



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 16
[2017 Senate Bill 77]

**Provision of Surplus Lines
Insurance by Domestic Insurance
Corporations**

BACKGROUND AND PRIOR LAW

Generally, surplus lines insurance policies offer coverage that the standard insurance market does not provide, typically for relatively high risks. Surplus lines insurance is subject to more flexible legal requirements than apply to standard insurance.

Prior to 2017 Wisconsin Act 16, Wisconsin law authorized only nondomestic insurers to provide surplus lines insurance premiums in Wisconsin.

2017 WISCONSIN ACT 16

2017 Wisconsin Act 16 authorizes domestic insurance corporations to provide surplus lines insurance in Wisconsin, subject to certain requirements, and specifies the application of various laws and requirements to surplus lines insurance policies provided by domestic surplus lines insurers.

Eligibility for Certificate

The Act requires the Wisconsin Commissioner of Insurance to issue a certificate permitting an insurer domiciled in Wisconsin to provide surplus lines insurance, if the insurer satisfies all of the following requirements:

- The insurer's board of directors has adopted a resolution requesting to be certified as a domestic surplus lines insurer.
- The insurer is eligible to provide surplus lines insurance in a state other than this state.
- The insurer has capital and surplus of no less than \$15 million.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

- If the insurer has issued insurance policies as a domestic insurer in the past, the insurer has provided a plan for the insurer's proposed treatment of those policies in the insurer's application for the certificate (see the related restrictions discussed below.)

Application of Other Laws to Domestic Surplus Lines Insurers

The Act specifies that a surplus lines insurance policy issued by a domestic insurer is only subject to the requirements of the surplus lines insurance statute, and not any other requirements relating to insurance policies, in the same manner as a surplus line insurance policy issued by a nondomestic insurer.

The Act clarifies that certain statutory requirements that are generally applicable to domestic insurance corporations continue to apply to a domestic corporation that offers surplus lines insurance. In addition, the Act specifies that domestic surplus lines insurers are subject to certain prohibitions relating to unfair marketing practices.

The Act specifies that a certified domestic surplus lines insurer shall be considered a nonadmitted insurer for purposes of federal law.¹ The Act also provides that insurance transacted by a domestic surplus lines insurer is subject to the same taxation as applies to nonadmitted insurers.

Finally, the Act specifies that policies issued by domestic surplus lines insurers are not subject to the Wisconsin Insurance Security Fund which provides insurance continuation protection, funded with assessments on insurance premiums.

Requirements and Restrictions

The Act prohibits a domestic surplus lines insurer from offering insurance other than surplus lines insurance. The Act also prohibits a domestic surplus lines insurer, after obtaining a certificate to do business as a domestic surplus lines insurer, from applying to issue policies other than as a domestic surplus lines insurer.

In addition, the Act requires every new or renewed insurance policy procured and delivered by a domestic surplus lines insurer to bear certain information, including:

- The name and address of the insurance agent or broker who procured the policy.
- A statement that the policy is issued and delivered as a surplus line coverage pursuant to the Wisconsin statute relating to surplus lines insurance, that a 3% tax applies to

¹ The federal Nonadmitted and Reinsurance Reform Act (NRRA), which took effect as part of the Dodd-Frank legislation in 2011, created uniform eligibility criteria for surplus line insurers and a uniform approach to state taxation of surplus lines insurance premiums. Except as authorized under a uniform law, the NRRA generally prohibits a state from imposing eligibility requirements on "nonadmitted insurers," generally defined to mean insurers that are not licensed to engage in the business of insurance in the state. [15 U.S.C. ss. 8204 (1) and 8206 (11) (A).]

gross premiums for the policy, and that the policy is not eligible for Wisconsin Insurance Security Fund protection.

Coverage Requirements for Certain Building Contractors

Wisconsin law, unchanged by the Act, requires a contractor to obtain an annual certificate of financial responsibility from the Department of Safety and Professional Services (DPS) before obtaining a building permit for a one- or two-family dwelling. One option for satisfying the financial responsibility requirement is proof of a policy of general liability insurance insuring the applicant in the amount of at least \$250,000 per occurrence.

Beginning with certificates submitted to DPS after the effective date of the Act, the Act modifies that proof of responsibility requirement to allow the insurance policy to be provided by an insurer that is eligible to provide insurance as a surplus lines insurer in one or more states.

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