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DEPARTMENT

**BULLETIN NO. 12-2024**

**TO: ALL LICENSED PROPERTY & CASUALTY INSURERS, PRODUCERS, BROKERS, SURPLUS LINES INSURERS, PRODUCER AND TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: ARK. CODE ANN. § 23-66-310(c) APPLICATION TO UNDERWRITING EXPENSES FOR SURPLUS LINES BROKERS & OTHERS**

**DATE: July 26, 2024**

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The Arkansas Insurance Department (“AID”) issues the following clarification to AID Bulletins 14-2015 and 14-2015A. Bulletin 14-2015 specifically provides the interpretation that “inspection fees” are considered “underwriting expenses” under Ark. Code Ann. § 23-66-310(b)(2)(A), and therefore not considered additional fees under Ark. Code Ann. § 23-66-310(c)(2). AID continues to maintain the interpretation that “inspection fees” are not counted as additional fees in Ark. Code Ann. § 23-66-310(c)(2).

Bulletin 14-2015 further makes reference to the opinion that surplus lines brokers are subject to Ark. Code Ann. §23-66-310(c)(2). Subsequently, Bulletin 14-2015A was issued after several surplus lines brokers and associations contacted AID explaining that it had been their understanding with AID that in the past, that surplus lines broker’s fees and commissions were **not** subject to the 20% aggregate limit on commissions and additional fees pursuant to Ark. Code Ann. § 23-66-310(c)(2). As a result, Bulletin 14-2015A was issued, which stated that the commissions and fees of the surplus lines broker are not subject to the 20% aggregate cap.

However, the conclusion reached in Bulletin 14-2015A- that the commissions and fees of the surplus lines broker are not subject to the 20% aggregate cap- is inconsistent with the plain language of the statute. Ark. Code Ann. § 23-66-310 is one of the statutes within the Trade Practices Act, which applies to all insurers, both in the admitted market and in the non-admitted market, as well as to all producers and brokers, in both markets. Ark. Code Ann. § 23-66-310 provides in part:

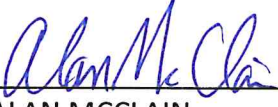
- (c) Nothing shall prohibit a duly licensed property or casualty agent or broker from charging a fee to the insured in addition to the premium properly charged for a policy or contract according to the insurer's rate and rule filings with the State Insurance Department, provided that:**
- (1) Each such fee is separately disclosed on the invoice or billing statement mailed or delivered to the insured; and**

**(2) The aggregate sum of the fees and all producers' commissions or other compensation due and owing for that policy or contract does not exceed twenty percent (20%) of the total gross premium charged the insured by the insurer for that policy or contract.**

Subsection (c) does not exempt surplus lines brokers from the 20% cap. The statute simply applies to “duly licensed” property or casualty agents and brokers. As such, Bulletin 14-2015A is **RESCINDED**.

Surplus lines brokers will be expected to comply with the 20% aggregate cap on all new policies and renewals with an effective date of January 1, 2025, and after.

For any questions regarding this Bulletin, please contact Amanda Gibson in the Legal Division of the Arkansas Insurance Department at (501) 371-2820.

  
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ALAN MCCLAIN  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

7-26-24  
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DATE