

**CHAPTER 180****( HB 345 )**

AN ACT relating to surplus lines.

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

➔Section 1. KRS 304.10-030 is amended to read as follows:

As used in this subtitle:

- (1) "Admitted insurer" means an insurer that is licensed or authorized to transact the business of insurance in Kentucky.
- (2) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- (3) "Broker" means a surplus lines broker duly licensed as such under this subtitle.
- (4) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
  - (a) The person employs or retains a qualified risk manager to negotiate insurance coverage;
  - (b) The person has paid aggregate nationwide commercial property and casualty insurance premium in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve (12) months;
  - (c)
    1. The person meets at least one (1) of the following criteria:
      - a. The person possesses a net worth in excess of twenty million dollars (\$20,000,000), adjusted pursuant to subparagraph 2. of this paragraph;
      - b. The person generates annual revenues in excess of fifty million dollars (\$50,000,000), as adjusted pursuant to subparagraph 2. of this paragraph;
      - c. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate;
      - d. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), adjusted pursuant to subparagraph 2. of this paragraph; or
      - e. The person is a municipality with a population in excess of fifty thousand (50,000) persons.
    2. Effective on the fifth January 1 occurring after July 12, 2012, and each fifth January 1 occurring thereafter, the amounts in subparagraph 1.a., b., and d. of this paragraph shall be adjusted to reflect the percentage change for the five (5) year period in the consumer price index for all urban consumers published by the Bureau of Labor Statistics of the Department of Labor.
- (5) 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 Kentucky.
- (6) "Home state" means:
  - (a)
    1. The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
    2. If one hundred percent (100%) of the insured risk is located out of the state referred to in subparagraph 1. of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or
  - (b) If more than one (1) insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the home state, as determined pursuant to paragraph (a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

- (7) "Nonadmitted insurance" means:
- (a) Any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance~~[-];~~ **and**
  - (b) **Any health and life insurance providing disability coverage:**
    - 1. **With policy limits in excess of those available from an admitted insurer;**
    - 2. **With participation limits; or**
    - 3. **Insuring occupations for which coverage is not procurable through an admitted insurer.**
- (8) "Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance in Kentucky.
- (9) **"Surplus lines" means nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is Kentucky.**

➔Section 2. KRS 304.10-040 is amended as follows:

- (1) ~~[Nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is Kentucky, hereinafter designated "Surplus Lines[-]"]~~ Surplus Lines~~[-]~~ may be procured from a nonadmitted insurer subject to the following conditions:
- (a)~~{(1)}~~ The insurance **shall**~~[-must]~~ be procured through a licensed surplus lines broker;~~[-]~~
  - (b)~~{(2)}~~ **After a diligent effort, a licensed agent with property and casualty lines of authority, or with health and life lines of authority if procuring disability insurance, has been unable to procure the full amount of insurance required from an insurer that is authorized to transact, and that actually writes, that kind and class of insurance in this state. If the licensed agent is able to procure an amount of insurance less than the full amount, only the excess amount needed to procure the full amount shall be exported;**~~[-The full amount of insurance required must not be procurable, after diligent effort by a licensed agent with a line of authority for property and casualty has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount procurable from authorized insurers.]~~
  - (c)~~{(3)}~~ The insurance **shall**~~[-must]~~ not be~~[-so]~~ exported for the **sole** purpose of securing~~[-advantages]~~ either~~[-as to]~~:
    - 1.~~{(a)}~~ A lower premium rate than would be accepted by an authorized insurer; or
    - 2.~~{(b)}~~ **More advantageous** terms of the insurance contract.
- (2)~~{(4)}~~ The requirements of subsection (1)~~{(2)}~~ of this section related to a diligent effort shall not be required for coverage procured or placed for an exempt commercial purchaser if:
- (a) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and
  - (b) The exempt commercial purchaser has subsequently requested in writing that the broker procure or place insurance from a nonadmitted insurer.

➔Section 3. KRS 304.10-060 is amended to read as follows:

- (1) The commissioner may by order declare eligible for export generally and without compliance with the provisions of **subsection (1)(b) and (c) of Section 2 of this Act**~~[-subsections (2) and (3) of KRS 304.10-040]~~, and 304.10-050, any class or classes of insurance coverage or risk for which he or she 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 commissioner.
- (2) The broker shall file with or as directed by the commissioner a memorandum as to each such coverage placed by the broker in an unauthorized insurer, in such form and content as the commissioner may reasonably require for the identification of the coverage and determination of the tax payable to the state relative thereto.

- (3) The broker, or a licensed agent of the authorized insurer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection (1) of this section, and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon shall be reported and paid by the insurer as required generally under KRS Chapter 136.

➔Section 4. KRS 304.10-120 is amended to read as follows:

- (1) Any person may be licensed as a surplus lines broker who:
- (a) Is a resident of Kentucky or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140; and
  - (b) Is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines.
- (2) Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.
- (3) The license fee shall be as specified in KRS 304.4-010.
- (4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 of this chapter.
- (5) Notwithstanding subsection (1) of this section, on or after July 1, 2002, an applicant licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.
- (6) If the resident surplus lines broker fails to maintain his or her agent license with lines of authority for property and casualty, *or health and life for a broker procuring surplus lines insurance providing disability coverage*, then the surplus lines broker license shall terminate and shall be promptly surrendered to the commissioner without demand.

➔Section 5. KRS 304.10-180 is amended to read as follows:

~~{(1) For single state risks located solely within this state,}~~ Each broker shall pay the following taxes:

~~(1){(a)}~~ A tax at the rate of three percent (3%) on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030, on surplus lines insurance *placed with an insured whose home state is Kentucky* subject to tax transacted by him or her with unauthorized insurers during the preceding calendar quarter as shown by his or her quarterly statement filed with the commissioner in accordance with KRS 304.10-170. The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the commissioner within thirty (30) days of the end of each calendar quarter. When collected the tax shall be credited to the insurance regulatory trust fund, as established by KRS 304.2-400;

~~(2){(b)}~~ The premium surcharge tax, to be remitted to the Kentucky Department of Revenue, in accordance with KRS 136.392; and

~~(3){(c)}~~ The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080. Each broker shall be subject to the provisions of this section and KRS 91A.080 and 91A.0802 to 91A.0810 as an insurance company.

~~{(2) For multistate risks, each broker shall pay a tax at the rate of eleven and eight tenths percent (11.8%) on premiums in accordance with the uniform Allocation Formula and other rules adopted by the Surplus Lines Insurance Multi State Compliance Compact Commission established in KRS 304.10-400. The tax collected on multistate risks shall be remitted to the Department of Insurance, which shall no less than semiannually divide and distribute the revenues as follows:~~

~~(a) Twenty five percent (25%) of the tax collected shall be retained by the Department of Insurance and treated as if collected pursuant to subsection (1)(a) of this section;~~

~~(b) Fifteen percent (15%) of the tax collected shall be distributed to the Department of Revenue and treated as if it was collected pursuant to KRS 136.392 and shall be used for the purposes of funding:~~

~~1. The Firefighters Foundation Program fund, as provided by KRS 95A.220 and 95A.262; and~~

~~2. The Law Enforcement Foundation Program Fund as provided by KRS 15.430; and~~

- (e) ~~Sixty percent (60%) of the tax collected shall be distributed to the Department for Local Government. The Department for Local Government:~~
1. ~~Shall determine the share of the tax for each city and county government on a pro rata basis pursuant to a distribution formula that is based upon the percentage of each city's and county's historical local premium tax collections from surplus lines insurance in calendar years 2007, 2008, and 2009, as compared to the total of all local insurance premium taxes on surplus lines insurance collected in calendar years 2007, 2008, and 2009;~~
  2. ~~Shall exclude any city or county from the distribution that collected a total of less than five hundred dollars (\$500) in insurance premium taxes from surplus lines insurance for calendar years 2007, 2008, and 2009 and the total amount of these city or county collections of less than five hundred dollars (\$500) shall be excluded from the determination of the total local insurance premium tax collections required by this subsection;~~
  3. ~~Shall not less than semiannually distribute the proceeds to city and county governments for the purposes of funding public safety, including but not limited to:~~
    - a. ~~Police;~~
    - b. ~~Fire;~~
    - c. ~~Emergency 911 services; and~~
    - d. ~~Ambulance services; and~~
  4. ~~May charge a yearly administrative fee equal to one percent (1%) of the total local government portion provided under this subsection, not to exceed ten thousand dollars (\$10,000) per year statewide.]~~

➔Section 6. KRS 304.99-085 is amended to read as follows:

- (1) A broker that fails to file an affidavit as provided by KRS 304.10-050 shall be liable for a penalty fee of one hundred dollars (\$100).
- (2) A broker that exhibits a pattern of failing to file affidavits as provided by KRS 304.10-050 shall be subject to a penalty fee not less than one thousand dollars (\$1,000) or more than five thousand (\$5,000), revocation of license, or both, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause.
- (3) A broker that fails to file a quarterly statement as provided by KRS 304.10-170 shall be liable for a penalty of five hundred dollars (\$500).
- (4) If any broker fails to remit the tax provided by KRS 304.10-180(1)~~{(a)}~~, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the commissioner shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than five hundred dollars (\$500).

➔Section 7. The following KRS section is repealed:

304.10-400 Surplus Lines Insurance Multi-State Compliance Compact.

**Signed by Governor April 26, 2018.**