prominently offset by a black border.~~ on the policy or contract in bold and in not less than ten-point type.

(3) Signed by the surplus lines broker who procured the policy or contract.

* * *

§435. Surplus lines in solvent insurers; capital and surplus requirements; ~~deposits and bond requirements~~ requirement for licensure in domiciliary jurisdiction

A.(+) A surplus lines broker shall not knowingly place surplus lines insurance with surplus lines insurers ~~unsound financially.~~ that are:

(1) Not financially sound.

1 (2) Each insurer is Not authorized to write the type of insurance in its their
2 domiciliary jurisdiction: jurisdictions to write the type of insurance placed.

3 (3) ~~The full amount or type of insurance cannot be obtained from insurers~~
4 ~~who are authorized to do business in this state. In addition to the other requirements~~
5 ~~of this Subpart, including but not limited to R.S. 22:432 and 438, the full amount or~~
6 ~~type of insurance may be procured from an approved unauthorized insurer, provided~~
7 ~~that a diligent search is made among the insurers who are authorized to transact~~
8 ~~business and are actually writing the particular type of insurance in this state if any~~
9 ~~are writing it.~~

10 B. ~~The surplus lines broker shall not so insure with any insurer unless the~~
11 ~~insurer has met the requirements of R.S. 22:436, unless otherwise provided by law,~~
12 ~~has established satisfactory evidence of good repute and financial integrity, and has~~
13 ~~done the following: A surplus lines broker shall not place coverage with a surplus~~
14 ~~lines insurer, unless, at the time of placement, the surplus lines broker has~~
15 ~~determined that the surplus lines insurer qualifies under one of the following~~
16 ~~Paragraphs:~~

17 (1)(a) If it is a foreign insurer that it has capital and surplus or its equivalent
18 under the laws of its domiciliary jurisdiction which equals the greater of:

19 (a) ~~Has capital and surplus of not less than fifteen million dollars exclusive~~
20 ~~of either surplus debentures or subordinated notes if a stock insurer, or surplus of not~~
21 ~~less than fifteen million dollars exclusive of either surplus debentures or~~
22 ~~subordinated notes if any other type insurer, and has on deposit with the~~
23 ~~commissioner of insurance a safekeeping or trust receipt from a bank or a savings~~
24 ~~and loan association doing business within Louisiana, indicating that one hundred~~
25 ~~thousand dollars in money, or approved bonds of the United States government, the~~
26 ~~state of Louisiana, or any political subdivision thereof, or in lieu of such deposit has~~
27 ~~delivered to the commissioner of insurance a bond in the amount of one hundred~~
28 ~~thousand dollars issued by an authorized surety company doing business in this state~~
29 ~~and approved by the commissioner of insurance.~~

1 ~~(b) Such deposit or surety bond shall be conditioned for the prompt payment~~
2 ~~of all claims arising and accruing to any person by virtue of any policy issued by any~~
3 ~~such unauthorized insurer upon any property or other risk situated in this state, and~~
4 ~~to be held subject to any claims, liens or judgments that may be judicially obtained~~
5 ~~against any such company in the courts of this state, or arising from any contract of~~
6 ~~insurance, or indemnity, or fidelity, or guaranty entered into in this state, and shall~~
7 ~~be liable to seizure and sale at the instance of any judgment creditor of such insurer,~~
8 ~~under judgment obtained in any of the courts of this state or in any of the federal~~
9 ~~courts of this state.~~

10 ~~(c) No surety bond furnished as provided herein shall be cancelled unless a~~
11 ~~new bond or deposit has been substituted or satisfactory evidence has been submitted~~
12 ~~to the commissioner of insurance that the insurer has discharged all of its assured~~
13 ~~obligations and liabilities in this state, and that it has no assessed liabilities whatever~~
14 ~~remaining in this state. The term of these bonds shall be for one year ending March~~
15 ~~first, but the last bond filed shall always remain in effect until a new bond is filed or~~
16 ~~a deposit is made as a substitution therefor. Withdrawal of any bond or deposit~~
17 ~~required herein may be made only upon the approval by the commissioner of~~
18 ~~insurance.~~

19 ~~(i) The minimum capital and surplus requirements under the laws of this~~
20 ~~state.~~

21 ~~(ii) Fifteen million dollars.~~

22 ~~(d) (b) The requirements of Subparagraph (a) of this Paragraph, with respect~~
23 ~~only to capital and surplus, may be satisfied by an insurer's possessing less than the~~
24 ~~minimum capital and surplus upon an affirmative finding of acceptability by the~~
25 ~~commissioner. If the commissioner finds such acceptable, the finding shall be in~~
26 ~~effect for a one-year period and shall be applied for annually thereafter to be renewed~~
27 ~~on an annual basis, unless the finding is revoked by the commissioner. The finding~~
28 ~~shall be based upon such factors as quality of management, capital and surplus of~~
29 ~~any parent company, company underwriting profit and investment income trends,~~

1 market availability, and company record and reputation within the industry. In no
2 event shall the commissioner make an affirmative finding of acceptability when ~~the~~
3 ~~nonadmitted~~ an unauthorized insurer's capital and surplus is less than four million
4 five hundred thousand dollars.

5 ~~(e) In the case of an insurance exchange created by the laws of a state other~~
6 ~~than this state:~~

7 ~~(f) The syndicates of the exchange shall maintain under terms acceptable to~~
8 ~~the commissioner capital and surplus, or its equivalent under the laws of its~~
9 ~~domiciliary jurisdiction, of not less than seventy-five million dollars in the aggregate.~~

10 ~~(ii) The exchange shall maintain under terms acceptable to the commissioner~~
11 ~~not less than fifty percent of the policyholder surplus of each syndicate in a custodial~~
12 ~~account accessible to the exchange or its domiciliary commissioner in the event of~~
13 ~~insolvency or impairment of the individual syndicate.~~

14 ~~(iii) In addition, each individual syndicate to be eligible to accept surplus~~
15 ~~lines insurance placements from this state shall meet either of the following~~
16 ~~requirements: For insurance exchanges which maintain funds in an amount of not~~
17 ~~less than fifteen million dollars for the protection of all exchange policyholders, the~~
18 ~~syndicate shall maintain under terms acceptable to the commissioner minimum~~
19 ~~capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction,~~
20 ~~of not less than five million dollars; or for insurance exchanges which do not~~
21 ~~maintain funds in an amount of not less than fifteen million dollars for the protection~~
22 ~~of all exchange policyholders, the syndicate shall maintain under terms acceptable~~
23 ~~to the commissioner minimum capital and surplus, or its equivalent under the laws~~
24 ~~of its domiciliary jurisdiction, of not less than the minimum capital and surplus~~
25 ~~requirements under the laws of its domiciliary jurisdiction or fifteen million dollars,~~
26 ~~whichever is greater.~~

27 ~~(2) If it is an alien Lloyd's plan or other similar group of insurers, which~~
28 ~~consists of unincorporated individual insurers, or a combination of both~~
29 ~~unincorporated and incorporated insurers:~~

1 ~~(a) The plan or group maintains in the United States a trust or trusts equal to~~
2 ~~thirty percent of the group's United States surplus lines gross liabilities excluding~~
3 ~~those types of insurance liabilities set forth in R.S. 22:1903(C)(4), not to exceed five~~
4 ~~hundred million dollars; however, after notice and an opportunity to be heard, the~~
5 ~~commissioner may require that the trust or trusts equal an amount in excess of five~~
6 ~~hundred million dollars if he finds such higher amount to be reasonably necessary~~
7 ~~to protect the interests of the public and policyholders of this state.~~

8 ~~(b) In addition, the group shall maintain in trust a surplus in the amount of~~
9 ~~one hundred million dollars, which shall be available for the benefit of United States~~
10 ~~surplus lines policyholders of any member of the group.~~

11 ~~(c) The incorporated members of the group shall not be engaged in any~~
12 ~~business other than underwriting as a member of the group and shall be subject to the~~
13 ~~same level of solvency regulation and control by the group's domiciliary regulator~~
14 ~~as are the unincorporated members.~~

15 ~~(d) The trust funds shall be maintained in an irrevocable trust account in the~~
16 ~~United States in a qualified financial institution, consisting of cash, securities, letters~~
17 ~~of credit, or investments of substantially the same character and quality as those~~
18 ~~which are eligible investments for the capital and statutory reserves of authorized~~
19 ~~insurers to write like kinds of insurance in this state and, in addition, the trust~~
20 ~~required by Subparagraph (b) of this Paragraph shall satisfy the requirements of the~~
21 ~~standard trust agreement required for listing with the International Insurers~~
22 ~~Department of the National Association of Insurance Commissioners.~~

23 ~~(3) In the case of a group of incorporated alien insurers under common~~
24 ~~administration, which has continuously transacted an insurance business outside the~~
25 ~~United States for at least three years immediately prior to December 31, 1997, and~~
26 ~~which submits to this state's authority to examine its books and records and bears the~~
27 ~~expense of the examination:~~

28 ~~(a) The group shall maintain an aggregate policyholders' surplus of ten~~
29 ~~billion dollars.~~

1 ~~(b) The group shall maintain in trust a surplus in the amount of one hundred~~
2 ~~million dollars. The surplus shall be available for the benefit of United States~~
3 ~~surplus lines policyholders of any member of the group.~~

4 ~~(c) Each insurer shall individually maintain capital and surplus of not less~~
5 ~~than twenty-five million dollars per company.~~

6 ~~(d) The trust funds shall satisfy the requirements of the Standard Trust~~
7 ~~Agreement requirement for listing with the International Insurers Department of the~~
8 ~~National Association of Insurance Commissioners and shall be maintained in an~~
9 ~~irrevocable trust account in the United States in a qualified financial institution, and~~
10 ~~shall consist of cash, securities, letters of credit, or investments of substantially the~~
11 ~~same character and quality as those which are eligible investments for the capital and~~
12 ~~statutory reserves of admitted insurers to write like kinds of insurance in this state.~~

13 ~~(e) Additionally, each member of the group shall make available to the~~
14 ~~commissioner an annual certification of the solvency of the member by the~~
15 ~~domiciliary regulator of the member and its independent public accountant.~~

16 ~~(4) Except for an exchange or plan complying with Subparagraph (B)(1)(e)~~
17 ~~or Paragraph (B)(2) or (B)(3) of this Section, an alien insurer shall satisfy the capital~~
18 ~~and surplus requirements of Subparagraphs (B)(1)(a) through (d) of this Section and~~
19 ~~shall have in force a trust fund of not less than the greater of:~~

20 ~~(a) Five million four hundred thousand dollars.~~

21 ~~(b) Thirty percent of the United States surplus lines gross liabilities, which~~
22 ~~does not include those types of insurance liabilities set forth in R.S. 22:1903(C)(4),~~
23 ~~not to exceed sixty million dollars, to be determined annually on the basis of~~
24 ~~accounting practices and procedures substantially equivalent to those promulgated~~
25 ~~by this state, as of December thirty-first next preceding the date of determination,~~
26 ~~where:~~

27 ~~(f) The liabilities are maintained in an irrevocable trust account in the United~~
28 ~~States in a qualified financial institution, on behalf of United States policyholders~~
29 ~~consisting of cash, securities, letters of credit, or other investments of substantially~~

1 ~~the same character and quality as those which are eligible investments pursuant to~~
2 ~~R.S. 22:584 et seq. for the capital and statutory reserves of admitted insurers to write~~
3 ~~like kinds of insurance in this state. The trust fund, which shall be included in any~~
4 ~~calculation of capital and surplus or its equivalent, shall satisfy the requirements of~~
5 ~~the Standard Trust Agreement required for listing with the International Insurers~~
6 ~~Department of the National Association of Insurance Commissioners.~~

7 (ii) ~~The insurer may request approval from the commissioner to use the trust~~
8 ~~fund to pay valid surplus lines claims. The balance of the trust fund shall never be~~
9 ~~less than the greater of five million four hundred thousand dollars or thirty percent~~
10 ~~of the current gross United States surplus lines liabilities of the insurer, excluding~~
11 ~~those types of liabilities set forth in R.S. 22:1903(C)(4).~~

12 (iii) ~~In calculating the trust fund amount required by this Paragraph, credit~~
13 ~~shall be given for surplus lines deposits separately required and maintained for a~~
14 ~~particular state or United States territory, not to exceed the amount of the loss and~~
15 ~~loss adjustment reserves of the insurer in the particular state or territory.~~

16 (6) ~~(2)(a) In addition to all of the other requirements of this Section, If it is~~
17 ~~an alien insurer, not domiciled in the United States or its territories it shall be listed~~
18 ~~by the International Insurers Department of the National Association of Insurance~~
19 ~~Commissioners: on its Quarterly Listing of Alien Insurers.~~

20 (b) ~~The commissioner may waive the requirement in Subparagraph (a) of this~~
21 ~~Paragraph or the requirements of Subparagraph (B)(4)(b) of this Section upon an~~
22 ~~affirmative finding of the insurer's meeting the requirements for capital and surplus~~
23 ~~or acceptability by the commissioner if the commissioner is satisfied that the~~
24 ~~placement of insurance with the insurer is necessary and will not be detrimental to~~
25 ~~the public and the policyholder. In determining whether business may be placed~~
26 ~~with the insurer, the commissioner may consider such factors as: pursuant to~~
27 ~~Paragraph (1) of this Subsection.~~

28 (a) ~~The interests of the public and policyholders.~~

1 ~~(b) The length of time the insurer has been authorized in its domiciliary~~
2 ~~jurisdiction and elsewhere.~~

3 ~~(c) Unavailability of particular coverages from authorized insurers or~~
4 ~~unauthorized insurers meeting the requirements of this Section.~~

5 ~~(d) The size of the company as calculated by its assets, capital and surplus,~~
6 ~~reserves, premium writings, insurance in force or other appropriate criteria; the kinds~~
7 ~~of business the company writes, its net exposure and the extent to which the business~~
8 ~~of the company is diversified among several lines of insurance and geographic~~
9 ~~locations.~~

10 ~~(e) The past and projected trend in the size of the company's capital and~~
11 ~~surplus of the company considering such factors as premium growth, operating~~
12 ~~history, loss and expense ratios, or other appropriate criteria.~~

13 ~~(7) Has caused to be provided to the commissioner a copy of its current~~
14 ~~annual statement certified by the insurer and an actuarial opinion as to the adequacy~~
15 ~~of, and methodology used to determine, the loss reserves of the insurer. The~~
16 ~~statement shall be provided at the same time it is provided to the insurer's domicile,~~
17 ~~but in no event more than eight months after the close of the period reported upon,~~
18 ~~and shall be certified as a true and correct copy by an accounting or auditing firm~~
19 ~~licensed in the jurisdiction of the insurer's domicile and certified by a senior officer~~
20 ~~of the unauthorized insurer as a true and correct copy of the statement filed with the~~
21 ~~regulatory authority in the domicile of the unauthorized insurer. In the case of an~~
22 ~~insurance exchange qualifying under Subparagraph (B)(1)(e) of this Section, the~~
23 ~~statement may be an aggregate combined statement of all underwriting syndicates~~
24 ~~operating during the period reported.~~

25 D. C. In addition to any other statements or reports required by this Subpart,
26 the commissioner of insurance may request from any surplus lines broker full and
27 complete information respecting the financial stability, reputation, and integrity of
28 any unauthorized insurer with whom any such surplus lines broker has dealt, or
29 proposes to deal, in the transaction of insurance business. The surplus lines broker

1 shall promptly furnish in written or printed form so much of the information
2 requested as he can produce. The commissioner of insurance, if he believes it to be
3 in the public interest, may order such surplus lines broker in writing to place no
4 further insurance business on Louisiana risks through such unauthorized company.

5 H. D. (1) Notwithstanding any law to the contrary, no person shall act in this
6 state as producer for or broker to any unauthorized insurer ~~which~~ that has not been
7 approved by the ~~Department~~ commissioner of ~~Insurance~~ insurance in accordance
8 with this Section and R.S. 22:436, unless the following criteria are met:

9 (a) The insurance is limited to commercial property and liability, including
10 commercial marine.

11 (b) The insurance coverage is excess coverage and the attachment point is
12 at least twenty-five million dollars for property and ten million dollars for liability
13 or such other amount as the ~~Department of Insurance~~ commissioner in ~~its~~ his
14 discretion shall require.

15 (c) Approval from the ~~Department of Insurance~~ is required commissioner has
16 been obtained for each policy.

17 (d) The insured has been informed in writing by the agent or broker that the
18 insurer has not been approved by the ~~Department of Insurance~~ commissioner.

19 (2) The commissioner, by regulation or directive, may require that the
20 insured meet minimum financial requirements and may require certification from the
21 producer or broker that the insurer meets the financial and any other requirements
22 promulgated by the ~~Department of Insurance~~ commissioner for insurance coverage
23 by an unauthorized insurer which has not been approved by the ~~Department of~~
24 ~~Insurance~~ commissioner under this Section and R.S. 22:436.

25 §436. Approved unauthorized insurers; list; requirements; removal

26 A. No surplus lines broker shall place surplus lines insurance with an insurer
27 who is not on the list of approved unauthorized insurers as compiled and maintained
28 by the commissioner of insurance.

1 B.~~(1)~~ To obtain and maintain placement on the list of approved unauthorized
2 insurers, ~~a foreign~~ an unauthorized insurer shall comply with the provisions of R.S.
3 22:435 applicable to foreign or alien insurers, respectively, and shall annually file
4 with the commissioner the following:

5 ~~(a)~~ (1) A copy of the insurer's annual statement, ~~signed and sworn to by its~~
6 ~~president and secretary as to its condition~~ as of the preceding December thirty-first,
7 evidencing that the insurer has ~~capital and surplus of not less than fifteen million~~
8 ~~dollars exclusive of either surplus debentures or subordinated notes~~, and complied
9 with the provisions of R.S. 22:435~~(B)(7)~~.

10 ~~(b)~~ Evidence that the amount of net premiums written does not exceed four
11 times the insurer's capital and surplus.

12 ~~(c)~~ (2) Evidence that, if the insurer issues workers' compensation insurance
13 in this state, it has established and maintained a workers' compensation claims office
14 pursuant to R.S. 23:1161.1 or has retained a licensed claims adjuster.

15 ~~(d)~~ (3) A copy of the producer production report in a form required by the
16 commissioner listing all business placed with the company by licensed surplus lines
17 brokers. The report shall be filed with the ~~Department of Insurance~~ commissioner
18 no later than April fifteenth of each year.

19 ~~(2)~~ An insurer that fails to file a copy of its annual statement on or before
20 March first of each year shall be removed from the list of approved unauthorized
21 insurers. ~~The commissioner may grant an extension, not to exceed thirty days, if~~
22 ~~presented with satisfactory evidence showing the reasonableness of the extension.~~

23 C. ~~To obtain and maintain placement on the list of approved unauthorized~~
24 ~~insurers, an alien insurer shall comply with the provisions of R.S. 22:435 applicable~~
25 ~~to alien insurers including but not limited to the provisions of R.S. 22:435(B)(7), and~~
26 ~~the commissioner may require an alien insurer to file a copy of the producer~~
27 ~~production report in a form prescribed by the commissioner listing all business~~
28 ~~placed with the company by licensed surplus lines brokers. The report shall be filed~~
29 ~~with the Department of Insurance no later than April fifteenth of each year. The~~

1 commissioner shall remove any alien insurer from the list of approved unauthorized
2 insurers if it ceases to comply with the provisions of R.S. 22:435 applicable to alien
3 insurers, or if he determines that continued placement of surplus lines insurance with
4 the insurer would not be in the best interest of the policyholders or citizens of
5 Louisiana.

6 ~~D.~~ The commissioner shall remove a foreign insurer from the list of
7 approved unauthorized insurers if:

8 (1) The insurer does not have capital and surplus of at least fifteen million
9 dollars exclusive of surplus debentures and subordinated notes, as determined by his
10 examiners.

11 (2) It is determined that the continued placement of surplus lines insurance
12 with the insurer would not be in the best interest of the policyholders or the citizens
13 of Louisiana.

14 ~~E.~~ C. The commissioner may remove a foreign insurer from the list of an
15 approved unauthorized insurers insurer from the list if:

16 (1) ~~The amount of net premiums written exceeds four times the insurer's~~
17 ~~capital and surplus. The insurer fails to pay any required fee.~~

18 (2) The insurer fails to deliver any information requested by the
19 commissioner within thirty days.

20 (3) The insurer issues workers' compensation insurance within the state, and
21 fails to establish and maintain a workers' compensation claims office pursuant to
22 R.S. 23:1161.1 or fails to retain a licensed claims adjuster.

23 ~~F.(1)~~ The commissioner may declare an approved unauthorized insurer
24 ineligible if at anytime he determines any of the following:

25 (a) (4) The insurer is in unsound financial condition or has acted in an
26 untrustworthy manner.

27 (b) (5) The insurer no longer satisfies the requirements set forth in R.S.
28 22:435.

29 (c) (6) The insurer has willfully violated the laws of this state.

1 ~~(d)~~ (7) The insurer ~~does not conduct a proper~~ conducts improper claims
 2 ~~practice.~~ practices, including but not limited to unfair trade practices as defined in
 3 Part IV of Chapter 7 of this Title, R.S. 22:1961 et seq.

4 G. D. Upon removing an insurer from the list of approved unauthorized
 5 insurers, the commissioner shall notify the insurer and all licensed surplus lines
 6 brokers of such action in writing. Such notice to licensed surplus lines brokers may,
 7 at the option of the surplus lines broker, be sent by the commissioner via electronic
 8 mail.

9 H. E. The commissioner shall have the authority to adopt and promulgate such
 10 rules and regulations as are necessary to carry out the provisions of this Section in
 11 accordance with the Administrative Procedure Act.

12 * * *

13 §438. ~~Proof of uninsurability, affidavit~~ Certificate of applicant for insurance

14 A. Any licensed surplus lines broker that procures a personal lines policy with
 15 an approved unauthorized insurer shall obtain from the ~~duly licensed submitting~~
 16 ~~producer or broker within thirty days of~~ applicant for insurance no later than the date
 17 of binding an affidavit of coverage, a certificate on a standardized form promulgated
 18 by the commissioner of insurance which shall be maintained by the licensed surplus
 19 lines broker, ~~that attests to the diligent efforts of the producer or broker to place~~
 20 ~~insurance coverage with admitted insurers and the results thereof.~~ The affidavit
 21 certificate shall affirm verify that:

22 ~~(1) the insured applicant for insurance~~ The applicant for insurance was
 23 expressly advised prior to placement of the surplus lines insurance,

24 ~~(2) that the surplus lines insurer with whom the~~ The insurance is being may
 25 be placed is with an approved unauthorized insurer,

26 ~~(3) and that in~~ In the event of insolvency of the insurer, losses shall not be paid
 27 by the ~~state insurance guaranty fund,~~ Louisiana Insurance Guaranty Association.

28 ~~(4) The applicant for insurance expressly authorizes the procurement of~~
 29 surplus lines insurance coverage.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 ~~(5) and that the~~ The coverage is being procured through a duly licensed
2 Louisiana surplus lines broker.

3 B. As long as the personal lines policy continues to be renewed by the same
4 approved unauthorized insurer, there shall not be a need for new ~~affidavits~~
5 certificates at each renewal. At renewal, if the personal lines policy is placed with a
6 different approved unauthorized insurer, then ~~the procurement of a new affidavit will~~
7 certificate shall be secured obtained in the manner outlined in Subsection A of this
8 Section.

9 Section 2. This Act shall become effective upon signature by the governor or, if not
10 signed by the governor, upon expiration of the time for bills to become law without signature
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
13 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Pierre

HB No. 543

Abstract: Provides relative to the regulation of surplus lines insurance, including authorizing placement of insurance with a surplus lines insurer without regard to the availability of authorized insurance.

Proposed law provides relative to the regulation of surplus lines insurance (property and casualty insurance coverage procured from insurers that do not have certificates of authority to sell insurance in this state), as follows:

- (1) Present law provides that the placement of insurance coverage with a surplus lines insurer (otherwise referred to as an approved unauthorized insurer or a non-admitted insurer) through a surplus lines broker may occur only if such coverage is not available from an authorized insurer (otherwise known as an admitted insurer).

Proposed law removes the requirement that insurance not be available from an authorized insurer, thus authorizing placement of insurance with a surplus lines insurer without regard to the availability of authorized insurance.

- (2) Present law provides extensive eligibility requirements for surplus lines insurers, including specific capital, surplus, bond, and deposit requirements.

Proposed law deletes many of these eligibility requirements in order to conform to the federal Nonadmitted and Reinsurance Reform Act (NRRA) of 2010 which preempts numerous state laws and regulations regarding surplus lines insurance. Establishes

new minimum capital and surplus requirements that conform to the NRRA for foreign surplus lines insurers, specifically requiring that they have either the minimum capital and surplus required in this state or \$15 million. Gives the commissioner of insurance the discretion to approve a surplus lines insurer with a smaller capital and surplus but at least \$4.5 million upon a finding that the insurer is acceptable after considering factors listed in proposed law. Further provides that alien insurers that are on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners (NAIC) or that meet the requirements for foreign insurers may be approved by the commissioner. Retains requirements for surplus lines brokers to submit reports and information requested by the commissioner of insurance. Retains the ability to procure certain high-dollar commercial policies from unauthorized insurers not on the approved list when the commissioner approves of the specific transaction.

- (3) Present law requires that a list of surplus lines insurers be maintained by the commissioner.

Proposed law retains this requirement but makes changes in the filing requirements for such insurers. Makes such filing requirements less administratively burdensome by eliminating certification of documents available through online systems for regulators accessible to the Department of Insurance. Deletes provisions for mandatory removal from the list for failure to timely file an annual statement. Consolidates the causes for removal from the approved list and makes removal discretionary with the commissioner.

- (4) Present law requires a submitting producer (agent) to submit an affidavit to the surplus lines broker prior to obtaining surplus lines coverage affirming that the applicant for insurance is not able to obtain authorized personal lines insurance after diligent efforts by the producer. Also prescribes the content of the affidavit, including that in the event of insolvency of the surplus lines insurer, losses shall not be paid by the La. Insurance Guaranty Assn.

Proposed law eliminates the requirement for an affidavit for personal lines policies, including the requirement that the applicant for insurance is not able to obtain authorized personal lines insurance after diligent efforts by the producer. Instead requires that a producer obtain written permission from the applicant for insurance, on a form (certificate) approved by the commissioner, prior to obtaining surplus lines coverage. Retains contents of the certificate, but adds including a statement that the applicant of insurance expressly authorizes the procurement of surplus lines insurance coverage.

- (5) Specifically provides that nothing in present law or proposed law shall apply to contingent liability insurance in a rent with option-to purchase program.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 22:431, 432, 433, 435, 436, and 438)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Limited requirement for a certificate to personal lines policies.
2. Changed references to "policyholder" to "applicant for insurance" in portion of proposed law relative to the certificate for personal lines policies.
3. Added exemption for contingent liability insurance in a rent with option-to purchase program.