

Ins 6.06 Unauthorized insurance. (1) **PURPOSE.** This rule is intended to interpret applicable statutes including, without limitation because of enumeration, sections 201.32 (1), 203.07, 206.41 (2), 208.36, 208.37 and 209.15, Wis. Stats.

(2) **UNAUTHORIZED INSURANCE PROHIBITED.** (a) No unauthorized insurance company or other unauthorized insurer shall take or receive any application for insurance in this state or shall receive or collect a premium on any part thereof for such insurance.

(b) No officer, agent, solicitor, or broker or other employe of any insurance company or other unauthorized insurer shall take or receive any application for insurance in this state or shall receive or collect a premium for any part thereof for such insurance.

(c) No person shall, in this state, directly or indirectly, act as agent for or otherwise represent or aid on behalf of another any insurer not then authorized to transact such insurance in this state, in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state.

(d) The provisions of this subsection do not apply to: 1. the lawful transaction of surplus lines insurance, 2. the lawful transaction of reinsurance by insurers, 3. transactions involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(3) **VALIDITY OF CONTRACTS.** Contracts of insurance placed in effect by unauthorized insurers in violation of the provisions of this rule are unenforceable by the insurer.

(4) **REPORTING OF UNAUTHORIZED INSURANCE.** (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner of insurance every insurance policy or contract which has been entered into by an insurer not licensed to transact such insurance in this state.

(b) Every person, firm, or corporation acting in the capacity of insurance adviser, counselor, or analyst in accordance with the provisions of section 209.045, Wis. Stats., shall report to the commissioner of insurance every insurance policy or contract which has been entered into by an insurer not licensed to transact such insurance in this state.

(5) **PREMIUM TAX ON UNAUTHORIZED INSURANCE.** The provisions of this rule do not waive or alter the requirements of section 76.33, Wis. Stats.

History: Cr. Register, March, 1960, No. 51, eff. 4-1-60.

Ins 6.07 Surplus lines insurance. (1) **PURPOSE.** This rule is intended to implement and interpret applicable statutes including but not limited to sections 76.33, 200.03 (6), 201.62, 201.63, 203.07, 203.54, and 209.15, Wis. Stats., for the purpose of establishing minimum requirements for the transaction of surplus lines insurance.

Register, May, 1960, No. 53

(2) SCOPE. This rule applies to the authority of an agent to procure the kinds of insurance provided for under section 201.04 (1), (2), (5), (12) and (15), Wis. Stats., from companies not licensed in this state.

(3) DEFINITIONS. (a) Surplus lines agent means a resident agent authorized under section 209.04, Wis. Stats., who is granted a surplus lines license in accordance with the provisions of section 201.63, Wis. Stats., and this rule.

(b) Surplus lines insurer means an unauthorized insurer in which an insurance coverage is placed or may be placed under the provisions of this rule.

(4) SURPLUS LINES INSURANCE AUTHORIZED. (a) If the insurance coverages, specified in subsection (2), of subjects resident, located, or to be performed in this state cannot be procured from licensed insurers, such coverages, hereinafter designated as surplus lines insurance, may be procured from unauthorized insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines as provided in subsection (5).
2. The insurer must be an eligible surplus lines insurer under the provisions of subsection (8).
3. The insurance must be so placed through a licensed Wisconsin agent resident in Wisconsin.
4. The other applicable provisions of this surplus lines rule must be complied with.

(5) ELIGIBILITY FOR SURPLUS LINES INSURANCE. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in excess of the amount so procurable from licensed insurers. For the purposes of this rule, diligent effort shall mean the refusal of coverage by at least 3 licensed insurers.

(b) The ability to obtain coverage at a lower premium is not recognized as a valid cause for placing such coverage in an unauthorized insurer.

(c) No surplus lines insurer shall offer or make available any preferential treatment or differentiation in rate or coverage based solely on employment, membership, or affiliation in any organization, group, or association.

(d) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of the coverage or unless the use would not be contrary to the purposes of this rule or applicable statutes with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(6) REQUIREMENTS FOR SURPLUS LINES CONTRACTS. (a) Every insurance contract procured and delivered as a surplus line coverage pursuant to this rule shall bear the name and address of the insurer.

ance agent who procured it and shall have stamped or affixed upon it the following: This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Wisconsin insurance statutes and administrative code. Section 76.33, Wis. Stats., requires payment of 3% premium tax.

(b) Surplus lines contracts shall contain a provision designating either a Wisconsin resident or the commissioner of insurance as attorney for service of summons and all other legal process.

(7) VALIDITY OF CONTRACTS. (a) Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this rule shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

(b) A contract of insurance placed in effect by an unauthorized insurer in violation of the provisions of this rule is unenforceable by the insurer.

(8) ELIGIBILITY OF SURPLUS LINES INSURERS. (a) A surplus lines agent shall not knowingly place surplus lines insurance with insurers unsound financially. The agent shall make a reasonable effort to ascertain the financial condition of the unauthorized insurer before placing insurance therewith.

(b) This rule shall not be deemed to cast upon the commissioner of insurance any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer.

(9) SURPLUS LINES AGENT'S LICENSE. (a) The commissioner of insurance may issue a surplus lines license to any authorized agent which shall grant such agent authority to procure the kinds of insurance provided for in this rule from companies not licensed in this state under the conditions prescribed in this rule. Every license issued pursuant to this subsection shall be for a term expiring on January 31 next following the date of issuance and may be renewed for ensuing periods of 12 months. Before any such license shall be issued and before each renewal thereof a written application shall be filed by the applicant in such form as the commissioner may prescribe and the fee provided therefor by this rule shall be paid.

(b) The fee for issuance of a surplus lines license shall be \$50 in cities of the first class and \$15 elsewhere.

(c) Every surplus lines agent shall execute and deliver to the commissioner of insurance a bond in the penal sum of \$1,000 with such sureties as the commissioner shall approve, conditioned that the agent will comply with all the requirements of this rule.

(10) PROCEDURE FOR EFFECTING SURPLUS LINES CONTRACTS. (a) Before any insurance shall be procured in an unlicensed company the agent shall make an affidavit which shall be promptly filed with the commissioner of insurance, that he is after diligent effort unable to procure, from any licensed insurer or insurers, the full amount of insurance required to protect the interest of the insured.

(b) Within 30 days after the effectuation of any surplus lines insurance the surplus lines agent shall file with the commissioner of insurance an exact copy of the policy so issued. If a policy has not been issued, the surplus lines agent shall so file an exact copy of

his certificate, cover note, or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the commissioner an exact copy of any substitute certificate, cover note, or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note, or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the commissioner as to the substance of any change represented by such substitute certificate, cover note, or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

(c) Upon placing a surplus line coverage, the surplus lines agent 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, a certificate, cover note, or other confirmation of insurance. Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be 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 document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(d) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he 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.

(e) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note, or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note or confirmation, or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this surplus lines rule if originally issued on such basis.

(f) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent 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 certificate, cover note, or confirmation theretofore issued.

(11) RECORDS OF SURPLUS LINES AGENT. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;
2. Brief general description of property insured and where located;

3. Gross premium charged;
4. Return premium paid, if any;
5. Rate of premium charged upon the several items of property;
6. Effective date of the contract, and the terms thereof;
7. Name and post office address of the insured;
8. Name and home office address of the insurer;
9. Amount collected from the insured; and
10. Other information as may be required by the commissioner of insurance.

(b) The record shall at all times be open to examination by the commissioner of insurance without notice, and shall be so kept available and open to the commissioner for 3 years next following expiration or cancellation of the contract.

(12) ANNUAL REPORT OF SURPLUS LINES AGENT. Each surplus lines agent shall, before March 1 in each year, make a report to the commissioner of insurance for the preceding calendar year on the form prescribed by him, of the facts required by subsection (11) and further showing that the amount of insurance procured from such unauthorized insurer or insurers is only the amount in excess of the amount so procurable from licensed insurers.

(13) PAYMENT OF PREMIUM TAX. Every surplus lines agent shall, before March 1 in each year, collect from the insureds and remit to the commissioner of insurance the state premium tax of 3% on the amount of gross premiums received for direct insurance, less return premiums and cancellations on direct insurance on risks in this state. This tax shall be in lieu of all taxes and fire department dues.

(14) SURPLUS LINES AGENTS MAY ADVERTISE. Any agent who is granted a surplus lines license in accordance with the provisions of this rule may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by Wisconsin statutes and this rule.

(15) SURPLUS LINES AGENTS' COMMISSIONS. Agents licensed in accordance with the provisions of this rule may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other resident licensed surplus lines agent.

(16) PENALTY. Any violation of this rule shall subject the agent to a revocation of his license.

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