

# State of Wisconsin



2017 Senate Bill 77

Date of enactment: **June 21, 2017**  
Date of publication\*: **June 22, 2017**

## 2017 WISCONSIN ACT 16

AN ACT *to renumber and amend* 101.654 (2) (a) 2.; *to amend* 611.02 (1) (a), 618.41 (1), 618.41 (3) and 618.41 (5); and *to create* 101.654 (2) (a) 2. a., 101.654 (2) (a) 2. b., 611.20 (5), 618.40 (3m), 618.41 (9) (c), 618.41 (13) and 646.01 (1) (b) 20. of the statutes; **relating to:** surplus lines insurance policies issued by domestic insurers.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1d.** 101.654 (2) (a) 2. of the statutes is renumbered 101.654 (2) (a) 2. (intro.) and amended to read:

101.654 (2) (a) 2. (intro.) A policy of general liability insurance issued by an insurer authorized to do business in this state insuring the applicant in the amount of at least \$250,000 per occurrence because of bodily injury to or death of others or because of damage to the property of others; and issued by one of the following:

**SECTION 1f.** 101.654 (2) (a) 2. a. of the statutes is created to read:

101.654 (2) (a) 2. a. An insurer authorized to do business in this state.

**SECTION 1g.** 101.654 (2) (a) 2. b. of the statutes is created to read:

101.654 (2) (a) 2. b. An insurer that is eligible to provide insurance as a surplus lines insurer in one or more states.

**SECTION 1j.** 611.02 (1) (a) of the statutes is amended to read:

611.02 (1) (a) *Domestic insurers.* This chapter applies to all insurance corporations, including domestic surplus lines insurers, as defined in s. 618.40 (3m), organized under the laws of this state, except those expressly governed by other chapters.

**SECTION 1m.** 611.20 (5) of the statutes is created to read:

611.20 (5) **DOMESTIC SURPLUS LINES INSURANCE.** The commissioner may issue to a domestic insurer a certificate of authority to do business in this state as a domestic surplus lines insurer, as defined in s. 618.40 (3m).

**SECTION 1p.** 618.40 (3m) of the statutes is created to read:

618.40 (3m) "Domestic surplus lines insurer" means an insurer that has a certificate to do business as a domestic surplus lines insurer under s. 618.41 (13).

**SECTION 1r.** 618.41 (1) of the statutes is amended to read:

618.41 (1) **GENERAL PERMISSION.** A domestic surplus lines insurer or a nondomestic insurer which has not obtained a certificate of authority to do business in this state under s. 618.12 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements specified in this section.

**SECTION 1t.** 618.41 (3) of the statutes is amended to read:

618.41 (3) **SOLICITATION PROHIBITED.** Nothing in subs. (1) and (2) permits the solicitation of business in this state by or on behalf of an insurer without a certificate of authority. The commissioner may by rule prescribe the manner in which insurance agents or brokers may adver-

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

tise the availability of their services in procuring, on behalf of persons seeking insurance, contracts with domestic surplus lines insurers or with insurers without a certificate of authority.

**SECTION 2.** 618.41 (5) of the statutes is amended to read:

618.41 (5) **TRADE PRACTICES.** With respect to contracts made under this section, nondomestic insurers and domestic surplus lines insurers are subject to s. 628.34 and rules promulgated thereunder.

**SECTION 3.** 618.41 (9) (c) of the statutes is created to read:

618.41 (9) (c) *Surplus lines policies issued by domestic surplus lines insurers.* Notwithstanding par. (a), every new or renewal insurance policy procured and delivered under this section by a domestic surplus lines insurer shall bear the name and address of the insurance agent or broker who procured it and shall have stamped or affixed upon it the following: “This insurance contract is issued and delivered as a surplus line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1), Wisconsin Statutes, requires payment by the policyholder of 3 percent tax on gross premium. If the insurer that issued and delivered this policy becomes insolvent, insureds or claimants will not be eligible for Wisconsin Insurance Security Fund protection under chapter 646 of the Wisconsin Statutes.”

**SECTION 4.** 618.41 (13) of the statutes is created to read:

618.41 (13) **DOMESTIC SURPLUS LINES INSURERS.** (a) An insurer domiciled in this state may submit to the commissioner an application for a certificate that permits the insurer to provide surplus lines insurance as a domestic surplus lines insurer. The commissioner shall issue the certificate to the insurer if the insurer satisfies all of the following requirements:

1. The insurer’s board of directors has adopted a resolution requesting to be certified as a domestic surplus lines insurer.

2. The insurer is eligible to provide surplus lines insurance in a state other than this state.

3. The insurer has capital and surplus of no less than \$15,000,000.

4. If the insurer applying for a certificate under this subsection has issued insurance policies in this state as a domestic insurer, the insurer includes in its application a plan for the insurer’s proposed treatment of those policies in compliance with chs. 600 to 655.

(b) A domestic surplus lines insurer is subject to chs. 600 to 655 as follows:

1. A domestic surplus lines insurer is subject to all requirements of this subchapter and the requirements that apply to a domestic insurer organized under ch. 611.

2. Notwithstanding subd. 1., a surplus lines insurance policy issued in this state by a domestic surplus lines insurer is only subject to the requirements of this section and the rules promulgated under this section and shall be exempt from all statutory requirements, including requirements relating to insurance rating plans, policy forms, policy cancellation and nonrenewal, and premium charged to the insured, in the same manner as a surplus lines insurance policy issued by a nondomestic insurer.

3. Nothing in this section shall be construed to affect the application of ch. 646 to insurance policies that were issued by a domestic insurer prior to that domestic insurer obtaining a certificate to do business as a domestic surplus lines insurer under this subsection.

(c) A domestic surplus lines insurer shall be considered a nonadmitted insurer as defined in [15 USC 8206](#) with respect to surplus lines insurance the domestic surplus lines insurer issues in this state.

(d) Insurance transacted by a domestic surplus lines insurer under this section is subject to taxation as specified under s. 618.43.

(e) A surplus lines insurance policy issued in this state by a domestic surplus lines insurer under this section is not subject to the Wisconsin insurance security fund under ch. 646.

(f) No domestic surplus lines insurer may offer insurance other than under this section.

(g) A domestic surplus lines insurer, after obtaining a certificate to do business as a domestic surplus lines insurer under this section, may not apply to the commissioner to issue policies other than as a domestic surplus lines insurer.

**SECTION 5.** 646.01 (1) (b) 20. of the statutes is created to read:

646.01 (1) (b) 20. A surplus lines insurance policy written by a domestic surplus lines insurer under s. 618.41 (1).

**SECTION 5m. Initial applicability.**

(1) The renumbering and amendment of section 101.654 (2) (a) 2. of the statutes and the creation of section 101.654 (2) (a) 2. a. and b. of the statutes first apply to an application for a certificate of financial responsibility submitted to the department of safety and professional services on the effective date of this subsection.