

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

400S0199

HOUSE BILL NO. 1030

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the provisions relating to placement of surplus
2 lines insurance and tax allocation of surplus lines insurance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-32-7 be amended to read as follows:

5 58-32-7. Any individual who is licensed in this state as an insurance producer and who is
6 determined by the director to be competent and trustworthy with respect to the handling of
7 surplus lines may be licensed as a surplus line broker. No individual is required to be licensed
8 pursuant to this chapter as a surplus lines broker if the selling, soliciting, or negotiating of
9 surplus lines insurance takes place in an insured's home state and the home state of the insured
10 is a state other than South Dakota.

11 Section 2. That § 58-32-16 be amended to read as follows:

12 58-32-16. If certain insurance coverages cannot be procured from authorized insurers, ~~such~~
13 the coverages, hereinafter designated—" surplus lines," may be procured from unauthorized
14 insurers, subject to the conditions set forth in §§ 58-32-17 to 58-32-19, inclusive. The
15 provisions of §§ 58-32-16 to 58-32-18, inclusive, do not apply to exempt commercial lines



1 policyholders as defined in §§ 58-24-68 and 58-24-69 if:

2 (1) The broker procuring or placing the surplus lines insurance has disclosed to the
3 exempt commercial purchaser that the insurance may or may not be available from
4 the admitted market that may provide greater protection with more regulatory
5 oversight; and

6 (2) The exempt commercial purchaser has subsequently requested in writing the broker
7 to procure or place the insurance from a nonadmitted insurer.

8 Section 3. That § 58-32-22 be amended to read as follows:

9 58-32-22. ~~The insurer with which surplus line insurance is placed:~~

10 ~~(1) Shall be authorized to transact insurance of the kind involved in at least one state of~~
11 ~~the United States, and have either unimpaired capital or surplus, or both, that is equal~~
12 ~~or greater than the minimum capital and surplus requirements under § 58-6-23. In the~~
13 ~~case of a group of individual unincorporated insurers, the trust fund shall be in an~~
14 ~~amount of at least fifty million dollars; or~~

15 ~~(2) If an alien insurer not authorized to transact insurance in at least one state of the~~
16 ~~United States, the alien insurer shall have an established and effective trust fund~~
17 ~~which has been filed with and approved by the nonadmitted insurers information~~
18 ~~office of the national association of insurance commissioners; or~~

19 ~~(3) If not eligible under either subdivision (1) or (2) of this section, shall currently be~~
20 ~~eligible pursuant to order of the director made upon application therefor by the broker~~
21 ~~accompanied by the financial statement of the insurer as of the date most recently~~
22 ~~available and such additional information concerning the insurer as the director may~~
23 ~~require. The director may revoke any such order at any time, and shall notify the~~
24 ~~broker of such revocation. Surplus lines insurance may be placed by a surplus lines~~

1 licensee if the insurer is authorized to write the type of insurance in its domiciliary
2 jurisdiction, and either meets the criteria established through a multi-state agreement
3 pursuant to § 58-32-45 or meets one of the following criteria:

4 (1) The insurer has capital and surplus or its equivalent under the laws of its domiciliary
5 jurisdiction which equals the greater of:

6 (a) The minimum capital and surplus requirements under § 58-6-23; or

7 (b) Fifteen million dollars; or

8 (2) The insurer is a nonadmitted insurer domiciled outside the United States that is listed
9 on the Quarterly Listing of Alien Insurers maintained by the International Insurers
10 Department of the National Association of Insurance Commissions.

11 The requirements of subdivision (1) of this section may be satisfied by an insurer's
12 possessing less than the minimum capital and surplus upon an affirmative finding of
13 acceptability by the director. The finding shall be based upon such factors as quality of
14 management, capital and surplus of any parent company, company underwriting profit and
15 investment income trends, market availability, and company record and reputation within the
16 industry. The director may not make an affirmative finding of acceptability if the nonadmitted
17 insurer's capital and surplus is less than four million five hundred thousand dollars.

18 Section 4. That § 58-32-44 be amended to read as follows:

19 58-32-44. Before the first day of April of each year, each broker shall remit to the state
20 treasurer, through the director of the Division of Insurance, a tax on the premiums, exclusive
21 of sums collected to cover federal and state taxes and examination fees, on surplus line
22 insurance transacted by ~~him~~ the broker at the rate and in the manner provided by ~~Title 10 § 10-~~
23 44-2. If in any prior calendar year a broker collects and remits in excess of five thousand dollars
24 of surplus lines premium tax, ~~he~~ the broker shall in the following year remit the tax on a

1 quarterly basis. ~~Such~~ The tax shall be ~~is~~ in lieu of all other taxes upon such insurers with respect
2 to the business so reported. When collected, the tax shall be credited to the general fund. If the
3 director has entered into an agreement as provided for by § 58-32-45, taxes may be required to
4 be remitted as may be specified by such an agreement.

5 Section 5. That § 58-32-45 be amended to read as follows:

6 58-32-45. For a surplus lines policy issued to an insured whose home state is this state and
7 where only a portion of the risk is located in this state, the entire premium tax shall be paid to
8 the director in accordance with § 58-32-44. If the director finds it would increase the efficiency
9 of the surplus lines insurance marketplace as well as the regulation of the surplus lines market,
10 the director may enter into a multi-state surplus lines agreement for the eligibility for placement
11 of surplus lines insurance and the payment, reporting, collection, and apportionment of surplus
12 lines premium taxes. If a surplus line policy covers risks or exposures only partially in this state
13 and the director has entered into agreement with other states for the apportionment of premium
14 taxes for multi-state risks, the tax payable under § 58-32-44 shall be computed and paid upon
15 the proportion of the premium which is properly allocable to the risks or exposures located in
16 this state according to the terms of any such agreement. The multi-state agreement may also
17 include the eligibility for placement of surplus lines insurance and the payment, reporting,
18 collection, and apportionment of surplus lines premium taxes for risks that are not multi-state
19 and for independently procured surplus lines pursuant to §§ 58-32-47 to 58-32-55, inclusive.

20 Section 6. That chapter 58-32 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The term, home state, as used in this chapter, means, with respect to an insured:

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

1 (2) If one hundred percent of the insured risk is located out of the state referred to in
2 subdivision (1) of this section, the state to which the greatest percentage of the
3 insured's taxable premium for the insurance contract is allocated.

4 If more than one insured from an affiliated group are named insureds on a single
5 nonadmitted insurance contract, the term means the home state as determined under subdivision
6 (1) of this section of the member of the affiliated group that has the largest percentage of
7 premium attributable to it under the contract.