

House Study Bill 128 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

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:

DIVISION I

SURPLUS LINES INSURANCE

Section 1. NEW SECTION. 515I.1 Purpose.

1. The purposes of this division 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.

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

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

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

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

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

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

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

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

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

30 (b) Has one of the following designations:

31 (i) Chartered property and casualty underwriter.

32 (ii) Associate in risk management.

33 (iii) Certified risk manager.

34 (iv) Risk and insurance management society fellow.

35 (v) Any other designation, certification, or license

1 determined by the commissioner to demonstrate minimum
2 competency in risk management.

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

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

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

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

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

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

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

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

35 b. The proposed nonadmitted insurer is authorized to write

1 the type of insurance sought in this state in its domiciliary
2 jurisdiction.

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

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

7 2. *a.* In addition to the full amount of gross premiums
8 charged by the nonadmitted insurer for the insurance on which
9 a premium tax is imposed, a surplus lines insurance producer
10 shall collect and pay to the state of Iowa in a manner and
11 pursuant to a schedule as directed by the commissioner as
12 provided in section 515I.5, subsection 6, the appropriate
13 amount of premium tax as provided in section 432.1 for surplus
14 lines insurance. The commissioner shall adopt rules to specify
15 the use of credits or deductions that may be applied to the
16 premium tax.

17 *b.* If the surplus lines insurance covers properties, risks,
18 or exposures located or to be performed both in and outside of
19 this state, the surplus lines insurance producer shall allocate
20 the premium tax among the various states according to the
21 methods set forth in division II of this chapter.

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

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

1 insured.

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

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

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

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

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

18 (2) Fifteen million dollars.

19 b. If the nonadmitted insurer is not domiciled in a state or
20 territory of the United States, verification of the insurer's
21 listing on the national association of insurance commissioners
22 quarterly listing of alien insurers as maintained by the
23 national association of insurance commissioners international
24 insurers department.

25 c. Evidence that the nonadmitted insurer is in good standing
26 with its domiciliary regulator.

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

35 a. The interests of the public and policyholders.

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

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

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

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

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

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

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

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

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

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

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

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

32 6. A surplus lines insurance producer shall file a report
33 and remit all premium taxes due to this state for all surplus
34 lines insurance placed by an eligible surplus lines insurer and
35 issued or delivered by that person during the reporting period

1 established by the commissioner. The specific requirements
2 for the timing of and content of the report and the manner of
3 filing shall be specified by the commissioner by rule. If
4 the commissioner elects to participate in a clearinghouse as
5 described in division II of this chapter, each surplus lines
6 insurance producer shall file reports and remit premium taxes
7 according to the guidelines of the clearinghouse.

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

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

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

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

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

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

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

35 A surplus lines insurance producer seeking to procure or

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

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

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

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

17 1. A person who directly procures, continues, or renews a
18 surplus lines insurance policy or contract independently and
19 without using a surplus lines insurance producer on properties,
20 risks, or exposures located or to be performed in whole or in
21 part in this state shall file a written report regarding the
22 transaction with the commissioner, in a manner and method as
23 directed by the commissioner by rule.

24 2. Each person who has independently procured a surplus
25 lines insurance policy or contract shall pay a premium tax at
26 a rate appropriate to the amount of premium tax equal to the
27 applicable percent, as provided in section 432.1. The tax
28 shall be remitted via a method and schedule and in a manner as
29 directed by the commissioner by rule.

30 3. If an independently procured surplus lines insurance
31 policy or contract covers properties, risks, or exposures
32 only partially located or to be performed in this state, the
33 tax payable shall be computed on the portion of the premium
34 properly attributable to the properties, risks, or exposures
35 located or to be performed in this state. If the commissioner

1 has elected to participate in a clearinghouse as described in
2 division II of this chapter, reports and premium tax payments
3 shall be remitted according to clearinghouse procedures.

4 4. If the information provided to the commissioner is
5 insufficient to substantiate the method of computation, or if
6 the commissioner determines that the method of computation is
7 incorrect, the commissioner shall determine the equitable and
8 appropriate amount of tax due to this state. In making such a
9 determination, the commissioner shall consider any available
10 relevant information.

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

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

15 1. The commissioner may declare a surplus lines insurer
16 ineligible to place surplus lines insurance in the state if at
17 any time the commissioner has reason to believe that a surplus
18 lines insurer meets any of the following conditions:

19 a. Is in unsound financial condition or has acted in an
20 untrustworthy manner.

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

22 c. Has willfully violated the laws of this state.

23 d. Does not conduct its claims settlement practices in a
24 fair and reasonable manner.

25 e. Has committed an unfair or deceptive insurance trade
26 practice under chapter 507B.

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

31 a. Removal of the resident surplus lines insurance
32 producer's principal place of business from this state without
33 notice to the commissioner.

34 b. Removal of the resident surplus lines insurance
35 producer's office accounts and records from this state during

1 the period for which the accounts and records are required to
2 be maintained.

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

6 d. Failure to file required reports with the commissioner
7 or the commissioner's designee.

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

10 f. Violating any provision of this chapter.

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

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

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

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

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

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

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

27 *c.* A surplus lines insurance producer, an eligible surplus
28 lines insurer, or a nonadmitted insurer violating a summary
29 order issued under this subsection shall be deemed in contempt
30 of that order. The commissioner may petition the district
31 court to enforce the order as certified by the commissioner.
32 The district court shall find the producer or insurer in
33 contempt of the order if the court finds after hearing that
34 the producer or insurer is not in compliance with the order.
35 The court may assess a civil penalty against the producer or

1 insurer and may issue further orders as it deems appropriate.

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

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

13 5. The commissioner may refer such evidence as is available
14 concerning violations of this chapter or of any rule adopted
15 or order issued under this chapter, or of the failure of a
16 person to comply with the licensing requirements of chapter
17 522B, to the attorney general or the proper county attorney who
18 may, with or without such reference, institute the appropriate
19 criminal proceedings under this chapter.

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

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

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

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

34 If any provision of this chapter, or the application of the
35 provision of this chapter to any person or circumstance, is

1 held invalid, the remainder of the chapter and the application
2 of the provision to persons or circumstances other than those
3 as to which it is held invalid, shall not be affected by that
4 holding.

5 Sec. 15. NEW SECTION. 515I.31 **Purpose.**

6 1. The purpose of this division is to establish a mechanism
7 by which a surplus lines insurance producer or insured shall
8 allocate premiums and pay premium taxes where placement of
9 surplus lines insurance covers properties, risks, or exposures
10 located or to be performed in multiple states.

11 2. This division shall be liberally construed and applied
12 to promote its underlying purposes which include all of the
13 following:

14 *a.* To require a surplus lines insurance producer or an
15 insured, under certain circumstances, to collect the entire
16 amount of premium tax due on a multistate risk as assessed
17 by all impacted states where a placement of surplus lines
18 insurance covers properties, risks, or exposures located or to
19 be performed in more than one state.

20 *b.* To facilitate payment of surplus lines insurance premium
21 taxes on surplus lines insurance placed through surplus lines
22 insurance producers on risks located or to be performed solely
23 in this state.

24 *c.* To facilitate payment of premium taxes by an insured
25 that has independently procured surplus lines insurance in this
26 state for a single state or multistate risk.

27 *d.* To allow for the imposition of a filing fee by a
28 clearinghouse.

29 Sec. 16. NEW SECTION. 515I.32 **Participation in a**
30 **clearinghouse.**

31 1. The commissioner is authorized to participate in a
32 national clearinghouse to facilitate the filing of reports and
33 collection of surplus lines insurance premium taxes for insured
34 risks located solely in this state or in multiple states.
35 Any such clearinghouse shall be maintained by the national

1 association of insurance commissioners or its affiliates or
2 subsidiaries, or an entity endorsed by the association.

3 2. Pursuant to the federal Dodd-Frank Wall Street Reform
4 and Consumer Protection Act, Pub. L. No. 111-203, also known as
5 the Nonadmitted and Reinsurance Reform Act, the commissioner is
6 authorized to collect or require the collection of the entire
7 amount of premium taxes due to all states for a multistate risk
8 which is partially located or to be performed in this state and
9 the remittance of surplus lines insurance premium tax payments
10 to a clearinghouse as described in subsection 1 for delivery to
11 another state, that are attributable to properties, risks, or
12 exposures located or to be performed in that state.

13 3. The commissioner is authorized to impose reasonable
14 filing fees for reports and tax payments made through
15 the clearinghouse to defray the costs of operation of the
16 clearinghouse.

17 Sec. 17. NEW SECTION. **515I.33 Collection and allocation of**
18 **surplus lines insurance premium taxes on multistate risks.**

19 1. In determining the amount of surplus lines insurance
20 premiums taxable in this state, all premiums written, procured,
21 or received in this state for such insurance shall be presumed
22 to be written on properties, risks, or exposures located or
23 to be performed in this state unless a report is filed by the
24 surplus lines insurance producer or insured which indicates
25 that the risk includes properties, risks, or exposures located
26 or to be performed in more than one state.

27 2. If a surplus lines insurance policy or contract covers
28 properties, risks, or exposures located or to be performed
29 in more than one state, the premium tax to be paid to the
30 commissioner of each state shall be computed on that portion
31 of the policy or contract premium that is attributable to
32 properties, risks, or exposures located or to be performed in
33 each state. The surplus lines insurance producer or insured
34 shall determine the amount of premium taxes due by allocating
35 the total premium among the states according to a method

1 specified by the commissioner by rule. If the information
2 provided by the surplus lines insurance producer or insured is
3 insufficient to substantiate the method of allocation used, or
4 if the commissioner determines that the method of allocation
5 used is incorrect, the commissioner shall determine the
6 equitable and appropriate amount of tax due to this state. In
7 making such a determination, the commissioner shall consider
8 any available relevant information.

9 Sec. 18. NEW SECTION. 515I.34 **Rulemaking authority.**

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

12 DIVISION II

13 COORDINATING PROVISIONS

14 Sec. 19. Section 507A.4, subsection 1, Code 2011, is amended
15 to read as follows:

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

18 Sec. 20. Section 515E.9, Code 2011, is amended to read as
19 follows:

20 **515E.9 Purchasing group restrictions.**

21 A purchasing group shall not purchase insurance from an
22 insurer not admitted in this state unless the purchase is
23 effected through a duly licensed ~~agent or broker~~ insurance
24 producer acting pursuant to ~~sections 515.120 through~~
25 ~~515.122~~ chapter 515I.

26 Sec. 21. Section 522B.6, subsection 2, paragraph g, Code
27 2011, is amended to read as follows:

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

30 Sec. 22. REPEAL. Sections 515.120 through 515.122, Code
31 2011, are repealed.

32 Sec. 23. CODE EDITOR'S DIRECTIVE. The Code editor is
33 directed to designate sections 515I.1 through 515I.30 as
34 division I of chapter 515I captioned as "Surplus lines
35 insurance" and to designate sections 515I.31 through 515I.34 as

1 division II of chapter 515I captioned as "Allocation of premium
2 tax on multistate risks".

3 Sec. 24. EFFECTIVE UPON ENACTMENT. This Act, being deemed
4 of immediate importance, takes effect upon enactment.

5 EXPLANATION

6 This bill establishes new regulations to permit increased
7 access to surplus lines insurance in the state, allows the
8 allocation of premiums and payment of premium taxes on such
9 insurance that is written on multistate risks, allows the
10 commissioner of insurance to participate in a national
11 clearinghouse in regards to the sale of such insurance, and
12 contains penalties, coordinating provisions, repeals, and
13 effective date provisions.

14 The bill creates new Code chapter 515I which is divided into
15 division I and division II. Division I of Code chapter 515I
16 contains regulations that permit the sale of surplus lines
17 insurance in the state by insurers who are not licensed to
18 do insurance business in the state. Such insurers shall be
19 listed as eligible surplus lines insurers if they meet the
20 requirements of the Code chapter and are approved to sell such
21 insurance by the commissioner of insurance.

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

29 Surplus lines insurance producers may sell insurance issued
30 by an insurer that is not admitted to do business in this
31 state if the insurer is an eligible surplus lines insurer, the
32 insurer is authorized to write the type of insurance being sold
33 in its domiciliary jurisdiction, and a diligent search by the
34 producer indicates that the type of insurance being sold cannot
35 be obtained from an insurer admitted to do insurance business

1 in this state. Surplus lines insurance producers may sell
2 commercial surplus lines insurance, without determining whether
3 the coverage is available from an insurer admitted to do
4 business in the state, to certain exempt commercial purchasers
5 that employ qualified risk managers to negotiate the coverage
6 and meet certain financial and size parameters.

7 A person who procures surplus lines insurance independently
8 without using the services of a surplus lines insurance
9 producer is required to file a written report about the
10 transaction and pay the appropriate premium taxes that are due
11 in the manner that is required by the commissioner by rule. If
12 the independently procured insurance policy or contract covers
13 properties, risks, or exposures located or to be performed in
14 multiple states, the tax payable is computed on the portion of
15 the premium attributable to the properties, risks, or exposures
16 in this state. Delinquent taxes shall be increased by a
17 penalty of 1 percent per month of the delinquent amount.

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

27 The commissioner may also suspend, revoke, or refuse to
28 renew the license of a surplus lines insurance producer or
29 impose any penalty under Code chapter 507B for specified
30 reasons. The commissioner may initiate an administrative
31 proceeding against a surplus lines insurance producer for
32 the collection of unpaid premium taxes and assess a penalty
33 of 1 percent per month of the delinquent amount. A person
34 who represents or aids a nonadmitted insurer in violation of
35 the new Code chapter is subject to criminal penalties. Upon

1 a determination by the commissioner that a surplus lines
2 producer, an eligible surplus lines insurance insurer, or
3 a nonadmitted insurer is violating or about to violate the
4 provisions of Code chapter 515I, the commissioner may issue a
5 summary order directing the producer or insurer to cease and
6 desist, and may impose civil penalties.

7 Willful violation of the provisions of the Code chapter by
8 a surplus lines insurance producer, an eligible surplus lines
9 insurer, or a nonadmitted insurer is punishable as a class "D"
10 felony. A class "D" felony is punishable by confinement for
11 no more than five years and a fine of at least \$750 but not
12 more than \$7,500. Such a willful violation that results in a
13 loss of more than \$10,000 is punishable as a class "C" felony.
14 A class "C" felony is punishable by confinement for no more
15 than 10 years and a fine of at least \$1,000 but not more than
16 \$10,000.

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

27 Division II of new Code chapter 515I establishes a
28 mechanism for a surplus lines insurance producer or insured
29 to allocate premiums and pay premium taxes where the surplus
30 lines insurance covers properties, risk, or exposures that
31 are located or to be performed in multiple states. The
32 commissioner is authorized to participate in a national
33 clearinghouse maintained or endorsed by the national
34 association of insurance commissioners to facilitate the filing
35 of reports and collection of surplus lines insurance premium

1 taxes for insured properties, risks, or exposures located
2 solely in this state or in multiple states. The commissioner
3 can collect or require the collection of the entire amount of
4 premium taxes due to all states and the remittance of those
5 payments to the clearinghouse. The commissioner can also
6 impose filing fees for reports and tax payments made through
7 the clearinghouse to defray its costs of operation.

8 In determining the amount of surplus lines insurance
9 premiums that are taxable in this state, it is presumed that
10 all premiums written, procured, or received in this state are
11 for properties, risks, or exposures located or to be performed
12 in this state unless a surplus lines insurance producer or
13 insured files a report indicating otherwise. If so, the
14 premium tax payable to the commissioner shall be computed
15 on that portion of the premium that is attributable to the
16 properties, risk, or exposures in this state according to a
17 method specified by the commissioner.

18 The commissioner shall adopt rules pursuant to Code chapter
19 17A to implement the purposes of the new Code chapter.

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

25 The bill is effective upon enactment.