

**SB46 INTRODUCED**



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



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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.



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29 A BILL  
30 TO BE ENTITLED  
31 AN ACT

32  
33 Relating to the Department of Insurance; to amend  
34 Sections 27-10-1 and 27-10-2 of the Code of Alabama 1975,  
35 relating to unauthorized insurers and exceptions; to amend  
36 Sections 27-10-20 through 27-10-26, 27-10-30, and 27-10-31 of  
37 the Code of Alabama 1975, relating to surplus line brokers and  
38 surplus line insurance; and to repeal Chapter 61 of Title 27,  
39 Code of Alabama 1975, providing for membership by this state  
40 in the Surplus Lines Insurance Multi-State Compliance Compact  
41 Act.

42 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

45 "§27-10-1

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



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57 (b) This section shall not apply to:

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

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

63 (3) Adjustment of losses as authorized in Section  
64 27-10-35;

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

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

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

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

84 "§27-10-2



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85 (a) Any person who ~~in this state~~ willfully represents  
86 or aids an unauthorized insurer in violation of Section  
87 27-10-1 ~~shall~~, in addition to any other applicable penalty,  
88 shall be liable for the full amount of any loss sustained by  
89 the insured under any such contract and for ~~the amount of~~ any  
90 premium taxes which may be payable under Section 27-10-35 by  
91 reason of such contract.

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

108 Section 2. Sections 27-10-20 through 27-10-26,  
109 27-10-30, and 27-10-31 of the Code of Alabama 1975, are  
110 amended to read as follows:

111 "§27-10-20

112 If certain insurance coverages cannot be procured on



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

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

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

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

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

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

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

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

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



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

143 "§27-10-21

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

157 "§27-10-22

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

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

165 "§27-10-23

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



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

172 "§27-10-24

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

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

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

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





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

204 (b) A business entity acting as a surplus line broker  
205 shall designate each licensed individual producer acting under  
206 the license, each of whom shall be responsible for the  
207 business entity's compliance with the insurance laws, rules,  
208 and regulations of this state. A separate fee shall be paid  
209 for each individual producer acting under a business entity  
210 license as surplus line broker, as ~~set forth~~ in Section  
211 27-4-2.

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

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

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



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

227 ~~(2)~~ (3) The appointment shall be irrevocable for as long  
228 as there may be any such cause of action in this state against  
229 the nonresident.

230 ~~(3)~~ (4) Service of process under this section shall be  
231 made by leaving three copies of the summons and complaint, or  
232 other process, with the commissioner, along with payment of  
233 the fee prescribed in Section 27-4-2, and the service shall be  
234 sufficient service upon the nonresident if notice of the  
235 service and a copy of the summons and complaint or other  
236 process are sent by registered or certified mail to the  
237 defendant by the commissioner; and the defendant's return and  
238 the certificate of the commissioner certifying compliance  
239 herewith shall be filed in the office of the clerk of court,  
240 or in the court or tribunal wherein the action is pending. The  
241 certificate of the commissioner shall show the date of the  
242 mailing by registered or certified mail of the notice of the  
243 service and copy of the summons and complaint, or other  
244 process, to the nonresident defendant and the date of the  
245 receipt of the return card and shall be signed by the  
246 commissioner. The commissioner may give the nonresident  
247 defendant notice of the service upon him or her, in lieu of  
248 the notice of service provided for herein to be given by  
249 registered or certified mail, in the following manner:

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



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253 by any officer duly qualified to serve legal process within  
254 the State of Alabama or, if the nonresident defendant is found  
255 to be outside of the State of Alabama, by a sheriff, deputy  
256 sheriff, or United States marshal or deputy United States  
257 marshal, or any duly constituted officer qualified to serve  
258 like process in the state or the jurisdiction where the  
259 nonresident defendant is found.

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

268           ~~(4)~~ (5) The commissioner shall keep on file for a period  
269 of not less than three years a copy of the summons and  
270 complaint or other process served upon the commissioner,  
271 together with a record of all such process and of the day,  
272 hour, and manner of service."

273           "§27-10-25

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



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281 (b) Notwithstanding Section 27-12-17(b), a reasonable  
282 fee for each policy may be charged by the filing surplus lines  
283 broker for each policy placed in lawful compliance with  
284 Section 27-10-20. This per-policy fee shall be itemized  
285 separately to the customer before purchase, enumerated in the  
286 policy or a notice delivered with the policy, and is subject  
287 to the surplus line broker tax required under Section  
288 27-10-31."

289 "§27-10-26

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

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

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

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



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309 fund of at least two million five hundred thousand dollars  
310 (\$2,500,000) within the United States administered by a  
311 recognized financial institution and held for the benefit of  
312 all its policyholders or policyholders and creditors in the  
313 United States, and with capital or surplus, or both, amounting  
314 to at least fifteen million dollars (\$15,000,000).

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

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

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

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

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

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



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337 27-10-31 and 27-10-35.

338 (c) When it appears after a search of surplus lines  
339 insurers that any particular insurance risk which is eligible  
340 to be placed in accordance with the surplus line law but on  
341 which insurance coverage, in whole or in part, is not  
342 procurable from foreign or alien insurers meeting all of the  
343 requirements of subsection (b) but is procurable from a  
344 foreign or alien insurer meeting all of the requirements of  
345 subsection (b) except for ~~paragraph~~ subdivision (3), then the  
346 surplus line broker may file a supplemental signed statement  
347 setting forth the facts and advising the department that the  
348 part of the risk as shall be unprocurable, as aforesaid, is  
349 being placed with named unauthorized insurers which meet all  
350 of the requirements of subsection (b) except for ~~paragraph~~  
351 subdivision (3), in the amounts and percentages set forth in  
352 the statement. These named unauthorized insurers, before  
353 accepting any risk in this state, shall deposit with the  
354 department cash or securities acceptable to the commissioner  
355 and with a market value of not less than one million dollars  
356 (\$1,000,000), which deposit shall be held by the department  
357 for the benefit of Alabama policyholders only. The deposit  
358 shall be held in the same manner as other deposits as  
359 described in Section 27-3-11. The commissioner may adopt  
360 reasonable rules for the implementation and administration of  
361 this section."

362 "§27-10-30

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



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365 verified statement of all surplus line insurance transacted by  
366 him or her during the preceding calendar year. If no surplus  
367 line insurance was transacted in the preceding calendar year,  
368 no statement is required.

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

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

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

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

376 (4) Aggregate of net premiums; and

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

379 "§27-10-31

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

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



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393 examination of the surplus line broker by the commissioner in  
394 the same manner as that allowed for domestic insurers for  
395 examination expenses under the provisions of subdivision (5)  
396 of subsection (c) of Section 27-4A-3. All taxes collected  
397 under this section shall be deposited in the State Treasury to  
398 the credit of the State General Fund.

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

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

404 Section 4. This act shall become effective on July 1,  
405 2024.