

## HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 543 by Representative Pierre

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

### Synopsis of Senate Amendments

1. Adds to the definition of "approved unauthorized insurer" in present law by retaining the present definition and adding a provision which requires an insurer to also meet the eligibility criteria as set forth by R.S. 22:435(A)(2) and (B) in order to be deemed an approved unauthorized insurer.
2. Defines "eligible unauthorized insurer" as an insurer that does not possess a certificate of authority or other qualification but who meets the eligibility requirements of proposed law and also an insurer from which a licensed surplus lines broker may procure insurance pursuant to the provisions of proposed law.
3. Defines "home state," with respect to an insured on a surplus lines insurance policy, as a state which may be identified as any one of the following:
  - a. The state in which an insured maintains its principal place of business or, with respect to an individual, that individual's place of residence.
  - b. When 100 percent of the insured risk is located outside of the state wherein the insured's principal place of business or residence is located, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
  - c. When more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the state shall be determined according to the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines contract. Such member's home state shall be either the state wherein that member's principal place of business or residence is located or, in cases where 100 percent of that member's insured risk is located out of the state which is his principal place of business or residence, the state to which the greatest percentage of such member's taxable premium is allocated.
4. Provides that an insured's home state, as determined in accordance with proposed law, shall be the state to have sole statutory and regulatory jurisdiction over the placement of surplus lines insurance pursuant to federal law.
5. Further provides that the insured's home state shall have exclusive authority to require the payment of any premium tax on surplus lines insurance pursuant to federal law.
6. Adds to the definition of "surplus lines insurance" in present law to include an "eligible unauthorized insurer" as a type of insurer which may provide surplus lines insurance through a licensed surplus lines broker.
7. Deletes reference in proposed law to contingent liability insurance in rent with option-to-purchase programs.
8. Clarifies section title.
9. Restates proposed law for the purpose of clarification.
10. Deletes provisions of present law which prohibit persons from acting as

producers or brokers to unauthorized insurers that have not been approved by the Department of Insurance unless each of the following criteria are met:

- a. The insurance is limited to commercial property and liability, including commercial marine.
  - b. The insurance coverage is excess coverage with an attachment point of at least \$25,000,000 for property and \$10,000,000 for liability, unless the Department of Insurance requires a different amount.
  - c. The producer or broker has obtained approval from the Department of Insurance for each policy.
  - d. The producer or broker has informed the insured in writing that the insurer has not been approved by the Department of Insurance.
11. Further deletes a provision which allows the commissioner of insurance to require that the insured meet minimum financial requirements and which also requires certification from the producer or broker that the insurer meets the financial requirements as promulgated by the Department of Insurance.
  12. Deletes provision which prohibits surplus lines brokers from placing surplus lines insurance with insurers who are not on the list of approved unauthorized insurers but retains provision that requires the commissioner to maintain a list of approved unauthorized insurers. Further provides that placement of an insurer on such list shall be prima facie evidence that an unauthorized insurer meets the financial and eligibility criteria of present and proposed law.
  13. With respect to contracts between brokers and insureds, changes the term used to signify that a broker has fully informed an insured from "certificate" to "acknowledgment".

### Digest of Bill as Finally Passed by Senate

Proposed law provides relative to the regulation of surplus lines insurance (property and casualty insurance coverage procured from insurers that do not have acknowledgments 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.

Proposed law further provides definitions for "eligible unauthorized insurer" and "home state." Also modifies definition of "approved unauthorized insurer" pursuant to proposed law.

- (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.

Proposed law further provides that an insurer's placement on the commissioner's list of surplus lines insurers shall serve as prima facie evidence of that insurer's compliance with the financial eligibility requirements contained in present law and proposed law.

- (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 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) Proposed law changes language relative to signification of an insured's knowledge with respect to surplus lines insurance from "certification" to "acknowledgment."

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

(Amends R.S. 22:46(2) and (17), 431, 432, 433, 435, 436, 438, and 439(F); Adds R.S. 22:46(7.1) and (8.1))