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**By: Senator Boozer**

Requested: November 13, 1996

Introduced and read first time: January 8, 1997

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Surplus Lines Insurance - Procurement From Unauthorized Insurers**

3 FOR the purpose of clarifying that surplus lines insurance may be procured from an  
4 unauthorized insurer only under certain circumstances; altering the persons who are  
5 required to execute a certain affidavit concerning the procurement of surplus lines  
6 insurance from unauthorized insurers; requiring the affidavit that must be executed  
7 in relation to the procurement of surplus lines insurance from an unauthorized  
8 insurer to include certain statements concerning authorized insurers; providing for  
9 the application of this Act; and generally relating to the procurement of surplus  
10 lines insurance from unauthorized insurers.

11 BY repealing and reenacting, with amendments,  
12 Article - Insurance  
13 Section 3-306 and 3-307  
14 Annotated Code of Maryland  
15 (1995 Volume and 1996 Supplement)  
16 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Insurance**

20 3-306.

21 (a) Surplus lines insurance may be procured from an unauthorized insurer ONLY  
22 if:

23 (1) for surplus lines insurance procured through a broker, the surplus lines  
24 insurance is procured through a qualified surplus lines broker;

25 (2) a diligent search is made among the authorized insurers that are writing  
26 the particular kind and class of insurance in the State;

27 (3) except for insurance against liability of persons described in § XX-XXX  
28 of this article [48A § 551(c)(1), (2), and (3)], the amount of surplus lines insurance

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1 procured from an unauthorized insurer is only the excess over the amount that can be  
2 procured from authorized insurers;

3 (4) for insurance against liability of persons described in § XX-XXX of this  
4 article [48A § 551(c)(1), (2), and (3)], the insurance cannot be obtained from three or  
5 more authorized insurers that are writing on a broad basis that particular kind and class  
6 of insurance;

7 (5) except as provided in subsection (b) of this section, the surplus lines  
8 insurance is not procured solely to get:

9 (i) a lower premium rate than would be accepted by an authorized  
10 insurer; or

11 (ii) more favorable terms of the insurance contract; and

12 (6) there is compliance with other applicable provisions of this subtitle.

13 (b) This subtitle does not prohibit a lower premium rate or more favorable terms  
14 in the insurance contract of an unauthorized insurer if the risk is eligible as surplus lines  
15 under subsection (a)(2), (3), and (4) of this section.

16 (c) (1) This section does not prohibit a surplus lines broker from renewing a  
17 risk with a surplus lines insurer if the risk was initially written on a surplus lines basis  
18 when there were fewer than three authorized insurers actually writing on a broad basis  
19 the particular kind and class of insurance to provide coverage against liability of persons  
20 described in § XX-XXX of this article [48A § 551 (c)(1), (2), and (3)] in the State.

21 (2) Even if on the date of renewal three or more authorized insurers are  
22 writing on a broad basis the particular kind and class of insurance required by the  
23 insured, a risk initially eligible for surplus lines insurance may be renewed on a surplus  
24 lines basis if the surplus lines insurer or broker gives to the insured appropriate notice of  
25 the availability of comparable types of insurance being written by three or more  
26 authorized insurers:

27 (i) each year; and

28 (ii) sufficiently in advance of the renewal date to allow the insured to  
29 determine whether to renew the policy with the surplus lines insurer.

30 3-307.

31 (a) [An] SUBJECT TO THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION,  
32 AN affidavit that sets forth the facts referred to in § 3-306 of this subtitle and any other  
33 facts required by the Commissioner must be personally executed by the surplus lines  
34 broker [or] AND the originating agent or broker at the time the surplus lines insurance  
35 is placed.

36 (b) The affidavit must be filed with the Commissioner on or before the 45th day  
37 after the last day of the month in which the surplus lines insurance was placed.

38 (C) THE AFFIDAVIT SHALL INCLUDE:

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1                   (1) A STATEMENT THAT COVERAGE IS UNAVAILABLE TO THE INSURED  
2 FROM AT LEAST THREE AUTHORIZED INSURERS THAT ARE WRITING ON A BROAD  
3 BASIS THAT PARTICULAR KIND AND CLASS OF INSURANCE IN THE STATE; AND

4                   (2) IF APPROPRIATE, A STATEMENT THAT THE INSURED HAS NOT BEEN  
5 OFFERED RENEWAL COVERAGE THROUGH AN AUTHORIZED INSURER.

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed  
7 only prospectively and may not be applied or interpreted to have any effect on or  
8 application to any procurement of surplus lines insurance from an unauthorized insurer  
9 before the effective date of this Act.

10                  SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 1997.