

HOUSE BILL 1343

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C4

1998 Regular Session  
(8lr2291)

*ENROLLED BILL*  
*-- Economic Matters/Finance --*

Introduced by **Delegate Barve**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurance - Surplus Lines Insurance**

3 FOR the purpose of altering the authority of the Maryland Insurance Commissioner  
4 to adopt regulations concerning surplus lines insurance under certain  
5 circumstances; altering certain provisions concerning the applicability and  
6 completion of a certain diligent search requirement under certain  
7 circumstances; authorizing a certain applicant to waive a certain diligent search  
8 requirement under certain circumstances; altering the form and content of a  
9 certain disclosure required with each insurance contract delivered as surplus  
10 lines coverage under certain circumstances; altering certain reporting  
11 requirements for a surplus lines broker; and generally relating to surplus lines  
12 insurance.

13 BY repealing and reenacting, without amendments,  
14 Article - Insurance  
15 Section 3-302 and 3-307  
16 Annotated Code of Maryland

1 (1997 Volume)

2 BY repealing and reenacting, with amendments,

3 Article - Insurance

4 Section 3-304, 3-306, 3-308, and 3-325

5 Annotated Code of Maryland

6 (1997 Volume)

7 BY adding to

8 Article - Insurance

9 Section 3-306.1

10 Annotated Code of Maryland

11 (1997 Volume)

12 BY repealing

13 Article - Insurance

14 Section 3-323

15 Annotated Code of Maryland

16 (1997 Volume)

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 3-302.

21 (a) This subtitle does not apply to:

22 (1) life insurance;

23 (2) health insurance;

24 (3) annuities;

25 (4) reinsurance;

26 (5) wet marine and transportation insurance, except as provided in  
27 subsection (b) of this section;

28 (6) insurance on a subject that is located, resident, or to be performed  
29 wholly outside the State;

30 (7) insurance on vehicles or aircraft owned and principally garaged  
31 outside the State;

32 (8) insurance on property or operation of railroads engaged in interstate  
33 commerce; or

1 (9) insurance:

2 (i) on aircraft owned or operated by aircraft manufacturers or  
3 operated in scheduled interstate flight;

4 (ii) on cargo of the aircraft described in subitem (i) of this item; or

5 (iii) against liability arising out of the ownership, maintenance, or  
6 use of the aircraft described in subitem (i) of this item, other than workers'  
7 compensation or employer's liability.

8 (b) This subtitle applies to wet marine and transportation insurance on:

9 (1) a pleasure craft under 60 feet in length that is owned and used for  
10 pleasure and not for business, hire, or other commercial use;

11 (2) fishing vessels under 50 gross tons that are not part of a fleet of 3 or  
12 more vessels; and

13 (3) charter or head boats under 50 gross tons that are not part of a fleet  
14 of 3 or more vessels.

15 3-304.

16 The Commissioner may adopt reasonable regulations consistent with this  
17 subtitle to:

18 (1) carry out this subtitle; [or]

19 (2) establish procedures for determining the eligibility of particular  
20 proposed coverages for placement with surplus lines insurers AND MAINTAIN A LIST  
21 OF THE IDENTIFIED COVERAGES;

22 (3) PERMIT A COMMERCIAL INSURED, AS DEFINED BY THE  
23 COMMISSIONER, ~~FOR THE PROCUREMENT OF A SURPLUS LINES INSURANCE POLICY~~  
24 ~~WITH AN ANNUAL PREMIUM OF NOT LESS THAN \$5,000,~~ TO WAIVE THE DILIGENT  
25 SEARCH REQUIREMENT UNDER § 3-306 OF THIS SUBTITLE *FOR THE PROCUREMENT*  
26 *OF A SURPLUS LINES INSURANCE POLICY;*

27 (I) *WITH AN ANNUAL PREMIUM OF NOT LESS THAN \$5,000; AND*

28 (II) *ISSUED BY AN INSURER WITH A FINANCIAL RATING OF "A" OR*  
29 *BETTER BY THE A.M. BEST COMPANY OR AN EQUIVALENT RATING FROM AN*  
30 *INDEPENDENT RATING ORGANIZATION APPROVED BY THE COMMISSIONER;*

31 (4) PROVIDE FOR THE CONTENT AND USE OF THE WRITTEN  
32 DISCLOSURE REQUIRED UNDER § 3-308 OF THIS SUBTITLE; AND

33 (5) PROVIDE FOR THE PERIODIC REVIEW, NO LESS THAN ANNUALLY, OF  
34 INFORMATION FROM SURPLUS LINES BROKERS, AGENTS, AND INSURERS AND FROM

1 OTHER SOURCES CONCERNING THE AVAILABILITY AND AFFORDABILITY OF  
2 INSURANCE FROM AUTHORIZED INSURERS IN THE STATE.

3 3-306.

4 (a) Surplus lines insurance may be procured from an unauthorized insurer if:

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

7 (2) SUBJECT TO THE PROVISIONS OF § 3-306.1 OF THIS SUBTITLE, a  
8 diligent search is made among the authorized insurers that are writing the particular  
9 kind and class of insurance in the State;

10 (3) except for insurance against liability of persons described in §  
11 24-206(1) of this article, the amount of surplus lines insurance procured from an  
12 unauthorized insurer is only the excess over the amount that can be procured from  
13 authorized insurers;

14 (4) for insurance against liability of persons described in § 24-206(1) of  
15 this article, the insurance cannot be obtained from three or more authorized insurers  
16 that are writing on a broad basis that particular kind and class of insurance;

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

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

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

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

23 (b) This subtitle does not prohibit a lower premium rate or more favorable  
24 terms in the insurance contract of an unauthorized insurer if:

25 (1) the risk is eligible as surplus lines under subsection (a)(2), (3), and (4)  
26 of this section; OR

27 (2) THE APPLICANT QUALIFIES AS A COMMERCIAL INSURED WHO MAY  
28 WAIVE, AS AUTHORIZED BY THE COMMISSIONER, THE DILIGENT SEARCH THAT IS  
29 OTHERWISE REQUIRED UNDER THIS SECTION.

30 (c) (1) This section does not prohibit a surplus lines broker from renewing a  
31 risk with a surplus lines insurer if the risk was initially written on a surplus lines  
32 basis when there were fewer than three authorized insurers actually writing on a  
33 broad basis the particular kind and class of insurance to provide coverage against  
34 liability of persons described in § 24-206(1) of this article in the State.

35 (2) Even if on the date of renewal three or more authorized insurers are  
36 writing on a broad basis the particular kind and class of insurance required by the

1 insured, a risk initially eligible for surplus lines insurance may be renewed on a  
2 surplus lines basis if the surplus lines insurer or broker gives to the insured  
3 appropriate notice of the availability of comparable types of insurance being written  
4 by three or more authorized insurers:

5 (i) each year; and

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

8 3-306.1.

9 (A) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A~~  
10 DILIGENT SEARCH REQUIRED BY § 3-306 OF THIS SUBTITLE SHALL BE DEEMED  
11 COMPLETED IF:

12 (I) THE INSURED OR THE SURPLUS LINES BROKER OR AGENT  
13 OBTAINS DECLINATIONS OF A RISK FROM THREE AUTHORIZED INSURERS THAT ARE  
14 WRITING THE PARTICULAR KIND AND CLASS OF INSURANCE IN THIS STATE; AND

15 (II) THE DECLINATIONS ARE INCLUDED IN THE AFFIDAVIT  
16 REQUIRED UNDER § 3-307 OF THIS SUBTITLE.

17 (2) IN ADDITION TO THE REQUIREMENT OF PARAGRAPH (1)(I) OF THIS  
18 SUBSECTION, AN AGENT SHALL OBTAIN A DECLINATION FROM EACH INSURER FOR  
19 WHICH THE AGENT HAS BEEN APPOINTED THAT THE AGENT KNOWS, OR SHOULD  
20 KNOW, IS ACTUALLY WRITING ON A BROAD BASIS THE PARTICULAR KIND AND CLASS  
21 OF INSURANCE SOUGHT.

22 ~~(2) IF THE DILIGENT SEARCH IS CONDUCTED BY AN AGENT HOLDING~~  
23 ~~MORE THAN THREE APPOINTMENTS FROM AUTHORIZED INSURERS, A DECLINATION~~  
24 ~~SHALL BE OBTAINED FROM EACH INSURER THAT THE AGENT KNOWS, OR SHOULD~~  
25 ~~KNOW, IS ACTUALLY WRITING ON A BROAD BASIS THE PARTICULAR KIND AND CLASS~~  
26 ~~OF INSURANCE SOUGHT.~~

27 (B) A DILIGENT SEARCH MAY NOT BE REQUIRED:

28 (1) FOR ANY COVERAGE ON A LIST OF ELIGIBLE SURPLUS LINES  
29 COVERAGES COMPILED BY THE COMMISSIONER; OR

30 (2) IF THE DILIGENT SEARCH IS WAIVED BY A COMMERCIAL INSURED IN  
31 ACCORDANCE WITH THE PROCESS DETERMINED BY THE COMMISSIONER.

32 (C) NOTWITHSTANDING THE RENEWAL PROVISIONS OF § 3-306(C) OF THIS  
33 SUBTITLE, A DILIGENT SEARCH SHALL BE REQUIRED FOR EACH RENEWAL OF A  
34 PERSONAL LINES INSURANCE POLICY WRITTEN THROUGH A SURPLUS LINES  
35 INSURER.

1 3-307.

2 (a) An affidavit that sets forth the facts referred to in § 3-306 of this subtitle  
3 and any other facts required by the Commissioner must be personally executed by the  
4 surplus lines broker or the originating agent or broker at the time the surplus lines  
5 insurance is placed.

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

8 3-308.

9 Each insurance contract or confirmation procured and delivered [as surplus  
10 lines coverage] UNDER THIS SUBTITLE shall be {;

11 (1) endorsed or stamped conspicuously in boldface type on the first page  
12 of the insurance contract or confirmation as follows: "This insurance is issued by a  
13 nonadmitted insurer not under the jurisdiction of the Maryland Insurance  
14 Commissioner"; AND

15 (2) ACCOMPANIED BY A WRITTEN DISCLOSURE, AS PRESCRIBED BY THE  
16 COMMISSIONER, THAT:

17 (1) IS WRITTEN IN CLEAR, PLAIN ENGLISH;

18 (2) EXPLAINS THAT THE INSURER DOES NOT POSSESS A  
19 CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER TO ENGAGE IN THE  
20 INSURANCE BUSINESS IN THE STATE; AND

21 (3) INCLUDES ANY OTHER INFORMATION THAT THE  
22 COMMISSIONER REQUIRES.

23 [3-323.

24 (a) Within 60 days after June 30 and December 31 of each year, each surplus  
25 lines broker shall file with the Commissioner a semiannual statement that reports:

26 (1) the gross amount of each kind of insurance business transacted and  
27 the total gross premiums charged;

28 (2) the total returned premiums and taxes paid to insureds;

29 (3) the total net premiums; and

30 (4) any additional information that the Commissioner reasonably  
31 requires.

32 (b) Each semiannual statement shall be open to public inspection.]

1 3-325.

2 (a) On or before March 15 and September 15 of each year, each surplus lines  
3 broker shall:

4 (1) file with the Commissioner a [report of the gross premiums charged,  
5 less premiums returned, for] SEMIANNUAL STATEMENT THAT REPORTS ON business  
6 subject to tax during the preceding half calendar year; and

7 (2) pay to the Commissioner the total amount of tax imposed by § 3-324  
8 of this subtitle and appearing on the [report] SEMIANNUAL STATEMENT FILED  
9 UNDER THIS SECTION.

10 (b) The [report] SEMIANNUAL STATEMENT shall be verified in the manner  
11 [and contain the information] that the Commissioner requires AND CONTAIN THE  
12 FOLLOWING INFORMATION:

13 (1) THE GROSS AMOUNT OF EACH KIND OF INSURANCE BUSINESS  
14 TRANSACTED AND THE TOTAL GROSS PREMIUMS CHARGED;

15 (2) THE TOTAL RETURNED PREMIUMS AND TAXES PAID TO INSURED;

16 (3) THE TOTAL NET PREMIUMS; AND

17 (4) ANY ADDITIONAL INFORMATION THAT THE COMMISSIONER  
18 REASONABLY REQUIRES.

19 (C) EACH SEMIANNUAL STATEMENT SHALL BE OPEN TO PUBLIC INSPECTION.

20 [(c)] (D) A surplus lines broker may credit any examination expense paid or  
21 assessed under § 2-208 of this article against the premium receipts tax due.

22 [(d)] (E) With respect to a penalty that has become final, a surplus lines  
23 broker is subject to the provisions of Title 6, Subtitle 1 of this article relating to  
24 penalties, interest, audits, assessments, limitations, appeals, and refunds.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 1998.