

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 70

Introduced by Pahls, 31.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Surplus Lines Insurance Act; to amend
2 sections 44-5502, 44-5504, 44-5505, 44-5506, 44-5508,
3 44-5510, 44-5511, and 44-5515, Reissue Revised Statutes
4 of Nebraska; to define and redefine terms; to provide an
5 exemption for commercial purchasers; to change provisions
6 relating to records, annual statements, tax payments,
7 solvency requirements, and nonadmitted insurers; to
8 harmonize provisions; to provide an operative date; to
9 repeal the original sections; and to declare an
10 emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-5502, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5502 For purposes of the Surplus Lines Insurance Act:

4 (1) Affiliated group means a group of entities in which
5 each entity, with respect to an insured, controls, is controlled by,
6 or is under common control with the insured;

7 (2) Control means:

8 (a) To own, control, or have the power of an entity
9 directly, indirectly, or acting through one or more other persons to
10 vote twenty-five percent or more of any class of voting securities of
11 another entity; or

12 (b) To direct, by an entity, in any manner, the election
13 of a majority of the directors or trustees of another entity;

14 ~~(1)-(3)~~ Department means the Department of Insurance;

15 ~~(2)-(4)~~ Director means the Director of Insurance;

16 ~~(3)~~ Insurer has the same meaning as in section 44-103;

17 (5)(a) Exempt commercial purchaser means any person
18 purchasing commercial insurance that, at the time of placement, meets
19 the following requirements:

20 (i) The person employs or retains a qualified risk
21 manager to negotiate insurance coverage;

22 (ii) The person has paid aggregate nationwide commercial
23 property and casualty insurance premiums in excess of one hundred
24 thousand dollars in the immediately preceding twelve months; and

25 (iii) The person meets at least one of the following

1 criteria:

2 (A) The person possesses a net worth in excess of twenty
3 million dollars, as such amount is adjusted pursuant to subdivision
4 (5)(b) of this section;

5 (B) The person generates annual revenue in excess of
6 fifty million dollars, as such amount is adjusted pursuant to
7 subdivision (5)(b) of this section;

8 (C) The person employs more than five hundred full-time
9 or full-time equivalent employees per individual insured or is a
10 member of an affiliated group employing more than one thousand
11 employees in the aggregate;

12 (D) The person is a not-for-profit organization or public
13 entity generating annual budgeted expenditures of at least thirty
14 million dollars, as such amount is adjusted pursuant to subdivision
15 (5)(b) of this section; or

16 (E) The person is a municipality with a population in
17 excess of fifty thousand inhabitants.

18 (b) Beginning on the fifth occurrence of January 1 after
19 the operative date of this act and each fifth occurrence of January 1
20 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D)
21 of this section shall be adjusted to reflect the percentage change
22 for such five-year period in the Consumer Price Index for All Urban
23 Consumers published by the Federal Bureau of Labor Statistics;

24 (4)-(6) Foreign, alien, admitted, and nonadmitted, when
25 referring to insurers, has the same meanings as in section 44-103 but

1 does not include a risk retention group as defined in 15 U.S.C.
2 3901(a)(4); and

3 (7)(a) Except as provided in subdivision (7)(b) of this
4 section, home state means, with respect to an insured, (i) the state
5 in which an insured maintains its principal place of business or, in
6 the case of an individual, the individual's principal residence or
7 (ii) if one hundred percent of the insured risk is located out of the
8 state referred to in subdivision (7)(a)(i) of this section, the state
9 to which the greatest percentage of the insured's taxable premium for
10 that insurance contract is allocated.

11 (b) If more than one insured from an affiliated group are
12 named insureds on a single nonadmitted insurance contract, home state
13 means the home state, as determined pursuant to subdivision (7)(a) of
14 this section, of the member of the affiliated group that has the
15 largest percentage of premium attributed to it under such insurance
16 contract.

17 (c) When determining the home state of the insured, the
18 principal place of business is the state in which the insured
19 maintains its headquarters and where the insured's high-level
20 officers direct, control, and coordinate the business activities of
21 the insured;

22 (8) Insurer has the same meaning as in section 44-103;

23 (9) Nonadmitted insurance means any property and casualty
24 insurance permitted to be placed directly or through surplus lines
25 licensees with a nonadmitted insurer eligible to accept such

1 insurance; and

2 (10) Qualified risk manager means, with respect to a
3 policyholder of commercial insurance, a person who meets the
4 definition in section 527 of the Nonadmitted and Reinsurance Reform
5 Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform
6 and Consumer Protection Act, Public Law 111-203, as such section
7 existed on January 1, 2011.

8 ~~(5) Industrial insured means an insured that:~~

9 ~~(a) Procures the insurance of any risk or risks other~~
10 ~~than sickness and accident insurance and life and annuity contracts,~~
11 ~~has fifty full-time employees, and has aggregate annual premiums for~~
12 ~~insurance on all risks other than workers' compensation insurance~~
13 ~~that total at least one hundred thousand dollars; and~~

14 ~~(b) Uses, to procure such insurance, the services of a~~
15 ~~salaried full-time employee who counsels or advises his or her~~
16 ~~employer regarding the insurance interests of the employer or the~~
17 ~~employer's subsidiaries or business affiliates, if the employee does~~
18 ~~not sell or solicit insurance or receive a commission.~~

19 Sec. 2. Section 44-5504, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-5504 (1) No person, other than an ~~industrial insured,~~
22 exempt commercial purchaser, shall place, procure, or effect
23 insurance upon any risk located in this state for or on behalf of an
24 insured whose home state is the State of Nebraska in any nonadmitted
25 insurer until such person has first been issued a surplus lines

1 license from the department as provided in section 44-5503.

2 (2) Application for a surplus lines license shall be made
3 to the department on forms designated and furnished by the department
4 and shall be accompanied by a license fee as established by the
5 director not to exceed two hundred fifty dollars for each individual
6 and corporate surplus lines license.

7 (3)(a) All corporate surplus lines licenses shall expire
8 on April 30 of each year, and all individual surplus lines licenses
9 shall expire on the licensee's birthday in the first year after
10 issuance in which his or her age is divisible by two, and all
11 individual surplus lines licenses may be renewed within the ninety-
12 day period before their expiration dates and all individual surplus
13 lines licenses also may be renewed within the thirty-day period after
14 their expiration dates upon payment of a late renewal fee as
15 established by the director not to exceed two hundred dollars in
16 addition to the applicable fee otherwise required for renewal of
17 individual surplus lines licenses as established by the director
18 pursuant to subsection (2) of this section. All individual surplus
19 lines licenses renewed within the thirty-day period after their
20 expiration dates pursuant to this subdivision shall be deemed to have
21 been renewed before their expiration dates. The department shall
22 establish procedures for the renewal of surplus lines licenses.

23 (b) Every licensee shall notify the department within
24 thirty days of any changes in the licensee's residential or business
25 address.

1 Sec. 3. Section 44-5505, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5505 Each surplus lines licensee shall keep in the
4 licensee's office a true and complete record of the business
5 transacted by the licensee showing (1) the exact amount of insurance
6 or limits of exposure, (2) the gross premiums charged therefor, (3)
7 the return premium paid thereon, (4) the rate of premium charged for
8 such insurance, (5) the date of such insurance and terms thereof, (6)
9 the name and address of the nonadmitted insurer writing such
10 insurance, (7) a copy of the declaration page of each policy and a
11 copy of each policy form issued by the licensee, (8) a copy of the
12 written statement described in subdivision ~~(3)~~(1)(c) of section
13 44-5510 or, in lieu thereof, a copy of the application containing
14 such written statement, (9) the name ~~and address~~ of the insured, (10)
15 the address of the principal residence of the insured or the address
16 at which the insured maintains its principal place of business, (11)
17 a brief and general description of the risk or exposure insured and
18 where located, ~~(11)~~(12) documentation showing that the nonadmitted
19 insurer writing such insurance complies with the requirements of
20 section 44-5508, and ~~(12)~~(13) such other facts and information as
21 the department may direct and require. Such records shall be kept by
22 the licensee in the licensee's office within the state for not less
23 than five years and shall at all times be open and subject to the
24 inspection and examination of the department or its officers. The
25 expense of any examination shall be paid by the licensee.

1 Sec. 4. Section 44-5506, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-5506 Every surplus lines licensee transacting business
4 under the Surplus Lines Insurance Act shall annually, on or before
5 February 15 in each year, make and file with the department a
6 verified statement upon a form prescribed by the department which
7 shall exhibit the true amount of all such ~~business transacted~~
8 insurance placed, procured, or effected for or on behalf of an
9 insured whose home state is the State of Nebraska with any
10 nonadmitted insurer during the year ending on December 31 next
11 preceding the filing thereof. The licensee shall, at the time such
12 statement is filed, pay to the department a tax of three percent on
13 the total gross amount of direct writing premiums received by the
14 licensee on such business and the fire insurance tax prescribed in
15 section 81-523. ~~In no event shall such~~ The calculation of the taxes
16 due pursuant to this section shall be based only on those premiums
17 received by the licensee for the placement or procurement of
18 insurance on behalf of an insured whose home state is the State of
19 Nebraska with any nonadmitted insurer. Such taxes shall not be
20 determined on a retaliatory basis pursuant to section 44-150. For
21 purposes of this section, direct writing and premiums ~~shall be as~~
22 defined have the same meaning as in section 77-907.

23 Sec. 5. Section 44-5508, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-5508 (1) ~~Every surplus lines licensee transacting~~

1 ~~business under the Surplus Lines Insurance Act shall ascertain the~~
2 ~~financial condition of each insurer before such licensee places any~~
3 ~~insurance with or procures any insurance from such insurer. If~~
4 ~~requested by the director, the licensee shall provide a copy of the~~
5 ~~current annual statement certified and sworn to by such insurer.~~

6 ~~(2) No surplus lines licensee shall knowingly or without~~
7 ~~proper investigation place any insurance with or procure any~~
8 ~~insurance from any nonadmitted foreign or alien insurer that does not~~
9 ~~have surplus, capital, and reserves in amounts equal to or greater~~
10 ~~than the requirements of surplus, capital, and reserves placed on~~
11 ~~admitted insurers which write the same kinds of insurance.~~

12 ~~(3) In addition to the requirements of subsection (2) of~~
13 ~~this section, no surplus lines licensee shall place any insurance~~
14 ~~with or procure any insurance from any nonadmitted alien insurer~~
15 ~~unless such insurer (a) maintains in the United States a trust fund~~
16 ~~in a qualified United States financial institution as defined in~~
17 ~~subsection (2) of section 44-416.08 in an amount not less than two~~
18 ~~million five hundred thousand dollars for the protection of~~
19 ~~policyholders in the United States, consisting of cash in United~~
20 ~~States currency, readily marketable securities, or clean,~~
21 ~~irrevocable, unconditional letters of credit, issued or confirmed by~~
22 ~~a qualified United States financial institution as defined in~~
23 ~~subsection (1) of section 44-416.08, and such trust fund shall have~~
24 ~~an expiration date which at no time shall be less than five years, or~~
25 ~~(b) is approved by the Nonadmitted Insurers Information Office of the~~

1 ~~National Association of Insurance Commissioners, and the director, in~~
2 ~~his or her discretion, has not independently determined such insurer~~
3 ~~to be in an unsound financial condition.~~

4 ~~(4) No surplus lines licensee shall place any insurance~~
5 ~~with or procure any insurance from any nonadmitted Lloyd's plan or~~
6 ~~other similar group which includes incorporated and individual~~
7 ~~unincorporated underwriters unless such group maintains a trust fund~~
8 ~~of not less than fifty million dollars as security to the full amount~~
9 ~~thereof for all policyholders and creditors in the United States of~~
10 ~~each member of the group and such trust complies with the terms and~~
11 ~~conditions established in subsection (3) of this section for~~
12 ~~nonadmitted alien insurers.~~

13 (1) A surplus lines licensee shall not place coverage
14 with a nonadmitted insurer unless, at the time of placement, the
15 surplus lines licensee has determined that the nonadmitted insurer:

16 (a) Is authorized to write such insurance in its
17 domiciliary jurisdiction;

18 (b) Has established satisfactory evidence of good repute
19 and financial integrity; and

20 (c)(i) Possesses capital and surplus or its equivalent
21 under the laws of its domiciliary jurisdiction that equals the
22 greater of the minimum capital and surplus requirements under the
23 laws of this state or fifteen million dollars; or

24 (ii) If minimum capital and surplus does not meet the
25 requirements of subdivision (1)(c)(i) of this section, then upon an

1 affirmative finding of acceptability by the director. The finding
2 shall be based upon such factors as quality of management, capital
3 and surplus of any parent company, company underwriting profit and
4 investment income trends, market availability, and company record and
5 reputation within the industry. The director shall not make an
6 affirmative finding of acceptability if the nonadmitted insurer's
7 capital and surplus is less than four million five hundred thousand
8 dollars.

9 (2) No surplus lines licensee shall place nonadmitted
10 insurance with or procure nonadmitted insurance from a nonadmitted
11 insurer domiciled outside the United States unless the insurer is
12 listed on the Quarterly Listing of Alien Insurers maintained by the
13 International Insurers Department of the National Association of
14 Insurance Commissioners.

15 ~~(5)-(3)~~ Any surplus lines licensee violating this section
16 shall be guilty of a Class III misdemeanor.

17 ~~(6)(a)-(4)(a)~~ No nonadmitted foreign or alien insurer
18 shall transact business under the act if it does not comply with the
19 surplus, and capital, ~~and reserves~~ requirements of subsection ~~(2)-(1)~~
20 of this section.

21 (b) In addition to the requirements of subdivision (a) of
22 this subsection, no nonadmitted alien insurer shall transact business
23 under the act if it does not comply with the requirements of
24 ~~subdivision (3)(a) or (b)~~ subsection (2) of this section.

25 ~~(c) No nonadmitted Lloyd's plan or other similar group~~

1 ~~which includes incorporated and individual unincorporated~~
2 ~~underwriters shall transact business under the act if it does not~~
3 ~~comply with the requirements of subsection (4) of this section.~~

4 Sec. 6. Section 44-5510, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-5510 (1) If an applicant for insurance is unable to
7 procure such insurance as he or she deems reasonably necessary to
8 insure a risk or exposure from an admitted insurer, such insurance
9 may be procured from a nonadmitted insurer upon the following terms
10 and conditions:

11 ~~(1)~~(a) The insurance shall be procured from a surplus
12 lines licensee;

13 ~~(2)~~(b) The insurance procured shall not include any
14 insurance described in subdivisions (1) through (4) of section
15 44-201;

16 ~~(3)~~(c) Not later than thirty days after the effective
17 date of such insurance, the insured shall provide, in writing, his or
18 her permission for such insurance to be written in a nonadmitted
19 insurer and his or her acknowledgment that, in the event of the
20 insolvency of such insurer, the policy will not be covered by the
21 Nebraska Property and Liability Insurance Guaranty Association; and

22 ~~(4)~~(d) Compliance with section 44-5511.

23 (2) A surplus lines licensee seeking to procure or place
24 nonadmitted insurance for an exempt commercial purchaser whose home
25 state is the State of Nebraska shall not be required to make a due

1 diligence search to determine whether the full amount or type of
2 insurance sought by such exempt commercial purchaser can be obtained
3 from admitted insurers if:

4 (a) The surplus lines licensee procuring or placing the
5 insurance has disclosed to the exempt commercial purchaser that such
6 insurance may or may not be available from the admitted market that
7 may provide greater protection with more regulatory oversight; and

8 (b) The exempt commercial purchaser has subsequently
9 requested in writing the surplus lines licensee to procure or place
10 such insurance for a nonadmitted insurer.

11 Sec. 7. Section 44-5511, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-5511 No later than thirty days after the last day of
14 each calendar quarter, every surplus lines licensee shall file with
15 the department a report containing such information as the department
16 may require, including: (1) The name of the nonadmitted insurer; (2)
17 the name of the licensee; (3) the number of policies issued by each
18 nonadmitted insurer; (4) except for insurance placed or procured on
19 behalf of an exempt commercial purchaser, a sworn statement by the
20 licensee with regard to the coverages described in the quarterly
21 report that, to the best of the licensee's knowledge and belief, the
22 licensee could not reasonably procure such coverages from an admitted
23 insurer; and (5) the premium volume for each nonadmitted insurer by
24 line of business.

25 Sec. 8. Section 44-5515, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-5515 Every ~~industrial insured exempt~~ commercial
3 purchaser whose home state is the State of Nebraska shall annually,
4 on or before February 15, pay to the department a tax of three
5 percent on the total gross amount of insurance premiums for policies
6 independently procured through nonadmitted insurers. Every industrial
7 insured exempt commercial purchaser shall pay the fire insurance tax
8 prescribed in section 81-523. The calculation of the taxes due
9 pursuant to this section shall be based only on those premiums
10 remitted for the placement or procurement of insurance by an exempt
11 commercial purchaser whose home state is the State of Nebraska. The
12 department shall prescribe a form for an ~~industrial insured exempt~~
13 commercial purchaser tax filing.

14 Sec. 9. This act becomes operative on July 21, 2011.

15 Sec. 10. Original sections 44-5502, 44-5504, 44-5505,
16 44-5506, 44-5508, 44-5510, 44-5511, and 44-5515, Reissue Revised
17 Statutes of Nebraska, are repealed.

18 Sec. 11. Since an emergency exists, this act takes effect
19 when passed and approved according to law.