

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 179

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO UNAUTHORIZED INSURERS AND SURPLUS LINES; AMENDING SECTION 41-1212, IDAHO CODE, TO PROVIDE THAT CERTAIN CODE SECTIONS APPLY ONLY WHEN THE INSURED'S HOME STATE IS IDAHO AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1213, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS; AMENDING SECTION 41-1214, IDAHO CODE, TO PROVIDE THAT A CERTAIN SEARCH REQUIREMENT IS NOT REQUIRED IN CERTAIN CIRCUMSTANCES, TO PROVIDE RECORD MAINTENANCE REQUIREMENTS, TO PROVIDE RESTRICTIONS RELATING TO INSURERS WITH WHICH SURPLUS LINE BROKERS MAY INSURE, TO GRANT THE DIRECTOR CERTAIN RULEMAKING AUTHORITY AND TO PROVIDE A PENALTY; AMENDING SECTION 41-1223, IDAHO CODE, TO GRANT THE DIRECTOR THE AUTHORITY TO PARTICIPATE IN A CERTAIN DATABASE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1229, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A TAX ON SURPLUS LINES; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 41-1212, Idaho Code, be, and the same is hereby amended to read as follows:

41-1212. EXEMPTIONS FROM SURPLUS LINE LAW. (1) The provisions of this surplus line law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or, except as to subsection (2) below, to the following insurances when so placed by licensed agents or surplus line brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial scheduled interstate flight, or cargo of such aircraft, or against liability, other than ~~workmen's~~ worker's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this law. The record shall be preserved for not less than five (5) years from the effective date of the insurance and shall be kept available in this state and open to the examination of the director. The broker shall furnish to the director at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year.

1       (3) The following sections apply only when the insured's home state is  
 2 Idaho:

- 3       (a) Section 41-1214, Idaho Code (conditions for export);
- 4       (b) Section 41-1215, Idaho Code (broker's affidavit);
- 5       (c) Section 41-1216, Idaho Code (open lines for export);
- 6       (d) Section 41-1217, Idaho Code (eligible surplus lines insurers);
- 7       (e) Section 41-1218, Idaho Code (eligible surplus line insurers --  
 8 penalty for violation);
- 9       (f) Section 41-1219, Idaho Code (evidence of the insurance -- changes  
 10 -- penalty);
- 11       (g) Section 41-1220, Idaho Code (endorsement of contract);
- 12       (h) Section 41-1227, Idaho Code (records of broker);
- 13       (i) Section 41-1228, Idaho Code (annual report of broker);
- 14       (j) Section 41-1229, Idaho Code (tax on surplus lines);
- 15       (k) Section 41-1233, Idaho Code (report and tax of independently pro-  
 16 cured coverages);
- 17       (l) Section 41-1234, Idaho Code (records of insureds).

18       SECTION 2. That Section 41-1213, Idaho Code, be, and the same is hereby  
 19 amended to read as follows:

20       41-1213. DEFINITIONS. As used in this chapter and any applicable  
 21 rules, the following definitions shall apply:

22       (1) "Affiliated" means, with respect to an insured, any entity that  
 23 controls, is controlled by or is under common control with the insured.

24       (2) "Affiliated group" means any group of entities that are all affili-  
 25 ated.

26       (3) "Broker" as used in this chapter means a surplus line broker duly  
 27 licensed as such under this chapter, including resident surplus line brokers  
 28 and nonresident surplus line brokers.

29       (4) "Control" means:

30       (a) An entity directly or indirectly, or acting through one (1) or more  
 31 other persons, owns or controls another entity or has the power to vote  
 32 twenty-five percent (25%) or more of any class of voting securities of  
 33 another entity; or

34       (b) An entity controls in any manner the election of a majority of the  
 35 directors or trustees of another entity.

36       (5) (a) "Exempt commercial purchaser" means any person purchasing com-  
 37 mercial insurance who, at the time of placement, meets the following re-  
 38 quirements:

39       (i) The person employs or retains a qualified risk manager to ne-  
 40 gotiate insurance coverage.

41       (ii) The person has paid aggregate nationwide commercial property  
 42 and casualty insurance premiums in excess of one hundred thou-  
 43 sand dollars (\$100,000) in the immediately preceding twelve (12)  
 44 months.

45       (iii) The person meets at least one (1) of the following criteria:

46       1. The person possesses a net worth in excess of twenty mil-  
 47 lion dollars (\$20,000,000) as such amount is adjusted pur-  
 48 suant to the provisions of paragraph (b) of this subsection.

2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

3. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.

4. The person is a nonprofit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000) as such amount is adjusted pursuant to the provisions of paragraph (b) of this subsection.

5. The person is a municipality with a population in excess of fifty thousand (50,000) persons.

(b) The amounts provided in subparagraph (iii) 1., 2. and 4. of paragraph (a) of this subsection must be adjusted to reflect the percentage change for the five (5) year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

(c) For the purposes of this subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization or public entity.

(26) To "eExport" means to place in an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located, or to be performed in Idaho.

(7) (a) "Home state" means:

(i) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) If one hundred percent (100%) of the insured risk is located out of state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one (1) insured from an affiliated group are named insureds on a single nonadmitted insurance contract, then "home state" means the home state, as determined pursuant to the provisions of paragraph (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) For the purposes of this subsection, "principal place of business" means the state where the insured maintains its headquarters and where the insured's high level officers direct, control and coordinate the business activities of the insured.

(8) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or a third party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i) Has at least ten (10) years of experience in risk financing, claim administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance; or

(ii) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competence in risk management; or

(iii) Has at least seven (7) years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance and has one (1) of the designations specified in subparagraph (iv) 1. through 5. of this paragraph; or

(iv) Has a bachelor's degree or higher education from an accredited college or university in risk management, business administration, finance, economics or any other field determined by a state insurance director or other state regulatory official or entity to demonstrate minimum competency in risk management; and either has three (3) years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis or purchasing commercial lines of insurance, or has one (1) of the following designations:

1. A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU and insurance institute of America;

2. A designation as an associate in risk management (ARM) issued by the American institute for CPCU and insurance institute of America;

3. A designation as a certified risk manager (CRM) issued by the national alliance for insurance education and research;

4. A designation as a RIMS fellow (RF) issued by the global risk management institute; or

5. Any other designation, certification or license determined by a state insurance director or other state insurance regulatory official or entity to demonstrate minimum competency in risk management.

SECTION 3. That Section 41-1214, Idaho Code, be, and the same is hereby amended to read as follows:

41-1214. CONDITIONS FOR EXPORT. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker who is a member of a surplus line association approved by the director.

(2) The full amount or kind of insurance required must not be procurable from insurers who are authorized to do business in this state. The amount of insurance exported shall be only the excess over the amount procurable from authorized insurers unless the excess is not available without support of

1 other coverages, provided that a diligent search is made among the insurers  
2 authorized to transact and actually writing that particular kind and class  
3 of insurance in this state.

4 (3) The insurance must not be so exported for the purpose of securing  
5 advantages either as to:

6 (a) A lower premium rate than would be accepted by an authorized in-  
7 surer; or

8 (b) Terms of the insurance contract.

9 (4) A surplus line broker seeking to procure from or place insurance  
10 with an unauthorized insurer for an exempt commercial purchaser is not re-  
11 quired to satisfy the diligent search requirement set forth in subsection  
12 (2) of this section when:

13 (a) The surplus line broker or referring insurance producer procuring  
14 or placing the surplus line insurance has disclosed to the exempt com-  
15 mercial purchaser that such insurance may or may not be available from  
16 the admitted market that may provide greater protection with more regu-  
17 latory oversight; and

18 (b) The exempt commercial purchaser has subsequently requested in  
19 writing the surplus line broker or referring insurance producer to pro-  
20 cur or place such insurance from an unauthorized insurer.

21 (5) Records of the surplus line broker's satisfaction of the require-  
22 ments of subsection (4) of this section shall be maintained in compliance  
23 with the provisions of section 41-1227, Idaho Code.

24 (6) A surplus line broker may not knowingly place surplus line insur-  
25 ance with insurers that are financially unsound. The surplus line broker may  
26 only so insure with the following:

27 (a) Any foreign insurer that is authorized to write the kind of insur-  
28 ance in its domiciliary jurisdiction and has capital and surplus or its  
29 equivalent under the laws of its domiciliary jurisdiction that equals  
30 the greater of the following: (i) the minimum capital and surplus re-  
31 quirements under the laws of this state; or (ii) fifteen million dollars  
32 (\$15,000,000); or

33 (b) Any alien insurer that is listed on the quarterly listing of alien  
34 insurers maintained by the international insurers department of the na-  
35 tional association of insurance commissioners.

36 (7) The requirements in paragraph (a) of subsection (6) of this section  
37 may be satisfied by an insurer that possesses less than the minimum capital  
38 and surplus upon an affirmative finding of acceptability by the director.  
39 Such finding shall be based upon factors such as quality of management, cap-  
40 ital and surplus of any parent company, company underwriting profit and in-  
41 vestment income trends, market availability and company record and reputa-  
42 tion within the industry. The director is prohibited from making an affirma-  
43 tive finding of acceptability when the foreign insurer's capital and surplus  
44 is less than four million five hundred thousand dollars (\$4,500,000).

45 (8) The director may promulgate rules to prescribe the terms under  
46 which the financial requirements provided in this section may be waived in  
47 circumstances where insurance cannot be otherwise procured on risks located  
48 in this state.

49 (9) For any violation of the provisions of this section, a surplus line  
50 broker may be subject to a fine of not less than one hundred dollars (\$100)

1 and not more than five thousand dollars (\$5,000), or the surplus line bro-  
 2 ker's license may be revoked, suspended or nonrenewed, or both such fine and  
 3 license revocation, suspension or nonrenewal.

4 SECTION 4. That Section 41-1223, Idaho Code, be, and the same is hereby  
 5 amended to read as follows:

6 41-1223. LICENSING OF SURPLUS LINE BROKERS. (1) Any individual while  
 7 licensed as a producer licensed for property or casualty insurance who has  
 8 had at least two (2) years' experience as a producer for the lines of insur-  
 9 ance for which he is seeking to be licensed as a surplus line broker, and who  
 10 is deemed by the director to be competent and trustworthy with respect to the  
 11 handling of surplus lines, may be licensed as a surplus line broker.

12 (2) Application for the license shall be made to the director on forms  
 13 as designated and furnished by the director.

14 (3) The license and continuation fee shall be as set forth by rule pur-  
 15 suant to section 41-401, Idaho Code.

16 (4) The license and licensee shall be subject to the applicable provi-  
 17 sions of chapter 10, title 41, Idaho Code (producers-- licensing).

18 (5) When a national insurance producer database of the national asso-  
 19 ciation of insurance commissioners, or other equivalent uniform national  
 20 database, for the licensure of surplus line brokers is created, the director  
 21 may participate in such database.

22 SECTION 5. That Section 41-1229, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 41-1229. TAX ON SURPLUS LINES. (1) On or before the first day of March  
 25 of each year each broker shall remit to the director a tax on the premiums,  
 26 exclusive of sums collected to cover federal and state taxes and examination  
 27 fees, on surplus line insurance subject to tax transacted by him with unau-  
 28 thorized insurers during the preceding calendar year as shown by his annual  
 29 statement filed with the director, and at the following rates:

30 ~~(a) For calendar years 2004, 2005 and 2006, beginning with the ef-~~  
 31 ~~fective date of the policy, two and seventy-five hundredths percent~~  
 32 ~~(2.75%); and~~

33 ~~(b) For calendar year 2007 and thereafter, beginning with the effective~~  
 34 ~~date of the policy, rate of one and five-tenths percent (1.5%).~~

35 Such tax shall be in lieu of all other taxes upon such insurers with respect  
 36 to the business so reported.

37 (2) ~~If a surplus line policy covers risks or exposures only partially~~  
 38 ~~in this state, the tax so payable shall be computed upon the proportion of~~  
 39 ~~the premium which is properly allocable to the risks or exposures located in~~  
 40 ~~this state For property and casualty insurance other than worker's compensa-~~  
 41 ~~tion insurance, if Idaho is the insured's home state, then the tax so payable~~  
 42 ~~shall be computed upon the entire premium under subsection (1) of this sec-~~  
 43 ~~tion, without regard to whether the policy covers risks or exposures that are~~  
 44 ~~located in Idaho. For all other lines of insurance, if a surplus line policy~~  
 45 ~~covers risks or exposures only partially in Idaho, the tax so payable shall~~  
 46 ~~be computed upon the proportion of the premium that is properly allocable to~~  
 47 ~~the risks or exposures located in Idaho.~~

1           SECTION 6. Section 5 of this act shall be in full force and effect on and  
2   after July 21, 2011.