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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO INSURANCE -- SURPLUS LINES INSURANCE

Introduced By: Senator Roger Picard

Date Introduced: March 24, 2022

Referred To: Senate Commerce

(Dept. of Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 27-3-38 of the General Laws in Chapter 27-3 entitled "Surplus Lines
2 Insurance" is hereby amended to read as follows:

3 **27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance --**
4 **Reports and records -- Premium tax -- Notice to purchasers.**

5 (a) The insurance commissioner may issue a surplus line broker's license to any person
6 authorizing the licensee to procure, subject to the restrictions provided in this section, policies of
7 insurance, except life and health and accident, [except as allowed under § 27-3-38.3](#), from eligible
8 surplus lines insurers. Residents of this state must hold a ~~property and casualty~~ insurance producer
9 license to qualify for a surplus lines broker license. This license may be denied, suspended, or
10 revoked by the insurance commissioner whenever, in the commissioner's judgment, any of the
11 bases under § 27-2.4-14 exist. Before any license is issued by the insurance commissioner and
12 before each renewal of a license, there shall be filed in his or her office a written application by the
13 person desiring the license in the form, and containing any information, that the insurance
14 commissioner may prescribe. For the purposes of carrying out the provisions of the Nonadmitted
15 and Reinsurance Reform Act of 2010, the commissioner is authorized to utilize the national
16 insurance producer database of the National Association of Insurance Commissioners (NAIC), or
17 any other equivalent uniform national database, for the licensure of a person as a surplus lines
18 producer and for renewal of such license. For insureds whose home state is this state, a person shall
19 not procure a contract of surplus lines insurance with a nonadmitted insurer unless the person

1 possesses a current surplus lines insurance license issued by the commissioner.

2 (b) A Rhode Island resident business entity acting as a surplus line broker may elect to
3 obtain a surplus line broker license. Application shall be made using the uniform business entity
4 application. Prior to approving the application, the commissioner shall find both of the following:

5 (1) The business entity has paid the appropriate fees.

6 (2) The business entity has designated a licensed surplus line broker responsible for the
7 business entity's compliance with the insurance laws and rules of this state.

8 (c) When any policy of insurance is procured under the authority of that license, there shall
9 be executed, both by the licensee and by the insured, affidavits setting forth facts showing that the
10 insured, or a licensed Rhode Island producer, were unable, after diligent effort, to procure from no
11 less than three (3) admitted insurers the full amount of insurance required to protect the property
12 owned or controlled by the insured or the risks insured. Provided, however, the aforementioned
13 affidavit shall not be required when insuring the following interest: amusement parks and devices,
14 environmental improvement and/or remediation sites, vacant property or property under
15 renovation, demolition operations, event cancellation due to weather, railroad liability,
16 discontinued products, fireworks and pyrotechnics, warehouseman's legal liability, excess property
17 coverage, private flood, and contingent liability. In addition, no such affidavit is required for
18 exempt commercial purchasers as defined by the Nonadmitted and Reinsurance Reform Act of
19 2010. For purposes of this section, residual market mechanisms shall not be considered authorized
20 insurers. Prior to renewing, continuing, or extending any policy, the licensed surplus line broker
21 must confirm that the insurer is on the insurance commissioner's list of approval surplus line
22 insurers in this state.

23 (d) The licensee shall keep a complete and separate record of all policies procured from
24 approved surplus lines insurers under the license and these records shall be open to the examination
25 of both the insurance commissioner and tax administrator at all reasonable times and shall show
26 the exact amount of each kind of insurance permitted under this section which has been procured
27 for each insured; the gross premiums charged by the insurers for each kind of insurance permitted
28 under this section which were returned to each insured; the name of the insurer or insurers which
29 issued each of these policies; the effective dates of these policies; and the terms for which these
30 policies were issued. The licensee shall file a yearly report with the insurance commissioner on a
31 form prescribed by the insurance commissioner showing the business procured under the surplus
32 line license for the preceding calendar year, and the report shall be due annually on or before April
33 1.

34 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section

1 shall file with the insurance commissioner, at the time of the insurance producer license renewal,
2 sufficient information, as determined by the insurance commissioner, whether a licensee or a person
3 acting on the licensee's behalf, has paid to the tax administrator, for all policies procured by the
4 licensee pursuant to the license during the next preceding calendar year, a tax, computed at the rate
5 of four percent (4%) on the gross premiums charged the insured by the insurers, less the amount of
6 premiums returned to the insured. The tax administrator shall provide to the insurance
7 commissioner, upon request, information needed to determine compliance with this subsection.
8 The content and nature of the information to be disclosed shall be determined and approved by the
9 tax administrator, shall be the minimum necessary to determine compliance, and shall be kept
10 confidential by the insurance commissioner.

11 (f) Every application form for insurance from a surplus lines insurer, every affidavit form
12 executed by the insured, and every policy (on its front and declaration pages) issued by the surplus
13 lines insurer, shall contain in ten-point (10) type the following notice:

14 NOTICE

15 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT
16 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS A
17 SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE ISLAND
18 INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME INSOLVENT, THE
19 PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS INSOLVENCY FUND
20 ARE NOT AVAILABLE.

21 SECTION 2. Section 27-4.4-4 of the General Laws in Chapter 27-4.4 entitled "The
22 Standard Nonforfeiture Law for Individual Deferred Annuities" is hereby amended to read as
23 follows:

24 **27-4.4-4. Minimum values.**

25 (a) The minimum values as specified in §§ 27-4.4-5 -- 27-4.4-8 and 27-4.4-10 of any paid-
26 up annuity, cash surrender, or death benefits available under an annuity contract shall be based
27 upon minimum nonforfeiture amounts as defined in this section.

28 (b) The minimum nonforfeiture amount at any time at or prior to the commencement of
29 any annuity payments shall be equal to an accumulation up to that time at rates of interest as
30 provided in subsection (d) of this section, the net considerations as defined in this section paid prior
31 to that time, decreased by the sum of:

32 (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates
33 of interest as provided in subsection (d) of this section; and

34 (2) The amount of any indebtedness to the company on the contract, including interest due

1 and accrued;

2 (3) An annual contract charge of fifty dollars (\$50.00), accumulated at rates of interest as
3 provided in subsection (d) of this section; and

4 (4) Any premium tax paid by the company for the contract, accumulated at rates of interest
5 as provided in subsection (d) of this section.

6 (c) The net considerations for a given contract year used to define the minimum
7 nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of the
8 gross considerations credited to the contract during that contract year.

9 (d) The interest rate used in determining minimum nonforfeiture amounts shall be an
10 annual rate of interest determined as the lesser of three percent (3%) per annum and the following,
11 which shall be specified in the contract if the interest rate will be reset:

12 (1) The five (5) year Constant Maturity Treasury Rate reported by the Federal Reserve as
13 of a date, or average over a period, rounded to the nearest one twentieth of one percent (1/20%),
14 specified in the contract no longer than fifteen (15) months prior to the contract issue date or
15 redetermination date under subdivision (4) of this subsection;

16 (2) Reduced by one hundred twenty-five (125) basis points;

17 (3) Where the resulting interest rate is not less than ~~one percent (1%)~~ fifteen (15) basis
18 points (0.15%); and

19 (4) The interest rate shall apply for an initial period and may be redetermined for additional
20 periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis
21 is the date or average over a specified period that produces the value of the five (5) year Constant
22 Maturity Treasury Rate to be used at each redetermination date.

23 (e) During the period or term that a contract provides substantive participation in an equity
24 indexed benefit, it may increase the reduction described in subsection (d)(2) of this section above
25 by up to an additional one hundred (100) basis points to reflect the value of the equity index benefit.
26 The present value at the contract issue date, and at each redetermination date thereafter, of the
27 additional reduction shall not exceed the market value of the benefit. The commissioner of
28 insurance may require a demonstration that the present value of the reduction does not exceed the
29 market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner,
30 the commissioner may disallow or limit the additional reduction.

31 (f) The commissioner of insurance may adopt rules to implement the provisions of
32 subsection (e) of this section and to provide for further adjustments to the calculation of minimum
33 nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit
34 and for other contracts that the commissioner determines adjustments are justified.

1 SECTION 3. Section 27-7.1-11.1 of the General Laws in Chapter 27-7.1 entitled "Workers'
2 Compensation Insurance" is hereby amended to read as follows:

3 **27-7.1-11.1. Challenge and review of application of rating system.**

4 (a) An advisory organization and every insurer subject to this chapter which makes its own
5 rate shall provide within this state reasonable means where any person aggrieved by the application
6 of its rating system may upon that person's ~~written request be heard in person~~ or ~~by~~ the person's
7 authorized ~~representative~~ representative's written request to review the manner in which the rating
8 system has been applied in connection with the insurance afforded the aggrieved person.

9 (b) Any party affected by the action of an advisory organization or the insurer may, within
10 thirty (30) days after written notice of that action, make application, in writing, for an appeal to the
11 director, setting forth the basis for the appeal and the grounds to be relied upon by the applicant. If
12 the advisory organization or insurer fails to grant or reject the request within thirty (30) days after
13 it is made, the applicant may proceed in the same manner as if the application has been rejected.

14 (c) The director shall review the application and, if the director finds that the application is
15 made in good faith and that it sets forth on its face grounds which reasonably justify holding a
16 hearing, the director shall conduct a hearing held not less than ten (10) days after written notice to
17 the applicant and to an advisory organization or insurer. The director, after a hearing, shall affirm
18 or reverse the action of an advisory organization or insurer.

19 (d) If, after a hearing held under this section, it is determined that the rates charged by an
20 insurer are in excess of the appropriate rate, the overcharge shall be refunded to the insured.

21 SECTION 4. Section 27-29-4 of the General Laws in Chapter 27-29 entitled "Unfair
22 Competition and Practices" is hereby amended to read as follows:

23 **27-29-4. Unfair methods of competition and unfair or deceptive acts or practices**
24 **defined.**

25 The following are defined as unfair methods of competition and unfair and deceptive acts
26 or practices in the business of insurance:

27 (1) Misrepresentations and false advertising of policies or contracts. Making, issuing,
28 circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or
29 statement, sales presentation, omission, or comparison misrepresenting the terms of any policy
30 issued or to be issued or the benefits, conditions, or advantages promised by any policy or the
31 dividends or share of the surplus to be received on any policy, or making any false or misleading
32 statement as to the dividends or share of surplus previously paid on any policy, or making any
33 misleading representation or any misrepresentation as to the financial condition of any insurer, or
34 as to the legal reserve system upon which any life insurer operates, or using any name or title of

1 any policy or class of policies misrepresenting the true nature of that policy or class of policies, or
2 making any misrepresentation to any policyholder insured in any company including any
3 intentional misquote of a premium rate, for the purpose of inducing or tending to induce the
4 policyholder to lapse, forfeit, or surrender his or her insurance, or misrepresenting for the purpose
5 of effecting a pledge or assignment of or effecting a loan against any policy, or misrepresenting
6 any policy as being share or stock;

7 (2) False information and advertising generally. Making, publishing, disseminating,
8 circulating, or placing before the public or causing, directly or indirectly, to be made, published,
9 disseminated, circulated, or placed before the public in a newspaper, magazine, or other
10 publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or
11 television station, or in any other way, an advertisement, announcement, or statement containing
12 any assertion, representation, or statement with respect to the business of insurance or with respect
13 to any person in the conduct of his or her insurance business that is untrue, deceptive, or misleading;

14 (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly,
15 or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral
16 or written statement or any pamphlet, circular, article of literature that is false or maliciously critical
17 of or derogatory to the financial condition of an insurer, and that is calculated to injure any person
18 engaged in the business of insurance;

19 (4) Boycott, coercion, and intimidation. Entering into any agreement to commit, or by any
20 concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending
21 to result in unreasonable restraint of, or monopoly in, the business of insurance;

22 (5)(i) False financial statements. Knowingly filing with any supervisory or other public
23 official, or knowingly making, publishing, disseminating, circulating, or delivering to any person,
24 or placing before the public or causing directly or indirectly, to be made, published, disseminated,
25 circulated, delivered to any person, or placed before the public any false material statement of
26 financial condition of an insurer; or

27 (ii) Knowingly making any false entry of a material fact in any book, report, or statement
28 of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the
29 business of the insurer in any book, report, or statement of the insurer;

30 (6) Stock operations and advisory board contracts. Issuing or delivering or permitting
31 agents, officers, or employees to issue or deliver agency company stock or other capital stock, or
32 benefit certificates or shares in any common law corporation, or securities of any special or advisory
33 board contracts or other contracts of any kind promising returns and profits as an inducement to
34 insurance;

1 (7)(i) Unfair discrimination. Making or permitting any unfair discrimination between
2 individuals of the same class and equal expectation of life in the rates charged for any policy of life
3 insurance or of life annuity or in the dividends or other benefits payable on any such policy or life
4 annuity, or in any other of the terms and conditions of the policy;

5 (ii) Making or permitting any unfair discrimination between individuals of the same class
6 and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any
7 policy or contract of accident or health insurance or in the benefits payable under any policy or
8 contract, or in any of the terms or conditions of that policy, or in any other manner;

9 (iii) Making or permitting any unfair discrimination between individuals or risks of the
10 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling,
11 or limiting the amount of insurance coverage on a property or casualty risk because of the
12 geographic location of the risk, unless:

13 (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext for
14 unfair discrimination; or

15 (B) The refusal, cancellation, or limitation is required by law or regulation;

16 (iv) Making or permitting any unfair discrimination between individuals or risks of the
17 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling,
18 or limiting the amount of insurance coverage on a residential property risk, or the personal property
19 contained in the residential property risk, because of the age of the residential property, unless:

20 (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext for
21 unfair discrimination; or

22 (B) The refusal, cancellation, or limitation is required by law or regulation;

23 (v) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage
24 available to an individual because of the sex or marital status of the individual; nothing in this
25 subsection shall prohibit an insurer from taking marital status into account for the purpose of
26 defining persons eligible for dependent benefits;

27 (vi) To terminate, or to modify coverage, or to refuse to issue or refuse to renew any
28 property or casualty policy solely because the applicant or insured or any employee of either is
29 mentally or physically impaired; provided, that this subsection shall not apply to accident and health
30 insurance sold by a casualty insurer and, provided that this subsection shall not be interpreted to
31 modify any other provision of law relating to the termination, modification, issuance or renewal of
32 any insurance policy or contract; or

33 (vii) Making or permitting any unfair discrimination by treating persons in a domestic
34 partnership as defined in § 27-29-2, differently than persons in a marriage for the purposes of

1 premiums, policy fees, or rates charged for policies of casualty, fire, homeowners, accident and
2 sickness, marine, or automobile insurance;

3 (8)(i) Rebates. Except as otherwise expressly provided by law, knowingly permitting or
4 offering to make or making any policy or agreement as to the policy other than as plainly expressed
5 in the policy issued on it, or paying or allowing or giving or offering to pay, allow, or give, directly
6 or indirectly, as inducement to the policy, any rebate of premiums payable on the policy, or any
7 special favor or advantage in the dividends or other benefits on the policy, or any valuable
8 consideration or inducement not specified in the policy, or giving, selling, or purchasing or offering
9 to give, sell, or purchase as inducement to the policy, or in connection with the policy, any stocks,
10 bonds, or other securities of any insurance company or other corporation, association, or
11 partnership, or any dividends or profits accrued on the security, or anything of value not specified
12 in the policy;

13 (ii) Nothing in subdivision (7) of this section or paragraph (i) of this subdivision shall be
14 construed as including within the definition of discrimination or rebates any of the following
15 practices:

16 (A) In the case of any contract of life insurance policies or life annuity, annuities paying
17 bonuses to policyholders or abating their premiums in whole or in part out of surplus accumulated
18 from nonparticipating insurance; provided, that any bonuses or abatement of premiums shall be fair
19 and equitable to policyholders and for the best interests of the company and its policyholders;

20 (B) In the case of life insurance policies issued on the industrial debit plan, making
21 allowance to policyholders who have continuously for a specified period made premium payments
22 directly to an office of the insurer in an amount that fairly represents the saving in collection
23 expenses; ~~and~~

24 (C) Readjustment of the rate of premium for a group insurance policy based on the loss or
25 expense experience under it, at the end of the first or any subsequent policy year of insurance under
26 the policy, which may be made retroactive only for the policy year;

27 (D) Engaging in an arrangement that would not violate § 106 of the Bank Holding
28 Company Act Amendments of 1972 (12 U.S.C. 1972), as interpreted by the Board of Governors of
29 the Federal Reserve System, or § 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q);

30 (E) The offer or provision by insurers or producers, by or through employees, affiliates or
31 third-party representatives, of value-added products or services at no or reduced cost when such
32 products or services are not specified in the policy of insurance if the product or service:

33 (I) Relates to the insurance coverage; and

34 (II) Is primarily designed to satisfy one or more of the following:

- 1 (aa) Provide loss mitigation or loss control;
- 2 (bb) Reduce claim costs or claim settlement costs;
- 3 (cc) Provide education about liability risks or risk of loss to persons or property;
- 4 (dd) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating
5 or reducing risk;
- 6 (ee) Enhance health;
- 7 (ff) Enhance financial wellness through items such as education or financial planning
8 services;
- 9 (gg) Provide post-loss services;
- 10 (hh) Incent behavioral changes to improve the health or reduce the risk of death or disability
11 of a customer (defined for purposes of this subsection as policyholder, potential policyholder,
12 certificate holder, potential certificate holder, insured, potential insured or applicant); or
- 13 (ii) Assist in the administration of the employee or retiree benefit insurance coverage.
- 14 (III) The cost to the insurer or producer offering the product or service to any given
15 customer must be reasonable in comparison to that customer's premiums or insurance coverage for
16 the policy class.
- 17 (IV) If the insurer or producer is providing the product or service offered, the insurer or
18 producer must ensure that the customer is provided with contact information to assist the customer
19 with questions regarding the product or service.
- 20 (V) The commissioner may adopt regulations when implementing the permitted practices
21 set forth in this statute to ensure consumer protection. Such regulations, consistent with applicable
22 law, may address, among other issues, consumer data protections and privacy, consumer disclosure
23 and unfair discrimination.
- 24 (VI) The availability of the value-added product or service must be based on documented
25 objective criteria and offered in a manner that is not unfairly discriminatory. The documented
26 criteria must be maintained by the insurer or producer and produced upon request by the
27 department.
- 28 (VII) If an insurer or producer does not have sufficient evidence, but has a good-faith belief
29 that the product or service meets the criteria in subsection 8(ii)(E)(II) of this section, the insurer or
30 producer may provide the product or service in a manner that is not unfairly discriminatory as part
31 of a pilot or testing program for no more than one year. An insurer or producer must notify the
32 department of such a pilot or testing program offered to consumers in this state prior to launching
33 and may proceed with the program unless the department objects within twenty-one days of notice.
- 34 (F)(I) Offering or giving non-cash gifts, items, or services, including meals to or charitable

1 donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of
2 contracts of insurance, as long as the cost does not exceed an amount determined to be reasonable
3 by the commissioner per policy year per term. The offer must be made in a manner that is not
4 unfairly discriminatory. The customer may not be required to purchase, continue to purchase or
5 renew a policy in exchange for the gift, item or service.

6 (II) Offering or giving non-cash gifts, items, or services including meals to or charitable
7 donations on behalf of a customer, to commercial or institutional customers in connection with the
8 marketing, sale, purchase, or retention of contracts of insurance, as long as the cost is reasonable
9 in comparison to the premium or proposed premium and the cost of the gift or service is not
10 included in any amounts charged to another person or entity. The offer must be made in a manner
11 that is not unfairly discriminatory. The customer may not be required to purchase, continue to
12 purchase or renew a policy in exchange for the gift, item or service.

13 (III) Conducting raffles or drawings to the extent permitted by state law, as long as there is
14 no financial cost to entrants to participate, the drawing or raffle does not obligate participants to
15 purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the
16 commissioner and the drawing or raffle is open to the public. The raffle or drawing must be offered
17 in a manner that is not unfairly discriminatory. The customer may not be required to purchase,
18 continue to purchase or renew a policy in exchange for the gift, item or service.

19 (iii) An insurer, producer or representative of either may not offer or provide insurance as
20 an inducement to the purchase of another policy or otherwise use the words "free", "no cost" or
21 words of similar import, in an advertisement.

22 (9)(i) Free choice of insurance producer or insurer. When any person, firm, or corporation
23 engaged in the business of lending money on the security of real or personal property, or in the
24 business of negotiating, purchasing, selling, or holding loans on the security of real property, or in
25 the business of building, selling, or financing the sale or purchase of real property, or any trustee,
26 director, officer, agent, or other employee of that person, firm, or corporation, requires that property
27 insurance be procured for the property, the borrower, debtor, or purchaser shall have free choice of
28 insurance producer and insurer through or by which the insurance is to be placed or written, subject
29 only to the right of the builder, creditor, lender, or seller:

30 (A) To require evidence, to be produced at a reasonable time prior to commencement or
31 renewal of risk, that the insurance providing reasonable coverage has been obtained in an amount
32 equal to the amount required by the builder, creditor, lender, or seller;

33 (B) To require insurance in an insurer authorized to do business and having a licensed
34 resident insurance producer agent in this state; and

1 (C) To refuse to accept insurance in a particular insurer on reasonable grounds related to
2 solvency;

3 (ii) When any contractor or subcontractor is required to procure a surety bond or policy of
4 insurance with respect to any building or construction contract that is about to be, or that has been
5 bid or entered into, the contractor or subcontractor shall have free choice of insurance producer and
6 insurer through or by which the surety bond or insurance is to be written; provided, that the owner
7 or contractor shall have the right: (A) To require evidence, to be produced at a reasonable time
8 prior to commencement or renewal of risk, that the insurance providing reasonable coverage has
9 been obtained in an amount equal to the amount required by the builder, creditor, lender, or seller;
10 (B) To require insurance in an insurer authorized to do business and having a licensed resident
11 insurance producer in this state; and (C) To refuse to accept insurance in a particular insurer on
12 reasonable grounds related to solvency; provided, that the owner or contractor shall have the right
13 to approve the form, sufficiency, or manner of execution of the surety bond or policy or insurance
14 furnished by the insurance company or insurance producer selected by the contractor or
15 subcontractor;

16 (iii) No person who lends money or extends credit may:

17 (A) Solicit insurance for the protection of real property after a person indicates interest in
18 securing a first mortgage credit extension until that person has received a commitment in writing
19 from the lender as to a loan or credit extension;

20 (B) Unreasonably reject a policy furnished by the borrower for the protection of the
21 property securing the creditor lien. A rejection shall not be deemed unreasonable if it is based on
22 reasonable standards, uniformly applied, relating to the extent of coverage required and the
23 financial soundness and the services of an insurer. The standards shall not discriminate against any
24 particular type of insurer, nor shall the standards call for rejection of a policy because it contains
25 coverage in addition to that required in the credit transaction;

26 (C) Require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a
27 separate charge, in connection with the handling of any policy required as security for a loan on
28 real estate, or pay a separate charge to substitute the policy of one insurer for that of another. This
29 subsection does not include the interest that may be charged on premium loans or premium
30 advancements in accordance with the terms of the loan or credit document;

31 (D) Use or disclose, without the prior written consent of the borrower, mortgagor, or
32 purchaser taken at a time other than the making of the loan or extension of credit, information
33 relative to a policy that is required by the credit transaction, for the purpose of replacing the
34 insurance; or

1 (E) Require any procedures or conditions of duly licensed insurance producers or insurers
2 not customarily required of those insurance producers or insurers affiliated or in any way connected
3 with the person who lends money or extends credit;

4 (iv) Every person who lends money or extends credit and who solicits insurance on real
5 and personal property subject to paragraph (iii) of this subdivision shall explain to the borrower in
6 writing that the insurance related to the credit extension may be purchased from an insurer or
7 insurance producer of the borrower's choice, subject only to the lender's right to reject a given
8 insurer or insurance producer as provided in paragraph (iii)(B) of this subdivision. Compliance
9 with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be
10 compliance with this subsection;

11 (v) This requirement for a commitment shall not apply in cases where the premium for the
12 required insurance is to be financed as part of the loan or extension of credit involving personal
13 property transactions;

14 (vi) The commissioner shall have the power to examine and investigate those insurance-
15 related activities of any person or insurer that the commissioner believes may be in violation of this
16 section. Any affected person may submit to the commissioner a complaint or material pertinent to
17 the enforcement of this section;

18 (vii) Nothing in this section shall prevent a person who lends money or extends credit from
19 placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser
20 has failed to provide required insurance in accordance with the terms of the loan or credit document;

21 (viii) Nothing contained in this section shall apply to credit life or credit accident and health
22 insurance.

23 (10) Notice of free choice of insurance producer or insurer. Every debtor, borrower, or
24 purchaser of property with respect to which insurance of any kind on the property is required in
25 connection with a debt or loan secured by the property or in connection with the sale of the property,
26 shall be informed in writing by the builder, creditor, lender, or seller, of his or her right of free
27 choice in the selection of the insurance producer and insurer through or by which the insurance is
28 to be placed. There shall be no interference, either directly or indirectly, with the borrower's,
29 debtor's, or purchaser's free choice of an insurance producer and of an insurer that complies with
30 the requirements of this section, and the builder, creditor, lender, seller, owner, or contractor shall
31 not refuse the policy tendered by the borrower, debtor, purchaser, contractor, or subcontractor.
32 Upon notice of any refusal of the tendered policy, the insurance commissioner shall order the
33 builder, creditor, lender, seller, owner, or contractor to accept the tendered policy, if the
34 commissioner determines that the refusal is not in accordance with the requirements of this section.

1 Failure to comply with an order of the insurance commissioner shall be deemed a violation of this
2 section;

3 (11) Using insurance information to detriment of another. Whenever the instrument
4 requires that the purchaser, mortgagor, or borrower furnish insurance of any kind on real property
5 being conveyed or is collateral security to a loan, the mortgagee, vendor, or lender shall refrain
6 from disclosing or using any and all insurance information to his or her or its own advantage and
7 to the detriment of either the borrower, purchaser, mortgagor, insurance company, or agency
8 complying with the requirements relating to insurance;

9 (12) Prohibited group enrollments. No insurer shall offer more than one group policy of
10 insurance through any person unless that person is licensed, at a minimum, as an insurance
11 producer. This prohibition shall not apply to employer-employee relationships, or to any of these
12 enrollments;

13 (13) Failure to maintain complaint handling procedures. No insurer shall fail to maintain a
14 complete record of all the complaints it received since the date of its last examination pursuant to
15 the general laws providing for examination of insurers. This record shall indicate the total number
16 of complaints, their classification by line of insurance, the nature of each complaint, the disposition
17 of each complaint, and the time it took to process each complaint. For the purposes of this
18 subsection, "complaint" means any written communication primarily expressing a grievance;

19 (14) Misrepresentation in insurance applications. Making false or fraudulent statements or
20 representations on or relative to an application for a policy, for the purpose of obtaining a fee,
21 commission, money, or other benefit from any insurers, insurance producer, or individual person;

22 (15) Requiring that repairs be made to an automobile at a specified auto body repair shop
23 or interfering with the insured's or claimant's free choice of repair facility. The insured or claimant
24 shall be promptly informed by the insurer of his or her free choice in the selection of an auto body
25 repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop has
26 been selected, the insurer may not recommend that a different auto body repair shop be selected to
27 repair the automobile. An auto body repair shop may file a complaint with the department of
28 business regulation alleging a violation of this subsection (15). Whenever the department of
29 business regulation has reason to believe that an insurer has violated this subsection (15), the
30 department shall conduct an investigation and may convene a hearing. A complaint filed by an auto
31 body repair shop must be accompanied by a statement written and signed by the insured or claimant
32 setting forth the factual basis of the complaint, and the insured or claimant must voluntarily appear
33 and testify at any administrative proceedings on the complaint; and

34 (16) Requiring that motor vehicle glass repair be made at a specified motor vehicle glass

1 repair shop or interfering with the insured's or claimant's free choice of a licensed repair facility.
2 The insured or claimant shall be promptly informed by the insurer of his or her free choice in the
3 selection of a licensed motor vehicle glass repair shop. The insurer shall not require a person to use
4 or employ unfair or deceptive acts or practices, threaten, coerce, or intimidate to induce a person to
5 use or select a particular licensed motor vehicle glass repair shop to provide motor vehicle glass
6 repair services. An insurer shall not knowingly contract with, refer motor vehicle glass repair
7 services to, or otherwise negotiate with an unlicensed motor vehicle glass repair shop, as defined
8 in chapter 38.5 of title 5. Once the insured or claimant has advised the insurer that a motor vehicle
9 glass repair shop has been selected, the insurer may not recommend that a different motor vehicle
10 glass repair shop be selected to repair the motor vehicle glass, and an insurer shall not assign or
11 dispatch the repair work or forward a related policy or policyholder's contact or repair scheduling
12 information to a different licensed motor vehicle glass repair shop without the knowledge and
13 consent of the insured. An insured may at any point in time elect to change the insured's choice of
14 licensed motor vehicle glass repair shop. However, an insurer authorized to conduct business in the
15 state may provide directly, or through other means, including electronic transmissions, specific,
16 truthful, and non-deceptive information regarding the features and benefits available to the insured
17 under the policy to assist the insured in selecting a licensed motor vehicle glass repair shop or
18 scheduling a licensed motor vehicle glass repair shop to perform motor vehicle glass repair, or enter
19 into any preferred provider agreements and/or participate in direct repair programs or direct repair
20 networks with licensed motor vehicle glass repair shops. A motor vehicle glass repair shop may
21 file a complaint with the department of business regulation alleging a violation of this subsection
22 (16). Whenever the department of business regulation has reason to believe that an insurer has
23 violated this subsection (16), the department shall conduct an investigation and may convene a
24 hearing. A complaint filed by a motor vehicle glass repair shop must be accompanied by a statement
25 written and signed by the insured or claimant setting forth the factual basis of the complaint, and
26 the insured or claimant must voluntarily appear and testify at any administrative proceedings on
27 the complaint.

28 SECTION 5. Section 27-34.2-6 of the General Laws in Chapter 27-34.2 entitled "Long
29 Term Care Insurance" is hereby amended to read as follows:

30 **27-34.2-6. Disclosure and performance standards for long-term care insurance.**

31 (a) The director may adopt regulations that establish:

32 (1) Standards for full and fair disclosure setting forth the manner, content, and required
33 disclosures for the sale of long term care insurance policies, terms of renewability, initial and
34 subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of

1 dependents, preexisting conditions, termination of insurance, continuation or conversion,
2 probationary periods, limitations, exceptions, reductions, elimination periods, requirements for
3 replacement, recurrent conditions, and definitions of terms; and

4 (2) Reasonable rules and regulations that are necessary, proper, or advisable to the
5 administration of this chapter including the procedure for the filing or submission of policies
6 subject to this chapter. This provision may not abridge any other authority granted the director by
7 law.

8 (b) No long term care insurance policy may:

9 (1) Be cancelled, nonrenewed, or terminated on the grounds of the age or the deterioration
10 of the mental or physical health of the insured individual or certificate holder; or

11 (2) Contain a provision establishing a new waiting period in the event existing coverage is
12 converted to or replaced by a new or other form within the same company, except with respect to
13 an increase in benefits voluntarily selected by the insured individual or group policyholder; or

14 (3) Provide coverage for skilled nursing care only or provide more coverage for skilled
15 care in a facility than coverage for lower levels of care.

16 (c) A long term care policy must provide:

17 (1) Home health care benefits that are at least fifty percent (50%) of those provided for care
18 in a nursing facility. The evaluation of the amount of coverage shall be based on aggregate days of
19 care covered for home health care when compared to days of care covered for nursing home care;
20 and

21 (2) Home health care benefits which meet the National Association of Insurance
22 Commissioners' minimum standards for home health care benefits in long term care insurance
23 policies.

24 (d)(1) No long term care insurance policy or certificate other than a policy or certificate
25 issued to a group as defined in § 27-34.2-4(4)(i) shall use a definition of "preexisting condition"
26 which is more restrictive than the following: "preexisting condition" means a condition for which
27 medical advice or treatment was recommended by, or received from a provider of health care
28 services, within six (6) months preceding the effective date of coverage of an insured person;

29 (2) No long term care insurance policy or certificate other than a policy or certificate issued
30 to a group as defined in § 27-34.2-4(4)(i) may exclude coverage for a loss or confinement which is
31 the result of a preexisting condition, unless the loss or confinement begins within six (6) months
32 following the effective date of coverage of an insured person;

33 (3) The director may extend the limitation periods set forth in ~~subdivisions~~ [§ 27-34.2-6\(d\)](#)
34 (1) and [\(d\)\(2\)](#) ~~of this subsection~~ as to specific age group categories in specific policy forms upon

1 findings that the extension is in the best interest of the public;

2 (4) The definition of "preexisting condition" does not prohibit an insurer from using an
3 application form designed to elicit the complete health history of an applicant, and, on the basis of
4 the answers on that application, from underwriting in accordance with that insurer's established
5 underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting
6 condition, regardless of whether it is disclosed on the application, need not be covered until the
7 waiting period described in ~~subdivision § 27-34.2-6(d)(2) of this subsection~~ expires. No long term
8 care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude,
9 limit or reduce coverage or benefits for specifically named or described preexisting diseases or
10 physical conditions beyond the waiting period described in ~~subdivision § 27-34.2-6(d)(2) of this~~
11 ~~subsection~~, unless the waiver or rider has been specifically approved by the director as set forth in
12 § 27-34.2-8. This shall not permit exclusion or limitation of benefits on the basis of Alzheimer's
13 disease, other dementias, or organic brain disorders.

14 (e)(1) No long term care insurance policy may be delivered or issued for delivery in this
15 state if the policy:

16 (i) Conditions eligibility for any benefits on a prior hospitalization or institutionalization
17 requirement; or

18 (ii) Conditions eligibility for benefits provided in an institutional care setting on the receipt
19 of a higher level of institutional care.

20 (iii) Conditions eligibility for any benefits other than waiver of premium, post-
21 confinement, post-acute care or recuperative benefits on a prior institutionalization requirement.

22 (2)(~~i~~) A long-term care insurance policy ~~containing post-confinement, post-acute care or~~
23 ~~recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled~~
24 ~~"Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any~~
25 ~~required number of days of confinement~~ or rider shall not condition eligibility for non-institutional
26 benefits on the prior or continuing receipt of skilled care services.

27 ~~(ii) A long term care insurance policy or rider that conditions eligibility of noninstitutional~~
28 ~~benefits on the prior receipt of institutional care shall not require a prior institutional stay of more~~
29 ~~than thirty (30) days.~~

30 (3) No long-term insurance policy or rider that provides benefits only following
31 institutionalization shall condition such benefits upon admission to a facility for the same or related
32 conditions within a period of less than thirty (30) days after discharge from the institution.

33 (f) The commissioner may adopt regulations establishing loss ratio standards for long term
34 care insurance policies provided that a specific reference to long term care insurance policies is

1 contained in the regulation.

2 ~~(g) Right to return—Free look. Long term care insurance applicants shall have the right to~~
3 ~~return the policy or certificate within thirty (30) days of its delivery and to have the premium~~
4 ~~refunded if, after examination of the policy or certificate, the applicant is not satisfied for any~~
5 ~~reason. Long term care insurance policies and certificates shall have a notice prominently printed~~
6 ~~on the first page or attached to the policy or certificate stating in substance that the applicant shall~~
7 ~~have the right to return the policy or certificate within thirty (30) days of its delivery and to have~~
8 ~~the premium refunded if, after examination of the policy or certificate other than a certificate issued~~
9 ~~pursuant to a policy issued to a group defined in § 27-34.2-4(4)(i), the applicant is not satisfied for~~
10 ~~any reason. This subsection shall also apply to denials of applications and any refund must be made~~
11 ~~within thirty (30) days of the return or denial.~~

12 (g)(1) Long-term care insurance applicants shall have the right to return the policy,
13 certificate or rider to the company or an agent/insurance producer of the company within thirty (30)
14 days of its receipt and to have the premium refunded if, after examination of the policy, certificate
15 or rider, the applicant is not satisfied for any reason.

16 (2) Long-term care insurance policies, certificates and riders shall have a notice
17 prominently printed on the first page or attached thereto including specific instructions to
18 accomplish a return. This requirement shall not apply to certificates issued pursuant to a policy
19 issued to a group defined in § 27-34.2-4. The following free look statement or language
20 substantially similar shall be included:

21 "You have thirty (30) days from the day you receive this policy, certificate or rider to
22 review it and return it to the company if you decide not to keep it. You do not have to tell the
23 company why you are returning it. If you decide not to keep it, simply return it to the company at
24 its administration office. Or you may return it to the agent/insurance producer that you bought it
25 from. You must return it within thirty (30) days of the day you first received it. The company will
26 refund the full amount of any premium paid within thirty (30) days after it receives the returned
27 policy, certificate or rider. The premium refund will be sent directly to the person who paid it. The
28 returned policy, certificate or rider will be void as if it had never been issued."

29 (h)(1) An outline of coverage shall be delivered to a prospective applicant for long term
30 care insurance at the time of initial solicitation through means which prominently direct the
31 attention of the recipient to the document and its purpose;

32 (2) The commissioner shall prescribe a standard format, including style, arrangement, and
33 overall appearance, and the content of an outline of coverage;

34 (3) In the case of insurance producer solicitations, an insurance producer must deliver the

1 outline of coverage prior to the presentation of an application or enrollment form;

2 (4) In the case of direct response solicitations, the outline of coverage must be presented in
3 conjunction with any application or enrollment form;

4 (5) In the case of a policy issued to a group defined in ~~subdivision~~ § 27-34.2-4(4)(i) of this
5 ~~act~~ chapter, an outline of coverage shall not be required to be delivered, provided that the
6 information described in ~~subdivision~~ §§ 27-34.2-6(6)(i) -- ~~subdivision~~ through 27-34.2-6(6)(vi) is
7 contained in other materials relating to enrollment. Upon request, these other materials shall be
8 made available to the commissioner.

9 (6) The outline of coverage shall include:

10 (i) A description of the principal benefits and coverage provided in the policy;

11 (ii) A description of the eligibility triggers for benefits and how those triggers are met;

12 ~~(iii)~~ (iii) A statement of the principal exclusions, reductions, and limitations contained in the
13 policy;

14 ~~(iii)~~ (iv) A statement of the terms under which the policy or certificate, or both, may be
15 continued in force or discontinued, including any reservation in the policy of a right to change
16 premiums. Continuation or conversion provisions of group coverage shall be specifically described;

17 ~~(iv)~~ (v) A statement that the outline of coverage is only a summary, not a contract of
18 insurance, and that the policy or group master policy contains governing contractual provisions;

19 ~~(v)~~ (vi) A description of the terms under which the policy or certificate may be returned and
20 the premium refunded; ~~and~~

21 ~~(vi)~~ (vii) A brief description of the relationship of cost of care and benefits; and .

22 ~~(vii)~~ (viii) A statement that discloses to the policyholder or certificate holder whether the
23 policy is intended to be a federally tax-qualified long-term care insurance contract under §
24 7702B(b) of the Internal Revenue Code of 1986, as amended, et seq.

25 (i) A certificate issued pursuant to a group long term care insurance policy which policy is
26 delivered or issued for delivery in this state shall include:

27 (1) A description of the principal benefits and coverage provided in the policy;

28 (2) A statement of the principal exclusions, reductions, and limitations contained in the
29 policy; and

30 (3) A statement that the group master policy determines governing contractual provisions.

31 ~~(4)~~ (j) If an application for a long-term care insurance contract or certificate is approved,
32 the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty
33 (30) days after the date of approval.

34 ~~(k)~~ (k) At the time of policy delivery, a policy summary shall be delivered for an individual

1 life insurance or annuity policy which provides long term care benefits within the policy or by rider.
2 In the case of direct response solicitations, the insurer shall deliver the policy summary upon the
3 applicant's request, but regardless of request shall make the delivery no later than at the time of
4 policy delivery. In addition to complying with all applicable requirements, the summary shall also
5 include:

6 (1) An explanation of how the long term care benefit interacts with other components of
7 the policy, ~~including deductions from death benefits;~~

8 (2) An illustration of the amount of benefits, the length of benefits, and the guaranteed
9 lifetime benefits, including a statement that any long-term care inflation projection option required
10 by § 27-34.2-13, is not available under the policy for each covered person;

11 (3) Any exclusions, reductions, and limitations on ~~benefits of~~ long term care benefits; ~~and~~

12 (4) A statement that any long-term care inflation protection option required by 230-RICR-
13 20-35-1 is not available under this policy. If inflation protection was not required to be offered, or
14 if inflation protection was required to be offered but was rejected, a statement that inflation
15 protection is not available under this policy that provides long-term care benefits, and an
16 explanation of other options available under the policy, if any, to increase the funds available to
17 pay for the long-term care benefits.

18 ~~(4)~~(5) If applicable to the policy type, the summary shall also include:

19 (i) A disclosure of the effects of exercising other rights under the policy;

20 (ii) ~~A disclosure of guarantees related to long term care costs of insurance charges~~ A
21 disclosure of guarantees, fees or other costs related to long-term care costs of insurance charges in
22 the base policy and any riders; and

23 (iii) Current and projected periodic and maximum lifetime benefits.

24 ~~(5)~~(6) The provisions of the policy summary listed above may be incorporated into a basic
25 illustration or into the life insurance policy summary which is required to be delivered in
26 accordance with chapter 4 of this title and the rules and regulations promulgated under § 27-4-23.

27 ~~(6)~~(1) Any time a long term benefit, funded through a life insurance vehicle by the
28 acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to
29 the policyholder. The report shall include:

30 (1) Any long term care benefits paid out during the month;

31 (2) Any costs or changes that apply or will apply to the policy or any riders;

32 ~~(2)~~(3) An explanation of any changes in the policy, e.g. death benefits or cash values, due
33 to long term care benefits being paid out; and

34 ~~(3)~~(4) The amount of long term care benefits existing or remaining.

1 ~~(m)~~(m) Any policy or rider advertised, marketed, or offered as long term care or nursing
2 home insurance shall comply with the provisions of this chapter.

3 ~~(m)~~(n) If a claim under a long-term care insurance contract is denied, the issuer shall, within
4 sixty (60) days of the date of a written request by the policyholder or certificate holder, or a
5 representative thereof:

- 6 (1) Provide a written explanation of the reasons for the denial; and
- 7 (2) Make available all information directly related to the denial.

8 (o) Any policy, certificate or rider advertised, marketed or offered as long-term care or
9 nursing home insurance, as defined in § 27-34.2-4, shall comply with the provisions of this chapter.

10 SECTION 6. Section 27-65-1 of the General Laws in Chapter 27-65 entitled "Commercial
11 Special Risks" is hereby amended to read as follows:

12 **27-65-1. Commercial special risks.**

13 (a) Commercial special risks. Notwithstanding any other provisions of this title to the
14 contrary and except as limited in subsection (b) of this section, insurers shall not be required to file
15 with, nor to receive approval from, the insurance division of the department of business regulation
16 for policy forms or rates used in the insurance of commercial special risks located in this state.
17 Commercial special risks are defined as:

18 (1) Risks written as commercial lines insurance, defined as insurance issued for purposes
19 other than for personal, family or household and that are written on an excess or umbrella basis;

20 (2) Those risks, or portions of them, written as commercial lines insurance, defined as
21 insurance issued for purposes other than for personal, family or household and that are not rated
22 according to manuals, rating plans, or schedules including "A" rates;

23 (3) Risks written as commercial lines insurance that employ or retain the services of a "risk
24 manager" and that also meet any one of the following criteria:

25 (i) Net worth over ten million dollars (\$10,000,000);

26 (ii) Net revenue/sales of over five million dollars (\$5,000,000);

27 (iii) More than twenty-five (25) employees per individual company or fifty (50) employees
28 per holding company in the aggregate;

29 (iv) Aggregates premiums of over thirty thousand dollars (\$30,000), excluding group life,
30 group health, workers' compensation and professional liability (including, but not limited to, errors
31 and omissions and directors and officers liability);

32 (v) Is a not for profit or public entity with an annual budget or assets of at least twenty-five
33 million dollars (\$25,000,000); or

34 (vi) Is a municipality with a population of over twenty thousand (20,000);

1 (4) Specifically designated commercial special risks including:

2 (i) All risks classified as highly protected risks.

3 "Highly protected risk" means a fire resistive building that meets the highest standards of
4 fire safety according to insurance company underwriting requirements;

5 (ii) All commercial insurance aviation risks;

6 (iii) All credit property insurance risks that are defined as "insurance of personal property
7 of a commercial debtor against loss, with the creditor as sole beneficiary" or "insurance of personal
8 property of a commercial debtor, with the creditor as primary beneficiary and the debtor as
9 beneficiary of proceeds not paid to the creditor." For the purposes of this definition, "personal
10 property" means furniture, fixtures, furnishings, appliances, and equipment designed for use in a
11 business trade or profession and not used by a debtor for personal or household use;

12 (iv) All boiler and machinery [and equipment breakdown](#) risks;

13 (v) All inland marine risks written as commercial lines insurance defined as insurance
14 issued for purposes other than for personal, family, or household;

15 (vi) All fidelity and surety risks;

16 (vii) All crime and burglary and theft risks; and

17 (viii) All directors and officers, [fiduciary liability, employment practices liability, kidnap
18 and ransom and management liability](#) risks.

19 (b) Notwithstanding subsection (a) of this section, the following lines of business shall
20 remain subject to all filing and approval requirements contained in this title even if written for risks
21 which qualify as commercial special risks:

22 (1) Life insurance;

23 (2) Annuities;

24 (3) Accident and health insurance;

25 (4) Automobile insurance that is mandated by statute;

26 (5) Workers' compensation and employers' liability insurance; and

27 (6) Issuance through residual market mechanisms.

28 (c) Any insurer that provides coverage to a commercial special risk shall disclose to the
29 insured that forms used and rates charges are exempt from filing and approval requirements by this
30 subsection. Records of all such disclosures shall be maintained by the insurer.

31 (d) Brokers for exempt commercial policyholders as defined in subdivision (a)(3) of this
32 section shall be exempt from the due diligence requirements of § 27-3-38(b).

33 (e) Notwithstanding any other provisions of this title, the requirements of § 27-5-2 shall
34 not apply to any policy insuring one or more commercial special risks located in this state.

1 SECTION 7. Title 27 of the General Laws entitled "INSURANCE" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 6.1

4 LENDER PLACED INSURANCE

5 **27-6.1-1. Purpose.**

6 The purpose of this chapter is to:

7 (1) Promote the public welfare by regulating lender-placed insurance on real property.

8 (2) Create a legal framework within which lender-placed insurance on real property may
9 be written in this state.

10 (3) Help maintain the separation between lenders/servicers and insurers/insurance
11 producers.

12 (4) Minimize the possibilities of unfair competitive practices in the sale, placement,
13 solicitation and negotiation of lender-placed insurance.

14 **27-6.1-2 Scope.**

15 (a) This chapter applies to insurers and insurance producers engaged in any transaction
16 involving lender-placed insurance as defined in this chapter.

17 (b) All lender-placed insurance written in connection with mortgaged real property,
18 including manufactured and mobile homes, is subject to the provisions of this chapter, except:

19 (1) Transactions involving extensions of credit primarily for business, commercial or
20 agricultural purposes.

21 (2) Insurance offered by the lender or servicer and elected by the mortgagor at the
22 mortgagor's option.

23 (3) Insurance purchased by a lender or servicer on real estate owned property.

24 (4) Insurance for which no specific charge is made to the mortgagor or the mortgagor's
25 account.

26 **27-6.1-3. Definitions.**

27 As used in this chapter:

28 (1) "Affiliate" means a person that directly, or indirectly through one or more
29 intermediaries, controls or is controlled by, or is under common control with, the person specified.

30 (2) "Commissioner" shall have the meaning established in § 42-14-5.

31 (3) "Individual lender-placed insurance" means coverage for individual real property
32 evidenced by a certificate of coverage under a master lender-placed insurance policy or a lender-
33 placed insurance policy for individual real property.

34 (4) "Insurance producer" means a person or entity (or its affiliates) required to be licensed

1 under the laws of this state to sell, solicit or negotiate insurance.

2 (5) "Insurer" means an insurance company, association or exchange authorized to issue
3 lender-placed insurance in this state (or its affiliates).

4 (6) "Investor" means a person or entity (and its affiliates) holding a beneficial interest in
5 loans secured by real property.

6 (7) "Lapse" means the moment in time in which a mortgagor has failed to secure or
7 maintain valid and/or sufficient insurance upon mortgaged real property as required by a mortgage
8 agreement.

9 (8) "Lender" means a person or entity (and its affiliates) making loans secured by an
10 interest in real property.

11 (9) "Lender-placed insurance" means insurance obtained by a lender or servicer when a
12 mortgagor does not maintain valid and/or sufficient insurance upon mortgaged real property as
13 required by the terms of the mortgage agreement. It may be purchased unilaterally by the lender or
14 servicer, who is the named insured, subsequent to the date of the credit transaction, providing
15 coverage against loss, expense or damage to collateralized property as a result of fire, theft, collision
16 or other risks of loss that would either impair a lender, servicer or investor's interest or adversely
17 affect the value of collateral covered by limited dual interest insurance. It is purchased according
18 to the terms of the mortgage agreement as a result of the mortgagor's failure to provide evidence of
19 required insurance.

20 (10) "Loss ratio" means the ratio of incurred losses to earned premium.

21 (11) "Master lender-placed insurance policy" means a group policy issued to a lender or
22 servicer providing coverage for all loans in the lender or servicer's loan portfolio as needed.

23 (12) "Mortgage agreement" means the written document that sets forth an obligation or a
24 liability of any kind secured by a lien on real property and due from, owing or incurred by a
25 mortgagor to a lender on account of a mortgage loan, including the security agreement, deed of
26 trust and any other document of similar effect, and any other documents incorporated by reference.

27 (13) "Mortgage loan" means a loan, advance, guarantee or other extension of credit from a
28 lender to a mortgagor.

29 (14) "Mortgage transaction" means a transaction by the terms of which the repayment of
30 money loaned or payment of real property sold is to be made at a future date or dates.

31 (15) "Mortgagee" means the person who holds mortgaged real property as security for
32 repayment of a mortgage agreement.

33 (16) "Mortgagor" means the person who is obligated on a mortgage loan pursuant to a
34 mortgage agreement.

1 (17) "Person" means an individual or entity.

2 (18) "Real estate owned property" means property owned or held by a lender or servicer
3 following foreclosure under the related mortgage agreement or the acceptance of a deed in lieu of
4 foreclosure.

5 (19) "Replacement cost value (RCV)" is the estimated cost to replace covered property at
6 the time of loss or damage without deduction for depreciation. RCV is not market value, but it is
7 instead the cost to replace covered property to its pre-loss condition.

8 (20) "Servicer" means a person or entity (and its affiliates) contractually obligated to
9 service one or more mortgage loans for a lender or investor. The term "servicer" includes entities
10 involved in subservicing arrangements.

11 **27-6.1-4. Term of Insurance Policy.**

12 (a) Lender-placed insurance shall become effective no earlier than the date of lapse of
13 insurance upon mortgaged real property subject to the terms of a mortgage agreement and/or any
14 other state or federal law requiring the same.

15 (b) Individual lender-placed insurance shall terminate on the earliest of the following dates:

16 (1) The date the insurance that is acceptable under the mortgage agreement becomes
17 effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.

18 (2) The date the applicable real property no longer serves as collateral for a mortgage loan
19 pursuant to a mortgage agreement.

20 (3) Such other date as specified by the individual policy or certificate of insurance.

21 (4) Such other date as specified by the lender or servicer.

22 (5) The termination date of the policy.

23 (c) An insurance charge shall not be made to a mortgagor for lender-placed insurance for
24 a term longer than the scheduled term of the lender-placed insurance, nor may an insurance charge
25 be made to the mortgagor for lender-placed insurance before the effective date of the lender-placed
26 insurance.

27 **27-6.1-5. Calculation of coverage and payment of premiums.**

28 (a) Any lender-placed insurance coverage, and subsequent calculation of premium, should
29 be based upon the replacement cost value of the property as best determined as follows:

30 (1) The dwelling coverage amount set forth in the most recent evidence of insurance
31 coverage provided by the mortgagee ("last known coverage amount" or "LKCA"), if known to the
32 lender or servicer.

33 (2) The insurer shall inquire of the insured, at least once, as to the LKCA; and if it is not
34 able to obtain the LKCA from the insured or in another manner, the insurer may proceed as set

1 forth below.

2 (3) If the LKCA is unknown, the replacement cost of the property serving as collateral as
3 calculated by the insurer, unless the use of replacement cost for this purpose is prohibited by other
4 state or federal law.

5 (4) If the LKCA is unknown and the replacement cost is not available or its use is
6 prohibited, the unpaid principal balance of the mortgage loan.

7 (b) In the event of a covered loss, any replacement cost coverage provided by an insurer in
8 excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.

9 (c) An insurer shall not write lender-placed insurance for which the premium rate differs
10 from that determined by the schedules of the insurer on file with the commissioner as of the
11 effective date of any such policy.

12 **27-6.1-6. Prohibited Practices.**

13 (a) An insurer or insurance producer shall not issue lender-placed insurance on mortgaged
14 property that the insurer or insurance producer or an affiliate of the insurer or insurance producer
15 owns, performs the servicing for, or owns the servicing right to the mortgaged property.

16 (b) An insurer or insurance producer shall not compensate a lender, insurer, investor or
17 servicer (including through the payment of commissions) on lender-placed property insurance
18 policies issued by the insurer.

19 (c) An insurer or insurance producer shall not share lender-placed insurance premium or
20 risk with the lender, investor or servicer that obtained the lender-placed insurance.

21 (d) An insurer or insurance producer shall not offer contingent commissions, profit sharing,
22 or other payments dependent on profitability or loss ratios to any person affiliated with a servicer
23 or the insurer in connection with lender-placed insurance.

24 (e) An insurer shall not provide free or below-cost outsourced services to lenders, investors
25 or servicers, and an insurer will not outsource its own functions to lenders, insurance producers,
26 investors or servicers on an above-cost basis.

27 (f) An insurer or insurance producer shall not make any payments, including, but not
28 limited to, the payment of expenses to a lender, insurer, investor or servicer for the purpose of
29 securing lender-placed insurance business or related outsourced services.

30 **27-6.1-7. Non-circumvention.**

31 Nothing in this chapter shall be construed to allow an insurance producer or an insurer
32 solely underwriting lender-placed insurance to circumvent the requirements set forth within this
33 chapter. This chapter shall apply to all insurers and insurance producers involved in lender-placed
34 insurance.

1 **27-6.1-8. Evidence of Coverage.**

2 (a) Lender-placed insurance shall be set forth in an individual policy or certificate of
3 insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance
4 coverage shall be mailed, first class mailed, or delivered in person to the last known address of the
5 mortgagor or delivered in accordance with chapter 14 of title 42. Notwithstanding any other
6 statutory or regulatory required information, the individual policy or certificate of insurance
7 coverage shall include the following information:

- 8 (1) The address and identification of the insured property;
- 9 (2) The coverage amount or amounts if multiple coverages are provided;
- 10 (3) The effective date of the coverage;
- 11 (4) The term of coverage;
- 12 (5) The premium charge for the coverage;
- 13 (6) Contact information for filing a claim; and
- 14 (7) A complete description of the coverage provided.

15 **27-6.1-9. Filing, Approval and Withdrawal of Forms and Rates.**

16 (a) All policy forms and certificates of insurance to be delivered or issued for delivery in
17 this state and the schedules of premium rates pertaining thereto shall be filed with the
18 commissioner.

19 (b) The commissioner shall review the rates to determine whether the rates are excessive,
20 inadequate or unfairly discriminatory. This analysis shall include a determination as to whether
21 expenses included by the insurer in the rate are appropriate.

22 (c) All insurers shall re-file lender-placed property insurance rates at least once every four
23 (4) years.

24 (d) All insurers writing lender-placed insurance shall have separate rates for lender placed
25 insurance and voluntary insurance obtained by a mortgage servicer on real estate owned property.

26 (e) Upon the introduction of a new lender-placed insurance program, the insurer shall
27 reference its experience in existing programs in the associated filings. Nothing in this chapter shall
28 limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions,
29 exclusions, eligibility criteria or other unique or different characteristics. Moreover, an insurer may,
30 where actuarially acceptable, rely upon models or, in the case of flood filings where applicable
31 experience is not credible, on Federal Emergency Management Agency (FEMA) National Flood
32 Insurance Program (NFIP) data.

33 (f) No later than April 1 of each year, each insurer with at least one hundred thousand
34 dollars (\$100,000) in direct written premium for lender-placed insurance in this state during the

1 prior calendar year shall report to the commissioner the following information for the prior calendar
2 year. This report shall be separately produced for each lender-placed program and presented on
3 both an individual-jurisdiction and countrywide basis containing the following information:

4 (1) Actual loss ratio;

5 (2) Earned premium;

6 (3) Any aggregate schedule rating debit/credit to earned premium;

7 (4) Itemized expenses;

8 (5) Paid losses; and

9 (6) Loss reserves, including case reserves and reserves for incurred but not reported losses.

10 (g) Except in the case of lender-placed flood insurance, to which this paragraph does not
11 apply, if an insurer experiences an annual loss ratio of less than thirty-five percent (35%) in any
12 lender placed program for two (2) consecutive years, it shall submit a rate filing (either adjusting
13 its rates or supporting their continuance) to the commissioner no more than ninety (90) days after
14 the submission of the data required pursuant to subsection (f) of this section.

15 (h) Except as specifically set forth in this section, rate and form filing requirements shall
16 be subject to the insurance laws of this state.

17 **27-6.1-10. Enforcement and judicial review.**

18 The commissioner shall have all rights and powers to enforce the provisions of this chapter
19 as provided by § 42-14-16 of the general laws of this state. All proceedings, including judicial
20 review, shall be conducted in accordance with the administrative procedures act chapter 35 of title
21 42 of the general laws. Any penalties shall be assessed in accordance with § 42-14-16.

22 **27-6.1-11. Regulatory authority.**

23 The commissioner may, after notice and hearing, promulgate reasonable regulations and
24 orders to carry out and effectuate the provisions of this chapter.

25 **27-6.1-12. Severability provisions.**

26 If any provision of this chapter, or the application of the provision to any person or
27 circumstance, is for any reason held to be invalid, the remainder of the chapter and the application
28 of such provision to other persons or circumstances shall not be affected thereby.

29 SECTION 8. Section 27-3-39 of the General Laws in Chapter 27-3 entitled "Surplus Lines
30 Insurance" is hereby repealed.

31 ~~**27-3-39. Surplus line broker's bond.**~~

32 ~~(a) No license to act as a resident surplus line broker in this state shall be issued until a~~
33 ~~certificate of the general treasurer is deposited with the insurance commissioner on a blank~~
34 ~~furnished by the insurance commissioner, stating that the licensee has filed with the general~~

1 ~~treasurer a bond in the penal sum of twenty five thousand dollars (\$25,000) executed by the licensee~~
2 ~~as principal and by a surety company authorized to transact business in this state as surety, and~~
3 ~~conditioned upon the licensee faithfully complying with all of the requirements of § 27-3-38.~~

4 ~~(b) Any bond required by this section shall be continuous while the principal is licensed to~~
5 ~~act as a surplus line broker in this state; provided, that before the bond may be cancelled, the~~
6 ~~insurance commissioner must have been notified in writing by the surety of the proposed~~
7 ~~cancellation at least thirty (30) days prior to the date cancellation is to become effective; and,~~
8 ~~provided, that in the event of cancellation, any license covered by the bond shall be suspended by~~
9 ~~the insurance commissioner pending the substitution of a similar bond for the cancelled bond. The~~
10 ~~surety shall be released from further liability under any bond covering a license revoked,~~
11 ~~terminated, or expired as to any acts committed after the date that license is revoked, terminated,~~
12 ~~or expired. The aggregate liability of the surety for any and all claims or recoveries that arise under~~
13 ~~any bond shall in no event exceed the amount of the penal sum of the bond. The commissioner may~~
14 ~~promulgate standards and procedures for collecting under bonds issued pursuant to this section.~~

15 ~~(c) Authorized surplus line agents or brokers of a licensed firm may meet the requirements~~
16 ~~of this section with a bond in the name of the licensed firm, continuous in form and in the amounts~~
17 ~~set forth in subsection (a).~~

18 SECTION 9. Section 27-4-6 of the General Laws in Chapter 27-4 entitled "Life Insurance
19 Policies and Reserves" is hereby repealed.

20 ~~**27-4-6. Terms to be stated in policy -- Rebates prohibited.**~~

21 ~~(a) No life insurance corporation doing business in this state, nor any insurance producer~~
22 ~~of the corporation, shall permit, offer, or make any contract of insurance or agreement as to any~~
23 ~~contract other than as plainly expressed in the policy issued on the contract or agreement; nor shall~~
24 ~~any company or any officer, insurance producer, or representative of the company or producer pay,~~
25 ~~allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to~~
26 ~~insure, or give, sell, or purchase, or offer to give, sell, or purchase as an inducement or in connection~~
27 ~~with any insurance, any stocks, bonds, or other securities of any insurance company or other~~
28 ~~corporation, association, or partnership, or any dividends or profits accruing on the securities, or~~
29 ~~any valuable consideration or inducement of any kind not specified in the policy, nor shall any~~
30 ~~person knowingly receive as an inducement any rebate of premium, or any special favor or~~
31 ~~advantage in the dividends or other benefits, or any paid employment or contract for services of~~
32 ~~any kind, or any valuable consideration or inducement of any kind, not specified in the policy.~~

33 ~~(b) Nothing in this section shall be construed to forbid a company transacting industrial~~
34 ~~insurance on a weekly payment plan from returning to policyholders who have made premium~~

1 ~~payments for a period of at least one year, directly to the company at its home or district offices, a~~
2 ~~percentage of the premium which the company would have paid for the weekly collection of the~~
3 ~~premiums.~~

4 SECTION 10. Section 27-6-46 of the General Laws in Chapter 27-6 entitled "Fire and
5 Marine Insurance Rating" is hereby repealed.

6 ~~**27-6-46. Terms to be stated in policy -- Rebates prohibited.**~~

7 ~~No insurer, or any officer, insurance producer, or representative of an insurer, shall make~~
8 ~~any contract for insurance, on property on risks located within this state, or against any liability,~~
9 ~~casualty, accident, or hazard that may arise or occur in this state, or any agreement as to that~~
10 ~~contract, other than as plainly expressed in the policy issued or to be issued on the agreement or~~
11 ~~contract; or shall any insurer, or officer, insurance producer, or representative of an insurer, directly~~
12 ~~or indirectly, in any manner, pay or allow or offer to pay or allow to the insured named in the policy~~
13 ~~or to any employee of the insured as an inducement to that insurance, or after the insurance shall~~
14 ~~have been effected, any rebate from the premium which is specified in the policy or any special~~
15 ~~favor or advantage in the dividends or other benefit to accrue on the policy; or any valuable~~
16 ~~consideration or inducement not specified in the policy or contract of insurance, or give, sell, or~~
17 ~~purchase, as an inducement to that insurance, or in connection with that insurance, any stock, bonds,~~
18 ~~or other securities of any insurance or other corporation or association, or any dividends or profits~~
19 ~~accrued on the securities, or anything of value not specified in the policy, or shall any insurance~~
20 ~~producer or his or her representatives, or any other person, directly or indirectly, either by sharing~~
21 ~~commissions or in any manner pay or allow or offer to pay or allow to the insured named in the~~
22 ~~policy, or to any employee of the insured, as an inducement to that insurance, or after the insurance~~
23 ~~shall have been effected, any rebate from the premium which is specified in the policy, or shall any~~
24 ~~insured, or party, or applicant for insurance, his or her or its employee, agent, or representative~~
25 ~~knowingly receive or accept, or agree to accept, or agree to receive or accept, directly or indirectly,~~
26 ~~any rebate of premium or any part of the premium or all or any part of any commission on the~~
27 ~~premium, or any favor or advantage, or share in any benefit to accrue under any contract of~~
28 ~~insurance, or any valuable consideration or inducement, other than what is specified in the policy;~~
29 ~~provided, that nothing in this section shall prevent any insurer from the distribution of surplus,~~
30 ~~dividends, savings, or the unused or unabsorbed portion of premiums and premium deposits to~~
31 ~~participating policyholders, or shall this section prevent any insurer, or its insurance producer, from~~
32 ~~paying commissions to a licensed insurance producer who shall have negotiated for the insurance,~~
33 ~~or shall it prevent any licensed insurance producer from sharing or dividing a commission earned~~
34 ~~or received by the insurance producer with any other licensed insurance producers who shall have~~

1 ~~aided the insurance producer in respect to the insurance for the negotiation of which that~~
2 ~~commission shall have been earned or paid; but no insurer or agent, or broker shall pay or allow~~
3 ~~commissions or brokerage to any person acting as an insurance producer in this state who is~~
4 ~~required by law to be licensed but is not licensed. Sections 27-8-7—27-8-10 shall not apply to the~~
5 ~~kinds of insurance subject to the provisions of this chapter.~~

6 SECTION 11. Section 27-9-44 of the General Laws in Chapter 27-9 entitled "Casualty
7 Insurance Rating" is hereby repealed.

8 ~~**27-9-44. Terms to be stated in policy -- Rebates prohibited.**~~

9 ~~No insurer, or any officer, insurance producer, or their representative, shall make any~~
10 ~~contract for insurance, on property or risks located within this state, or against any liability,~~
11 ~~casualty, accident, or hazard that may arise or occur in this state, or any agreements as to any~~
12 ~~contract, other than as plainly expressed in the policy issued or to be issued on the agreement or~~
13 ~~contract; nor shall any insurer, or officer, insurance producer, or their representative, directly or~~
14 ~~indirectly, in any manner, pay or allow or offer to pay or allow to the insured named in the policy~~
15 ~~or to any employee of the insured as an inducement to the insurance, or after the insurance shall~~
16 ~~have been effected, any rebate from the premium which is specified in the policy or any special~~
17 ~~favor or advantage in the dividends or other benefit to accrue on the policy, or any valuable~~
18 ~~consideration or inducement, not specified in the policy or contract of insurance, or give, sell, or~~
19 ~~purchase, as an inducement to the insurance, or in connection with the insurance, any stock, bonds,~~
20 ~~or other securities of any insurance or other corporation or association, or any dividends or profits~~
21 ~~accrued on the stock, bonds, or securities, or anything of value, not specified in the policy, nor shall~~
22 ~~any insurance producer or representative, or any other person, directly or indirectly, either by~~
23 ~~sharing commissions or in any manner, pay or allow or offer to pay or allow to the insured named~~
24 ~~in the policy, or to any employee of the insured, as an inducement to the insurance, or after the~~
25 ~~insurance shall have been effected, any rebate from the premium which is specified in the policy,~~
26 ~~nor shall any insured, or party, or applicant for insurance, his, her or its employee, agent, or~~
27 ~~representative, knowingly receive or accept, or agree to accept, or agree to receive or accept,~~
28 ~~directly or indirectly, any rebate of a premium or any part of the premium or all or any part of any~~
29 ~~commission on the premium, or any favor or advantage, or share in any benefit to accrue under any~~
30 ~~contract of insurance, or any valuable consideration or inducement, other than what is specified in~~
31 ~~the policy; provided, that nothing in this section shall prevent any insurer from the distribution of~~
32 ~~surplus, dividends, savings, or the unused or unabsorbed portion of premiums and premium~~
33 ~~deposits to participating policyholders, nor shall this section prevent any insurer, or its agent, from~~
34 ~~paying commissions to a licensed insurance producer who shall have negotiated for the insurance,~~

1 ~~nor shall it prevent any licensed insurance producer from sharing or dividing a commission earned~~
2 ~~or received by the insurance producer with any other licensed insurance producer who shall have~~
3 ~~aided the insurance producer in respect to the insurance for the negotiation of which the commission~~
4 ~~shall have been earned or paid; but no insurer, or insurance producer shall pay or allow~~
5 ~~commissions or brokerage to any person acting as an insurance producer in this state who is~~
6 ~~required by law to be licensed but is not licensed. As used in this section, the word "insurance"~~
7 ~~includes suretyship and the word "policy" includes bond. Sections 27-8-7—27-8-10 shall not apply~~
8 ~~to the kinds of insurance subject to the provisions of this chapter.~~

9 SECTION 12. This act shall take effect upon passage.

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LC005311/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- SURPLUS LINES INSURANCE

1 This act would clarify and update various insurance statutes including surplus lines
2 licensing; would eliminate the need for an "in person" hearing defaulting to the administrative
3 procedures act; would reduce the standard non forfeiture interest rate on a go forward basis; would
4 update the rebating laws; update and clarify the long term care insurance statute; would add
5 additional lines of insurance to the commercial special risks statute; and would add a new chapter
6 addressing lender placed insurance.

7 This act would take effect upon passage.

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LC005311/SUB A/2
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