

Technical Advisory



TA 321

November 20, 2015

Subject: Mississippi Insurance Department Revises Rules for Surplus Lines Placement

Background: Mississippi resident agents, as well as non-resident agents (such as Louisiana agents) who make surplus lines placements are required to comply with two important Mississippi statutes: Miss. Ann. Code **§83-21-19(1)(c)** and **§83-21-23**.

On November 12, 2015, the Mississippi Insurance Department issued [Bulletin 2015-5](#), which addressed several important issues regarding compliance with these two statutes. The Bulletin is effective upon date of issuance.

Main Points: Here are pertinent excerpts from the two Mississippi statutes:

§ 83-21-19.

- (1) *Surplus lines insurance may be placed by a surplus lines insurance producer if:*
- (c) *The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state, if any are writing it;*

§ 83-21-23.

- (1) *When any policy of insurance or certificate of insurance is procured under the authority of such license, there shall be executed by the surplus lines insurance producer a form setting forth facts in complete detail as to what was done to place such kind of insurance and showing that such surplus lines insurance producer therein was unable, after diligent effort, to procure from a licensed company or companies the full amount of insurance required to protect the property, liability, or risk desired to be insured. This form shall be maintained on file with the surplus lines insurance producer and may be subject to review by the Commissioner of Insurance at any time if the commissioner deems such request advisable.*

Below is a summary of key points. Refer to Bulletin 2015-5 for complete details.

Key Point #1: “Retail insurance producer” vs. “surplus lines insurance producer.”

Both statutes above refer to business being placed by a “surplus lines insurance producer.” **This has historically been interpreted to require that a retail producer also hold a surplus lines license, since proper licensure is required to “sell, solicit or negotiate” insurance.**

Bulletin 2015-5 recognizes the distinction between the two, noting that “*a retail insurance producer is defined as a duly licensed insurance producer who is not licensed as a surplus lines insurance producer...and would not deal directly with the nonadmitted insurer.*”

By recognizing the different roles of the “retail insurance producer” and “surplus lines insurance producer,” and providing a separate “Retail Insurance Producer Nonadmitted Insurance Form” (explained below), the Mississippi Insurance Department has clarified that a “retail insurance producer” does NOT need a surplus lines license if they place the business through a “surplus lines insurance producer.” This would apply to both Mississippi resident retail insurance producers and nonresident (Louisiana) retail insurance producers.

Key Point #2: Due diligence.

Prior to the release of Bulletin 2015-5, the due diligence required for a surplus lines placement was documented with “Eligible Nonadmitted Insurance Form.”

Bulletin 2015-5 introduces the new “Retail Insurance Producer Nonadmitted Insurance Form.”

While the retail agent may now perform the due diligence effort, the responsibility for due diligence statutorily remains with the surplus lines producer. If the retail agent has conducted the due diligence, he can submit the Retail Insurance Producer Nonadmitted Insurance Form to the surplus lines producer, who is required to retain due diligence documentation.

The surplus lines producer will still complete the Eligible Nonadmitted Insurance Form, as before. However, if the surplus lines producer is willing to accept the retail producer’s due diligence effort, he can attach the Retail Insurance Producer Nonadmitted Insurance Form in lieu of conducting his own due diligence.

Or, the surplus lines producer may wish to conduct his own due diligence, which can be documented on the Eligible Nonadmitted Insurance Form, as before.

Necessary Action: Circulate this Technical Advisory to all appropriate agency staff.

Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.