

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

§ 7304. Surplus Line Broker or Agent.

(a) *Issuance of Licenses; Fee; Authority Conferred by License.* The Insurance Commissioner, upon receipt of an application in proper form and proof of payment of a license fee of \$100 may issue a surplus line license to any duly qualified and licensed insurance broker or agent of the Commonwealth. The license shall permit the broker or agent named therein to act as broker or agent in the Commonwealth for any foreign company or insurer (or any alien company or insurer approved by the commissioner) not authorized to transact business in the Commonwealth in securing, issuing or placing policies of insurance, contracts of indemnity or surety bonds on property located in, or undertakings to be carried out in the Commonwealth companies.

(b) *Execution and Delivery of Bond; Amount of Bond; Condition; Rights Conferred by License; Expiration Date.* Before receiving a license, the surplus line broker or agent shall execute and deliver to the commissioner a bond in the penal sum of \$2,000 in such form and with such sureties as the commissioner shall approve, conditioned that the broker or agent will fully comply with all requirements of this division. The license shall entitle the broker or agent to transact business for any or all unauthorized insurance companies or insurers as provided in this division, and shall be annually be renewable.

(c) *Affidavit as Prerequisite to Procurement of Insurance; Contents.* Before the person named in the license may procure, effect or issue any insurance policy or indemnity contract or surety bond, the person shall in every case execute and file with the commissioner an affidavit in acceptable form that the insured is unable to procure in any company or companies or insurers admitted to do business in the Commonwealth the amount or kind of insurance described in the affidavit at rates not less than the minimum rates on the property promulgated by an authorized rating bureau or other bureau or conference whose rates have been accepted by the Insurance Commissioner.

(d) *Limitation on Issuance; Endorsement on Policy; Filing of Power of Attorney; Validity of Power.* Surplus line insurance shall only be issued after the insured has procured insurance in companies admitted to do business in the Commonwealth to the full amount which the companies are willing to write on the property. Every policy issued under this section shall be endorsed "Issued in an unauthorized company, under agent's (or broker's) License No. __," which endorsement shall be properly filled in and signed by the broker or agent. Before registering and delivering any such policy for an unauthorized insurance company or insurer, the broker or agent shall procure from the company or insurer a power of attorney empowering him as its attorney in fact to receive and accept on its behalf service of any and all writs, processes and summonses necessary to give complete jurisdiction of the company or insurer to any of the courts of the Commonwealth. The power of attorney shall be deemed to make the attorney the authorized agent of the company or insurer upon whom lawful service may be made of all writs, processes and summonses in any case, suit or proceeding in any court of the Commonwealth. The power of attorney shall be valid so long as the company or insurer has any liability existing in the Commonwealth on account of any outstanding policies or unpaid claims pending against it. The

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

broker or agent shall file the power of attorney with the Insurance Commissioner promptly on its receipt.

(e) *Record of Business; Filing of Statements; Contents.* Every broker or agent shall keep a separate account of the business done under a surplus line license and on or before the first day of July in each year, shall file with the commissioner a statement for the calendar year preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each company issuing any policy or contract, the amount of the insurance, the premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such other information and upon such form as required by the commissioner, and pay the commissioner an amount equal to taxes imposed by law on the premiums of like authorized insurance companies.

(f) *Status of Companies Issuing Insurance; Liability to Suit; Duty of Agent on Being Served with Process; Time for Answer; When Jurisdiction Deemed Acquired.* Every company, insurer or insurers making insurance under the provisions of this section shall be deemed and held to be doing business in the Commonwealth as an unlicensed concern, and may be sued upon any cause of action arising under any policy of insurance so issued and delivered by it. Any broker or agent being served with summons and complaint in any such case shall mail the summons and complaint, or true and complete copies thereof, by registered letter with proper postage affixed, properly addressed to the company sued. The company shall have 40 days within the date of the service of the summons and complaint upon the broker or agent in which to plead, answer or defend any such cause. Upon service of summons and complaint being had upon the broker or agent for the company, the court in which the action is begun shall be deemed to have fully acquired jurisdiction in personam of the defendant company so served.

(g) *Penalty for Failure to File Statement; Action for Recovery; Revocation of License; Conditions Prerequisite to Reissuance.* Every broker or agent who fails or refuses to make and file any required statement shall be liable for a fine of \$25 for each day of delinquency. The fine may be recovered in an action instituted by the commissioner in the name of the Commonwealth, the Attorney General representing him, in any court of competent jurisdiction. If any broker or agent shall:

- (1) Fail to make and file an annual statement; or
- (2) Refuse to allow the commissioner to inspect and examine the records of the business transacted pursuant to this section; or
- (3) Fail to keep records in the manner required by the commissioner; or
- (4) Refuse or neglect to immediately notify the insurance company for whom the broker or agent has placed, registered or delivered a policy, of the commencement of any action or proceeding in any court against the company; the license of the broker or agent shall immediately be revoked by the commissioner, and no license shall be issued to the broker or agent within one year from the date of the revocation, nor until all fines are paid, and the commissioner is satisfied that full compliance with the provisions of this section will be had.

Source: PL 3-107, § 18.