

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 38.2-1857.1, 38.2-1857.2, 38.2-1857.4 through 38.2-1857.7,*
 3 *38.2-1857.9, 38.2-4806, 38.2-4807, 38.2-4809, 38.2-4810, and 38.2-4811 of the Code of Virginia and*
 4 *to amend the Code of Virginia by adding sections numbered 38.2-4805.1 and 38.2-4805.2, relating to*
 5 *surplus lines insurance; licensing of brokers and premium tax liability.*

6 [H 2286]

7 Approved

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That §§ 38.2-1857.1, 38.2-1857.2, 38.2-1857.4 through 38.2-1857.7, 38.2-1857.9, 38.2-4806,**
 10 **38.2-4807, 38.2-4809, 38.2-4810, and 38.2-4811 of the Code of Virginia are amended and reenacted**
 11 **and that the Code of Virginia is amended by adding sections numbered 38.2-4805.1 and**
 12 **38.2-4805.2 as follows:**

13 § 38.2-1857.1. Property and casualty insurance agents may be licensed as surplus lines brokers for
 14 certain insurance from unlicensed insurers.

15 The Commission may issue a surplus lines broker's license to any individual or business entity
 16 actively licensed as a property and casualty insurance agent for the procuring of insurance of the classes
 17 enumerated in §§ 38.2-109 through ~~38.2-122~~ 38.2-122.2 and §§ 38.2-124 through 38.2-134 from insurers
 18 not licensed to transact insurance business in this Commonwealth. However, nothing in this ~~chapter~~
 19 *article* or in Chapter 48 (§ 38.2-4806 et seq.) of this title shall apply to the sale, solicitation or
 20 negotiation of (i) the contracts of insurance cited in subsection C of § 38.2-1802 or (ii) *contracts of*
 21 *insurance for any insured whose home state, as defined in § 38.2-4805.2, is a state other than this*
 22 *Commonwealth.*

23 § 38.2-1857.2. Applications for surplus lines brokers' licenses.

24 A. Every original applicant for a surplus lines broker's license shall apply for such license in a form
 25 and manner prescribed by the Commission, and containing any information the Commission requires.

26 B. Prior to issuance of a license, the applicant shall file with the Commission a certification or
 27 attestation that the applicant has, and thereafter shall keep in force for as long as the license remains in
 28 effect, a bond in favor of this Commonwealth in the amount of \$25,000 with corporate sureties licensed
 29 by the Commission. The bond shall be conditioned that the broker will conduct business under the
 30 license in accordance with the provisions of the surplus lines insurance law and that he will promptly
 31 remit the taxes provided by such law. The bond shall not be terminated unless at least thirty calendar
 32 days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date
 33 of the bond, the licensed surplus lines broker fails to file with the Commission a certification or
 34 attestation that a new bond satisfying the requirements of this section has been put into effect, the
 35 surplus lines broker license shall terminate and the licensee shall be required to apply for a new surplus
 36 lines broker license.

37 C. Notwithstanding any other provisions of this title, a person licensed as a surplus lines broker in
 38 his home state ~~or province~~, *as defined in § 38.2-1800*, shall receive a nonresident surplus lines broker
 39 license subject to meeting the requirements set forth in § 38.2-1857.9.

40 D. Except where prohibited by state or federal law, by submitting an application for license, the
 41 applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of
 42 process on the applicant in any action or proceeding arising in this Commonwealth out of or in
 43 connection with the exercise of the license. Such appointment of the clerk of the Commission as agent
 44 for service of process shall be irrevocable during the period within which a cause of action against the
 45 applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth.
 46 Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8
 47 (§ 38.2-800 et seq.) of this title.

48 E. A business entity acting as a surplus lines broker is required to obtain a surplus lines broker
 49 license. In addition to the other requirements in this section, and before approving the application, the
 50 Commission shall find that:

51 1. The business entity has paid the fee set forth in ~~this section~~ § 38.2-1857.3; and

52 2. ~~The If:~~

53 a. *A resident of this Commonwealth, the business entity has designated a licensed Virginia Property*
 54 *and Casualty insurance agent to be responsible for the business entity's compliance with the insurance*
 55 *laws, rules and regulations of this Commonwealth; or*

56 b. *Not a resident of this Commonwealth, the business entity has designated a producer licensed in*

57 *his home state to be responsible for the business entity's compliance with the insurance laws, rules and*
 58 *regulations of this Commonwealth.*

59 F. The Commission may require any documents reasonably necessary to verify the information
 60 contained in an application.

61 § 38.2-1857.4. Term of licenses; renewal.

62 ~~A. Every license issued pursuant to this chapter article shall be for a term expiring on June 30 next~~
 63 ~~following the date of its issuance and may be renewed for the ensuing license year, upon the filing of~~
 64 ~~an application in the form prescribed by the Commission and payment of the nonrefundable renewal~~
 65 ~~application processing fee prescribed in § 38.2-1857.3.~~

66 ~~B. Any licensed resident surplus lines broker who has moved his residence from this Commonwealth~~
 67 ~~shall have all licenses immediately terminated by the Commission.~~

68 § 38.2-1857.5. Requirement to report to Commission.

69 A. Each licensed surplus lines broker shall report within thirty calendar days to the Commission any
 70 change in his residence or name.

71 B. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or business entity
 72 licensed as a surplus lines broker in this Commonwealth and operating under an assumed or fictitious
 73 name shall notify the Commission, at the earlier of the time the application for a surplus lines broker
 74 license is filed or within thirty calendar days from the date the assumed or fictitious name is adopted,
 75 setting forth the name under which the surplus lines broker intends to operate in Virginia. The
 76 Commission shall also be notified within thirty calendar days from the date of cessation of the use of
 77 such assumed or fictitious name.

78 C. Each licensed surplus lines broker convicted of a felony shall report within thirty calendar days to
 79 the Commission the facts and circumstances regarding the criminal conviction.

80 D. Each licensed surplus lines broker shall report to the Commission within thirty calendar days of
 81 the final disposition of the matter any administrative action taken against him in another jurisdiction or
 82 by another governmental agency in this Commonwealth. Such report shall include a copy of the order,
 83 consent to order or other relevant legal documents.

84 ~~E. The license authority of any Any licensed resident surplus lines broker shall terminate immediately~~
 85 ~~when such surplus lines broker who has moved his residence from this Commonwealth shall have all~~
 86 ~~licenses immediately terminated by the Commission, whether or not the surplus lines broker has notified~~
 87 ~~the Commission has been notified of such move. Nothing shall prohibit such surplus lines broker from~~
 88 ~~applying for a license as a nonresident surplus lines broker.~~

89 F. The license authority of any business entity licensed as a surplus lines broker shall terminate
 90 immediately if the sole licensed responsible producer designated pursuant to subdivision E 2 of
 91 § 38.2-1857.2 for the business entity's compliance with the insurance laws, rules and regulations of this
 92 Commonwealth is removed for any reason, and a new responsible producer has not been appointed
 93 designated and the Commission notified within ~~thirty~~ 30 calendar days of such removal and of the
 94 newly designated responsible producer.

95 § 38.2-1857.6. Accepting and placing surplus lines business.

96 No surplus lines broker shall accept surplus lines business from any person other than an applicant
 97 for insurance or a duly licensed property or casualty insurance agent, nor shall such surplus lines broker
 98 compensate any person other than a duly licensed property or casualty insurance agent for such business.
 99 No person other than an applicant for insurance or a duly licensed property or casualty insurance agent
 100 shall place surplus lines business with a surplus lines broker licensed under this chapter article nor shall
 101 any person other than a duly licensed property or casualty insurance agent accept compensation for such
 102 business.

103 § 38.2-1857.7. Grounds for placing on probation, refusal to issue or renew, revocation, or suspension
 104 of license.

105 The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on
 106 probation, suspend, revoke or refuse to issue or renew any surplus lines broker's license for any one or
 107 more of the following causes:

108 1. Providing materially incorrect, misleading, incomplete or untrue information in the license
 109 application or any other document filed with the Commission;

110 2. Violating any insurance laws, or violating any regulation, subpoena or order of the Commission or
 111 of another state's insurance regulatory authority;

112 3. Obtaining or attempting to obtain a license through misrepresentation or fraud;

113 4. Improperly withholding, misappropriating or converting any moneys or properties received in the
 114 course of doing business;

115 5. Engaging in the practice of rebating;

116 6. Engaging in twisting or any form thereof, where "twisting" means inducing an insured to terminate
 117 an existing policy and purchase a new policy through misrepresentation;

118 7. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application
119 for insurance;

120 8. Having been convicted of a felony;

121 9. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

122 10. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, or
123 untrustworthiness in the conduct of business in this Commonwealth or elsewhere, or demonstrating
124 financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds;

125 11. Having an insurance producer, surplus lines broker, or consultant license, or its equivalent,
126 denied, suspended or revoked in any other state, province, district or territory;

127 12. Forging another's name to an application for insurance or to any document related to an
128 insurance transaction;

129 13. Improperly using notes or any other reference material to complete an examination for an
130 insurance license;

131 14. Knowingly accepting insurance business from an individual who is not licensed;

132 15. Failing to comply with an administrative or court order imposing a child support obligation; or

133 16. Failing to pay state income *or premium license* tax or comply with any administrative or court
134 order directing payment of state income tax.

135 § 38.2-1857.9. Licensing nonresidents; clerk of the Commission to be appointed agent for service of
136 process; reciprocal agreements with other states and Canadian provinces.

137 A. An individual or business entity who is not a resident as defined in § 38.2-1800, but who is a
138 resident of another state, territory, or province of Canada, shall receive a nonresident surplus lines
139 broker license if:

140 1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently
141 licensed or otherwise authorized as a resident surplus lines broker and is in good standing in his home
142 state;

143 2. The applicant has submitted the proper application for licensure, or in lieu thereof has submitted a
144 copy of the application for a Surplus Lines Broker license submitted to the home state, and has paid the
145 fees required by § 38.2-1857.3; and

146 3. The applicant's home state issues nonresident surplus lines broker licenses to residents of this
147 Commonwealth on the same basis, or will permit a resident of this Commonwealth to act as a surplus
148 lines broker in such state without requiring a license.

149 B. For the purposes of this ~~chapter~~ *article*, any individual whose place of residence and place of
150 business are in a city or town located partly within the Commonwealth and partly within another state
151 may be considered as meeting the requirements as a resident of this Commonwealth, provided the other
152 state has established by law or regulation similar requirements as to residence of such individuals.

153 C. The Commission may enter into a reciprocal agreement with an appropriate official of any other
154 state or province of Canada if such an agreement is required in order for a Virginia resident to be
155 similarly licensed as a nonresident in that state or province.

156 D. The Commission may verify the surplus lines broker's licensing status through the Producer
157 Database maintained by the NAIC, its affiliates or subsidiaries.

158 E. A nonresident surplus lines broker who moves from one state or province to another state or
159 province shall file a change of address and provide a certification from the new home state or province
160 within ~~thirty~~ 30 calendar days of the change of legal residence. No fee or license application is required.

161 F. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that
162 the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

163 G. As used in this section, "home state" has the same meaning that is ascribed to the term in
164 § 38.2-1800.

165 § 38.2-4805.1. Application of chapter.

166 *Except as provided in subsection C of § 38.2-1802, this chapter shall apply to the sale, solicitation,
167 and negotiation of surplus lines insurance coverage for insureds whose home state, as defined in
168 § 38.2-4805.2, is this Commonwealth.*

169 § 38.2-4805.2. Definitions.

170 *As used in this chapter, unless the context requires a different meaning:*

171 "Eligible nonadmitted insurer" or "eligible surplus lines insurer" means a nonadmitted insurer
172 approved by the Commission pursuant to § 38.2-4811 with which a surplus lines broker may place
173 surplus lines insurance.

174 "Home state" means (i) the state in which an insured maintains its principal place of business or, in
175 the case of an individual, the individual's principal residence or (ii) if 100 percent of the insured risk is
176 located out of the state referred to in clause (i) of this definition, "home state" means the state to which
177 the greatest percentage of the insured's taxable premium for that insurance contract is allocated. When
178 more than one insured from an affiliated group are named insureds on a single insurance contract,

179 "home state" means the state of the member of the affiliated group that has the largest percentage of
180 premium attributed to it under such insurance contract.

181 "Licensed insurer" or "admitted insurer" means an insurer licensed in this Commonwealth to engage
182 in the business of insurance.

183 "NAIC" means the National Association of Insurance Commissioners.

184 "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this
185 Commonwealth. "Nonadmitted insurer" does not include a risk retention group as defined in
186 § 38.2-5101.

187 "Principal place of business" means the state where the insured maintains its headquarters and
188 where the insured's high-level officers direct, control, and coordinate the business activities of the
189 insured.

190 "Property and casualty insurance" means the classes of insurance defined in §§ 38.2-109 through
191 38.2-122.2 and §§ 38.2-124 through 38.2-134.

192 "Surplus lines broker" means an individual or business entity licensed pursuant to Article 5.1 of
193 Chapter 18 to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be
194 performed in this Commonwealth with nonadmitted insurers.

195 "Surplus lines insurance" means any property and casualty insurance permitted to be placed directly
196 by an insured or through a surplus lines broker with an eligible nonadmitted insurer.

197 § 38.2-4806. Notice to insured that insurance is not placed with a licensed insurer required.

198 A. For all policies of insurance procured under this chapter, the surplus lines broker procuring such
199 policies shall execute an affidavit in form and content as prescribed by the Commission affirming that
200 the insured was given the notice required and prescribed under subsection B of this section. The
201 affidavit shall be filed with the Commission within 30 calendar days after the end of the calendar
202 quarter in which any such insurance has been procured. The affidavit shall accompany the reports
203 required by subsection C of this section and subsection A of § ~~38.2-4807~~ and shall be considered a
204 sworn statement as to the validity and accuracy of such reports.

205 "Class" of insurance shall mean those classes enumerated in §§ ~~38.2-109 through 38.2-122~~ and
206 §§ ~~38.2-124 through 38.2-134~~.

207 A company is authorized to write the insurance coverage sought when it is licensed for that class of
208 insurance in this Commonwealth and has complied with the applicable provisions of Chapters 3
209 (§ ~~38.2-300 et seq.~~), 19 (§ ~~38.2-1900 et seq.~~), 20 (§ ~~38.2-2000 et seq.~~), and 26 (§ ~~38.2-2600 et seq.~~) of
210 this title concerning rules, rates and policy forms providing the insurance coverage sought, unless such
211 insurance has been exempted from filing by Commission order.

212 B. A notice in a form prescribed by the Commission shall be given to the insured under the
213 provisions of a policy procured pursuant to this chapter by the surplus lines broker procuring the policy
214 or by any duly licensed property and casualty insurance agent placing surplus lines business with the
215 surplus lines broker. The notice shall contain, but not be limited to, statements that the policy is being
216 procured from or has been placed with an insurer approved by the Commission for issuance of surplus
217 lines insurance in this Commonwealth, but not licensed or regulated by the Commission and that there is
218 no protection under the Virginia Property and Casualty Insurance Guaranty Association, established
219 under Chapter 16 (§ 38.2-1600 et seq.) of this title, against financial loss to claimants or policyholders
220 because of the insolvency of an unlicensed insurer. The notice shall also set forth the name, license
221 number and mailing address of the broker. The notice shall be given prior to placement of the insurance.
222 In the event coverage must be placed and become effective within 24 hours after referral of the business
223 to the surplus lines broker, the notice may be given promptly following such a placement. In addition, a
224 copy of the notice shall be affixed to the policy.

225 C. Within 30 calendar days after the end of each calendar quarter, each licensed surplus lines broker
226 shall file a report with the Commission summarizing the business transacted during that quarter. Such
227 report shall be on a form prescribed by the Commission and shall include for each surplus lines policy
228 written the direct gross premium, the policy number, the name of the insured, the policy period and the
229 name of the insurer from which coverage has been procured and any other information required by the
230 Commission.

231 § 38.2-4807. Licensees to keep records and file annual statement of policies.

232 A. Every licensed surplus lines broker shall keep in his office a complete record of, and file on a
233 form prescribed by the Commission in the office of the Commission annually on or before March 1,
234 subject to § ~~38.2-1304~~ a statement setting forth (i) each policy of insurance procured by him under this
235 chapter during the previous calendar year; (ii) the name and address of the insurer or insurers; (iii) the
236 inception and expiration dates of each policy; (iv) the perils insured against; (v) the location of each risk
237 so insured and the premium rate and the gross premium charged for each such policy of insurance; (vi)
238 the amount of premium returned; and (vii) any other information the Commission requires.

239 B. The record of each policy of insurance shall be kept open at all reasonable times to examination

240 by the Commission without notice for a period of not less than five years following termination of the
241 policy.

242 § 38.2-4809. Licensees to pay assessments and license taxes on insurers.

243 A. 1. Every licensed surplus lines broker or any person required to be licensed as a surplus lines
244 broker shall be subject to the annual assessment, penalties, and other provisions of §§ 38.2-400 and
245 38.2-403 and shall also be subject to the annual taxes, license taxes, penalties, and other provisions of
246 Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 on each policy of insurance procured by him
247 during the preceding calendar year with an insurer not licensed to transact insurance business in this
248 Commonwealth. *For policies effective on or after July 1, 2011, such payments shall be made based on*
249 *the direct gross premium income derived from policies for insureds whose home state is this*
250 *Commonwealth.*

251 2. *Every surplus lines broker subject to the provisions of this chapter shall, on or before March 1 of*
252 *each year, report under oath to the Commission, upon a form prescribed by the Commission, the direct*
253 *gross premium income derived from policies for insureds whose home state is this Commonwealth*
254 *during the preceding year ending December 31.*

255 3. *Every surplus lines broker failing to file the report required by this section shall be fined \$50 for*
256 *each day's failure to file the report.*

257 4. *Upon the failure of any such surplus lines broker to pay the premium license tax within the time*
258 *required by this section, there shall be added to such tax a penalty of 10 percent of the amount of the*
259 *tax and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 for the period*
260 *between the due date and the date of full payment. The Commission shall notify the surplus lines broker*
261 *of all additional amounts owed, and the surplus lines broker shall pay such amounts within 14 days of*
262 *the date of the notice.*

263 5. *Upon good cause shown, the Commission may accept late payment of the premium license tax*
264 *exclusive of penalties; however, interest shall be paid on such tax as prescribed in subdivision A 4.*

265 6. If any person overestimates and overpays the assessment or annual taxes, the Commission shall
266 order a refund of the amount of the overpayment to the person. The overpayment shall be refunded out
267 of the state treasury on the order of the Commission upon the Comptroller.

268 B. Each licensed surplus lines broker or any person required to be licensed as a surplus lines broker
269 whose annual premium *license* tax liability can reasonably be expected to exceed \$1,500 shall file a
270 quarterly tax report with the Commission. Such report shall be in a form prescribed by the Commission.
271 This report shall be filed no later than thirty calendar days after the end of each calendar quarter.
272 Notwithstanding any provision to the contrary, each such person shall pay the premium *license* tax owed
273 for the direct gross premiums adjusted for additional and returned premiums shown by each quarterly
274 tax report when such report is filed with the Commission.

275 C. In addition to other penalties provided by law, any licensed surplus lines broker or any person
276 required to be licensed as a surplus lines broker who willfully fails or refuses to pay the full amount of
277 the tax or assessment required by this chapter, either by himself or through his agents or employees, or
278 who makes a false or fraudulent return with intent to evade the tax or assessment hereby levied, or who
279 makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor.

280 D. If any licensed surplus lines broker or any person required to be licensed as a surplus lines broker
281 charges and collects from the insured the taxes and assessments required by this section, such person
282 shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth
283 under this chapter.

284 § 38.2-4810. Issuance and delivery of surplus lines policies; prior authority or information required.

285 Each policy or other written evidence of insurance procured pursuant to this chapter shall be
286 delivered promptly to the ~~Insured~~ *named insured shown on the policy's declarations page*. No surplus
287 lines broker shall issue or deliver any policy or other written evidence of insurance or represent that
288 insurance will be or has been granted by an unlicensed insurer unless (i) he has prior written authority
289 from such insurer for the insurance, (ii) he has received information from the insurer in the regular
290 course of business that the insurance has been granted, or (iii) an insurance policy providing the
291 insurance actually has been issued by the insurer and delivered to the ~~Insured~~ *named insured shown on*
292 *the policy's declarations page*.

293 § 38.2-4811. Surplus lines coverage to be placed only with unlicensed insurers approved by
294 Commission.

295 A. No surplus lines broker shall procure a policy of insurance with any insurer not licensed to
296 transact insurance business in this Commonwealth, unless such unlicensed insurer has prior approval of
297 the Commission to issue surplus lines insurance.

298 B. Any unlicensed *foreign* insurer wishing to be approved by the Commission to issue surplus lines
299 coverage may receive such approval upon providing:

300 1. ~~Satisfactory evidence of good repute and financial integrity~~ *Evidence that it is authorized to write*

301 *the type of insurance in its domiciliary jurisdiction; and*

302 2. Proof that it qualifies under a, b or e of this subdivision:

303 a. The unlicensed insurer has capital and surplus or its equivalent under the laws of its domiciliary
304 jurisdiction, which equal the greater of (i) the minimum capital and surplus requirements under
305 §§ 38.2-1028, 38.2-1029, 38.2-1030 or § 38.2-1031, or (ii) \$15 million.

306 (1) *The C. Notwithstanding the capital and surplus requirements of this subdivision B 2 a, an*
307 *unlicensed foreign insurer may be satisfied by an unlicensed insurer possessing less than the*
308 *mentioned capital and surplus receive approval upon an affirmative finding of acceptability by the*
309 *Commission. The finding shall be based upon such factors as quality of management, capital and surplus*
310 *of any parent company, company underwriting profit and investment income trends, market availability,*
311 *and company record and reputation within the industry. In no event shall the Commission make an*
312 *affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4.5*
313 *million.*

314 (2) An unlicensed alien insurer also shall provide evidence that it maintains in the United States an
315 irrevocable trust fund in a qualified U.S. financial institution on behalf of U.S. policyholders. This trust
316 fund at all times shall be valued at not less than \$2.5 million and shall consist of cash, securities, letters
317 of credit, or investments of substantially the same character and quality as those that are eligible
318 investments for the capital and statutory reserves of admitted insurers authorized to write like classes of
319 insurance in this Commonwealth. Such trust fund, which shall be included in any calculation of capital
320 and surplus or its equivalent, shall have an expiration date which at no time shall be less than five
321 years; and

322 b. In the case of any Lloyd's or other similar group, including incorporated and individual
323 unincorporated underwriters, the incorporated members of which shall not be engaged in any business
324 other than underwriting as a member of the group and shall be subject to the same level of solvency
325 regulation and control by the group's domiciliary regulator as are the unincorporated members, the
326 Lloyd's or other similar group maintains a trust fund of not less than \$50 million as security to the full
327 amount thereof for all policyholders and creditors in the United States of each member of the group, and
328 such trust shall likewise comply with the terms and conditions established in subdivision 2 a (2) for
329 alien insurers; and

330 c. In the case of an "insurance exchange" created by the laws of individual states, the insurance
331 exchange maintains capital and surplus, or the substantial equivalent of capital and surplus, of not less
332 than \$50 million in the aggregate. For insurance exchanges that maintain funds for the protection of all
333 insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus,
334 or the substantial equivalent of capital and surplus, of not less than \$3 million. If the insurance
335 exchange does not maintain funds for the protection of all insurance exchange policyholders, each
336 individual syndicate shall meet the minimum capital and surplus requirements of subdivision 2 a.

337 *€ D. An unlicensed alien insurer shall be deemed approved by the Commission if such insurer is*
338 *listed on the Quarterly Listing of Alien Insurers maintained by the NAIC International Insurers*
339 *Department.*

340 *E. Any such unlicensed foreign insurer approved by the Commission shall cause to be provided to*
341 *the Commission, not later than March 1 or the later date established by the insurer's state of domicile or*
342 *entry, a copy of its current annual statement certified by the insurer. Such later date established by the*
343 *insurer's state of domicile or entry shall not be later than August 31. The report shall be:*

- 344 1. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
- 345 2. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile.

346 In the case of an insurance exchange, such report may be an aggregate combined statement of all
347 underwriting syndicates operating during the period reported upon.

348 The Commission, at its discretion, may extend the period for filing an annual statement by a
349 maximum of two months.

350 *Ɔ F. If at any time the Commission has reason to believe that an eligible surplus lines insurer (i) is*
351 *in unsound financial condition, (ii) is no longer eligible under subdivision B 2 this section, (iii) has*
352 *willfully violated the laws of this Commonwealth, or (iv) does not make reasonably prompt payment of*
353 *just losses and claims in this Commonwealth or elsewhere, the Commission may declare it ineligible.*
354 *The Commission shall promptly mail notice of all such declarations to each surplus lines licensee.*