

Maine Revised Statute Title 24-A, Chapter 19: SURPLUS LINES

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24-A §2001. SHORT TITLE

This chapter constitutes and may be cited as the "Surplus Lines Law." [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

24-A §2002. EXEMPTIONS

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 769, §A92 (AMD). 1993, c. 153, §15 (RP).

24-A §2002-A. EXEMPTIONS FROM PROVISIONS

1. The following kinds of insurance must be procured from authorized insurers and are not eligible for export in the surplus lines market:

- A. Life insurance; [1993, c. 153, §16 (NEW).]
- B. Health insurance; or [1993, c. 153, §16 (NEW).]
- C. Employee benefit excess insurance. [1993, c. 153, §16 (NEW).]

[1993, c. 153, §16 (NEW) .]

2. This surplus lines law may not be used to place reinsurance. Nothing in this subsection prohibits the cession or assumption of reinsurance as otherwise permitted by this Title.

[1993, c. 153, §16 (NEW) .]

3. Producers with surplus lines authority may procure the following kinds of insurance from eligible surplus lines insurers without adherence to the procedures set forth in section 2004:

- A. Wet marine and transportation insurance; [1993, c. 153, §16 (NEW).]
- B. Insurance on subjects located, resident or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State; [1993, c. 153, §16 (NEW).]
- C. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; or [1993, c. 153, §16 (NEW).]
- D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of such aircraft. [1993, c. 153, §16 (NEW).]

[1997, c. 592, §48 (AMD) .]

SECTION HISTORY

1993, c. 153, §16 (NEW). 1997, c. 592, §48 (AMD).

24-A §2003. DEFINITIONS -- "PRODUCER," "EXPORT"

1. "Producer" as used in this chapter and unless context otherwise requires, means a producer with surplus lines authority duly licensed as such under this chapter.

[1997, c. 592, §49 (AMD) .]

2. To "export" means to place in an unauthorized insurer under this Surplus Lines Law insurance covering a subject of insurance resident, located or to be performed in Maine.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1997, c. 592, §49 (AMD).

24-A §2004. CONDITIONS FOR EXPORT

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:
[1969, c. 132, §1 (NEW).]

1. The insurance must be procured through a licensed producer with surplus lines authority.

[1997, c. 592, §50 (AMD) .]

2. The desired coverage is necessary for the adequate protection of a risk in the State.

[1969, c. 132, §1 (NEW) .]

3. It may be written under the laws of this State by an authorized insurer.

[1969, c. 132, §1 (NEW) .]

4. The insurance is not available after diligent effort has been made to place the coverage with authorized insurers.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1997, c. 592, §50 (AMD).

24-A §2005. REPORT OF COVERAGE

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §29 (RPR). 1973, c. 585, §12 (AMD). 1997, c. 592, §51 (RP).

24-A §2006. OPEN LINES FOR EXPORT

1. The superintendent may by order declare eligible for export generally and without compliance with section 2004, subsections 2, 3 and 4, any class or classes of insurance coverage or risk for which the superintendent finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this State, that there is not a reasonable or adequate market among authorized insurers

either as to acceptance of the risk, contract terms, or premium or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the superintendent.

[1997, c. 592, §52 (AMD) .]

2. The producer shall file with or as directed by the superintendent a memorandum as to each such coverage placed by the producer in an unauthorized insurer, in such form and context as the superintendent may reasonably require for the identification of the coverage and determination of the tax payable to the State relative thereto.

[1997, c. 592, §52 (AMD) .]

3. A producer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection 1, and without regard to rate or form filings that may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon must be reported and paid by the insurer as required generally under the law of this State.

[1997, c. 592, §53 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §30 (AMD). 1973, c. 585, §12 (AMD). 1997, c. 592, §§52,53 (AMD).

24-A §2007. ELIGIBLE SURPLUS LINES INSURERS

1. A producer may not knowingly place surplus lines insurance with an insurer that is unsound financially or that is ineligible under this section.

[1997, c. 592, §54 (AMD) .]

2. The superintendent shall from time to time publish a list of all surplus lines insurers determined by the superintendent to be eligible currently, and shall mail a copy of such list to each producer at the producer's office last of record with the superintendent. This subsection may not be construed to cast upon the superintendent the duty of determining the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the superintendent, may indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the superintendent has no credible evidence to the contrary. While any such list is in effect, the producer shall restrict to the insurers so listed all surplus lines business placed by the producer.

[1997, c. 592, §54 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 592, §54 (AMD).

24-A §2008. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

1. Upon placing a surplus lines coverage, the producer shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer, or, if such policy is not then available, the surplus lines producer's certificate. Such a certificate must be executed by the producer and show the description and location of the subject of the insurance, coverage, conditions and term of the

insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

[1997, c. 592, §55 (AMD) .]

2. A producer may not issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless the producer has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

[1997, c. 592, §55 (AMD) .]

3. If, after the issuance and delivery of any such certificate, there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the producer's original certificate, or in any other material respect as to the insurance evidenced by the certificate, the producer shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible under the certificate.

[1997, c. 592, §55 (AMD) .]

4. If a policy issued by the insurer is not available upon placement of the insurance and the producer has issued and delivered the certificate as provided in this section, upon request of the insured the producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the producer's certificate.

[1997, c. 592, §55 (AMD) .]

5. Any producer with surplus lines authority who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection 3, upon conviction, is subject to the penalty provided by section 12-A or to any greater applicable penalty otherwise provided by law.

[2007, c. 466, Pt. D, §5 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1997, c. 592, §55 (AMD). 2007, c. 466, Pt. D, §5 (AMD).

24-A §2009. IDENTIFICATION AND NOTICE ON CONTRACT

Every insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped upon it, and bearing the name of the producer with surplus lines authority who procured it, the following: [1997, c. 592, §56 (AMD) .]

"This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance." [1997, c. 592, §56 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 592, §56 (AMD).

24-A §2009-A. CANCELLATION AND NONRENEWAL OF SURPLUS LINES COVERAGE

1. Notice. Cancellation and nonrenewal by an insurer of surplus lines coverage subject to this chapter shall not be effective unless received by the named insured at least 14 days prior to the effective date of cancellation or, when the cancellation is for nonpayment of premium, at least 10 days prior to the effective date of cancellation. A postal service certificate of mailing to the named insured at the insured's last known address shall be conclusive proof of receipt on the 5th calendar day after mailing.

[1989, c. 172, §1 (NEW) .]

2. Exemption. Cancellation and nonrenewal by an insurer of surplus lines coverage subject to this chapter shall not be subject to sections 2908 and 3007.

[1989, c. 172, §1 (NEW) .]

SECTION HISTORY

1989, c. 172, §1 (NEW).

24-A §2010. SURPLUS LINES INSURANCE VALID

Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers. [1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

24-A §2011. INSURER'S LIABILITY FOR LOSSES AND UNEARNED PREMIUMS

1. As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to this chapter, and if the premium has been received by the producer with surplus lines authority who placed such insurance, in all questions arising under the coverage as between the insurer and the insured the insurer is deemed to have received the premium due to it for such coverage; and the insurer is liable to the insured as to losses covered by such insurance, and for unearned premiums that may become payable to the insured upon cancellation of such insurance, whether or not in fact the producer is indebted to the insurer with respect to the insurance or for any other cause.

[1997, c. 592, §57 (AMD) .]

2. Each unauthorized insurer assuming a surplus lines risk under this chapter is deemed to have subjected itself to the terms of this section.

[1997, c. 592, §57 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1997, c. 592, §57 (AMD).

24-A §2012. SURPLUS LINES AUTHORITY

1. Any person while licensed in this State as a resident producer who is determined by the superintendent to be competent and trustworthy with respect to the handling of surplus lines, and while maintaining an office at a designated location in this State, may be licensed as a producer with surplus lines authority.

[1997, c. 592, §58 (AMD) .]

2. Application for the authority must be made to the superintendent on forms as designated and furnished by the superintendent.

[1997, c. 592, §58 (AMD) .]

3. The application and authority fee must be as specified in section 601.

[1997, c. 592, §58 (AMD) .]

4. The producer with surplus lines authority is subject to the applicable provisions of chapter 16.

[1997, c. 592, §58 (AMD) .]

5. A nonresident producer who is considered by the superintendent to be competent and trustworthy with respect to the handling of surplus lines may apply for surplus lines authority under the following circumstances:

A. If the nonresident maintains a business location within this State and maintains all records of surplus lines transactions within this State; [2001, c. 259, §47 (AMD).]

B. If the nonresident transacts only liability insurance business and only on behalf of a purchasing group registered with the superintendent and the nonresident agrees to produce surplus lines records in this State within 14 days from a request of the superintendent; or [2001, c. 259, §47 (AMD).]

C. The license is to be issued on a reciprocal basis pursuant to sections 1420-G and 1420-O. [2001, c. 259, §48 (NEW).]

[2001, c. 259, §§47, 48 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 457, §§33,34 (AMD). 1997, c. 592, §58 (AMD). 1997, c. 457, §55 (AFF). 2001, c. 259, §§47,48 (AMD).

24-A §2013. LICENSE SUSPENSION OR REVOCATION

1. Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities under any surplus lines authority:

A. If the producer fails to remit the tax as required by section 2018; [2001, c. 259, §49 (AMD).]

B. If a producer who is required to maintain an office in this State fails to do so, or to keep the records, or to allow the superintendent to examine those records as required by this law, or if the producer removes those records from the State when prohibited; [2001, c. 259, §49 (AMD).]

C. If the producer places a surplus lines coverage in an insurer other than as authorized under section 2007; [1997, c. 592, §59 (AMD).]

D. For any other applicable cause for which a producer's license may be suspended or revoked; or [2001, c. 259, §50 (AMD).]

E. If the producer assists any person or persons not licensed as producers with surplus lines authority by serving as a reporting producer for purposes of section 2015 or 2016 with respect to insurance coverage not procured by the producer. [1997, c. 592, §59 (AMD).]

[2001, c. 259, §§49, 50 (AMD) .]

2. The procedures provided by chapter 16 for suspension or revocation of licenses apply to suspension or revocation of a surplus lines authority.

[1997, c. 592, §59 (AMD) .]

3. Upon a ruling by the superintendent suspending or revoking a producer's surplus lines authority the superintendent may suspend or revoke all other licenses or authorities held by the same individual under this Title.

[1997, c. 592, §59 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §§411,412 (AMD). 1985, c. 564, §3 (AMD). 1991, c. 298, §4 (AMD). 1995, c. 329, §§28,29 (AMD). 1997, c. 457, §35 (AMD). 1997, c. 592, §59 (AMD). 1997, c. 457, §55 (AFF). 2001, c. 259, §§49,50 (AMD).

24-A §2014. PRODUCER'S SURETY BOND

A licensed producer with surplus lines authority may accept and place surplus line business for any insurance producer licensed in this State for the kind of insurance involved, and may compensate the producer for the business. [1997, c. 592, §60 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1997, c. 592, §60 (AMD).

24-A §2015. RECORD OF PROCURED COVERAGES

1. Each producer shall keep in the producer's office a full and true record of each surplus lines coverage procured by the producer, including a copy of each daily report, if any, a copy of each certificate of insurance issued, books of account in which financial entries are recorded respecting these transactions and such of the following items as may be applicable:

A. Amount of the insurance; [1969, c. 132, §1 (NEW).]

B. Gross premium charged; [1969, c. 132, §1 (NEW).]

C. Return premium paid, if any; [1969, c. 132, §1 (NEW).]

D. Rate of premium charged upon the several items of property; [1969, c. 132, §1 (NEW).]

E. Effective date of the contract and the terms of the contract; [1997, c. 592, §61 (AMD).]

F. Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by such insurer, if less than the entire risk; [1997, c. 592, §61 (AMD).]

G. Name and address of the insured; [1969, c. 132, §1 (NEW).]

H. Brief general description of the property or risk insured and where located or to be performed; and [1969, c. 132, §1 (NEW).]

I. Other information as may be required by the superintendent. [1969, c. 132, §1 (NEW).]

[2007, c. 51, §5 (AMD) .]

2. The record may not be removed from this State in the case of a resident producer with surplus lines authority and in the case of both resident and nonresident licensees must be made available and open to examination by the superintendent at all times within 5 years after issuance of the coverage to which it relates. For the purpose of investigation or examination by the superintendent, records may be maintained in electronic form.

[2007, c. 51, §5 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1985, c. 564, §4 (AMD). 1997, c. 457, §36 (AMD). 1997, c. 592, §61 (AMD). 2007, c. 51, §5 (AMD).

24-A §2016. PERIODIC REPORTS AND TAX PAYMENTS

2. If a surplus lines policy covers risks or exposures only partially in this State the tax so payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this State.

[1991, c. 674, §1 (NEW) .]

1. Each producer with surplus lines authority shall maintain in the producer's office a monthly report showing the amount of insurance placed for any person or organization, the location of each risk, the gross premium charged, the name of each insurer with which the insurance was placed, the date and term of each insurance contract issued during the preceding month and any other pertinent information required by the superintendent. The report must show in the same detail each contract cancelled during the month covered by the report and the return premium on it. The monthly report must be made available to the superintendent for examination at the producer's office location at any time or by delivery to the bureau upon 5 days' notice by the superintendent.

[2007, c. 51, §6 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 674, §1 (RPR). 1997, c. 457, §37 (AMD). 1997, c. 592, §62 (AMD). 1997, c. 660, §B3 (AMD). 2007, c. 51, §6 (AMD).

24-A §2017. ANNUAL REPORT

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 674, §1 (RPR). 1995, c. 329, §30 (RP).

24-A §2018. FAILURE TO PAY TAX

If any producer fails to remit the tax provided by section 2016 within 30 days after the tax is due, the superintendent may, following an adjudicatory hearing, assess a penalty of not less than \$25 for each day of delinquency. Any fine collected by the superintendent must be paid to the Treasurer of State and credited to the Insurance Regulatory Fund. [1997, c. 592, §63 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1979, c. 541, §A162 (AMD). 1991, c. 298, §5 (AMD). 1991, c. 674, §2 (AMD). 1997, c. 592, §63 (AMD). RR 1997, c. 2, §49 (COR).

24-A §2019. LEGAL PROCESS AGAINST SURPLUS LINE INSURER

1. An unauthorized insurer shall be sued, upon any cause of action arising in the State under any contract issued by it as a surplus lines contract pursuant to this law, in the Superior Court.

[1969, c. 132, §1 (NEW) .]

2. Before the surplus lines insurer may do business in this State, each insurer shall appoint an agent to receive service of legal process issued against it in this State. The insurer shall file with the superintendent a copy of the appointment. The notice to the superintendent must be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer, showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer. Service of legal process against the insurer may be made in any such action by service of 2 copies upon the designated agent. If no agent is designated, service of legal process against the insurer may be made by mailing a copy of the process to the producer through whom such insurance was procured, or to the insurer at its principal place of business, addressed to the address of the producer or insurer, as the case may be, last of record with the superintendent. Upon service of process in accordance with this provision, the court is deemed to have jurisdiction in personam of the insurer.

[1997, c. 592, §64 (AMD) .]

3. An unauthorized insurer issuing such policy is deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy must contain a provision stating the substance of this section, and designating the person to whom process must be served as provided in subsection 2.

[1997, c. 592, §64 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 592, §64 (AMD).

24-A §2020. PRODUCER'S SURETY BOND

1. Every applicant for a surplus lines producer's authority shall file with the superintendent evidence of a bond in favor of the State executed by an authorized surety insurer. The bond is conditioned upon full accounting and due payment to the person entitled to the bond of funds coming into the surplus lines producer's possession through insurance transactions under the license. The bond may be continuous in force and aggregate liability on the bond is limited to payment of not less than \$20,000.

[1997, c. 592, §65 (AMD) .]

2. The bond must remain in force until released by the superintendent or until canceled by the surety. Without prejudice to liability previously incurred, the surety may cancel the bond upon 30 days' advance written notice to both the producer and the superintendent. Upon notice to the superintendent of cancellation by the surety and failure of the surplus lines producer to procure a satisfactory replacement bond prior to cancellation, the surplus lines producer's authority terminates.

[1997, c. 592, §65 (AMD) .]

SECTION HISTORY

1993, c. 153, §17 (NEW). 1995, c. 329, §31 (AMD). 1997, c. 592, §65 (AMD) .

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