

**SB46 ENROLLED**



1 SB46  
2 N4Y3TJ8-2  
3 By Senator Shelnuttt  
4 RFD: Banking and Insurance  
5 First Read: 06-Feb-24



## SB46 Enrolled

1 Enrolled, An Act,

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5 Relating to the Department of Insurance; to amend  
6 Sections 27-10-1 and 27-10-2 of the Code of Alabama 1975,  
7 relating to unauthorized insurers and exceptions; to amend  
8 Sections 27-10-20 through 27-10-26, 27-10-30, and 27-10-31 of  
9 the Code of Alabama 1975, relating to surplus line brokers and  
10 surplus line insurance; and to repeal Chapter 61 of Title 27,  
11 Code of Alabama 1975, providing for membership by this state  
12 in the Surplus Lines Insurance Multi-State Compliance Compact  
13 Act.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 27-10-1 and 27-10-2 of the Code of  
16 Alabama 1975, are amended to read as follows:

17 "§27-10-1

18 (a) ~~No~~ In this state, no person shall ~~in this state~~,  
19 ~~directly or indirectly~~, act as agent for, or otherwise  
20 represent, directly or indirectly, ~~or aid on behalf of~~  
21 ~~another~~, any insurer not ~~then~~ authorized to transact such  
22 insurance in this state in the solicitation, negotiation, or  
23 effectuation of insurance or annuity contracts, forwarding of  
24 applications, delivery of policies or contracts, inspection of  
25 risks, fixing of rates, investigation or adjustment of losses,  
26 collection of premiums, or in any other manner in the  
27 transaction of insurance with respect to subjects of insurance  
28 ~~resident~~, located or ~~to be~~ performed in this state.



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29 (b) This section shall not apply to:

30 (1) Acceptance of service of process by the  
31 commissioner under Section 27-10-52;

32 (2) Surplus lines insurance or coverage specified in  
33 Section 27-10-34 ~~and other transactions as to which a~~  
34 ~~certificate of authority is not required of an insurer;~~

35 (3) Adjustment of losses as authorized in Section  
36 27-10-35;

37 (4) Transactions for which a certificate of authority  
38 to do business is not required of an insurer under the laws of  
39 this state;

40 (5) Reinsurance effectuated in accordance with this  
41 title; or

42 (6) The property and operations of the shipbuilding  
43 ~~and/or~~ ship repair industry engaged in interstate or foreign  
44 commerce and vessels, cargoes, watercraft, piers, wharves,  
45 graven docks, dry docks, marine railways, and building ways,  
46 commonly known as wet marine.

47 (c) ~~This section shall not be deemed to render invalid,~~  
48 ~~as between the parties thereto, any insurance contract entered~~  
49 ~~into in violation of this section.~~ No insurance contract entered  
50 into in violation of this section shall preclude the insured  
51 from enforcing his or her rights under the contract in  
52 accordance with the terms and provisions of the contract and  
53 the laws of this state to the same degree those rights would  
54 have been enforceable had the contract been lawfully  
55 procured."

56 "§27-10-2



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57 (a) Any person who ~~in this state~~ willfully represents  
58 or aids an unauthorized insurer in violation of Section  
59 27-10-1 ~~shall~~, in addition to any other applicable penalty,  
60 shall be liable for the full amount of any loss sustained by  
61 the insured under any such contract and for ~~the amount of~~ any  
62 premium taxes which may be payable under Section 27-10-35 by  
63 reason of such contract.

64 (b) Any independent adjuster who, directly or  
65 indirectly, ~~enters into an investigation~~ investigates ~~or~~  
66 ~~adjustment of~~ any loss arising under ~~a contract of an~~  
67 insurance or annuity contract issued by an unauthorized  
68 insurer and covering ~~at time of issuance~~ a subject of  
69 insurance ~~resident~~, located or ~~to be~~ performed in this state  
70 shall be liable for the full amount of any loss suffered by  
71 the insured under such contract. The commissioner ~~may~~, after a  
72 hearing, may revoke the license of such an independent  
73 adjuster. This subsection does not apply as to surplus lines  
74 contracts lawfully written under this chapter, or exempted  
75 under Section 27-10-34, or to insurance contracts procured by  
76 the insured on his or her own behalf and on which the tax is  
77 paid as required by Section 27-10-35, or to transactions as to  
78 which the insurer is not required to have a certificate of  
79 authority."

80 Section 2. Sections 27-10-20 through 27-10-26,  
81 27-10-30, and 27-10-31 of the Code of Alabama 1975, are  
82 amended to read as follows:

83 "§27-10-20

84 If certain insurance coverages cannot be procured on



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85 terms acceptable to the insureds from authorized insurers,  
86 such coverages, designated "surplus lines," may be procured  
87 from unauthorized insurers subject to the terms and conditions  
88 of either subdivisions (1) or (2) of this section:

89 (1)a. The insurance must be procured through a licensed  
90 surplus line broker;

91 b. The full amount of insurance required must not be  
92 procurable, after diligent effort has been made to do so, from  
93 among the insurers authorized to transact and actually  
94 transacting that kind and class of insurance in this state or  
95 has been procured to the full extent such insurers are willing  
96 to insure;

97 c. A surplus line transaction conducted in accordance  
98 with 15 U.S.C. § 8205 may be exempt from the diligent effort  
99 requirement;

100 ~~e.d.~~ The insurance must not be procured for the purpose  
101 of securing advantages as to a lower premium rate than would  
102 be accepted by an authorized insurer; and

103 ~~d.e.~~ This section, and this surplus line law, does not  
104 apply as to life insurance or disability insurance.

105 (2) The insurance ~~contracts-of insurance~~ are issued to  
106 an industrial insured, defined as an insured:

107 a. Which procures the insurance of any risk by use of  
108 services of a full-time employee acting as an insurance  
109 manager or buyer or the services of a regularly and  
110 continuously retained, qualified insurance consultant;

111 b. Whose aggregate annual premiums for insurance on all  
112 risks other than workmen's compensation and group insurance



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113 total at least twenty-five thousand dollars (\$25,000.00); and  
114 c. Which has at least 25 employees."

115 "§27-10-21

116 ~~Within 30 days after the effective date of any such~~  
117 ~~insurance, If surplus line insurance was transacted in the~~  
118 ~~preceding calendar quarter, the surplus line broker shall file~~  
119 ~~a written quarterly report ~~with~~ as prescribed by the~~  
120 commissioner setting forth facts from which it can be  
121 determined whether ~~under Section 27-10-20~~ the coverage has  
122 been lawfully placed as a surplus line. ~~If so required by the~~  
123 ~~commissioner, the report shall be in the form of the broker's~~  
124 ~~affidavit.~~ If ~~so~~ required by the commissioner, the report  
125 shall be accompanied by a written statement signed by the  
126 insured ~~to the effect that~~ acknowledging the coverage was  
127 placed ~~in~~ with an unauthorized insurer with the insured's  
128 knowledge and consent."

129 "§27-10-22

130 Every insurance contract procured and delivered as a  
131 surplus line coverage pursuant to this article shall ~~be~~  
132 ~~initialed by, or~~ bear the name and license number of, the  
133 surplus line broker who procured it and shall have stamped  
134 upon it the following:

135 "This contract is registered and delivered as a surplus  
136 line coverage under the Alabama Surplus Line Insurance Law."

137 "§27-10-23

138 Insurance contracts procured as "surplus line"  
139 coverages from unauthorized insurers in accordance with this  
140 article shall be ~~fully~~ valid and enforceable as to all parties



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141 and shall be ~~given acceptance and recognition~~ recognized in  
142 all matters ~~and respects~~ to the same effect and extent as like  
143 contracts issued by authorized insurers."

144 "§27-10-24

145 (a) Any person, ~~while~~ licensed as a resident insurance  
146 producer in this state for the property and casualty lines of  
147 authority and ~~who is~~ deemed by the commissioner ~~to have had~~  
148 ~~sufficient~~ sufficiently ~~experience~~ experienced in the  
149 insurance business ~~to be competent for the purpose~~ may be  
150 licensed as a surplus line broker for the same types ~~and kinds~~  
151 of insurance that he or she ~~as a resident producer~~ is  
152 currently licensed to handle as follows:

153 (1) Application ~~to the commissioner for the license~~  
154 shall be made on forms ~~as~~ designated and furnished by the  
155 commissioner.

156 (2) License fee ~~in the amount stated in~~ required by  
157 Section 27-4-2 shall be paid to the commissioner. The license  
158 shall expire on December 31 next after its issue.

159 (3) Prior to the issuance of the license, the applicant  
160 shall file with the commissioner, ~~and thereafter for as long~~  
161 ~~as any license remains in effect he or she shall keep in force~~  
162 ~~and unimpaired,~~ a bond in favor of the State of Alabama in the  
163 penal sum of at least fifty thousand dollars (\$50,000),  
164 aggregate liability, with authorized corporate sureties  
165 approved by the commissioner to remain in force for the  
166 duration of the license or any renewal. The amount of the bond  
167 may be increased if deemed necessary by the commissioner,  
168 considering the amount of surplus lines tax paid in previous



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169 years. The bond shall be conditioned that the broker will  
170 conduct business under the license in accordance with the  
171 provisions of the surplus line insurance law and ~~that he or~~  
172 ~~she~~ will promptly remit the taxes as provided by the law. No  
173 bond shall be terminated unless at least 30 days' prior  
174 written notice thereof is given to the broker and the  
175 commissioner.

176 (b) A business entity acting as a surplus line broker  
177 shall designate each licensed individual producer acting under  
178 the license, each of whom shall be responsible for the  
179 business entity's compliance with the insurance laws, rules,  
180 and regulations of this state. A separate fee shall be paid  
181 for each individual producer acting under a business entity  
182 license as surplus line broker, as ~~set forth~~ in Section  
183 27-4-2.

184 (c) A nonresident person may be licensed as a surplus  
185 line broker for the same types of insurance that he or she is  
186 currently licensed in good standing to handle in his or her  
187 domiciled state, as follows:

188 (1) The nonresident shall comply with the requirements  
189 established in subsection (a).

190 ~~(e)-(1)~~ (2) Each licensed nonresident surplus line broker  
191 shall be considered to have performed acts equivalent to and  
192 constituting an appointment of the commissioner ~~as his or her~~  
193 ~~attorney~~ to receive service of legal process issued against  
194 the nonresident in this state upon causes of action arising  
195 within this state out of transactions under the nonresident's  
196 surplus line broker license. Service upon the commissioner ~~as~~





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197 ~~such attorney~~ shall constitute effective legal service upon  
198 the nonresident.

199 ~~(2)~~ (3) The appointment shall be irrevocable for as long  
200 as there may be any such cause of action in this state against  
201 the nonresident.

202 ~~(3)~~ (4) Service of process under this section shall be  
203 made by leaving three copies of the summons and complaint, or  
204 other process, with the commissioner, along with payment of  
205 the fee prescribed in Section 27-4-2, and the service shall be  
206 sufficient service upon the nonresident if notice of the  
207 service and a copy of the summons and complaint or other  
208 process are sent by registered or certified mail to the  
209 defendant by the commissioner; and the defendant's return and  
210 the certificate of the commissioner certifying compliance  
211 herewith shall be filed in the office of the clerk of court,  
212 or in the court or tribunal wherein the action is pending. The  
213 certificate of the commissioner shall show the date of the  
214 mailing by registered or certified mail of the notice of the  
215 service and copy of the summons and complaint, or other  
216 process, to the nonresident defendant and the date of the  
217 receipt of the return card and shall be signed by the  
218 commissioner. The commissioner may give the nonresident  
219 defendant notice of the service upon him or her, in lieu of  
220 the notice of service provided for herein to be given by  
221 registered or certified mail, in the following manner:

222 a. By having a notice of service and a copy of the  
223 summons and complaint, or other process, served upon the  
224 nonresident defendant, if found within the State of Alabama,



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225 by any officer duly qualified to serve legal process within  
226 the State of Alabama or, if the nonresident defendant is found  
227 to be outside of the State of Alabama, by a sheriff, deputy  
228 sheriff, or United States marshal or deputy United States  
229 marshal, or any duly constituted officer qualified to serve  
230 like process in the state or the jurisdiction where the  
231 nonresident defendant is found.

232           b. The officer's return showing service, when made,  
233 shall be filed in the office of the clerk of the court, or in  
234 the court or tribunal wherein the action is pending, on or  
235 before the return day of the process or as the court or  
236 tribunal may allow, and the court or tribunal in which the  
237 action is pending may order a continuance, or continuances, as  
238 may be necessary to afford the nonresident defendant  
239 reasonable opportunity to defend the action.

240           ~~(4)~~ (5) The commissioner shall keep on file for a period  
241 of not less than three years a copy of the summons and  
242 complaint or other process served upon the commissioner,  
243 together with a record of all such process and of the day,  
244 hour, and manner of service."

245           "§27-10-25

246           (a) A licensed surplus line broker may accept and place  
247 surplus line business for any insurance producer licensed in  
248 this state for the kind and class of insurance involved and  
249 may compensate the producer therefor. No producer shall  
250 knowingly misrepresent to the broker any material fact  
251 involved in any insurance or in the eligibility thereof for  
252 placement with an unauthorized insurer.

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253 (b) Notwithstanding Section 27-12-17(b), a reasonable  
254 fee for each policy may be charged by the filing surplus lines  
255 broker for each policy placed in lawful compliance with  
256 Section 27-10-20. This per-policy fee shall be itemized  
257 separately to the customer before purchase, enumerated in the  
258 policy or a notice delivered with the policy, and is subject  
259 to the surplus line broker tax required under Section  
260 27-10-31."

261 "§27-10-26

262 (a) A surplus line broker shall not knowingly place  
263 surplus line insurance with an insurer that is unsound  
264 financially, or that is ineligible under this section. The  
265 broker shall ascertain the financial condition of the  
266 unauthorized insurer before placing insurance therewith.

267 (b) The broker ~~shall not so insure~~ may only place  
268 insurance with ~~any~~ an insurer meeting one of the following:

269 (1) ~~With any~~ An insurer ~~which is not an~~ authorized  
270 ~~insurer~~ in at least one state of the United States for the  
271 kind of insurance involved, and with capital or surplus, or  
272 both, amounting to at least five million dollars (\$5,000,000);  
273 or guaranteed trust fund amounting to at least five million  
274 dollars (\$5,000,000).

275 (2) ~~With an~~ An alien insurer ~~not~~ authorized to transact  
276 insurance in at least one state of the United States, ~~or an~~  
277 unauthorized insurer listed on the Quarterly Listing of Alien  
278 Insurers maintained by the International Insurers Department  
279 of the National Association of Insurance Commissioners and  
280 ~~unless~~ the insurer shall have established an effective trust



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281 fund of at least two million five hundred thousand dollars  
282 (\$2,500,000) within the United States administered by a  
283 recognized financial institution and held for the benefit of  
284 all its policyholders or policyholders and creditors in the  
285 United States, and with capital or surplus, or both, amounting  
286 to at least fifteen million dollars (\$15,000,000).

287 (3) ~~With a~~A foreign or alien insurer which has  
288 transacted insurance as an authorized insurer in its domicile  
289 state or country ~~of domicile~~ for not less than five years,  
290 unless it is a wholly owned subsidiary of an insurer  
291 authorized to transact insurance in this state or unless it  
292 makes a deposit in this state as may be permitted under  
293 subsection (c).

294 (4) ~~With an~~An insurer ~~the voting control of which is~~  
295 ~~held controlled,~~ in whole or substantial part, by any  
296 government or governmental agency.

297 (5) ~~In any~~Any insurer made ineligible as a surplus line  
298 insurer by order of the commissioner received by or known to  
299 the broker. The commissioner may issue an order of  
300 ineligibility if he or she finds that the insurer:

301 a. Does not meet the financial requirements of this  
302 section;

303 b. Has without just cause refused to pay valid claims  
304 arising under its contracts in this state or has otherwise  
305 conducted its affairs in a manner as to result in injury or  
306 loss to the insuring public of this state; or

307 c. Has conducted its affairs in a manner as to result  
308 in the avoidance of payment of tax as required by Sections



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309 27-10-31 and 27-10-35.

310 (c) When it appears after a search of surplus lines  
311 insurers that any particular insurance risk which is eligible  
312 to be placed in accordance with the surplus line law but on  
313 which insurance coverage, in whole or in part, is not  
314 procurable from foreign or alien insurers meeting all of the  
315 requirements of subsection (b) but is procurable from a  
316 foreign or alien insurer meeting all of the requirements of  
317 subsection (b) except for ~~paragraph~~ subdivision (3), then the  
318 surplus line broker may file a supplemental signed statement  
319 setting forth the facts and advising the department that the  
320 part of the risk as shall be unprocurable, as aforesaid, is  
321 being placed with named unauthorized insurers which meet all  
322 of the requirements of subsection (b) except for ~~paragraph~~  
323 subdivision (3), in the amounts and percentages set forth in  
324 the statement. These named unauthorized insurers, before  
325 accepting any risk in this state, shall deposit with the  
326 department cash or securities acceptable to the commissioner  
327 and with a market value of not less than one million dollars  
328 (\$1,000,000), which deposit shall be held by the department  
329 for the benefit of Alabama policyholders only. The deposit  
330 shall be held in the same manner as other deposits as  
331 described in Section 27-3-11. The commissioner may adopt  
332 reasonable rules for the implementation and administration of  
333 this section."

334 "§27-10-30

335 (a) Each surplus line broker shall, on or before the  
336 first day of March of each year, file with the commissioner a



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337 verified statement of all surplus line insurance transacted by  
338 him or her during the preceding calendar year. If no surplus  
339 line insurance was transacted in the preceding calendar year,  
340 no statement is required.

341 (b) The statement shall be on forms as prescribed and  
342 furnished by the commissioner and shall show:

343 (1) Gross amount of each kind of insurance transacted;

344 (2) Aggregate gross premiums charged, exclusive of sums  
345 collected to cover state or federal taxes;

346 (3) Aggregate of returned premiums and taxes paid to  
347 insureds;

348 (4) Aggregate of net premiums; and

349 (5) Additional information as required by the  
350 commissioner."

351 "§27-10-31

352 (a) On or before the first day of March each year, the  
353 surplus line broker shall remit to the State Treasurer through  
354 the commissioner, as a tax imposed for the privilege of  
355 transacting business as a surplus line broker in this state, a  
356 tax of six percent on the direct premiums, less return  
357 premiums and exclusive of sums collected to cover state or  
358 federal taxes, on surplus line insurance issued to insureds  
359 whose home state is this state as the term "home state" is  
360 defined in 15 U.S.C. § 8206, subject to tax transacted by the  
361 broker during the preceding calendar year as shown by the  
362 annual statement filed with the commissioner.

363 (b) The tax under the provisions of this section shall  
364 be subject to deduction of the full amount of all expenses of



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365 examination of the surplus line broker by the commissioner in  
366 the same manner as that allowed for domestic insurers for  
367 examination expenses under the provisions of subdivision (5)  
368 of subsection (c) of Section 27-4A-3. All taxes collected  
369 under this section shall be deposited in the State Treasury to  
370 the credit of the State General Fund.

371 ~~(c) This section shall not be effective if the Surplus~~  
372 ~~Lines Insurance Multi-State Compliance Compact is not enacted~~  
373 ~~into law by two compacting states."~~

374 Section 3. Chapter 61 of Title 27 of the Code of  
375 Alabama 1975, is repealed.

376 Section 4. This act shall become effective on July 1,  
377 2024.



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB46

Senate 27-Feb-24

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,  
Secretary.

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House of Representatives

Passed: 02-Apr-24

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By: Senator Shelnut