

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

S. B. No. 333

Senator Hackett

A BILL

To amend sections 3905.30, 3905.33, 3955.05, and 1
3960.11 and to enact section 3905.332 of the 2
Revised Code to authorize domestic surplus lines 3
insurers. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3905.30, 3905.33, 3955.05, and 5
3960.11 be amended and section 3905.332 of the Revised Code be 6
enacted to read as follows: 7

Sec. 3905.30. (A) As used in sections 3905.30 to 3905.38 8
of the Revised Code: 9

(1) Notwithstanding section 3905.01 of the Revised Code, 10
"home state" means the state in which an insured maintains its 11
principal place of business or, in the case of an individual, 12
the individual's principal residence except in the case of 13
either of the following: 14

(a) If one hundred per cent of the insured risk is located 15
out of the state in which an insured maintains its principal 16
place of business or principal residence as described in 17
division (A)(1)(a) of this section, "home state" means the state 18
to which the greatest percentage of the insured's taxable 19

premium for that insurance contract is allocated. 20

(b) If more than one insured from an affiliated group are 21
named insureds on a single unauthorized insurance contract, 22
"home state" means the state in which the member of the 23
affiliated group that has the largest percentage of premium 24
attributed to it under such insurance contract. 25

(2) "Principal place of business" means the state where 26
the insured maintains the insured's headquarters and where the 27
insured's high-level officers direct, control, and coordinate 28
the business activities of the insured. 29

(B) The superintendent of insurance may issue a surplus 30
lines broker's license to any natural person who is a resident 31
of this or any other state or to a business entity that is 32
organized under the laws of this or any other state. To be 33
eligible for a resident surplus lines broker's license, a person 34
must have both a property license and a casualty license. To be 35
eligible for a nonresident surplus lines broker's license, a 36
person must hold an active surplus lines broker license in the 37
person's home state. A nonresident surplus lines broker shall 38
obtain a nonresident license with a property and casualty line 39
of authority in this state if the broker is or will be 40
personally performing the due diligence requirements under 41
section 3905.33 of the Revised Code. 42

(C) (1) A surplus lines broker's license permits the person 43
named in the license to negotiate for and obtain insurance, 44
other than life insurance, on property or persons in this state 45
from ~~insurers~~ both of the following: 46

(a) Insurers not authorized to transact business in this 47
state; 48

(b) An insurer designated as a domestic surplus lines insurer pursuant to section 3905.332 of the Revised Code. 49
50

(2) Each such license expires on the thirty-first day of January next after the year in which it is issued, and may be then renewed. 51
52
53

Sec. 3905.33. (A) No person licensed under section 3905.30 of the Revised Code shall solicit, procure an application for, bind, issue, renew, or deliver a policy with any insurer that is not eligible to write insurance on an unauthorized basis in this state. 54
55
56
57
58

Pursuant to the "Nonadmitted and Reinsurance Reform Act of 2010," 15 U.S.C. 8201 et seq., 124 Stat. 1589, or any successor or replacement law, where this state is the home state of the insured, an insurer shall be considered eligible to write insurance on an unauthorized basis in this state if ~~either~~any of the following are true: 59
60
61
62
63
64

(1) The insurer meets the requirements and criteria in sections 5A(2) and 5C(2) (a) of the nonadmitted insurance model act adopted by the national association of insurance commissioners, or alternative nationwide uniform eligibility requirements adopted by this state through participation in a compact or other nationwide system pursuant to 15 U.S.C. 8201 et seq., 124 Stat. 1589. 65
66
67
68
69
70
71

(2) For unauthorized insurance placed with, or procured from an unauthorized insurer domiciled outside the United States, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners. 72
73
74
75
76

(3) The insurer has been designated as a domestic surplus 77

lines insurer pursuant to section 3905.332 of the Revised Code. 78

(B) (1) No surplus lines broker shall solicit, procure, 79
place, or renew any insurance with an unauthorized insurer 80
unless an agent or the surplus lines broker has complied with 81
the due diligence requirements of this section and is unable to 82
procure the requested insurance from an authorized insurer. 83

Due diligence requires an agent to contact at least five 84
of the authorized insurers the agent represents, or as many 85
insurers as the agent represents, that customarily write the 86
kind of insurance required by the insured. Due diligence is 87
presumed if declinations are received from each authorized 88
insurer contacted. If any authorized insurer fails to respond 89
within ten days after the initial contact, the agent may assume 90
the insurer has declined to accept the risk. 91

(2) Due diligence shall only be performed by an agent 92
licensed in this state that holds an active property and 93
casualty insurance agent license. 94

(3) An insurance agent or surplus lines broker is exempt 95
from the due diligence requirements of this section if the agent 96
or surplus lines broker is procuring insurance from a risk 97
purchasing group or risk retention group as provided in Chapter 98
3960. of the Revised Code. 99

(4) An insurance agent or surplus lines broker is exempt 100
from the due diligence requirements of this section if the agent 101
or surplus lines broker is seeking to procure or place 102
unauthorized insurance for a person that qualifies as an exempt 103
commercial purchaser under section 3905.331 of the Revised Code 104
and both of the following are true: 105

(a) The surplus lines broker procuring or placing the 106

surplus lines insurance has disclosed to the exempt commercial 107
purchaser that the insurance may or may not be available from 108
the authorized market that may provide greater protection with 109
more regulatory oversight. 110

(b) After receipt of the disclosure required under 111
division (B) (4) (a) of this section, the exempt commercial 112
purchaser has requested in writing that the insurance agent or 113
broker procure or place the insurance from an unauthorized 114
insurer. 115

(C) Except when exempt from due diligence requirements 116
under division (B) of this section, an insurance agent who 117
procures or places insurance through a surplus lines broker 118
shall obtain a signed statement from the insured acknowledging 119
that the insurance policy is to be placed with a company or 120
insurer not authorized to do business in this state and 121
acknowledging that, in the event of the insolvency of the 122
insurer, the insured is not entitled to any benefits or proceeds 123
from the Ohio insurance guaranty association. The statement must 124
be on a form prescribed by the superintendent and need not be 125
notarized. The agent shall submit the original signed statement 126
to the surplus lines broker within thirty days after the 127
effective date of the policy. If no other agent is involved, the 128
surplus lines broker shall obtain the statement from the 129
insured. 130

The surplus lines broker shall maintain the original 131
signed statement or a copy of the statement, and the originating 132
agent shall keep a copy of the statement, for at least five 133
years after the effective date of the policy to which the 134
statement pertains. A copy of the signed statement shall be 135
given to the insured at the time the insurance is bound or a 136

policy is delivered. 137

(D) For the purpose of carrying out the "Nonadmitted and 138
Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 139
et seq., or any successor or replacement law, the superintendent 140
shall conduct a fiscal analysis of the impact of entering into a 141
multistate agreement or compact for determining eligibility for 142
placement of unauthorized insurance and for payment, reporting, 143
collection, and allocation of the tax on unauthorized insurance. 144
If the fiscal analysis indicates that entering into a multistate 145
agreement or compact is advantageous to this state, the 146
superintendent may enter into the surplus lines insurance 147
multistate compliance compact adopted by the national conference 148
of insurance legislators and known as "SLIMPACT," as amended on 149
December 21, 2010, and including any subsequent amendment; or, 150
if it is in this state's financial best interest, the 151
superintendent shall request that the general assembly authorize 152
the superintendent to enter into a different multistate 153
agreement or compact. 154

(E) The superintendent may adopt rules in accordance with 155
Chapter 119. of the Revised Code to carry out the purposes of 156
sections 3905.30 to 3905.38 of the Revised Code. 157

Sec. 3905.332. (A) Notwithstanding any other provision of 158
the Revised Code, a domestic insurer may be designated a 159
domestic surplus lines insurer pursuant to this section. 160

(B) A domestic insurer shall not be designated a domestic 161
surplus lines insurer unless all of the following are met: 162

(1) The domestic insurer possesses minimum capital and 163
surplus of at least fifteen million dollars. 164

(2) The domestic insurer is seeking to become a domestic 165

surplus lines insurer pursuant to a resolution adopted by its 166
board of directors. 167

(3) The superintendent of insurance has authorized the 168
designation of the insurer as a domestic surplus lines insurer 169
in writing. 170

(C) A domestic surplus lines insurer shall be considered 171
an unauthorized insurer for the purposes of writing surplus 172
lines insurance coverage pursuant to the requirements of this 173
chapter. 174

(D) (1) A domestic surplus lines insurer shall only write 175
surplus lines insurance in this state in accordance with the 176
requirements of this chapter. 177

(2) A domestic surplus lines insurer may write surplus 178
lines insurance in any other jurisdiction in which the insurer 179
is eligible to write surplus lines insurance, provided that the 180
domestic surplus lines insurer complies with any requirements of 181
that jurisdiction. 182

(E) A domestic surplus lines insurer shall not engage in 183
the business of insurance in this state on an admitted basis. 184

(F) Surplus lines insurance written by a domestic surplus 185
lines insurer is subject to the tax on premiums as required in 186
section 3905.36 of the Revised Code and is exempt from the tax 187
on premiums required in section 5725.18 of the Revised Code. 188

(G) A domestic surplus lines insurer shall be considered a 189
nonadmitted insurer as defined in 15 U.S.C. 8206 with respect to 190
surplus lines insurance issued in this state. 191

(H) Surplus lines insurance policies issued in this state 192
by a domestic surplus lines insurer are not subject to the 193

provisions of Chapter 3955. of the Revised Code nor are they 194
subject to the protection of either Ohio insurance guaranty 195
association account established pursuant to section 3955.06 of 196
the Revised Code. 197

(I) Surplus lines insurance policies issued in this state 198
by a domestic surplus lines insurer are not subject to and are 199
exempt, in the same manner and to the same extent as surplus 200
lines insurance policies issued by an insurer domiciled in 201
another state, from all statutory requirements relating to all 202
of the following: 203

(1) Insurance rating and rating plans; 204

(2) Policy forms; 205

(3) Policy cancellation and renewal. 206

(J) Unless otherwise specified in this section or 207
specifically exempted under this chapter, a domestic surplus 208
lines insurer shall be subject to all financial, reserve, and 209
solvency requirements under this title that are imposed on 210
domestic admitted insurers, as applicable. 211

Sec. 3955.05. Sections 3955.01 to 3955.19 of the Revised 212
Code apply to all kinds of direct insurance, except: 213

(A) Title insurance; 214

(B) Fidelity or surety bonds, or any other bonding 215
obligations; 216

(C) Credit insurance, vendors' single interest insurance, 217
collateral protection insurance, or any similar insurance 218
protecting the interests of a creditor arising out of a 219
creditor-debtor transaction; 220

(D) Mortgage guaranty, financial guaranty, residual value,	221
or other forms of insurance offering protection against	222
investment risks;	223
(E) Ocean marine insurance;	224
(F) Any insurance provided by or guaranteed by government,	225
including, but not limited to, any department, board, office,	226
commission, agency, institution, or other instrumentality or	227
entity of any branch of state government, any political	228
subdivision of this state, the United States or any agency of	229
the United States, or any separate or joint governmental self-	230
insurance or risk-pooling program, plan, or pool;	231
(G) Contracts of any corporation by which health services	232
are to be provided to its subscribers;	233
(H) Life, annuity, health, or disability insurance,	234
including sickness and accident insurance written pursuant to	235
Chapter 3923. of the Revised Code;	236
(I) Fraternal benefit insurance;	237
(J) Mutual protective insurance of persons or property;	238
(K) Reciprocal or interinsurance contracts written	239
pursuant to Chapter 3931. of the Revised Code for medical	240
malpractice insurance if the reciprocal exchange or	241
interinsurance exchange is not subject to the risk-based capital	242
requirements in effect in the state of domicile of the	243
reciprocal exchange or interinsurance exchange. As used in this	244
division, "medical malpractice insurance" means insurance	245
coverage against the legal liability of the insured and against	246
loss, damage, or expense incident to a claim arising out of the	247
death, disease, or injury of any person as the result of	248
negligence or malpractice in rendering professional service by	249

any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.	250 251
(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;	252 253 254
(M) Warranty or service contracts, or the insurance of those contracts;	255 256
(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;	257 258
(O) Any transaction, or combination of transactions, between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, that involves the transfer of investment or credit risk unaccompanied by a transfer of insurance risk;	259 260 261 262 263
(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;	264 265
(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;	266 267
(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees;	268 269 270
<u>(S) Surplus lines insurance issued under section 3905.332</u> <u>of the Revised Code.</u>	271 272
Sec. 3960.11. (A) No person shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker in accordance with Chapter 3905. of the Revised Code.	273 274 275 276 277

(B) No person shall act or aid in any manner in 278
soliciting, negotiating, or procuring liability insurance in 279
this state for a purchasing group from an authorized insurer or 280
a risk retention group chartered in a state unless the person is 281
licensed as an insurance agent or broker in accordance with 282
Chapter 3905. of the Revised Code. 283

(C) No person shall act or aid in any manner in 284
soliciting, negotiating, or procuring liability insurance 285
coverage in this state for any member of a purchasing group 286
under a purchasing group's policy unless the person is licensed 287
as an insurance agent or broker in accordance with Chapter 3905. 288
of the Revised Code. 289

(D) No person shall act or aid in any manner in 290
soliciting, negotiating, or procuring liability insurance from 291
an insurer not authorized to do business in this state, or from 292
a domestic insurer designated as a domestic surplus lines 293
insurer pursuant to section 3905.332 of the Revised Code, on 294
behalf of a purchasing group located in this state unless the 295
person is licensed as a surplus line broker in accordance with 296
section 3905.30 of the Revised Code. 297

Section 2. That existing sections 3905.30, 3905.33, 298
3955.05, and 3960.11 of the Revised Code are hereby repealed. 299