

SB46 ENROLLED



1 SB46
2 N4Y3TJ8-2
3 By Senator Shelnuttt
4 RFD: Banking and Insurance
5 First Read: 06-Feb-24



SB46 Enrolled

1 Enrolled, An Act,

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

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§27-10-1

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



SB46 Enrolled

29 (b) This section shall not apply to:

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

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

35 (3) Adjustment of losses as authorized in Section
36 27-10-35;

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

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

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

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

56 "§27-10-2



SB46 Enrolled

57 (a) Any person who ~~in this state~~ willfully represents
58 or aids an unauthorized insurer in violation of Section
59 27-10-1 ~~shall~~, in addition to any other applicable penalty,
60 shall be liable for the full amount of any loss sustained by
61 the insured under any such contract and for ~~the amount of~~ any
62 premium taxes which may be payable under Section 27-10-35 by
63 reason of such contract.

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

80 Section 2. Sections 27-10-20 through 27-10-26,
81 27-10-30, and 27-10-31 of the Code of Alabama 1975, are
82 amended to read as follows:

83 "§27-10-20

84 If certain insurance coverages cannot be procured on



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85 terms acceptable to the insureds from authorized insurers,
86 such coverages, designated "surplus lines," may be procured
87 from unauthorized insurers subject to the terms and conditions
88 of either subdivisions (1) or (2) of this section:

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

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

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

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

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

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

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

111 b. Whose aggregate annual premiums for insurance on all
112 risks other than workmen's compensation and group insurance



SB46 Enrolled

113 total at least twenty-five thousand dollars (\$25,000.00); and
114 c. Which has at least 25 employees."

115 "§27-10-21

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

129 "§27-10-22

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

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

137 "§27-10-23

138 Insurance contracts procured as "surplus line"
139 coverages from unauthorized insurers in accordance with this
140 article shall be ~~fully~~ valid and enforceable as to all parties



SB46 Enrolled

141 and shall be ~~given acceptance and recognition~~ recognized in
142 all matters ~~and respects~~ to the same effect and extent as like
143 contracts issued by authorized insurers."

144 "§27-10-24

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

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

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

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



SB46 Enrolled

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

176 (b) A business entity acting as a surplus line broker
177 shall designate each licensed individual producer acting under
178 the license, each of whom shall be responsible for the
179 business entity's compliance with the insurance laws, rules,
180 and regulations of this state. A separate fee shall be paid
181 for each individual producer acting under a business entity
182 license as surplus line broker, as ~~set forth~~ in Section
183 27-4-2.

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

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

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



SB46 Enrolled

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

199 ~~(2)~~ (3) The appointment shall be irrevocable for as long
200 as there may be any such cause of action in this state against
201 the nonresident.

202 ~~(3)~~ (4) Service of process under this section shall be
203 made by leaving three copies of the summons and complaint, or
204 other process, with the commissioner, along with payment of
205 the fee prescribed in Section 27-4-2, and the service shall be
206 sufficient service upon the nonresident if notice of the
207 service and a copy of the summons and complaint or other
208 process are sent by registered or certified mail to the
209 defendant by the commissioner; and the defendant's return and
210 the certificate of the commissioner certifying compliance
211 herewith shall be filed in the office of the clerk of court,
212 or in the court or tribunal wherein the action is pending. The
213 certificate of the commissioner shall show the date of the
214 mailing by registered or certified mail of the notice of the
215 service and copy of the summons and complaint, or other
216 process, to the nonresident defendant and the date of the
217 receipt of the return card and shall be signed by the
218 commissioner. The commissioner may give the nonresident
219 defendant notice of the service upon him or her, in lieu of
220 the notice of service provided for herein to be given by
221 registered or certified mail, in the following manner:

222 a. By having a notice of service and a copy of the
223 summons and complaint, or other process, served upon the
224 nonresident defendant, if found within the State of Alabama,



SB46 Enrolled

225 by any officer duly qualified to serve legal process within
226 the State of Alabama or, if the nonresident defendant is found
227 to be outside of the State of Alabama, by a sheriff, deputy
228 sheriff, or United States marshal or deputy United States
229 marshal, or any duly constituted officer qualified to serve
230 like process in the state or the jurisdiction where the
231 nonresident defendant is found.

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

240 ~~(4)~~ (5) The commissioner shall keep on file for a period
241 of not less than three years a copy of the summons and
242 complaint or other process served upon the commissioner,
243 together with a record of all such process and of the day,
244 hour, and manner of service."

245 "§27-10-25

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

SB46 Enrolled



253 (b) Notwithstanding Section 27-12-17(b), a reasonable
254 fee for each policy may be charged by the filing surplus lines
255 broker for each policy placed in lawful compliance with
256 Section 27-10-20. This per-policy fee shall be itemized
257 separately to the customer before purchase, enumerated in the
258 policy or a notice delivered with the policy, and is subject
259 to the surplus line broker tax required under Section
260 27-10-31."

261 "§27-10-26

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

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

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

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



SB46 Enrolled

281 fund of at least two million five hundred thousand dollars
282 (\$2,500,000) within the United States administered by a
283 recognized financial institution and held for the benefit of
284 all its policyholders or policyholders and creditors in the
285 United States, and with capital or surplus, or both, amounting
286 to at least fifteen million dollars (\$15,000,000).

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

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

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

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

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

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



SB46 Enrolled

309 27-10-31 and 27-10-35.

310 (c) When it appears after a search of surplus lines
311 insurers that any particular insurance risk which is eligible
312 to be placed in accordance with the surplus line law but on
313 which insurance coverage, in whole or in part, is not
314 procurable from foreign or alien insurers meeting all of the
315 requirements of subsection (b) but is procurable from a
316 foreign or alien insurer meeting all of the requirements of
317 subsection (b) except for ~~paragraph~~ subdivision (3), then the
318 surplus line broker may file a supplemental signed statement
319 setting forth the facts and advising the department that the
320 part of the risk as shall be unprocurable, as aforesaid, is
321 being placed with named unauthorized insurers which meet all
322 of the requirements of subsection (b) except for ~~paragraph~~
323 subdivision (3), in the amounts and percentages set forth in
324 the statement. These named unauthorized insurers, before
325 accepting any risk in this state, shall deposit with the
326 department cash or securities acceptable to the commissioner
327 and with a market value of not less than one million dollars
328 (\$1,000,000), which deposit shall be held by the department
329 for the benefit of Alabama policyholders only. The deposit
330 shall be held in the same manner as other deposits as
331 described in Section 27-3-11. The commissioner may adopt
332 reasonable rules for the implementation and administration of
333 this section."

334 "§27-10-30

335 (a) Each surplus line broker shall, on or before the
336 first day of March of each year, file with the commissioner a



SB46 Enrolled

337 verified statement of all surplus line insurance transacted by
338 him or her during the preceding calendar year. If no surplus
339 line insurance was transacted in the preceding calendar year,
340 no statement is required.

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

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

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

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

348 (4) Aggregate of net premiums; and

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

351 "§27-10-31

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

363 (b) The tax under the provisions of this section shall
364 be subject to deduction of the full amount of all expenses of



SB46 Enrolled

365 examination of the surplus line broker by the commissioner in
366 the same manner as that allowed for domestic insurers for
367 examination expenses under the provisions of subdivision (5)
368 of subsection (c) of Section 27-4A-3. All taxes collected
369 under this section shall be deposited in the State Treasury to
370 the credit of the State General Fund.

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

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

376 Section 4. This act shall become effective on July 1,
377 2024.



SB46 Enrolled

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB46
Senate 27-Feb-24
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 02-Apr-24

By: Senator Shelnut