



March 5, 2024

Michele Estrada
Department of Insurance and Financial Services,
Office of Appeals, Legal Research, and Market Regulation
530 W. Allegan Street
Lansing, MI 48933

Re: Request for Rulemaking – Surplus Lines Insurance Fees

Dear Ms. Estrada,

The Wholesale & Specialty Insurance Association¹ (WSIA) appreciates the opportunity to provide comments on the Department of Insurance and Financial Services request for rulemaking regarding surplus lines insurance fees. WSIA has concerns with the current language in the proposed rulemaking request but are committed to working with DIFS to find language that will reflect the spirit of 2020 HB 5174 and provide appropriate protection for consumers. We have also attached a draft markup that we hope you'll consider as an alternative to the original draft.

WSIA identified three provisions of the request for rulemaking that we would like to identify:

- **Subsection (1) regarding the naming of specific expenses incurred for which a fee might be charged** – While we recognize that this list pre-dates the current revision, we don't think this list reflects that statutory changes that were made in 2020 or the reasonable circumstances under which a surplus lines broker would need to charge a fee. Underwriting, state filing requirements, and data modeling are three common functions of the broker that would not be eligible for recoupment under the existing list. Surplus lines policies often require additional effort on the part of the broker such that it would be virtually impossible to list all the items that might be considered "unique to surplus lines." Because of that, our preference would be to reiterate the statutory standard, "underwriting and other expenses that are unique to surplus lines." Furthermore, the items on the existing list would not be considered unique to surplus lines, as each of these items are frequently obtained by retail agents on admitted transactions. That being said, WSIA doesn't have any issue with the exclusion of costs incurred in maintaining offices and compensating employees, which are not typical justifications for charging a policy fee.

¹ WSIA is the U.S. professional trade association representing the wholesale and specialty insurance market and the wholesale distribution system. WSIA presents approximately 400 wholesale broker member firms, 100 surplus lines insurance companies, and 200 associates and service providers to the surplus lines market, our membership operates in more than 1,500 offices representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide – all of whom are committed to the wholesale distribution system and U.S. surplus lines market.

- **Subsection (2) requiring the disclosure of a commission as part of the disclosure of the fee** – WSIA is not aware of any other state that requires the disclosure of a commission as part of the fee disclosure, nor do admitted transactions require the disclosure of a commission. Practically, this requirement would be complicated by the fact that the retail agent and the surplus lines broker typically split the commission on a surplus lines policy (usually in favor of the retail agent). Commissions are not disclosed on admitted or surplus lines transactions in other states because the cost of the commission is incorporated directly into the premium itself, whereas the fee constitutes a value-added service to the consumer when coverage is unavailable in the admitted market.
- **Identification of specific cap within the rule** – We also think it would be helpful to note the statutory cap on personal lines fees within the new rule. Simply to ensure compliance among the surplus lines broker community, we would suggest that the rule incorporates the fact that personal lines fees are restricted to \$100 or 10% of the policy premium. The attachment includes some potential language, but we would certainly entertain alternatives.

WSIA remains willing to dialogue directly with DIFS in order to find satisfactory language for the proposed rule. Thank you for the opportunity to provide comments and please reach out if you have any questions.

Sincerely,



John H. Meetz
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DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

INSURANCE BUREAU

SURPLUS LINES INSURANCE FEES

Filed with the secretary of state on

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of insurance and financial services by sections 210 and 1955 of the insurance code of 1956, 1956 PA 218, MCL 500.210; and 500.1955, and Executive Reorganization Order No. 2013-1, MCL 550.991)

R 500.1251, ~~etc~~ of the Michigan Administrative Code is amended, as follows:

R 500.1251 Surplus lines insurance fee.

Rule 1. (1) A surplus lines licensee **issuing a commercial surplus lines insurance policy** may charge, ~~in addition to the premium charged by an unauthorized insurer,~~ a **reasonable** fee to cover **underwriting and other expenses that are unique to surplus lines and in the case of a personal surplus lines insurance policy, a surplus lines licensee may charge a fee not to exceed the greater of \$100 or 10% of the personal lines insurance policy premium to cover underwriting and other expenses that are unique to surplus lines.** ~~the costs incurred in the placement of the insurance which exceeds \$50.00 when the actual costs incurred for services performed by persons or entities unrelated to the licensee exceed that amount. The fee allowable under this rule shall be adjusted annually pursuant to the provisions of section 1915 of the Insurance Code, 1956 PA 218, MCL 500.1915. Expenses unique to surplus lines do not include costs incurred in maintaining offices and compensating the licensee's employees. Costs unrelated to the licensee do not include costs incurred in maintaining offices and compensating the licensee's employees.~~

(3) **The licensee shall provide proof of the itemized fees charged and evidence of the requisite disclosure of the fees to the director on request.** ~~The licensee shall file both of the following with the commissioner in the form and manner prescribed by the commissioner:~~

~~(a) A report of all fees in excess of the amount allowable under subrule (1) of this rule charged by the licensee.~~

~~(b) An affidavit stating that the licensee has not received compensation for the cost of these services from the unauthorized insurer.~~

March 7, 2024

Michele Estrada
Department of Insurance and Financial Services,
Office of Appeals, Legal Research, and Market Regulation
530 W. Allegan Street
Lansing, MI 48933

Re: Request for Rulemaking – Surplus Lines Insurance Fees (2023-62 IF)

Dear Ms. Estrada,

On behalf of over 5,000 Michigan Independent Insurance Agents, Big I Michigan (Michigan Association of Independent Insurance Agents) appreciates the opportunity to provide comments on the Department of Insurance and Financial Services request for rulemaking regarding surplus lines insurance fees. Big I Michigan has concerns with the draft rule language, but we are committed to working with the department to find language that will reflect the statutory intent of 2020 HB 5174 and provide appropriate protection for consumers.

Big I Michigan identified three provisions of the request for rulemaking that we would like to identify:

1. **Subsection (2) requiring the disclosure of a commission as part of the disclosure of the fee** – Big I Michigan is not aware of any other state that requires the disclosure of a commission as part of the fee disclosure, nor do admitted transactions require the disclosure of a commission. Commissions are not disclosed on admitted or surplus lines transactions in other states because the cost of the commission is incorporated directly into the premium itself, whereas the fee constitutes a value-added service to the consumer when coverage is unavailable in the admitted market.

Big I Michigan has concerns that this provision exceeds the intent of fee disclosure requirements currently laid out in MCL 500.1915(2)(b).

2. **Subsection (1) regarding the naming of specific expenses incurred for which a fee might be charged** – We have concerns that this list does not reflect the statutory changes that were made in 2020 or the reasonable circumstances under which a surplus lines broker would need to charge a fee. Underwriting, state filing requirements, and data modeling are three common functions of the broker that would not be eligible for recoupment under the existing list. Surplus lines policies often require additional effort on the part of the broker such that it would be virtually impossible to list all the items that might be considered “unique to surplus lines.” Our preference would be to reiterate the statutory standard, “underwriting and other expenses that are unique to surplus lines” as done in other states. Big I Michigan does support maintaining the existing language regarding the exclusion of costs incurred in maintaining offices and compensating employees, which are not typical justifications for charging a policy fee.

- 3. Clarification of types of policies within the rule** – We also think it would be helpful to clarify the difference between personal lines fees and commercial lines fees within the rule. In subsection (1) of the proposed rule, it discusses a reasonable fee for both personal and commercial policies. However, the statute under MCL 500.1915(1)(b) already specifies how much of a personal lines fee may be charged (\$100 or 10% of the policy premium). Big I Michigan would recommend either removing the reference to personal lines in the rule or incorporate the specific personal lines language currently included in the law.

Thank you for the opportunity to provide comments and please reach out if you have any questions.

Sincerely,



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Director of Government Relations
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