

CHAPTER 1025
SURPLUS LINES INSURANCE
H.F. 2145

AN ACT establishing regulations to permit access to surplus lines insurance in this state, and providing civil and criminal penalties, coordinating provisions, and repeals, and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
SURPLUS LINES INSURANCE

Section 1. **NEW SECTION. 515L.1 Purpose.**

1. The purposes of this chapter are to do all of the following:
 - a. Establish a system of regulation which will permit orderly access to surplus lines insurance in this state.
 - b. Encourage admitted insurers to make new and innovative types of insurance available to consumers in this state.
 - c. Protect persons seeking insurance in this state.
 - d. Permit surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers.
 - e. Provide a system through which persons may independently procure surplus lines insurance.
 - f. Protect revenues of this state.
 - g. Foster a national system of regulation of surplus lines insurance by collaborating with other state insurance commissioners.
 - h. Provide a system which subjects surplus lines insurance activities in this state to the jurisdiction of the insurance commissioner and state and federal courts in suits by or on behalf of the state.
 - i. Ensure compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.
2. This division¹ shall be liberally construed to promote these purposes.

Sec. 2. **NEW SECTION. 515L.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Admitted insurer*” means an insurer licensed to do insurance business in this state.
2. “*Affiliate*” means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.
3. “*Affiliated group*” means any group of entities that are affiliates.
4. “*Commercial insurance*” means insurance for businesses or professionals.
5. “*Commissioner*” means the commissioner of insurance, or the commissioner’s designees.
6. “*Control*” means either of the following:
 - a. That an entity directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another entity.
 - b. That an entity controls in any manner the election of a majority of the directors or trustees of another entity.
7. “*Eligible surplus lines insurer*” means either of the following:
 - a. A nonadmitted insurer that has filed an application with the commissioner and been approved for placement of surplus lines insurance and appears on the Iowa listing of nonadmitted companies.

¹ See chapter 1138, §73, 86, 87 herein

b. A nonadmitted insurer domiciled outside of the United States that is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners.

8. “*Exempt commercial purchaser*” means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:

a. The person employs or retains a qualified risk manager to negotiate insurance coverage.

b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months.

c. The person meets at least one of the following criteria:

(1) The person possesses a net worth in excess of twenty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(2) The person generates annual revenues in excess of fifty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(3) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.

(4) The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty million dollars except that beginning on January 1, 2015, and on January 1 every five years thereafter, this amount shall be adjusted to reflect the percentage change in the consumer price index for all urban consumers for the most recent available five-year period published by the United States department of labor, bureau of labor statistics.

(5) The person is a municipality with a population in excess of fifty thousand persons.

9. “*Home state*” means:

a. Except as provided in paragraph “b”, with respect to an insured either of the following:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence.

(2) If one hundred percent of the insured risk is located out of the state described in subparagraph (1), the state to which the greatest percentage of the insured’s taxable premium for that insurance policy or contract is allocated.

b. If more than one insured from an affiliated group is a named insured on a single surplus lines insurance policy or contract, the home state, as determined pursuant to paragraph “a”, subparagraph (1), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance policy or contract.

10. “*Independently procured insurance*” means insurance obtained by a person directly from a nonadmitted insurer.

11. “*Insurer*” means the same as defined in section 507.1, subsection 2.

12. “*Nonadmitted insurer*” means an insurer not licensed to do insurance business in this state. “*Nonadmitted insurer*” does not include a risk retention group as defined in chapter 515E.

13. “*Person*” means the same as defined in section 507.1, subsection 2, or any government or governmental entity.

14. “*Placement*” or “*placed*” means that an eligible surplus lines insurer has accepted a premium and issued an insurance policy or contract for a particular risk.

15. “*Premium tax*” means the tax imposed by the state on a contract of insurance equal to the applicable percent, as provided in section 432.1.

16. “*Qualified risk manager*” means a person who meets all of the following requirements:

a. The person is an employee of, or third party consultant retained by a commercial insurance policyholder.

b. The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

c. The person meets one of the following requirements:

(1) The person has a bachelor's degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and meets both of the following requirements:

(a) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(b) Has one of the following designations:

(i) Chartered property and casualty underwriter.

(ii) Associate in risk management.

(iii) Certified risk manager.

(iv) Risk and insurance management society fellow.

(v) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management.

(2) The person has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in subparagraph (1), subparagraph division (b).

(3) The person has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.

(4) The person has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

17. "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, that is placed through a surplus lines insurance producer with an eligible surplus lines insurer. For purposes of this chapter only, "surplus lines insurance" also includes disability insurance that is in excess of policy limits available from an admitted insurer.

18. "Surplus lines insurance producer" means a person licensed pursuant to chapter 522B to sell, solicit, or negotiate surplus lines insurance.

Sec. 3. NEW SECTION. 5151.3 Placement of surplus lines insurance business with nonadmitted insurers.

1. Surplus lines insurance may be placed by a surplus lines insurance producer with a nonadmitted insurer only if all of the following requirements are met:

a. The proposed nonadmitted insurer is an eligible surplus lines insurer.

b. The proposed nonadmitted insurer is authorized to write the type of insurance sought in this state in its domiciliary jurisdiction.

c. Unless otherwise exempt from this requirement, after a diligent search the full amount or type of insurance cannot be obtained from an admitted insurer.

d. All other requirements of this chapter are met.

2. a. In addition to the full amount of gross premiums charged by the nonadmitted insurer for the insurance on which a premium tax is imposed for surplus lines insurance for which the insured's home state is Iowa, a surplus lines insurance producer shall collect and pay to the state of Iowa the appropriate amount of premium tax as provided in section 432.1 for surplus lines insurance. The commissioner shall adopt rules to specify the use of credits or deductions that may be applied to the premium tax.

b. The tax on any portion of the premium unearned at the termination of the surplus lines insurance that has been credited by the state shall be returned to the policyholder directly by the surplus lines insurance producer. The surplus lines insurance producer is prohibited from rebating, for any reason, any part of the tax.

3. This section shall not apply to a person properly licensed as an insurance producer, who, for a fee and pursuant to a written agreement, is engaged solely to offer advice, counsel, opinion, or service to an insured with respect to the benefits, advantages, or disadvantages promised under any proposed or in-force policy of insurance if the person does not, directly

or indirectly, participate in the sale, solicitation, or negotiation of insurance on behalf of the insured.

4. Insurance placed under this section shall be valid and enforceable as to all parties.

Sec. 4. NEW SECTION. 515I.4 Requirements for eligible surplus lines insurers.

1. When this state is the home state of the insured, a nonadmitted insurer shall not place any surplus lines insurance business in this state unless the insurer has been approved for such activity by the commissioner. A nonadmitted insurer seeking to qualify as an eligible surplus lines insurer shall submit a request to so qualify in a form and format as directed by the commissioner which demonstrates all of the following:

a. Capital and surplus or its equivalent under the laws of the insurer's domiciliary jurisdiction which equals the greater of either of the following:

(1) The minimum capital and surplus requirements under the laws of this state.

(2) Fifteen million dollars.

b. Evidence that the nonadmitted insurer is in good standing with its domiciliary regulator.

2. The commissioner may waive the requirements of this section or set specific requirements on a case-by-case basis upon an affirmative finding of acceptability by the commissioner that the placement of insurance with the nonadmitted insurer is necessary and will not be detrimental to the public and to policyholders. In determining whether business may be placed with a nonadmitted insurer, the commissioner shall consider all of the following:

a. The interests of the public and policyholders.

b. The length of time the insurer has been licensed to do insurance business in its domiciliary jurisdiction and elsewhere.

c. The unavailability of particular coverages from other admitted insurers or eligible surplus lines insurers in this state.

d. The size of the nonadmitted insurer as measured by the insurer's assets, capital and surplus, reserves, premium writings, insurance in force, or other appropriate criteria.

e. The kinds of business the nonadmitted insurer writes, the insurer's net exposure, and the extent to which the insurer's business is diversified among several lines of insurance and geographic locations.

f. The past and projected trend in the size of the nonadmitted insurer's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria.

3. Eligible surplus lines insurers shall not be required to file or seek approval of their forms and rates.

Sec. 5. NEW SECTION. 515I.5 Duties of surplus lines insurance producers.

1. A surplus lines insurance producer shall not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer, unless the producer has authority from the insurer to bind the risk to be insured, or has received information from the insurer in the regular course of business that the coverage has been granted.

2. Upon placement of surplus lines insurance, the surplus lines insurance producer shall promptly deliver to the insured the policy or contract, or if the policy or contract is not then available, a certificate cover note, binder, or other evidence of insurance. The certificate cover note, binder, or other evidence of insurance shall contain information as specified by the commissioner by rule.

3. As soon as is reasonably possible after the placement of the insurance, the surplus lines insurance producer shall deliver a copy of the policy or contract or, if not available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each policy or contract or certificate of insurance shall contain or have attached a complete record of all policy or contract insuring agreements, conditions, exclusions, clauses, endorsements, or any other material facts that would regularly be included in the policy or contract.

4. If, after delivery of any evidence of insurance, there is any change in the identity of the eligible surplus lines insurer, or the proportion of the risk assumed by such insurer, or any

other material change in coverage as stated in the original evidence of insurance, or in any other material change as to the insurance coverage so evidenced, the surplus lines insurance producer shall promptly issue and deliver to the insured an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the surplus lines insurer responsible for the coverage.

5. Each surplus lines insurance producer shall keep a full and true record of each surplus lines insurance policy or contract placed by an eligible surplus lines insurer and issued or delivered by that person which covers risks wholly or partly located or to be performed in this state. These records and any other records deemed reasonably necessary by the commissioner shall be made available to the commissioner for examination upon request. Records shall be maintained for a period of not less than five years following termination of the surplus lines insurance policy or contract.

6. A surplus lines insurance producer shall file a report and remit all premium taxes due to this state for all surplus lines insurance placed by an eligible surplus lines insurer and issued or delivered by that person during the reporting period established by the commissioner. The specific requirements for the timing of and content of the report and the manner of filing shall be specified by the commissioner by rule.

Sec. 6. NEW SECTION. 515I.6 Actions against eligible surplus lines insurers.

An eligible surplus lines insurer may be sued upon a cause of action arising in this state under a surplus lines insurance policy or contract placed by the insurer or upon evidence of insurance placed by the insurer and issued or delivered in this state by a surplus lines insurance producer. A policy or contract issued by an eligible surplus lines insurer shall contain a provision stating the substance of this section and designating the person upon whom service of process can be made on behalf of the insurer.

Sec. 7. NEW SECTION. 515I.7 Effect of payment to surplus lines insurance producer.

A payment of premium to a surplus lines insurance producer acting for a person other than the producer in procuring, continuing, or renewing any policy or contract of surplus lines insurance procured under this chapter shall be deemed to be payment to the eligible surplus lines insurer, notwithstanding any other conditions or stipulations that are inserted in the policy or contract of insurance.

Sec. 8. NEW SECTION. 515I.8 Referrals to surplus lines insurance producers.

A surplus lines insurance producer may accept referrals to place surplus lines insurance from any other licensed insurance producer and the surplus lines insurance producer may compensate the referring insurance producer for the referral.

Sec. 9. NEW SECTION. 515I.9 Exempt commercial purchasers.

A surplus lines insurance producer seeking to procure or place surplus lines insurance in this state for an exempt commercial purchaser is not required to make a diligent search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from an admitted insurer if both of the following requirements are met:

1. The surplus lines insurance producer has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer that may provide the purchaser with greater protection and with more regulatory oversight.

2. The exempt commercial purchaser has subsequently requested in writing that the surplus lines insurance producer place such insurance with an eligible surplus lines insurer.

Sec. 10. NEW SECTION. 515I.10 Independently procured surplus lines insurance — premium tax — penalty.

1. When this state is the home state of the insured, a person who directly procures, continues, or renews a surplus lines insurance policy or contract independently and without using a surplus lines insurance producer on properties, risks, or exposures located or to be performed in whole or in part in this state shall file a written report regarding the transaction with the commissioner, in a manner and method as directed by the commissioner by rule.

2. When this state is the home state of the insured, each person who has independently procured a surplus lines insurance policy or contract shall pay a premium tax at a rate appropriate to the amount of premium tax equal to the applicable percent, as provided in section 432.1. The tax shall be remitted via a method and schedule and in a manner as directed by the commissioner by rule.

3. The commissioner may assess a penalty of one percent of the delinquent amount of taxes owed per month as specified in section 507A.9.

Sec. 11. NEW SECTION. 515I.11 Violations and penalties.

1. The commissioner may, after notice and a hearing, declare a surplus lines insurer ineligible to place surplus lines insurance in the state if at any time the commissioner has reason to believe that a surplus lines insurer meets any of the following conditions:

- a. Is in unsound financial condition or has acted in an untrustworthy manner.
- b. No longer meets the standards set forth in this chapter.
- c. Has willfully violated the laws of this state.
- d. Does not conduct its claims settlement practices in a fair and reasonable manner.
- e. Has committed an unfair or deceptive insurance trade practice under chapter 507B.

2. The commissioner may suspend, revoke, or refuse to renew the license of a surplus lines insurance producer or impose any sanction or penalty allowed under chapter 507B after notice and hearing for one or more of the following grounds:

- a. Removal of the resident surplus lines insurance producer's principal place of business from this state without notice to the commissioner.
- b. Removal of the resident surplus lines insurance producer's office accounts and records from this state during the period for which the accounts and records are required to be maintained.
- c. Closure of the surplus lines insurance producer's office for a period of more than thirty business days, unless permission is granted by the commissioner.
- d. Failure to file required reports with the commissioner or the commissioner's designee.
- e. Failure to remit surplus lines insurance premium taxes to this state as directed by the commissioner.

f. Violating any provision of this chapter.

g. For any cause for which an insurance producer license could be denied, revoked, or suspended, or renewal refused or a civil penalty imposed under chapter 522B.

3. The commissioner may initiate an administrative proceeding against a surplus lines insurance producer for the collection of unpaid premium taxes. The commissioner may assess a penalty of one percent of the delinquent amount of taxes owed per month as specified in section 507A.9 and any other penalties allowed by law.

4. A person that represents or aids a nonadmitted insurer in violation of this chapter shall be subject to criminal penalties as set forth in section 507A.10.

Sec. 12. NEW SECTION. 515I.12 Cease and desist orders — civil and criminal penalties.

1. Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a surplus lines insurance producer, an eligible surplus lines insurer, or a nonadmitted insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the producer or insurer. The commissioner may issue an order requiring the producer or insurer to cease and desist from engaging in the conduct resulting in the violation and may assess a civil penalty of not more than fifty thousand dollars against the producer or insurer.

2. a. Upon a determination by the commissioner that a surplus lines insurance producer, an eligible surplus lines insurer, or a nonadmitted insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the producer or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

b. A surplus lines insurance producer, an eligible surplus lines insurer, or a nonadmitted insurer to whom a summary order has been issued under this subsection may contest the order by filing a request for a contested case proceeding and hearing as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the producer or insurer shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing.

c. A surplus lines insurance producer, an eligible surplus lines insurer, or a nonadmitted insurer violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall find the producer or insurer in contempt of the order if the court finds after hearing that the producer or insurer is not in compliance with the order. The court may assess a civil penalty against the producer or insurer and may issue further orders as it deems appropriate.

3. A person acting as a surplus lines insurance producer, an eligible surplus lines insurer, or nonadmitted insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

4. A person acting as a surplus lines insurance producer, an eligible surplus lines insurer, or nonadmitted insurer who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

5. The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule adopted or order issued under this chapter, or of the failure of a person to comply with the licensing requirements of chapter 522B, to the attorney general or the proper county attorney who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

6. This chapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any other statute.

Sec. 13. NEW SECTION. 515I.13 Insurance policy or contract remains valid.

A policy or contract of insurance issued or delivered by an eligible surplus lines insurer or a nonadmitted insurer which is otherwise valid and contains a condition or provision not in compliance with the requirements of this chapter is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions which would have applied had the policy or contract been issued or delivered in full compliance with this chapter.

Sec. 14. NEW SECTION. 515I.13A Scope of operation.

This chapter applies only to transactions when this state is the home state of the applicant or the insured.

Sec. 15. NEW SECTION. 515I.14 Severability.

If any provision of this chapter, or the application of the provision of this chapter to any person or circumstance, is held invalid, the remainder of the chapter and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected by that holding.

Sec. 16. NEW SECTION. 515I.15 Rulemaking authority.

The commissioner shall adopt rules pursuant to chapter 17A to implement the purposes of this chapter.

DIVISION II
COORDINATING PROVISIONS

Sec. 17. Section 432.1, subsection 3, Code 2011, is amended to read as follows:

3. The applicable percent, as provided in subsection 4, of the gross amount of premiums written, and assessments and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state except surplus lines insurance, after deducting the amounts returned upon canceled policies, certificates, and rejected applications but not including the gross premiums written, and assessments and fees received in connection with ocean marine insurance authorized in section 515.48. For surplus lines insurance, the applicable percent, as provided in subsection 4, shall be calculated on the amount of premiums written on surplus lines insurance policies where the home state of the insured, as defined in chapter 515I, is Iowa.

Sec. 18. Section 507A.4, subsection 1, Code Supplement 2011, is amended to read as follows:

1. The lawful transaction of surplus lines insurance as permitted by ~~sections 515.120 through 515.122~~ chapter 515I.

Sec. 19. Section 515E.9, Code 2011, is amended to read as follows:

515E.9 Purchasing group restrictions.

A purchasing group shall not purchase insurance from an insurer not admitted in this state unless the purchase is effected through a duly licensed ~~agent or broker~~ insurance producer acting pursuant to ~~sections 515.120 through 515.122~~ chapter 515I.

Sec. 20. Section 522B.6, subsection 2, paragraph g, Code 2011, is amended to read as follows:

g. Excess and surplus lines insurance provided by certain nonadmitted insurers pursuant to ~~section 515.120~~ chapter 515I.

Sec. 21. REPEAL. Sections 515.120 through 515.122, Code and Code Supplement 2011, are repealed.

Sec. 22. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved March 29, 2012