

By: **Delegate Barve**
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Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 1998

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
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

1 Article - Insurance
2 Section 3-306.1
3 Annotated Code of Maryland
4 (1997 Volume)

5 BY repealing
6 Article - Insurance
7 Section 3-323
8 Annotated Code of Maryland
9 (1997 Volume)

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

12 **Article - Insurance**

13 3-302.

14 (a) This subtitle does not apply to:

15 (1) life insurance;

16 (2) health insurance;

17 (3) annuities;

18 (4) reinsurance;

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

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

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

25 (8) insurance on property or operation of railroads engaged in interstate
26 commerce; or

27 (9) insurance:

28 (i) on aircraft owned or operated by aircraft manufacturers or
29 operated in scheduled interstate flight;

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

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

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

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

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

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

11 3-304.

12 The Commissioner may adopt reasonable regulations consistent with this
13 subtitle to:

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

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

18 (3) PERMIT A COMMERCIAL INSURED, AS DEFINED BY THE
19 COMMISSIONER, FOR THE PROCUREMENT OF A SURPLUS LINES INSURANCE POLICY
20 WITH AN ANNUAL PREMIUM OF NOT LESS THAN \$5,000, TO WAIVE THE DILIGENT
21 SEARCH REQUIREMENT UNDER § 3-306 OF THIS SUBTITLE;

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

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

28 3-306.

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

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

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

1 (3) except for insurance against liability of persons described in §
2 24-206(1) of this article, the amount of surplus lines insurance procured from an
3 unauthorized insurer is only the excess over the amount that can be procured from
4 authorized insurers;

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

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

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

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

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

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

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

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

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

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

32 (i) each year; and

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

1 3-306.1.

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

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

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

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

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

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

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

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

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

29 3-307.

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

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

1 3-308.

2 Each insurance contract or confirmation procured and delivered [as surplus
3 lines coverage] UNDER THIS SUBTITLE shall be ~~£~~:

4 ~~(1)~~ (I) endorsed or stamped conspicuously in boldface type on the first page
5 of the insurance contract or confirmation as follows: "This insurance is issued by a
6 nonadmitted insurer not under the jurisdiction of the Maryland Insurance
7 Commissioner"; AND

8 ~~(2)~~ (II) ACCOMPANIED BY A WRITTEN DISCLOSURE, AS PRESCRIBED BY THE
9 COMMISSIONER, THAT:

10 ~~(+)~~ (I) IS WRITTEN IN CLEAR, PLAIN ENGLISH;

11 ~~(=)~~ (II) EXPLAINS THAT THE INSURER DOES NOT POSSESS A
12 CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER TO ENGAGE IN THE
13 INSURANCE BUSINESS IN THE STATE; AND

14 ~~(=)~~ (III) INCLUDES ANY OTHER INFORMATION THAT THE
15 COMMISSIONER REQUIRES.

16 [3-323.

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

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

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

22 (3) the total net premiums; and

23 (4) any additional information that the Commissioner reasonably
24 requires.

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

26 3-325.

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

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

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

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

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

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

7 (3) THE TOTAL NET PREMIUMS; AND

8 (4) ANY ADDITIONAL INFORMATION THAT THE COMMISSIONER
9 REASONABLY REQUIRES.

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

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

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

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