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Representatives Thomas, J., Thomas, D.

Cosponsors: Representatives Lampton, Abdullahi, Brennan, Daniels, Fischer, Fowler Arthur, Gross, Lorenz, Mathews, A., Sigrist, Upchurch, Williams, Willis, Young

To amend section 3905.33 and to enact section 3905.333 of the Revised Code regarding surplus lines insurers.

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

Section 1. That section 3905.33 be amended and section 3905.333 of the Revised Code be enacted to read as follows:

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.

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 any of the following are true:

(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.

(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.

(3) The insurer has been designated as a domestic surplus lines insurer pursuant to section 3905.332 of the Revised Code.

(B)(1) ~~No~~ Except as provided in section 3905.333 of the Revised Code, no surplus lines broker shall solicit, procure, place, or renew any insurance with an unauthorized insurer unless an agent or the surplus lines broker has complied with the due diligence requirements of this section and is unable to procure the requested insurance from an authorized insurer.

Due diligence requires an agent to ~~contact at least five of~~ thoroughly examine if coverage can be placed with the authorized insurers the agent represents~~, or as many insurers as the agent represents,~~ that customarily write the kind of insurance required by the insured. Due diligence is presumed if ~~declinations are~~ a declination is received from ~~each~~ an authorized insurer contacted. If any authorized insurer fails to respond within ten days after the initial contact, the agent may assume the insurer has declined to accept the risk.

(2) Due diligence shall only be performed by an agent

licensed in this state that holds an active property and casualty insurance agent license.

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

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

(a) The surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight.

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

(C) Except when exempt from due diligence requirements under division (B) of this section, an insurance agent who procures or places insurance through a surplus lines broker shall obtain a signed statement from the insured acknowledging that the insurance policy is to be placed with a company or insurer not authorized to do business in this state and

acknowledging that, in the event of the insolvency of the insurer, the insured is not entitled to any benefits or proceeds from the Ohio insurance guaranty association. The statement must be on a form prescribed by the superintendent and need not be notarized. The agent shall submit the original signed statement to the surplus lines broker within thirty days after the effective date of the policy. If no other agent is involved, the surplus lines broker shall obtain the statement from the insured.

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

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

the superintendent to enter into a different multistate agreement or compact.

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

Sec. 3905.333. (A) As used in this section, "export list" means a list determined and published by the superintendent of insurance of coverages and classes for which no general market exists with an admitted insurer.

(B)(1) The superintendent of insurance shall create and maintain an insurance export list.

(2) The superintendent shall review the list on a periodic basis, determined by the superintendent, and may, at the superintendent's sole discretion, revise the list as needed.

(C) The superintendent shall consider all of the following when creating and revising the export list:

(1) Current marketplace conditions;

(2) Information from admitted and surplus lines insurers operating in this state;

(3) Information from other sources, including insurance producers and consumers;

(4) Any other information deemed relevant by the superintendent.

(D)(1) Any person may request, in writing, that the superintendent add or remove coverage or a class of insurance from the export list.

(2) Any person making such a request shall provide

evidence of the market conditions that support the request.

(3) The superintendent, at the superintendent's sole discretion, may include such coverage or class of insurance on the export list.

(E) Notwithstanding division (B) of section 3905.33 of the Revised Code, a surplus lines broker may solicit, procure, place, or renew any insurance with an unauthorized insurer without completing due diligence for any insurance coverage or class included on the export list.

(F) The superintendent and the department of insurance, including any employee or agent of the department, bears no liability with regard to actions authorized under this section.

Section 2. That existing section 3905.33 of the Revised Code is hereby repealed.