

## CHAPTER 36

## ( HB 375 )

AN ACT authorizing associations and member underwriters authorized to transact insurance in this state to also qualify as eligible surplus lines insurers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 304.3-070 is amended to read as follows:

- (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock or mutual insurer, or a combined stock and mutual life insurer, or a reciprocal insurer, or Lloyd's plan insurer, of the same general type as may be formed as a domestic insurer under this code, ***or an association, including incorporated and individual unincorporated underwriters, meeting the requirements of subsection (3) of this section,*** except that:
  - (a) No foreign insurer shall be authorized to transact insurance in this state which does not maintain reserves as required by Subtitle 6 as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan;
  - (b) No insurer shall be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile;
  - (c) No insurer shall be authorized to transact in this state any kind of insurance which is not within the definition as set forth in Subtitle 5;
  - (d) No such authority shall be granted or continued as to any insurer while in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on business previously transacted in this state;
  - (e) A combined stock and mutual life insurer must maintain separate accounting for income, expenses, assets, liabilities and surplus funds allocated between the "mutual" branch and the "stock" branch, in a manner as provided by a regulation to be promulgated by the commissioner. The "mutual" branch shall not invest any moneys in equity securities of the "stock" branch, nor shall it loan any moneys to the "stock" branch. The "stock" branch shall not loan any moneys to the "mutual" branch; and
  - (f) A life insurer in forming the "stock" branch or the "mutual" branch of a combined stock and mutual life insurer, must possess the capital funds required pursuant to KRS 304.3-120 for the stock branch, and must possess the surplus funds required under KRS 304.24-100 for the mutual branch. The commissioner shall not grant a certificate of authority to any life insurer to conduct its business as a combination stock and mutual life insurer, unless the aforesaid capitalization requirements are fulfilled.
- (2) In determining the solvency of or impairment to any foreign or alien insurer which is requesting the issuance or continuance of any certificate of authority to do business in this state, the commissioner may admit as assets only those items which would qualify as admitted assets for a domestic insurer similarly situated.
- (3) ***To qualify for and hold authority to transact insurance in this state an association, including incorporated and individual unincorporated underwriters, in addition to meeting the requirements of subsection (1) of this section, shall have:***
  - (a) ***Collective minimum capital and surplus equivalents, net of liabilities, on a several, not joint, basis of at least two-hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two-hundred fifty million dollars (\$250,000,000);***
  - (b) ***The incorporated members of the association:***
    1. ***Shall not be engaged in any business, other than underwriting; and***
    2. ***Shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members;***
  - (c) ***An association, including incorporated and individual unincorporated underwriters that meet the requirement of this subsection shall not be deemed a Lloyd's plan insurer, as defined in KRS 304.3-040, and shall not be subject to the requirements of Subtitle 28 of this chapter; and***

(d) *The underwriting members of an association, including incorporated and individual unincorporated underwriters, that qualify for and hold authority to transact insurance in this state pursuant to this section, may also qualify as eligible surplus lines insurers pursuant to Section 3 of this Act.*

➔Section 2. KRS 304.3-120 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, to qualify for authority to transact insurance (as defined in Subtitle 5), an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual, reciprocal, or Lloyd's insurer), and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

		Foreign Mutual, Reciprocal, and	
Stock Insurers		Lloyd's Insurers	
Minimum		Minimum	
Required	Initial	Required	Initial
Capital	Free	Basic	Free
Stock	Surplus	Surplus	Surplus
\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000

- (2) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to July 15, 1982, may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock (if a stock insurer) or surplus (if a mutual, reciprocal, or Lloyd's insurer) as required for such authority immediately prior to July 15, 1982. The commissioner shall not authorize such an insurer to transact any other kinds of insurance unless it then complies with the requirements as to capital and surplus. Notwithstanding the other provisions hereof, the exception provided in this subsection (2) shall cease to apply to any such insurer from and after the date upon which it has accumulated surplus in an amount equal to two hundred percent (200%) of the initial free surplus (if a stock or foreign mutual, reciprocal, or Lloyd's insurer) or the surplus (if a domestic mutual insurer) required under other provisions of this code to qualify for authority to transact the kind or kinds of insurance being transacted by it.
- (3) Each insurer shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000). Insurers holding a valid certificate of authority to transact insurance in this state immediately prior to July 13, 1984, may, if otherwise qualified therefor, continue to be so authorized while possessing additional surplus as required for such authority immediately prior to July 13, 1984. The commissioner shall not authorize such an insurer to transact any other kinds of insurance unless it complies with this subsection. The exception provided in this subsection shall cease to apply to any insurer from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection. ***This subsection shall not apply to an association qualifying pursuant to subsection (3) of Section 1 of this Act.***
- (4) As to surplus required for authority to transact one (1) or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed shall be governed by Subtitle 24 of this chapter.

➔Section 3. KRS 304.10-070 is amended to read as follows:

- (1) A broker shall place surplus lines insurance only with an insurer that he or she knows, or in the exercise of reasonable diligence could know:
  - (a) ***1.*** Is authorized to write the type of insurance in its domiciliary jurisdiction;
  - 2.***~~{(b)}~~ Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of:
    - a.***~~{1-}~~ The minimum capital and surplus requirements set forth in KRS 304.3-120; or
    - b.***~~{2-}~~ Fifteen million dollars (\$15,000,000); and
  - 3.***~~{(c)}~~ Is listed on the quarterly listing of alien insurers maintained by the National Association of Insurance Commissioners, if the insurer is a nonadmitted insurer domiciled outside of the United States; ***or***

- (b) *Is an association, including incorporated and individual unincorporated underwriters, that is authorized to transact insurance in this state pursuant to subsection (3) of Section 1 of this Act, provided that the syndicates within the association with whom surplus lines coverage is to be placed are listed on the quarterly listing of alien insurers maintained by the National Association of Insurance Commissioners. The association's authorized status pursuant to subsection (3) of Section 1 of this Act shall not preclude the association from also being an eligible surplus lines insurer pursuant to this section.*
- (2) A broker may:
- (a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars (\$15,000,000); and
  - (b) Place insurance with a United States insurance exchange which the commissioner, in his or her discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.
- (3) The commissioner may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The commissioner shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the commissioner has reason to believe that a surplus lines insurer no longer meets the standards set forth in this subtitle.

**Signed by Governor April 7, 2014.**