HB142

RRT1YNN-1

By Representative Ellis

RFD: Insurance

First Read: 07-Feb-24

SYNOPSIS:

Under existing law, a person may not act as an agent for an insurance company unless the agent is licensed. The law allows an exception for surplus line brokers who issue policies under certain conditions when policies may not be available for certain coverages.

This bill would update the laws relating to surplus line brokers to adopt revisions to the Nonadmitted Insurance Model Act by the National Association of Insurance Commissioners (NAIC).

This bill would also adopt the federal exemption requirement for diligent search efforts, allow surplus line brokers to file reports on placed coverage quarterly rather than on a 30 day rolling basis, ensure nonresident surplus line brokers comply with the same requirements as resident surplus line brokers, codify broker fees while requiring disclosure in the policy for consumer protection, eliminate zero premium reporting, adopt the federal definition of home state, and repeal the Surplus Lines Insurance Multi-State Compliance Compact Act in this state.

A BILL

TO BE ENTITLED

AN ACT

Relating to the Department of Insurance; to amend Sections 27-10-1 and 27-10-2 of the Code of Alabama 1975, relating to unauthorized insurers and exceptions; to amend Sections 27-10-20 through 27-10-26, 27-10-30, and 27-10-31 of the Code of Alabama 1975, relating to surplus line brokers and surplus line insurance; and to repeal Chapter 61 of Title 27, Code of Alabama 1975, providing for membership by this state in the Surplus Lines Insurance Multi-State Compliance Compact Act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 27-10-1 and 27-10-2 of the Code of Alabama 1975, are amended to read as follows:

"§27-10-1

(a) ~~No~~ In this state, no person shall ~~in this state, directly or indirectly,~~ act as agent for, or otherwise represent, directly or indirectly, ~~or aid on behalf of another,~~ any insurer not ~~then~~ authorized to transact such insurance in this state in the solicitation, negotiation, or effectuation of insurance or annuity contracts, forwarding of applications, delivery of policies or contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance with respect to subjects of insurance ~~resident,~~ located or ~~to be~~ performed in this state.

(b) This section shall not apply to:

(1) Acceptance of service of process by the commissioner under Section 27-10-52;

(2) Surplus lines insurance or coverage specified in Section 27-10-34~~ and other transactions as to which a certificate of authority is not required of an insurer~~;

(3) Adjustment of losses as authorized in Section 27-10-35;

(4) Transactions for which a certificate of authority to do business is not required of an insurer under the laws of this state;

(5) Reinsurance effectuated in accordance with this title; or

(6) The property and operations of the shipbuilding ~~and/~~or ship repair industry engaged in interstate or foreign commerce and vessels, cargoes, watercraft, piers, wharves, graven docks, dry docks, marine railways, and building ways, commonly known as wet marine.

(c) ~~This section shall not be deemed to render invalid, as between the parties thereto, any insurance contract entered into in violation of this section~~No insurance contract entered into in violation of this section shall preclude the insured from enforcing his or her rights under the contract in accordance with the terms and provisions of the contract and the laws of this state to the same degree those rights would have been enforceable had the contract been lawfully procured."

"§27-10-2

(a) Any person who~~ in this state~~ willfully represents or aids an unauthorized insurer in violation of Section 27-10-1~~ shall~~, in addition to any other applicable penalty, shall be liable for the full amount of any loss sustained by the insured under any such contract and for~~ the amount of~~ any premium taxes which may be payable under Section 27-10-35 by reason of such contract.

(b) Any independent adjuster who, directly or indirectly,~~ enters into an investigation~~ investigates~~ or adjustment of~~ any loss arising under~~ a contract of~~ an insurance or annuity contract issued by an unauthorized insurer and covering~~ at time of issuance~~ a subject of insurance~~ resident,~~ located or~~ to be~~ performed in this state shall be liable for the full amount of any loss suffered by the insured under such contract. The commissioner~~ may~~, after a hearing, may revoke the license of such an independent adjuster. This subsection does not apply as to surplus lines contracts lawfully written under this chapter, or exempted under Section 27-10-34, or to insurance contracts procured by the insured on his or her own behalf and on which the tax is paid as required by Section 27-10-35, or to transactions as to which the insurer is not required to have a certificate of authority."

Section 2. Sections 27-10-20 through 27-10-26, 27-10-30, and 27-10-31 of the Code of Alabama 1975, are amended to read as follows:

"§27-10-20

If certain insurance coverages cannot be procured on terms acceptable to the insureds from authorized insurers, such coverages, designated "surplus lines," may be procured from unauthorized insurers subject to the terms and conditions of either subdivisions (1) or (2) of this section:

(1)a. The insurance must be procured through a licensed surplus line broker;

b. The full amount of insurance required must not be procurable, after diligent effort has been made to do so, from among the insurers authorized to transact and actually transacting that kind and class of insurance in this state or has been procured to the full extent such insurers are willing to insure;

c. A surplus line transaction conducted in accordance with 15 U.S.C. § 8205 may be exempt from the diligent effort requirement;

~~c.~~d. The insurance must not be procured for the purpose of securing advantages as to a lower premium rate than would be accepted by an authorized insurer; and

~~d.~~e. This section, and this surplus line law, does not apply as to life insurance or disability insurance.

(2) The insurance contracts ~~of insurance~~ are issued to an industrial insured, defined as an insured:

a. Which procures the insurance of any risk by use of services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained, qualified insurance consultant;

b. Whose aggregate annual premiums for insurance on all risks other than workmen's compensation and group insurance total at least twenty-five thousand dollars ($25,000.00); and

c. Which has at least 25 employees."

"§27-10-21

~~Within 30 days after the effective date of any such insurance,~~ If surplus line insurance was transacted in the preceding calendar quarter, the surplus line broker shall file a ~~written~~ quarterly report ~~with~~ as prescribed by the commissioner setting forth facts from which it can be determined whether ~~under Section 27-10-20~~ the coverage has been lawfully placed as a surplus line. ~~If so required by the commissioner, the report shall be in the form of the broker's affidavit.~~ If ~~so~~ required by the commissioner, the report shall be accompanied by a written statement signed by the insured ~~to the effect that~~ acknowledging the coverage was placed ~~in~~ with an unauthorized insurer with the insured's knowledge and consent."

"§27-10-22

Every insurance contract procured and delivered as a surplus line coverage pursuant to this article shall ~~be initialed by, or~~ bear the name and license number of~~,~~ the surplus line broker who procured it and shall have stamped upon it the following:

"This contract is registered and delivered as a surplus line coverage under the Alabama Surplus Line Insurance Law."

"§27-10-23

Insurance contracts procured as "surplus line" coverages from unauthorized insurers in accordance with this article shall be ~~fully~~ valid and enforceable as to all parties and shall be ~~given acceptance and recognition~~ recognized in all matters ~~and respects~~ to the same effect and extent as like contracts issued by authorized insurers."

"§27-10-24

(a) Any person, ~~while~~ licensed as a resident insurance producer in this state for the property and casualty lines of authority and ~~who is~~ deemed by the commissioner ~~to have had sufficient~~ sufficiently ~~experience~~ experienced in the insurance business ~~to be competent for the purpose~~ may be licensed as a surplus line broker for the same types ~~and kinds~~ of insurance that he or she ~~as a resident producer~~ is currently licensed to handle as follows:

(1) Application ~~to the commissioner for the license~~ shall be made on forms ~~as~~ designated and furnished by the commissioner.

(2) License fee ~~in the amount stated in~~ required by Section 27-4-2 shall be paid to the commissioner. The license shall expire on December 31 next after its issue.

(3) Prior to the issuance of the license, the applicant shall file with the commissioner~~, and thereafter for as long as any license remains in effect he or she shall keep in force and unimpaired,~~ a bond in favor of the State of Alabama in the penal sum of at least fifty thousand dollars ($50,000), aggregate liability, with authorized corporate sureties approved by the commissioner to remain in force for the duration of the license or any renewal. The amount of the bond may be increased if deemed necessary by the commissioner, considering the amount of surplus lines tax paid in previous

years. The bond shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus line insurance law and ~~that he or she~~ will promptly remit the taxes as provided by the law. No bond shall be terminated unless at least 30 days' prior written notice thereof is given to the broker and the commissioner.

(b) A business entity acting as a surplus line broker shall designate each licensed individual producer acting under the license, each of whom shall be responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state. A separate fee shall be paid for each individual producer acting under a business entity license as surplus line broker, as ~~set forth~~ in Section 27-4-2.

(c) A nonresident person may be licensed as a surplus line broker for the same types of insurance that he or she is currently licensed in good standing to handle in his or her domiciled state, as follows:

(1) The nonresident shall comply with the requirements established in subsection (a).

~~(c)(1)~~(2) Each licensed nonresident surplus line broker shall be considered to have performed acts equivalent to and constituting an appointment of the commissioner ~~as his or her attorney~~ to receive service of legal process issued against the nonresident in this state upon causes of action arising within this state out of transactions under the nonresident's surplus line broker license. Service upon the commissioner ~~as~~

~~such attorney~~ shall constitute effective legal service upon the nonresident.

~~(2)~~(3) The appointment shall be irrevocable for as long as there may be any such cause of action in this state against the nonresident.

~~(3)~~(4) Service of process under this section shall be made by leaving three copies of the summons and complaint, or other process, with the commissioner, along with payment of the fee prescribed in Section 27-4-2, and the service shall be sufficient service upon the nonresident if notice of the service and a copy of the summons and complaint or other process are sent by registered or certified mail to the defendant by the commissioner; and the defendant's return and the certificate of the commissioner certifying compliance herewith shall be filed in the office of the clerk of court, or in the court or tribunal wherein the action is pending. The certificate of the commissioner shall show the date of the mailing by registered or certified mail of the notice of the service and copy of the summons and complaint, or other process, to the nonresident defendant and the date of the receipt of the return card and shall be signed by the commissioner. The commissioner may give the nonresident defendant notice of the service upon him or her, in lieu of the notice of service provided for herein to be given by registered or certified mail, in the following manner:

a. By having a notice of service and a copy of the summons and complaint, or other process, served upon the nonresident defendant, if found within the State of Alabama, by any officer duly qualified to serve legal process within the State of Alabama or, if the nonresident defendant is found to be outside of the State of Alabama, by a sheriff, deputy sheriff, or United States marshal or deputy United States marshal, or any duly constituted officer qualified to serve like process in the state or the jurisdiction where the nonresident defendant is found.

b. The officer's return showing service, when made, shall be filed in the office of the clerk of the court, or in the court or tribunal wherein the action is pending, on or before the return day of the process or as the court or tribunal may allow, and the court or tribunal in which the action is pending may order a continuance, or continuances, as may be necessary to afford the nonresident defendant reasonable opportunity to defend the action.

~~(4)~~ (5) The commissioner shall keep on file for a period of not less than three years a copy of the summons and complaint or other process served upon the commissioner, together with a record of all such process and of the day, hour, and manner of service."

"§27-10-25

(a) A licensed surplus line broker may accept and place surplus line business for any insurance producer licensed in this state for the kind and class of insurance involved and may compensate the producer therefor. No producer shall knowingly misrepresent to the broker any material fact involved in any insurance or in the eligibility thereof for placement with an unauthorized insurer.

(b) Notwithstanding Section 27-12-17(b), a reasonable fee for each policy may be charged by the filing surplus lines broker for each policy placed in lawful compliance with Section 27-10-20. This per-policy fee shall be itemized separately to the customer before purchase, enumerated in the policy or a notice delivered with the policy, and is subject to the surplus line broker tax required under Section 27-10-31."

"§27-10-26

(a) A surplus line broker shall not knowingly place surplus line insurance with an insurer that is unsound financially~~,~~ or that is ineligible under this section. The broker shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith.

(b) The broker ~~shall not so insure~~ may only place insurance with ~~any~~ an insurer meeting one of the following:

(1) ~~With any~~An insurer ~~which is not an~~ authorized ~~insurer~~ in at least one state of the United States for the kind of insurance involved, and with capital or surplus, or both, amounting to at least five million dollars ($5,000,000); or guaranteed trust fund amounting to at least five million dollars ($5,000,000).

(2) ~~With an~~An alien insurer ~~not~~ authorized to transact insurance in at least one state of the United States~~,~~ or an unauthorized insurer listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners and ~~unless~~ the insurer shall have established an effective trust

fund of at least two million five hundred thousand dollars ($2,500,000) within the United States administered by a recognized financial institution and held for the benefit of all its policyholders or policyholders and creditors in the United States, and with capital or surplus, or both, amounting to at least fifteen million dollars ($15,000,000).

(3) ~~With a~~A foreign or alien insurer which has transacted insurance as an authorized insurer in its domicile state or country~~ of domicile~~ for not less than five years, unless it is a wholly owned subsidiary of an insurer authorized to transact insurance in this state or unless it makes a deposit in this state as may be permitted under subsection (c).

(4) ~~With an~~An insurer~~ the voting control of which is held~~ controlled, in whole or substantial part, by any government or governmental agency.

(5) ~~In any~~Any insurer made ineligible as a surplus line insurer by order of the commissioner received by or known to the broker. The commissioner may issue an order of ineligibility if he or she finds that the insurer:

a. Does not meet the financial requirements of this section;

b. Has without just cause refused to pay valid claims arising under its contracts in this state or has otherwise conducted its affairs in a manner as to result in injury or loss to the insuring public of this state; or

c. Has conducted its affairs in a manner as to result in the avoidance of payment of tax as required by Sections

27-10-31 and 27-10-35.

(c) When it appears after a search of surplus lines insurers that any particular insurance risk which is eligible to be placed in accordance with the surplus line law but on which insurance coverage, in whole or in part, is not procurable from foreign or alien insurers meeting all of the requirements of subsection (b) but is procurable from a foreign or alien insurer meeting all of the requirements of subsection (b) except for ~~paragraph~~ subdivision (3), then the surplus line broker may file a supplemental signed statement setting forth the facts and advising the department that the part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers which meet all of the requirements of subsection (b) except for ~~paragraph~~ subdivision (3), in the amounts and percentages set forth in the statement. These named unauthorized insurers, before accepting any risk in this state, shall deposit with the department cash or securities acceptable to the commissioner and with a market value of not less than one million dollars ($1,000,000), which deposit shall be held by the department for the benefit of Alabama policyholders only. The deposit shall be held in the same manner as other deposits as described in Section 27-3-11. The commissioner may adopt reasonable rules for the implementation and administration of this section."

"§27-10-30

(a) Each surplus line broker shall, on or before the first day of March of each year, file with the commissioner a verified statement of all surplus line insurance transacted by him or her during the preceding calendar year. If no surplus line insurance was transacted in the preceding calendar year, no statement is required.

(b) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

(1) Gross amount of each kind of insurance transacted;

(2) Aggregate gross premiums charged, exclusive of sums collected to cover state or federal taxes;

(3) Aggregate of returned premiums and taxes paid to insureds;

(4) Aggregate of net premiums; and

(5) Additional information as required by the commissioner."

"§27-10-31

(a) On or before the first day of March each year, the surplus line broker shall remit to the State Treasurer through the commissioner, as a tax imposed for the privilege of transacting business as a surplus line broker in this state, a tax of six percent on the direct premiums, less return premiums and exclusive of sums collected to cover state or federal taxes, on surplus line insurance issued to insureds whose home state is this state as the term "home state" is defined in 15 U.S.C. § 8206, subject to tax transacted by the broker during the preceding calendar year as shown by the annual statement filed with the commissioner.

(b) The tax under the provisions of this section shall be subject to deduction of the full amount of all expenses of examination of the surplus line broker by the commissioner in the same manner as that allowed for domestic insurers for examination expenses under the provisions of subdivision (5) of subsection (c) of Section 27-4A-3. All taxes collected under this section shall be deposited in the State Treasury to the credit of the State General Fund.

~~(c) This section shall not be effective if the Surplus Lines Insurance Multi-State Compliance Compact is not enacted into law by two compacting states.~~"

Section 3. Chapter 61 of Title 27 of the Code of Alabama 1975, is repealed.

Section 4. This act shall become effective on July 1, 2024.