



## State of Utah

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## Insurance Department

TODD E. KISER  
*Insurance Commissioner*

### Bulletin 2014-5

**To:** All surplus lines insurers and surplus lines producers/brokers

**From:** Todd E. Kiser, Utah Insurance Commissioner

**Date:** May 15, 2015

**Subject:** **Surplus Lines Insurance Amendments Bill, 2014 Legislative Session (HB 129)**

The Utah Insurance Department (Department) and Surplus Line Association of Utah (SLAU) is issuing this Bulletin to inform all insurers, producers and brokers writing surplus lines insurance in Utah of changes made to Utah Code Annotated (U.C.A.) §31A-15-103 by the Utah Legislature in the 2014 Legislative Session.

House Bill 129<sup>1</sup> (HB 129) was passed by the Utah Legislature during its 2014 Legislative Session. The bill makes certain changes to surplus lines policies, the rates of which are subject to adjustment (auditable policy) that are issued or renewed in Utah on or after the May 13, 2014 effective date of the bill. The bill adds three new subsections to U.C.A. § 31A-15-103(12), (13) and (14). Those subsections provide that:

#### Subsection (12)

- If a surplus lines insurer elects to audit a surplus lines policy it issued, the audit must be initiated within six months after the expiration of the term for which the premium is paid.
- An audit must be completed within three years after the surplus lines insurance transaction expires.
- If an audit is not initiated within six months after the policy's expiration or completed within three years, the surplus lines insurer cannot charge premium in excess of the terms of the original policy.

#### Subsection (13)

- A surplus lines insurer may not count as earned premium an amount in excess of fifty percent (50%) of the initial premium until the earlier of: (i) the completion of an audit; or (ii) the term for which the auditable policy was written has expired and the time to conduct an audit has passed.

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<sup>1</sup> <http://le.utah.gov/~2014/bills/static/HB0129.html>

- If after an audit is conducted, as required in Subsection (12), the actual exposure is less than the estimated exposure, the insured is entitled to a refund of initial premium represented by the reduction of exposure.
- An insured may request an audit by the insurer within six months after the expiration of the term for which the initial premium is paid, if the insured believes the actual exposure is less than the estimated exposure in an auditable policy.
  - If the insurer does not complete an audit as provided in Subsection (12) after a request from the insured, the insurer must accept the insured's statement of exposure and refund that portion of the initial premium represented by the reduction of exposure.
- If after an audit is conducted, as required in Section 12, the risk is determined to be greater than the initial estimate, the insurer is entitled to additional premium, consistent with current law.

#### Subsection (14)

- The new laws apply to the extent not preempted by federal law. The Department interprets Section 14 to mean that:
  - surplus lines policies written on a single-state risk, in Utah only, are required to comply with the new laws;
  - surplus lines policies written on multi-state risks where Utah is the "home state," as defined under federal law<sup>2</sup> in 15 U.S.C. 8206, and where at least some of the risk is located within Utah, are required to comply with the new laws; and
  - surplus lines policies written on multi-state risks where Utah is *not* the "home state," as defined under federal law<sup>3</sup> in 15 U.S.C. 8206, do not need to comply with the new laws.

Surplus lines insurers should examine the bill for the exact wording of these provisions. The bill can be found at: <http://le.utah.gov/~2014/bills/static/HB0129.html>.

Utah law continues to allow broad freedom of form and rate in surplus lines policies, provided the new requirements are met. Additionally, "split rate" surplus lines policies continue to be allowed. The new laws only apply to the portion of a "split rate" policy that is auditable.

**DATED** this 15<sup>th</sup> day of May 2014.

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Todd E. Kiser  
Insurance Commissioner

<sup>2</sup> In July 2010, Congress enacted the Nonadmitted and Reinsurance Reform Act (the "NRRA") into law as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

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