

ORIGINAL SENATE
FILE NO. SF0023

ENROLLED ACT NO. 8, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to insurance; expanding the authority to transmit certain insurance notices or documents electronically; modifying provisions governing nonadmitted insurance; imposing additional requirements on the selection of members of the Wyoming health and life guarantee association board of directors; authorizing a service fee on surplus lines brokers; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-3-501, 26-3-503(a)(intro), 26-11-102(a)(intro), 26-11-103(a)(i), (v), (xiv), (xviii) and (xix), 26-11-104(a)(intro), (i), (ii) and (iii)(A), 26-11-105(b), 26-11-106(a), 26-11-107(d) and by creating a new subsection (h), 26-11-109(a) and (b)(intro), 26-11-110, 26-11-115, 26-11-117(a), (b)(intro) and (c), 26-11-118(e) and by creating a new subsection (j), 26-11-120(c), 26-11-124(a), (b) and by creating a new subsection (d) and 26-42-105(a) are amended to read:

26-3-501. Applicability.

(a) This article shall apply ~~only~~ to property and casualty insurance, life insurance and disability insurance, including:-

(i) Accident only insurance;

(ii) Accidental death or dismemberment insurance;

(iii) Credit insurance;

(iv) Dental or vision care insurance;

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(v) Medicare supplemental insurance as defined by section 1882(g)(i) of the federal Social Security Act;

(vi) Long-term care insurance, including nursing home fixed indemnity insurance;

(vii) Disability income or a combination of accident only and disability income insurance;

(viii) Insurance issued as a supplement to liability insurance;

(ix) Specified disease insurance;

(x) Workers' compensation insurance;

(xi) Medical payment insurance coverage provided under a motor vehicle insurance policy;

(xii) Hospital confinement indemnity insurance;

(xiii) Limited benefit insurance that is offered and marketed as supplemental health insurance and not as a substitute for hospital or medical insurance or major medical expense insurance.

26-3-503. Posting of policies on the internet.

(a) Notwithstanding any other provisions of W.S. 26-3-502, standard ~~property and casualty~~ insurance policies and endorsements to which this article is applicable that do not contain personally identifiable information may be mailed, delivered or posted on the insurer's web site. If the insurer elects to post insurance policies and endorsements on its web site in lieu of mailing or delivering

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them to the insured, it shall comply with all of the following conditions:

26-11-102. Home state regulation of nonadmitted insurance; exemptions.

(a) This chapter does not apply to reinsurance or to the following insurances when placed by licensed agents insurance producers or surplus line-lines brokers of this state or when procured directly by an insured from a nonadmitted insurer:

26-11-103. Definitions.

(a) As used in this chapter:

(i) "Admitted insurer" means an insurer licensed authorized to engage in transact the business of insurance in this state;

(v) "Nonadmitted insurance" means any property and casualty, accident and health or sickness or disability insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance;

(xiv) "Nonadmitted insurer" means with respect to a state, an insurer not licensed authorized to engage in transact the business of insurance in the state, but does not include a health maintenance organization or a risk retention group as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4);

(xviii) "Qualified risk manager" means with respect to a policyholder of commercial insurance, a person

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who meets all of the requirements set forth by department rule and regulation, which requirements shall be in compliance with the Nonadmitted and Reinsurance Reform Act of 2010 or subsequent similar federal enactment;

(xix) "Surplus lines broker" means an individual or business entity which is licensed in a state to sell, solicit or negotiate insurance on properties, risks or exposures located or to be performed in a state with nonadmitted insurers;

26-11-104. Conditions for export.

(a) If certain insurance coverages cannot be procured from authorized—admitted insurers, those coverages, designated in this chapter as "surplus lines", may be procured from nonadmitted insurers, subject to the following conditions:

(i) The insurance shall be procured through a licensed surplus line—lines broker;

(ii) The full amount of insurance required is not procurable, after diligent effort has been made by the insurance producer to do so, from among the admitted insurers authorized to transact and actually writing that kind and class—type of insurance in this state, and the amount of insurance exported shall be only the excess over the amount procurable from authorized—admitted insurers. The surplus lines broker shall verify that a properly conducted diligent effort search was performed and documented as prescribed by the commissioner;

(iii) The insurance shall not be exported for the purpose of securing advantages either as to:

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(A) A lower premium rate than would be accepted by an ~~authorized~~admitted insurer; or

26-11-105. Surplus lines transaction report.

(b) The report shall be ~~on forms~~in the form and manner prescribed by the commissioner.

26-11-106. Open lines for export.

(a) The commissioner, by order, may declare eligible for export generally and without compliance with W.S. 26-11-104(a)(ii) and (iii), any ~~class~~type of insurance coverage or risk for which he finds, after notice and a hearing, ~~of which notice is given to each insurer authorized to transact those classes in this state,~~ that there is not a reasonable or adequate market among ~~authorized~~admitted insurers either as to acceptance of the risk, contract terms, premium or premium rate. The order shall continue in effect during the existence of the conditions upon which predicated, but subject to the commissioner's earlier termination.

26-11-107. Requirements for eligible nonadmitted insurers; publication of eligible insurers.

(d) The commissioner ~~from time to time~~ may publish create and maintain a list of all ~~surplus lines nonadmitted~~ insurers ~~he deems that qualify as~~ eligible ~~currently and shall mail a copy of the list to each broker at his office last of record with the commissioner nonadmitted insurers in Wyoming.~~ To qualify for inclusion on the list, the nonadmitted insurer shall annually file an application with the commissioner and any other appropriate information as required by the commissioner. This subsection does not obligate the

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commissioner to determine the actual financial condition or claims practices of any nonadmitted insurer. The status of eligibility, if granted by the commissioner, indicates only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect the surplus lines broker shall restrict to the insurers listed all surplus line business he places.

(h) Insurance policy rate and form filings applicable to admitted insurers do not apply to nonadmitted insurers issuing policies under the provisions of this chapter.

26-11-109. Required information on surplus lines contracts; duty to notify insured.

(a) Any—Every new or renewed insurance contract, certificate, cover note or other confirmation of insurance that is procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped or printed upon it, in at least ten (10) point bold type font, the name and address of the surplus line—lines broker who procured the coverage, and the following disclosure: "This insurance contract is issued pursuant to the Wyoming Nonadmitted Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Wyoming Insurance Department. In the event of insolvency of the surplus lines insurer, losses will not be paid by the Wyoming Insurance Guaranty Association or the Wyoming Life and Health Guarantee Association."

(b) No contract of insurance placed by a surplus lines broker under this chapter shall be binding upon the insured and no premium charged shall be due and payable until the surplus lines broker shall have notified the insured in writing, The insurance producer shall give written notice to

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every person applying for insurance with a nonadmitted insurer prior to placement. The notice shall provide the disclosure required by subsection (a) of this section and any additional information required by the commissioner. The applicant shall sign and date a copy of the notice acknowledging receipt. The notice shall be in a form acceptable to the commissioner, a signed copy of which shall be maintained by the surplus lines broker with the records of the contract and available for ~~possible~~-examination, ~~that~~ by the commissioner.

26-11-110. Enforceability and validity of nonadmitted insurance.

Insurance contracts procured from ~~unauthorized~~-~~nonadmitted~~ insurers in accordance with this chapter are fully valid and enforceable as to all parties and shall be given recognition in all matters and respects to the same effect as like contracts issued by ~~authorized~~-admitted insurers.

26-11-115. Surplus lines broker may accept and place business from producers.

A licensed surplus ~~line~~-lines broker may accept and place surplus line business for any insurance ~~agent~~-producer licensed in this state for the kind of insurance involved and may compensate the ~~agent~~-producer therefor.

26-11-117. Surplus lines broker affidavit report.

(a) Each surplus lines broker, ~~annually~~, on or before ~~March 1~~-February 15, May 15, August 15 and November 15 of each year, if applicable, shall file with the commissioner a ~~verified~~-an affidavit report ~~of verifying that~~ all surplus ~~line~~-lines insurance ~~he~~-transacted during the preceding

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calendar ~~year~~ quarter has been submitted as required by the commissioner.

(b) The affidavit report of the surplus lines broker shall be ~~on forms in the form and manner~~ the commissioner prescribes. ~~and The report shall show:~~ include a statement as to the diligent efforts made to place the coverage with admitted insurers, the results thereof and any additional information required by the commissioner.

(c) ~~More frequent~~ An alternative reporting and tax payment period may be required by participation in a multistate compact, reciprocal agreement or clearinghouse pursuant to W.S. 26-11-123.

26-11-118. Tax on surplus lines.

(e) ~~Annually, on or before March 1, At the time of filing an affidavit report required by W.S. 26-11-117,~~ each surplus lines broker shall pay the premium tax due for ~~the policies written during the preceding~~ each calendar ~~year as shown by his annual report filed with~~ quarter's business as reported, in the manner prescribed by the commissioner. ~~unless more frequent~~ An alternative reporting and payment is period may be required by participation in a multistate compact, reciprocal agreement or clearinghouse pursuant to subsection (g) of this section. The surplus lines broker shall pay interest on the amount of any delinquent tax due, at the rate of nine percent (9%) per year, compounded annually, beginning the day the amount becomes delinquent.

(j) The clearinghouse is authorized to collect from the surplus lines broker a reasonable service fee, as approved by the commissioner, as a percentage of total gross premiums of each surplus lines policy or document reported under this

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chapter to cover the cost of administrative services of the clearinghouse. The service fee shall be paid by the insured.

26-11-120. Service of process against nonadmitted insurer.

(c) ~~An unauthorized~~ A nonadmitted insurer issuing a policy is deemed to have authorized service of process against it in the manner and to the effect provided in this section. The policy shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process as provided in subsection (b) of this section.

26-11-124. Independently procured insurance; duty to report and pay tax.

(a) Each insured ~~in whose home state is~~ this state and who independently procures, continues or renews insurance with a nonadmitted insurer, ~~on properties, risks or exposures located or to be performed in whole or in part in this state,~~ other than insurance procured through a surplus lines broker, shall, within forty-five (45) days after the date the insurance was so procured, continued or renewed, file a report with the commissioner, ~~upon forms~~ in the form and manner prescribed by the commissioner, showing the name and address of the insured or insureds, name and address of the insurer, the subject of insurance, a general description of the coverage, the amount of premium currently charged and additional pertinent information requested by the commissioner.

(b) ~~At the time of filing the report required in subsection (a) of this section,~~ The insured is subject to the

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same tax and clearinghouse service fee payment requirements as apply to a surplus lines broker in W.S. 26-11-118.

(d) This section does not authorize independent procurement of accident and health or sickness or disability insurance.

26-42-105. Board of directors.

(a) The board of directors of the association consists of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation provided by W.S. 26-42-108. Membership on the board shall be subject to the following:

(i) The members of the board ~~are~~ shall be selected by member insurers subject to the approval of the commissioner;

(ii) A majority of the members shall be domestic insurers. If there are not enough domestic insurers for a majority, then all domestic insurers shall be on the board. The domestic insurers shall hold the positions of chairman and at least one (1) other officer position on the board if possible;

(iii) Each member insurer selected shall identify the individual representing the member insurer on the board and shall provide the individual's name, address, biographical information and position in an affidavit to the commissioner for review and approval;

(iv) Vacancies on the board ~~are~~ shall be filled for the remaining period of the term by a majority vote of

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the remaining board members subject to the approval of the commissioner.

Section 2. W.S. 26-11-102(a)(ii), 26-11-103(a)(ii), 26-11-106(b) and (c), 26-11-109(b)(i) and (ii) and 26-11-117(b)(ii) through (vii) and (d) are repealed.

Section 3. This act is effective July 1, 2020.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk