

**Senate File 2061 - Introduced**

SENATE FILE 2061

BY ANDERSON

(COMPANION TO HSB 534)

**A BILL FOR**

1 An Act establishing regulations to permit access to surplus  
2 lines insurance in this state, and providing civil and  
3 criminal penalties, coordinating provisions, and repeals,  
4 and including effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

DIVISION I

SURPLUS LINES INSURANCE

Section 1. NEW SECTION. 515I.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.

2. This division shall be liberally construed to promote these purposes.

Sec. 2. NEW SECTION. 515I.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

1 professionals.

2 5. "*Commissioner*" means the commissioner of insurance, or  
3 the commissioner's designees.

4 6. "*Control*" means either of the following:

5 a. That an entity directly or indirectly, or acting through  
6 one or more other persons, owns, controls, or has the power  
7 to vote twenty-five percent or more of any class of voting  
8 securities of another entity.

9 b. That an entity controls in any manner the election of a  
10 majority of the directors or trustees of another entity.

11 7. "*Eligible surplus lines insurer*" means a nonadmitted  
12 insurer that has filed an application with the commissioner  
13 and been approved for placement of surplus lines insurance and  
14 appears on the Iowa listing of nonadmitted companies.

15 8. "*Exempt commercial purchaser*" means any person purchasing  
16 commercial insurance that, at the time of placement, meets all  
17 of the following requirements:

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

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

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

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

32 (2) The person generates annual revenues in excess of fifty  
33 million dollars except that beginning on January 1, 2015, and  
34 on January 1 every five years thereafter, this amount shall be  
35 adjusted to reflect the percentage change in the consumer price

1 index for all urban consumers for the most recent available  
2 five-year period published by the United States department of  
3 labor, bureau of labor statistics.

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

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

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

18 9. *"Home state"* means:

19 a. Except as provided in paragraph "b", with respect to an  
20 insured either of the following:

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

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

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

34 10. *"Independently procured insurance"* means insurance  
35 obtained by a person directly from a nonadmitted insurer.

1 11. "*Insurer*" means the same as defined in section 507.1,  
2 subsection 2.

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

6 13. "*Person*" means the same as defined in section 507.1,  
7 subsection 2.

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

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

14 16. "*Qualified risk manager*" means a person who meets all  
15 of the following requirements:

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

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

21 c. The person meets one of the following requirements:

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

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

31 (b) Has one of the following designations:

32 (i) Chartered property and casualty underwriter.

33 (ii) Associate in risk management.

34 (iii) Certified risk manager.

35 (iv) Risk and insurance management society fellow.

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

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

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

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

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

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

29 Sec. 3. NEW SECTION. 515I.3 Placement of surplus lines  
30 insurance business with nonadmitted insurers.

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

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

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

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

7     *d.* All other requirements of this chapter are met.

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

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

22     3. This section shall not apply to a person properly  
23 licensed as an insurance producer, who, for a fee and pursuant  
24 to a written agreement, is engaged solely to offer advice,  
25 counsel, opinion, or service to an insured with respect to  
26 the benefits, advantages, or disadvantages promised under  
27 any proposed or in-force policy of insurance if the person  
28 does not, directly or indirectly, participate in the sale,  
29 solicitation, or negotiation of insurance on behalf of the  
30 insured.

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

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

35     1. When this state is the home state of the insured, a

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

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

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

12       (2) Fifteen million dollars.

13     *b.* If the nonadmitted insurer is not domiciled in a state or  
14 territory of the United States, verification of the insurer's  
15 listing on the national association of insurance commissioners  
16 quarterly listing of alien insurers as maintained by the  
17 national association of insurance commissioners international  
18 insurers department.

19     *c.* Evidence that the nonadmitted insurer is in good standing  
20 with its domiciliary regulator.

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

29       *a.* The interests of the public and policyholders.

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

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



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

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

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

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

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

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

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

30     3. As soon as is reasonably possible after the placement  
31 of the insurance, the surplus lines insurance producer shall  
32 deliver a copy of the policy or contract or, if not available,  
33 a certificate of insurance to the insured to replace any  
34 evidence of insurance previously issued. Each policy or  
35 contract or certificate of insurance shall contain or have

1 attached a complete record of all policy or contract insuring  
2 agreements, conditions, exclusions, clauses, endorsements, or  
3 any other material facts that would regularly be included in  
4 the policy or contract.

5 4. If, after delivery of any evidence of insurance, there  
6 is any change in the identity of the eligible surplus lines  
7 insurer, or the proportion of the risk assumed by such insurer,  
8 or any other material change in coverage as stated in the  
9 original evidence of insurance, or in any other material change  
10 as to the insurance coverage so evidenced, the surplus lines  
11 insurance producer shall promptly issue and deliver to the  
12 insured an appropriate substitute for, or endorsement of the  
13 original document, accurately showing the current status of  
14 the coverage and the surplus lines insurer responsible for the  
15 coverage.

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

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

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

35 An eligible surplus lines insurer may be sued upon a cause of

1 action arising in this state under a surplus lines insurance  
2 policy or contract placed by the insurer or upon evidence of  
3 insurance placed by the insurer and issued or delivered in  
4 this state by a surplus lines insurance producer. A policy  
5 or contract issued by an eligible surplus lines insurer shall  
6 contain a provision stating the substance of this section and  
7 designating the person upon whom service of process can be made  
8 on behalf of the insurer.

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

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

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

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

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

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

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

1 oversight.

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

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

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

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

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

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

26 1. The commissioner may declare a surplus lines insurer  
27 ineligible to place surplus lines insurance in the state if at  
28 any time the commissioner has reason to believe that a surplus  
29 lines insurer meets any of the following conditions:

30 *a.* Is in unsound financial condition or has acted in an  
31 untrustworthy manner.

32 *b.* No longer meets the standards set forth in this chapter.

33 *c.* Has willfully violated the laws of this state.

34 *d.* Does not conduct its claims settlement practices in a  
35 fair and reasonable manner.

1 e. Has committed an unfair or deceptive insurance trade  
2 practice under chapter 507B.

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

7 a. Removal of the resident surplus lines insurance  
8 producer's principal place of business from this state without  
9 notice to the commissioner.

10 b. Removal of the resident surplus lines insurance  
11 producer's office accounts and records from this state during  
12 the period for which the accounts and records are required to  
13 be maintained.

14 c. Closure of the surplus lines insurance producer's  
15 office for a period of more than thirty business days, unless  
16 permission is granted by the commissioner.

17 d. Failure to file required reports with the commissioner  
18 or the commissioner's designee.

19 e. Failure to remit surplus lines insurance premium taxes to  
20 this state as directed by the commissioner.

21 f. Violating any provision of this chapter.

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

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

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

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

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

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

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

1 operation of law or is overturned by a presiding officer or  
2 court following a request for hearing.

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

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

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

24 5. The commissioner may refer such evidence as is available  
25 concerning violations of this chapter or of any rule adopted  
26 or order issued under this chapter, or of the failure of a  
27 person to comply with the licensing requirements of chapter  
28 522B, to the attorney general or the proper county attorney who  
29 may, with or without such reference, institute the appropriate  
30 criminal proceedings under this chapter.

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

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

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

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

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

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

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

19 DIVISION II

20 COORDINATING PROVISIONS

21 Sec. 16. Section 507A.4, subsection 1, Code Supplement  
22 2011, is amended to read as follows:

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

25 Sec. 17. Section 515E.9, Code 2011, is amended to read as  
26 follows:

27 515E.9 Purchasing group restrictions.

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

33 Sec. 18. Section 522B.6, subsection 2, paragraph g, Code  
34 2011, is amended to read as follows:

35 g. Excess and surplus lines insurance provided by certain



1 nonadmitted insurers pursuant to ~~section 515.120~~ chapter 515I.

2 Sec. 19. REPEAL. Sections 515.120 through 515.122, Code and  
3 Code Supplement 2011, are repealed.

4 Sec. 20. EFFECTIVE UPON ENACTMENT. This Act, being deemed  
5 of immediate importance, takes effect upon enactment.

6 EXPLANATION

7 This bill establishes new regulations to permit increased  
8 access to surplus lines insurance in the state, and contains  
9 penalties, coordinating provisions, repeals, and effective date  
10 provisions.

11 The bill creates new Code chapter 515I which contains  
12 regulations that permit the sale of surplus lines insurance  
13 in the state by insurers who are not licensed to do insurance  
14 business in the state. Such insurers shall be listed as  
15 eligible surplus lines insurers if they meet the requirements  
16 of the Code chapter and are approved to sell such insurance by  
17 the commissioner of insurance.

18 Surplus lines insurance producers that are licensed pursuant  
19 to Code chapter 522B to sell, solicit, or negotiate surplus  
20 lines insurance are also subject to new regulations and must  
21 file reports and remit premium taxes to the state for all  
22 surplus lines insurance sold or delivered by the producer, as  
23 required by the commissioner by rule. A payment of premium to  
24 a producer is deemed to be payment to the insurer.

25 Surplus lines insurance producers may sell insurance issued  
26 by an insurer that is not admitted to do business in this  
27 state if the insurer is an eligible surplus lines insurer, the  
28 insurer is authorized to write the type of insurance being sold  
29 in its domiciliary jurisdiction, and a diligent search by the  
30 producer indicates that the type of insurance being sold cannot  
31 be obtained from an insurer admitted to do insurance business  
32 in this state. Surplus lines insurance producers may sell  
33 commercial surplus lines insurance, without determining whether  
34 the coverage is available from an insurer admitted to do  
35 business in the state, to certain exempt commercial purchasers

1 that employ qualified risk managers to negotiate the coverage  
2 and meet certain financial and size parameters.

3 When this state is the home state of the insured, a person  
4 who procures surplus lines insurance independently without  
5 using the services of a surplus lines insurance producer is  
6 required to file a written report about the transaction and  
7 pay the appropriate premium taxes that are due in the manner  
8 that is required by the commissioner by rule. Delinquent taxes  
9 shall be increased by a penalty of 1 percent per month of the  
10 delinquent amount.

11 The commissioner may declare a nonadmitted insurer  
12 ineligible to place surplus lines insurance in the state if  
13 the commissioner believes that the insurer is in an unsound  
14 financial condition or has acted in an untrustworthy manner;  
15 no longer meets the requirements of Code chapter 515I; has  
16 willfully violated Iowa law; does not conduct its claims  
17 settlement practices in a fair and reasonable manner; or has  
18 committed an unfair or deceptive trade practice under Code  
19 chapter 507B.

20 The commissioner may also suspend, revoke, or refuse to  
21 renew the license of a surplus lines insurance producer or  
22 impose any penalty under Code chapter 507B for specified  
23 reasons. The commissioner may initiate an administrative  
24 proceeding against a surplus lines insurance producer for  
25 the collection of unpaid premium taxes and assess a penalty  
26 of 1 percent per month of the delinquent amount. A person  
27 who represents or aids a nonadmitted insurer in violation of  
28 the new Code chapter is subject to criminal penalties. Upon  
29 a determination by the commissioner that a surplus lines  
30 producer, an eligible surplus lines insurance insurer, or  
31 a nonadmitted insurer is violating or about to violate the  
32 provisions of Code chapter 515I, the commissioner may issue a  
33 summary order directing the producer or insurer to cease and  
34 desist, and may impose civil penalties.

35 Willful violation of the provisions of the Code chapter by

1 a surplus lines insurance producer, an eligible surplus lines  
2 insurer, or a nonadmitted insurer is punishable as a class "D"  
3 felony. A class "D" felony is punishable by confinement for  
4 no more than five years and a fine of at least \$750 but not  
5 more than \$7,500. Such a willful violation that results in a  
6 loss of more than \$10,000 is punishable as a class "C" felony.  
7 A class "C" felony is punishable by confinement for no more  
8 than 10 years and a fine of at least \$1,000 but not more than  
9 \$10,000.

10 A policy or contract issued by an eligible surplus lines  
11 insurer or a nonadmitted insurer which is otherwise valid  
12 and contains a condition or provision not in compliance with  
13 the requirements of Code chapter 515I shall be construed in  
14 accordance with the conditions and provisions which would have  
15 applied if the policy or contract had been issued or delivered  
16 in compliance with the Code chapter. Also, if a provision of  
17 the chapter is held invalid as to a person or circumstance, the  
18 rest of the Code chapter shall be valid as to other persons or  
19 circumstances.

20 The commissioner shall adopt rules pursuant to Code chapter  
21 17A to implement the purposes of the new Code chapter.

22 The bill repeals several provisions currently contained in  
23 Code chapter 515 which relate to the sale of surplus lines  
24 insurance in the state. Code sections 507A.4(1) and 515E.9 are  
25 amended to reflect this repeal and the enactment of new Code  
26 chapter 515I.

27 The bill is effective upon enactment.