

## 1 HOUSE BILL NO. 578

2 INTRODUCED BY E. BUTTREY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ELIGIBLE SURPLUS LINES INSURERS TO PROVIDE  
5 EXCESS COVERAGE FOR CERTAIN TYPES OF DISABILITY INSURANCE; DEFINING "DISABILITY  
6 INSURANCE" FOR SURPLUS LINES; AMENDING SECTIONS 33-2-301 AND 33-2-307, MCA; AND  
7 PROVIDING AN EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 33-2-301, MCA, is amended to read:12 **"33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as "The  
13 Surplus Lines Insurance Law".

14 (2) The purpose of this part is to:

15 (a) protect persons seeking insurance in this state;

16 (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers  
17 and to be exported from this state pursuant to this part;18 (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state  
19 and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state;  
20 and

21 (d) protect revenues of this state.

22 (3) As used in this part, the following definitions apply:

23 (a) "Affiliated" means that a person directly or indirectly controls, is controlled by, or is under common  
24 control with the insured.

25 (b) "Affiliated group" means any group of persons that are affiliated.

26 (c) "Approved risk list" means the list approved by the commissioner of the kinds of insurance presumed  
27 unobtainable from authorized insurers when Montana is the home state of the insured.28 (d) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this  
29 state.

30 (e) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership,

1 a limited liability partnership, or other legal entity.

2 (ii) The term does not include an individual.

3 (f) "Control", including the terms "controlled by" and "under common control with", means that:

4 (i) the person directly or indirectly or acting through one or more other persons owns, controls, or has  
5 the power to vote 25% or more of any class of voting securities of a business entity; or

6 (ii) the person controls in any manner the election of a majority of the directors or trustees of a business  
7 entity.

8 (g) (i) "Disability insurance" for surplus lines insurance is a component of casualty insurance that provides  
9 excess coverage that is either unavailable from or limited by an authorized insurer:

10 (A) for an individual to use for income assistance after a disabling accident or illness or the loss of the  
11 individual's ability to pursue employment in professional sports, the entertainment industry, or high-risk  
12 occupations for which the individual has proven to be qualified; or

13 (B) if a principal is disabled or incapacitated, for a business entity to cover liability or provide assurance  
14 for loans or contracts.

15 (ii) The term does not mean health insurance intended for paying health care providers.

16 ~~(g)(h)~~ "Eligible surplus lines insurer" means an unauthorized insurer that is eligible to issue surplus lines  
17 insurance under 33-2-307.

18 ~~(h)(i)~~ "Exempt commercial purchaser" has the meaning provided in 33-2-318.

19 ~~(j)(j)~~ "Export" means to place surplus lines insurance with an unauthorized insurer.

20 ~~(j)(k)~~ "Home state" means, with respect to an insured:

21 (i) the state in which the insured maintains its principal place of business or, in the case of an individual,  
22 the individual's principal residence;

23 (ii) if 100% of the insured risk is located outside the state referred to in subsection ~~(3)(j)(i)~~ (3)(k)(i), the  
24 state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance  
25 contract;

26 (iii) if more than one insured from an affiliated group are named insureds on a single surplus lines  
27 insurance contract, the home state as determined under subsection ~~(3)(j)(i)~~ (3)(k)(i) or ~~(3)(j)(ii)~~ (3)(k)(ii) for the  
28 member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines  
29 insurance contract; or

30 (iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group

1 policyholder as determined under subsection ~~(3)(j)(i)~~ (3)(k)(i) or, if a group policyholder does not pay 100% of the  
 2 premiums from its own funds, the home state of the group member as determined under subsection ~~(3)(j)(i)~~  
 3 (3)(k)(i).

4 ~~(k)(l)~~ (l) "Independently procured insurance" means surplus lines insurance procured directly by an insured  
 5 from an eligible surplus lines insurer.

6 ~~(j)(m)~~ (m) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more  
 7 than one state.

8 ~~(m)(n)~~ (n) "Natural disaster multiperil insurance" means any bundled flood, earthquake, and landslide  
 9 insurance that may be sold as surplus lines insurance.

10 ~~(n)(o)~~ (o) "Principal place of business" means the state where the insured business maintains its  
 11 headquarters and where the insured's high-level officers direct, control, and coordinate the business activities  
 12 of the insured.

13 ~~(o)(p)~~ (p) "Principal residence" means the state where an individual insured resides for the greatest number  
 14 of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to  
 15 which the greatest percentage of the insured's taxable premium for that insurance contract is located.

16 ~~(p)(q)~~ (q) "Producing insurance producer" means a Montana-licensed property and casualty insurance  
 17 producer dealing directly with a person seeking insurance.

18 ~~(q)(r)~~ (r) "Qualified risk manager" has the meaning provided in 33-2-319.

19 ~~(r)(s)~~ (s) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one  
 20 state.

21 ~~(s)(t)~~ (t) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto  
 22 Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

23 ~~(t)(u)~~ (u) (i) "Surplus lines insurance" means any property or casualty insurance permitted in a state to be  
 24 placed directly or through a surplus lines insurance producer with an unauthorized insurer eligible to accept the  
 25 insurance. The term includes independently procured insurance.

26 (ii) The term does not include the kinds of insurance exempted under 33-2-317.

27 ~~(t)(v)~~ (v) "Surplus lines insurance producer" means an individual or business entity licensed under 33-2-305  
 28 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized  
 29 insurers eligible to accept the insurance.

30 ~~(v)(w)~~ (w) "Unauthorized insurer" means, with respect to a state, an insurer not authorized to transact the

1 business of insurance in the state. The term includes an insurance exchange authorized under the laws of  
 2 another state. The term does not include a risk retention group, as that term is defined in the Liability Risk  
 3 Retention Act of 1986, 15 U.S.C. 3901(a)(4)."

4

5 **Section 2.** Section 33-2-307, MCA, is amended to read:

6 **"33-2-307. Requirements for eligible surplus lines insurers -- list of eligible surplus lines insurers.**

7 (1) If an unauthorized insurer is domiciled in any state, a surplus lines insurance producer may not place  
 8 insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

9 (a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction;

10 and

11 (b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals  
 12 the greater of:

13 (i) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

14 (ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the  
 15 requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The  
 16 commissioner's finding must be based ~~upon such on~~ factors ~~as~~ that include:

17 (A) the quality of management, capital, and surplus of a parent company;

18 (B) company underwriting profit and investment income trends;

19 (C) market availability; and

20 (D) company record and reputation within the industry.

21 (2) The commissioner may not make an affirmative finding of acceptability when the surplus lines  
 22 insurer's capital and surplus is less than \$4.5 million.

23 ~~(2)(3)~~ If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place  
 24 insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears on  
 25 the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

26 ~~(3)(4)~~ A list of eligible surplus lines insurers must be published at least semiannually by the  
 27 commissioner and must contain a range of risks that are covered, including disability insurance as defined in  
 28 33-2-301. This subsection does not require the commissioner to place or maintain the name of any unauthorized  
 29 insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an  
 30 employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in

1 this subsection.

2 ~~(4)~~(5) As used in this section, the following definitions apply:

3 (a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks  
4 or other evidences of ownership.

5 (b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities  
6 and capital of the insurer for the protection of policyholders."

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8 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2019.

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