

E AND R AMENDMENTS TO LB 70

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 44-5502, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-5502 For purposes of the Surplus Lines Insurance Act:

6 (1) Affiliated group means a group of entities in which
7 each entity, with respect to an insured, controls, is controlled
8 by, or is under common control with the insured;

9 (2) Control means:

10 (a) To own, control, or have the power of an entity
11 directly, indirectly, or acting through one or more other persons
12 to vote twenty-five percent or more of any class of voting
13 securities of another entity; or

14 (b) To direct, by an entity, in any manner, the election
15 of a majority of the directors or trustees of another entity;

16 ~~(1)~~ (3) Department means the Department of Insurance;

17 ~~(2)~~ (4) Director means the Director of Insurance;

18 ~~(3)~~ Insurer has the same meaning as in section 44-103;

19 (5) (a) Exempt commercial purchaser means any person
20 purchasing commercial insurance that, at the time of placement,
21 meets the following requirements:

22 (i) The person employs or retains a qualified risk
23 manager to negotiate insurance coverage;

1 (ii) The person has paid aggregate nationwide commercial
2 property and casualty insurance premiums in excess of one hundred
3 thousand dollars in the immediately preceding twelve months; and

4 (iii) The person meets at least one of the following
5 criteria:

6 (A) The person possesses a net worth in excess of twenty
7 million dollars, as such amount is adjusted pursuant to subdivision
8 (5) (b) of this section;

9 (B) The person generates annual revenue in excess of
10 fifty million dollars, as such amount is adjusted pursuant to
11 subdivision (5) (b) of this section;

12 (C) The person employs more than five hundred full-time
13 or full-time equivalent employees per individual insured or is a
14 member of an affiliated group employing more than one thousand
15 employees in the aggregate;

16 (D) The person is a not-for-profit organization or public
17 entity generating annual budgeted expenditures of at least thirty
18 million dollars, as such amount is adjusted pursuant to subdivision
19 (5) (b) of this section; or

20 (E) The person is a municipality with a population in
21 excess of fifty thousand inhabitants.

22 (b) Beginning on the fifth occurrence of January 1 after
23 the operative date of this act and each fifth occurrence of January
24 1 thereafter, the amounts in subdivisions (5) (a) (iii) (A), (B), and
25 (D) of this section shall be adjusted to reflect the percentage
26 change for such five-year period in the Consumer Price Index
27 for All Urban Consumers published by the Federal Bureau of Labor

1 Statistics;

2 ~~(4)~~ (6) Foreign, alien, admitted, and nonadmitted, when
3 referring to insurers, has the same meanings as in section 44-103
4 but does not include a risk retention group as defined in 15 U.S.C.
5 3901(a)(4); and

6 (7)(a) Except as provided in subdivision (7)(b) of this
7 section, home state means, with respect to an insured, (i) the
8 state in which an insured maintains its principal place of business
9 or, in the case of an individual, the individual's principal
10 residence or (ii) if one hundred percent of the insured risk is
11 located out of the state referred to in subdivision (7)(a)(i) of
12 this section, the state to which the greatest percentage of the
13 insured's taxable premium for that insurance contract is allocated.

14 (b) If more than one insured from an affiliated group
15 are named insureds on a single nonadmitted insurance contract, home
16 state means the home state, as determined pursuant to subdivision
17 (7)(a) of this section, of the member of the affiliated group that
18 has the largest percentage of premium attributed to it under such
19 insurance contract.

20 (c) When determining the home state of the insured, the
21 principal place of business is the state in which the insured
22 maintains its headquarters and where the insured's high-level
23 officers direct, control, and coordinate the business activities of
24 the insured;

25 (8) Insurer has the same meaning as in section 44-103;

26 (9) Nonadmitted insurance means any property and casualty
27 insurance permitted to be placed directly or through surplus

1 lines licensees with a nonadmitted insurer eligible to accept such
2 insurance; and

3 (10) Qualified risk manager means, with respect to a
4 policyholder of commercial insurance, a person who meets the
5 definition in section 527 of the Nonadmitted and Reinsurance Reform
6 Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street
7 Reform and Consumer Protection Act, Public Law 111-203, as such
8 section existed on January 1, 2011.

9 ~~(5) Industrial insured means an insured that:~~

10 ~~(a) Procures the insurance of any risk or risks~~
11 ~~other than sickness and accident insurance and life and annuity~~
12 ~~contracts, has fifty full-time employees, and has aggregate~~
13 ~~annual premiums for insurance on all risks other than workers'~~
14 ~~compensation insurance that total at least one hundred thousand~~
15 ~~dollars; and~~

16 ~~(b) Uses, to procure such insurance, the services of a~~
17 ~~salariied full-time employee who counsels or advises his or her~~
18 ~~employer regarding the insurance interests of the employer or the~~
19 ~~employer's subsidiaries or business affiliates, if the employee~~
20 ~~does not sell or solicit insurance or receive a commission.~~

21 Sec. 2. Section 44-5503, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-5503 The department, in consideration of the payment
24 of the license fee, may issue a surplus lines license, revocable
25 at any time, to any individual who currently holds an insurance
26 producer license or to a foreign or domestic corporation. The
27 corporate surplus lines license shall list all officers or

1 employees of the corporation who currently hold an insurance
2 producer license or meet the requirements for an individual surplus
3 lines license and who have authority to transact surplus lines
4 business on behalf of the corporation. Only individuals listed
5 on the corporate surplus lines license shall transact surplus
6 lines business on behalf of the corporate licensee. If the
7 applicant is an individual, the application for the license shall
8 include the applicant's social security number. The director may
9 utilize the national insurance producer data base of the National
10 Association of Insurance Commissioners, or any other equivalent
11 uniform national data base, for the licensure of an individual or
12 an entity as a surplus lines producer and for renewal of such
13 license.

14 Sec. 3. Section 44-5504, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-5504 (1) No person, other than an ~~industrial insured,~~
17 exempt commercial purchaser, shall place, procure, or effect
18 insurance ~~upon any risk located in this state~~ for or on behalf
19 of an insured whose home state is the State of Nebraska in any
20 nonadmitted insurer until such person has first been issued a
21 surplus lines license from the department as provided in section
22 44-5503.

23 (2) Application for a surplus lines license shall be
24 made to the department on forms designated and furnished by the
25 department and shall be accompanied by a license fee as established
26 by the director not to exceed two hundred fifty dollars for each
27 individual and corporate surplus lines license.

1 (3) (a) All corporate surplus lines licenses shall expire
2 on April 30 of each year, and all individual surplus lines
3 licenses shall expire on the licensee's birthday in the first year
4 after issuance in which his or her age is divisible by two, and
5 all individual surplus lines licenses may be renewed within the
6 ninety-day period before their expiration dates and all individual
7 surplus lines licenses also may be renewed within the thirty-day
8 period after their expiration dates upon payment of a late renewal
9 fee as established by the director not to exceed two hundred
10 dollars in addition to the applicable fee otherwise required for
11 renewal of individual surplus lines licenses as established by the
12 director pursuant to subsection (2) of this section. All individual
13 surplus lines licenses renewed within the thirty-day period after
14 their expiration dates pursuant to this subdivision shall be
15 deemed to have been renewed before their expiration dates. The
16 department shall establish procedures for the renewal of surplus
17 lines licenses.

18 (b) Every licensee shall notify the department within
19 thirty days of any changes in the licensee's residential or
20 business address.

21 Sec. 4. Section 44-5505, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-5505 Each surplus lines licensee shall keep in the
24 licensee's office a true and complete record of the business
25 transacted by the licensee showing (1) the exact amount of
26 insurance or limits of exposure, (2) the gross premiums charged
27 therefor, (3) the return premium paid thereon, (4) the rate of

1 premium charged for such insurance, (5) the date of such insurance
2 and terms thereof, (6) the name and address of the nonadmitted
3 insurer writing such insurance, (7) a copy of the declaration
4 page of each policy and a copy of each policy form issued by
5 the licensee, (8) a copy of the written statement described in
6 subdivision ~~(3)~~ (1)(c) of section 44-5510 or, in lieu thereof, a
7 copy of the application containing such written statement, (9) the
8 name and address of the insured, (10) the address of the principal
9 residence of the insured or the address at which the insured
10 maintains its principal place of business, (11) a brief and general
11 description of the risk or exposure insured and where located, ~~(11)~~
12 (12) documentation showing that the nonadmitted insurer writing
13 such insurance complies with the requirements of section 44-5508,
14 and ~~(12)~~ (13) such other facts and information as the department
15 may direct and require. Such records shall be kept by the licensee
16 in the licensee's office within the state for not less than five
17 years and shall at all times be open and subject to the inspection
18 and examination of the department or its officers. The expense of
19 any examination shall be paid by the licensee.

20 Sec. 5. Section 44-5506, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 44-5506 ~~Every surplus lines licensee transacting business~~
23 ~~under the Surplus Lines Insurance Act shall annually, on or before~~
24 ~~February 15 in each year, make and file with the department a~~
25 ~~verified statement upon a form prescribed by the department which~~
26 ~~shall exhibit the true amount of all such business transacted~~
27 ~~during the year ending on December 31 next preceding the filing~~

1 ~~thereof. The licensee shall, at the time such statement is filed,~~
2 ~~pay to the department a tax of three percent on the total gross~~
3 ~~amount of direct writing premiums received by the licensee on such~~
4 ~~business and the fire insurance tax prescribed in section 81-523.~~
5 ~~In no event shall such taxes be determined on a retaliatory basis~~
6 ~~pursuant to section 44-150. For purposes of this section, direct~~
7 ~~writing and premiums shall be as defined in section 77-907.~~

8 (1) For purposes of carrying out the Nonadmitted and
9 Reinsurance Reform Act of 2010, which is Subtitle B of the
10 Dodd-Frank Wall Street Reform and Consumer Protection Act, Public
11 Law 111-203, as such act existed on January 1, 2011, the
12 director may enter into the Nonadmitted Insurance Multi-State
13 Agreement in order to facilitate the collection, allocation, and
14 disbursement of premium taxes attributable to the placement of
15 nonadmitted insurance, provide for uniform methods of allocation
16 and reporting among nonadmitted insurance risk classifications, and
17 share information among states relating to nonadmitted insurance
18 premium taxes.

19 (2) The director may participate in the clearinghouse
20 established through the Nonadmitted Insurance Multi-State Agreement
21 for the purpose of collecting and disbursing to reciprocal
22 states any funds collected applicable to properties, risks, or
23 exposures located or to be performed outside of this state. To
24 the extent that other states where portions of the properties,
25 risks, or exposures reside have failed to enter into a compact
26 or reciprocal allocation procedure with the State of Nebraska,
27 the net premium tax shall be retained by the State of Nebraska.

1 If the director chooses to participate in the clearinghouse for
2 the purpose authorized by this subsection, the director may also
3 participate in such clearinghouse for purposes of surplus lines
4 policies applicable to risks located solely within this state.

5 (3) Every surplus lines licensee transacting business
6 under the Surplus Lines Insurance Act shall, on or before February
7 15 for the quarter ending the preceding December 31, May 15 for the
8 quarter ending the preceding March 31, August 15 for the quarter
9 ending the preceding June 30, and November 15 for the quarter
10 ending the preceding September 30 of each year, make and file with
11 the department a verified statement upon a form prescribed by the
12 department or a designee of the director which shall exhibit the
13 true amount of all such business transacted during that period.

14 (4) (a) Every surplus lines licensee transacting business
15 under the Surplus Lines Insurance Act shall collect and pay to
16 the director or the director's designee, at the time the statement
17 required under subsection (3) of this section is filed, a sum based
18 on the total gross premiums charged, less any return premiums,
19 for surplus lines insurance provided by the licensee pursuant to
20 the license. In no event shall such taxes be determined on a
21 retaliatory basis pursuant to section 44-150.

22 (b) When the insurance covers properties, risks, or
23 exposures located or to be performed solely in this state on behalf
24 of an insured whose home state is the State of Nebraska, the sum
25 payable shall be computed based on an amount equal to three percent
26 of the premiums to be remitted to the State Treasurer in accordance
27 with section 77-912.

1 (c) When the insurance covers properties, risks, or
2 exposures located or to be performed both in and out of this state,
3 the sum payable shall be computed based on:

4 (i) For purposes of the portion that is attributable to
5 instate risks, an amount and rate equal to that set forth in
6 subdivision (4)(b) of this section; plus

7 (ii) For purposes of the portion that is attributable to
8 out-of-state risks, an amount equal to the portion of the premiums
9 allocated to each of the other states or territories and at a rate
10 as established by each state or territory as being applicable to
11 the properties, risks, or exposures located or performed outside
12 of this state. The tax on any portion of the premium unearned at
13 termination of insurance having been credited by the state to the
14 licensee shall be returned to the policyholder directly by the
15 surplus lines licensee or through the producing broker, if any. The
16 surplus lines licensee is prohibited from rebating, for any reason,
17 any portion of the tax.

18 (5) The director may utilize or adopt the allocation
19 schedule included in the Nonadmitted Insurance Multi-State
20 Agreement for the purpose of allocating risk and computing the
21 tax due on the portion of premium attributable to each risk
22 classification and to each state in which properties, risks, or
23 exposures are located.

24 Sec. 6. Section 44-5508, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 44-5508 ~~(1)~~ Every surplus lines licensee transacting
27 business under the Surplus Lines Insurance Act shall ascertain the

1 financial condition of each insurer before such licensee places
2 any insurance with or procures any insurance from such insurer. If
3 requested by the director, the licensee shall provide a copy of the
4 current annual statement certified and sworn to by such insurer.

5 (2) No surplus lines licensee shall knowingly or without
6 proper investigation place any insurance with or procure any
7 insurance from any nonadmitted foreign or alien insurer that
8 does not have surplus, capital, and reserves in amounts equal
9 to or greater than the requirements of surplus, capital, and
10 reserves placed on admitted insurers which write the same kinds of
11 insurance.

12 (3) In addition to the requirements of subsection (2) of
13 this section, no surplus lines licensee shall place any insurance
14 with or procure any insurance from any nonadmitted alien insurer
15 unless such insurer (a) maintains in the United States a trust
16 fund in a qualified United States financial institution as defined
17 in subsection (2) of section 44-416.08 in an amount not less
18 than two million five hundred thousand dollars for the protection
19 of policyholders in the United States, consisting of cash in
20 United States currency, readily marketable securities, or clean,
21 irrevocable, unconditional letters of credit, issued or confirmed
22 by a qualified United States financial institution as defined in
23 subsection (1) of section 44-416.08, and such trust fund shall
24 have an expiration date which at no time shall be less than five
25 years, or (b) is approved by the Nonadmitted Insurers Information
26 Office of the National Association of Insurance Commissioners, and
27 the director, in his or her discretion, has not independently

1 ~~determined such insurer to be in an unsound financial condition.~~

2 ~~(4) No surplus lines licensee shall place any insurance~~
3 ~~with or procure any insurance from any nonadmitted Lloyd's plan~~
4 ~~or other similar group which includes incorporated and individual~~
5 ~~unincorporated underwriters unless such group maintains a trust~~
6 ~~fund of not less than fifty million dollars as security to the full~~
7 ~~amount thereof for all policyholders and creditors in the United~~
8 ~~States of each member of the group and such trust complies with the~~
9 ~~terms and conditions established in subsection (3) of this section~~
10 ~~for nonadmitted alien insurers.~~

11 (1) A surplus lines licensee shall not place coverage
12 with a nonadmitted insurer unless, at the time of placement, the
13 surplus lines licensee has determined that the nonadmitted insurer:

14 (a) Is authorized to write such insurance in its
15 domiciliary jurisdiction;

16 (b) Has established satisfactory evidence of good repute
17 and financial integrity; and

18 (c) (i) Possesses capital and surplus or its equivalent
19 under the laws of its domiciliary jurisdiction that equals the
20 greater of the minimum capital and surplus requirements under the
21 laws of this state or fifteen million dollars; or

22 (ii) If minimum capital and surplus does not meet the
23 requirements of subdivision (1)(c)(i) of this section, then upon an
24 affirmative finding of acceptability by the director. The finding
25 shall be based upon such factors as quality of management, capital
26 and surplus of any parent company, company underwriting profit and
27 investment income trends, market availability, and company record

1 and reputation within the industry. The director shall not make an
2 affirmative finding of acceptability if the nonadmitted insurer's
3 capital and surplus is less than four million five hundred thousand
4 dollars.

5 (2) No surplus lines licensee shall place nonadmitted
6 insurance with or procure nonadmitted insurance from a nonadmitted
7 insurer domiciled outside the United States unless the insurer is
8 listed on the Quarterly Listing of Alien Insurers maintained by the
9 International Insurers Department of the National Association of
10 Insurance Commissioners.

11 ~~(5)~~ (3) Any surplus lines licensee violating this section
12 shall be guilty of a Class III misdemeanor.

13 ~~(6)(a)~~ (4)(a) No nonadmitted foreign or alien insurer
14 shall transact business under the act ~~Surplus Lines Insurance Act~~
15 if it does not comply with the surplus, and capital, and reserves
16 requirements of subsection ~~(2)~~ (1) of this section.

17 (b) In addition to the requirements of subdivision (a)
18 of this subsection, no nonadmitted alien insurer shall transact
19 business under the act if it does not comply with the requirements
20 of subdivision ~~(3)(a)~~ or (b) subsection (2) of this section.

21 ~~(c)~~ No nonadmitted Lloyd's plan ~~or other similar~~
22 group which includes incorporated and individual unincorporated
23 underwriters shall transact business under the act if it does not
24 comply with the requirements of subsection ~~(4)~~ of this section.

25 Sec. 7. Section 44-5510, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 44-5510 (1) If an applicant for insurance is unable to

1 procure such insurance as he or she deems reasonably necessary to
2 insure a risk or exposure from an admitted insurer, such insurance
3 may be procured from a nonadmitted insurer upon the following terms
4 and conditions:

5 ~~(1)~~ (a) The insurance shall be procured from a surplus
6 lines licensee;

7 ~~(2)~~ (b) The insurance procured shall not include any
8 insurance described in subdivisions (1) through (4) of section
9 44-201;

10 ~~(3)~~ (c) Not later than thirty days after the effective
11 date of such insurance, the insured shall provide, in writing, his
12 or her permission for such insurance to be written in a nonadmitted
13 insurer and his or her acknowledgment that, in the event of the
14 insolvency of such insurer, the policy will not be covered by the
15 Nebraska Property and Liability Insurance Guaranty Association; and

16 ~~(4)~~ (d) Compliance with section 44-5511.

17 (2) A surplus lines licensee seeking to procure or place
18 nonadmitted insurance for an exempt commercial purchaser whose home
19 state is the State of Nebraska shall not be required to make a
20 due diligence search to determine whether the full amount or type
21 of insurance sought by such exempt commercial purchaser can be
22 obtained from admitted insurers if:

23 (a) The surplus lines licensee procuring or placing the
24 insurance has disclosed to the exempt commercial purchaser that
25 such insurance may or may not be available from the admitted market
26 that may provide greater protection with more regulatory oversight;
27 and

1 (b) The exempt commercial purchaser has subsequently
2 requested in writing the surplus lines licensee to procure or place
3 such insurance for a nonadmitted insurer.

4 Sec. 8. Section 44-5511, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 44-5511 ~~No later than thirty days after the last day of~~
7 each calendar quarter, On or before February 15 for the quarter
8 ending the preceding December 31, May 15 for the quarter ending the
9 preceding March 31, August 15 for the quarter ending the preceding
10 June 30, and November 15 for the quarter ending the preceding
11 September 30 of each year, every surplus lines licensee shall file
12 with the department a report containing such information as the
13 department may require, including: (1) The name of the nonadmitted
14 insurer; (2) the name of the licensee; (3) the number of policies
15 issued by each nonadmitted insurer; (4) except for insurance placed
16 or procured on behalf of an exempt commercial purchaser, a sworn
17 statement by the licensee with regard to the coverages described
18 in the quarterly report that, to the best of the licensee's
19 knowledge and belief, the licensee could not reasonably procure
20 such coverages from an admitted insurer; and (5) the premium volume
21 for each nonadmitted insurer by line of business.

22 Sec. 9. Section 44-5515, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-5515 Every ~~industrial insured~~ exempt commercial
25 purchaser whose home state is the State of Nebraska shall, on or
26 before February 15 for the quarter ending the preceding December
27 31, May 15 for the quarter ending the preceding March 31, August

1 15 for the quarter ending the preceding June 30, and November 15
2 for the quarter ending the preceding September 30 of each year,
3 pay to the department a tax in the amount required by subdivision
4 (4) (a) of section 44-5506. annually, on or before February 15, pay
5 to the department a tax of three percent on the total gross amount
6 of insurance premiums for policies procured through nonadmitted
7 insurers. Every industrial insured shall pay the fire insurance
8 tax prescribed in section 81-523. The calculation of the taxes due
9 pursuant to this section shall be based only on those premiums
10 remitted for the placement or procurement of insurance by an exempt
11 commercial purchaser whose home state is the State of Nebraska. The
12 department shall prescribe a form for an industrial insured exempt
13 commercial purchaser tax filing.

14 Sec. 10. This act becomes operative on July 21, 2011.

15 Sec. 11. Original sections 44-5502, 44-5503, 44-5504,
16 44-5505, 44-5506, 44-5508, 44-5510, 44-5511, and 44-5515, Reissue
17 Revised Statutes of Nebraska, are repealed.

18 Sec. 12. Since an emergency exists, this act takes effect
19 when passed and approved according to law.

20 2. On page 1, line 2, after the first comma insert
21 "44-5503,"; and in line 6 after "to" insert "licensure,".