



Ohio Revised Code

Section 3905.33 Unauthorized insurers; applicability and construction of federal provisions; due diligence.

Effective: June 17, 2011

Legislation: House Bill 122 - 129th General Assembly

(A) No person licensed under section 3905.30 of the Revised Code shall solicit, procure an application for, bind, issue, renew, or deliver a policy with any insurer that is not eligible to write insurance on an unauthorized basis in this state.

Pursuant to the "Nonadmitted and Reinsurance Reform Act of 2010," 15 U.S.C. 8201 et seq., 124 Stat. 1589, or any successor or replacement law, where this state is the home state of the insured, an insurer shall be considered eligible to write insurance on an unauthorized basis in this state if either of the following are true:

(1) The insurer meets the requirements and criteria in sections 5A(2) and 5C(2)(a) of the non-admitted insurance model act adopted by the national association of insurance commissioners, or alternative nationwide uniform eligibility requirements adopted by this state through participation in a compact or other nationwide system pursuant to 15 U.S.C. 8201 et seq., 124 Stat. 1589.

(2) For unauthorized insurance placed with, or procured from an unauthorized insurer domiciled outside the United States, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the national association of insurance commissioners.

(B)(1) No surplus lines broker shall solicit, procure, place, or renew any insurance with an unauthorized insurer unless an agent or the surplus lines broker has complied with the due diligence requirements of this section and is unable to procure the requested insurance from an authorized insurer.

Due diligence requires an agent to contact at least five of the authorized insurers the agent represents, or as many insurers as the agent represents, that customarily write the kind of insurance required by the insured. Due diligence is presumed if declinations are received from each authorized insurer contacted. If any authorized insurer fails to respond within ten days after the



initial contact, the agent may assume the insurer has declined to accept the risk.

(2) Due diligence shall only be performed by an agent licensed in this state that holds an active property and casualty insurance agent license.

(3) An insurance agent or surplus lines broker is exempt from the due diligence requirements of this section if the agent or surplus lines broker is procuring insurance from a risk purchasing group or risk retention group as provided in Chapter 3960. of the Revised Code.

(4) An insurance agent or surplus lines broker is exempt from the due diligence requirements of this section if the agent or surplus lines broker is seeking to procure or place unauthorized insurance for a person that qualifies as an exempt commercial purchaser under section 3905.331 of the Revised Code and both of the following are true:

(a) The surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight.

(b) After receipt of the disclosure required under division (B)(4)(a) of this section, the exempt commercial purchaser has requested in writing that the insurance agent or broker procure or place the insurance from an unauthorized insurer.

(C) Except when exempt from due diligence requirements under division (B) of this section, an insurance agent who procures or places insurance through a surplus lines broker shall obtain an affidavit from the insured acknowledging that the insurance policy is to be placed with a company or insurer not authorized to do business in this state and acknowledging that, in the event of the insolvency of the insurer, the insured is not entitled to any benefits or proceeds from the Ohio insurance guaranty association. The affidavit must be on a form prescribed by the superintendent. The agent shall submit the originally executed affidavit to the surplus lines broker within thirty days after the effective date of the policy. If no other agent is involved, the surplus lines broker shall obtain the affidavit from the insured.

The surplus lines broker shall maintain the originally executed affidavit or a copy of the affidavit,



and the originating agent shall keep a copy of the affidavit, for at least five years after the effective date of the policy to which the affidavit pertains. A copy of the affidavit shall be given to the insured at the time the insurance is bound or a policy is delivered.

(D) For the purpose of carrying out the "Nonadmitted and Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 et seq., or any successor or replacement law, the superintendent shall conduct a fiscal analysis of the impact of entering into a multi-state agreement or compact for determining eligibility for placement of unauthorized insurance and for payment, reporting, collection, and allocation of the tax on unauthorized insurance. If the fiscal analysis indicates that entering into a multi-state agreement or compact is advantageous to this state, the superintendent may enter into the surplus lines insurance multi-state compliance compact adopted by the national conference of insurance legislators and known as "SLIMPACT," as amended on December 21, 2010, and including any subsequent amendment; or, if it is in this state's financial best interest, the superintendent shall request that the general assembly authorize the superintendent to enter into a different multi-state agreement or compact.

(E) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of sections 3905.30 to 3905.38 of the Revised Code.