

House Study Bill 534 - 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 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 Supplement 2011, is amended
26 to read as 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~~
32 515.122 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.