
By: **Delegate Barve**

Introduced and read first time: February 23, 1998

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

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
17 (1997 Volume)

18 BY repealing and reenacting, with amendments,
19 Article - Insurance
20 Section 3-304, 3-306, 3-308, and 3-325
21 Annotated Code of Maryland
22 (1997 Volume)

23 BY adding to
24 Article - Insurance
25 Section 3-306.1
26 Annotated Code of Maryland
27 (1997 Volume)

28 BY repealing
29 Article - Insurance

1 Section 3-323
2 Annotated Code of Maryland
3 (1997 Volume)

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

6 **Article - Insurance**

7 3-302.

8 (a) This subtitle does not apply to:

9 (1) life insurance;

10 (2) health insurance;

11 (3) annuities;

12 (4) reinsurance;

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

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

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

19 (8) insurance on property or operation of railroads engaged in interstate
20 commerce; or

21 (9) insurance:

22 (i) on aircraft owned or operated by aircraft manufacturers or
23 operated in scheduled interstate flight;

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

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

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

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

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

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

5 3-304.

6 The Commissioner may adopt reasonable regulations consistent with this
7 subtitle to:

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

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

12 (3) PERMIT A COMMERCIAL INSURED, AS DEFINED BY THE
13 COMMISSIONER, TO WAIVE THE DILIGENT SEARCH REQUIREMENT UNDER § 3-306 OF
14 THIS SUBTITLE;

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

17 (5) PROVIDE FOR THE PERIODIC REVIEW, NO LESS THAN ANNUALLY, OF
18 INFORMATION FROM SURPLUS LINES BROKERS, AGENTS, AND INSURERS AND FROM
19 OTHER SOURCES CONCERNING THE AVAILABILITY AND AFFORDABILITY OF
20 INSURANCE FROM AUTHORIZED INSURERS IN THE STATE.

21 3-306.

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

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

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

28 (3) except for insurance against liability of persons described in §
29 24-206(1) of this article, the amount of surplus lines insurance procured from an
30 unauthorized insurer is only the excess over the amount that can be procured from
31 authorized insurers;

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

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

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

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

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

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

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

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

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

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

23 (i) each year; and

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

26 3-306.1.

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

30 (I) THE INSURED OR THE SURPLUS LINES BROKER OR AGENT
31 OBTAINS DECLINATIONS OF A RISK FROM THREE AUTHORIZED INSURERS; AND

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

34 (2) IF THE DILIGENT SEARCH IS CONDUCTED BY AN AGENT HOLDING
35 MORE THAN THREE APPOINTMENTS FROM AUTHORIZED INSURERS, A DECLINATION
36 SHALL BE OBTAINED FROM EACH INSURER THAT THE AGENT KNOWS, OR SHOULD

1 KNOW, IS ACTUALLY WRITING ON A BROAD BASIS THE PARTICULAR KIND AND CLASS
2 OF INSURANCE SOUGHT.

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

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

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

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

11 3-307.

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

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

18 3-308.

19 Each insurance contract or confirmation procured and delivered [as surplus
20 lines coverage] UNDER THIS SUBTITLE shall be [endorsed or stamped conspicuously
21 in boldface type on the first page of the insurance contract or confirmation as follows:
22 "This insurance is issued by a nonadmitted insurer not under the jurisdiction of the
23 Maryland Insurance Commissioner"] ACCOMPANIED BY A WRITTEN DISCLOSURE, AS
24 PRESCRIBED BY THE COMMISSIONER, THAT:

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

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

29 (3) INCLUDES ANY OTHER INFORMATION THAT THE COMMISSIONER
30 REQUIRES.

31 [3-323.

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

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

- 1 (2) the total returned premiums and taxes paid to insureds;
2 (3) the total net premiums; and
3 (4) any additional information that the Commissioner reasonably
4 requires.

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

6 3-325.

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

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

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

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

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

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

21 (3) THE TOTAL NET PREMIUMS; AND

22 (4) ANY ADDITIONAL INFORMATION THAT THE COMMISSIONER
23 REASONABLY REQUIRES.

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

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

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

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