2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1123

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee

Peace Garden Room, State Capitol

HB 1123 January 18, 2011 13004

Conference Committee

Ellen Letans

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution: Surplus lines insurance.

Minutes:

Chairman Keiser: Opens the hearing on HB 1123.

Carole Kessel~Chief Examiner-Director of the Examinations & Company Licensing Division of North Dakota Insurance Department: (see attached testimony)-(Refers to chart-attached).

Representative N Johnson: In the state agreement with other states, do we have to do them individually or do we just have one agreement that would be universally acceptable?

Carole Kessel: We hope all states will agree and that all states agree. The language is broad enough.

Chairman Keiser: What is a stamping office?

Carole Kessel: Like Texas, have established by statue, stamping offices that serve to stamp approval on surplus lines transactions and to collect taxes.

Representative Amerman: This is the first step to this process; will there be other steps you will be looking at?

Carole Kessel: The following steps would be to make a decision on what type multi-state agreement to enter into. Right now there are 2 choices floating out there, one is called slim pact (surplus line insurance multistate compact), and it's called slim pact light because there was apparently there was a previous version that has been reduced. The other version is a National Association of Insurance Commissioners multi-state agreement, which would create a clearing house for state and producers to report to and remit tax and allocated back to the states in which the risks were located. Slim pact also would create a clearing house but the provisions are considerably broader. We have done an analysis if the committee is interested in looking at that. The bill will simply provide the commissioner the flexibility to make a choice of which way to go, SLIM pact or the NAIC's version. NAIC's version has not been not adopted by the entire body of commissioners. It's too early to be adopting a version. The problem with acting too soon, is that would be in our benefit to adopt the version that the majority of states adopt.





House Industry, Business and Labor Committee HB 1123 January 18, 2011 Page 2

Representative Ruby: Would each state be able to set their own level of taxing or does that have to be uniform across the board?

Carole Kessel: Each state will set their own tax rate. The problem that leads to part of the problem with NRRA is that some states have a complex tax structure that applies a different tax rate to different line of business. Under both SLIM pact and NAIC multi-state agreement, the states would have to agree to set one tax rate for that state. North Dakota has no problem because our tax rate is 1 3/4% across the board. We don't have an issue.

Representative Frantsvog: On page 5 of your testimony, you state that for the year 2009 a total taxable surplus lines premiums and fees reported was 53.8 million, on which 942,000 taxes was paid. The next sentence it states "bases on our identification of policy holders and out of state addresses, 2009 tax collections the 145 thousand, is the 145 thousand a part of the 942 thousand?

Carole Kessel: That correct, it's the part that North Dakota will lose under the federal law. It is that portion of premium tax on North Dakota risks under a multi state policy where North Dakota is not the home state. We lose that.

Representative Frantsvog: The last sentence in the same paragraph, we are not able to quantify the additional taxes that North Dakota will collect as a home state, but in your fiscal note is shows revenues of 295 thousand dollars, is that a 2 separate thing?

Carole Kessel: The 190 thousand dollars is the 145 thousand dollar estimate per fiscal year. The 290 thousand is the 2 fiscal years.

Representative Frantsvog: OK.

Representative Amerman: Looking at dates, do we need an emergency clause of July this year?

Carole Kessel: We don't believe so. The tax to be reported and paid will be submitted in April 1, 2012, so I do think that there is a little leeway in which way to go and to enter into an agreement or compact.

Representative Boe: The 142 thousand dollars that we would be losing out on, who benefits to that, is it just not collected or is there some other entity that collects the taxes.

Carole Kessel: The home state of the insured would benefit, if they have a provision that requires payment of premium tax on 100% of risks, whether or not they were in the state of Texas or in the state of North Dakota:

Chairman Keiser: Do you know what CSG, NCSL, NCOIL, of those 3 entities, what are the 2 options have they endorses?

Carole Kessel: All three of the entities have endorsed SLIM Pact Light.







Chairman Keiser: The industry has been outspoken on this and they have said that they will oppose, completely the NAIC approach, is that true or not?

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Carole Kessel: I do believe that is the case.

Chairman Keiser: Do you know how many states have entered the SLIM Pact legislation

to date?

Carole Kessel: I do not. States are still doing a lot of analysis and decision making.

Vice Chairman Kasper: What are the main differences between the SLIM Pact and the NACI multi-state compact?

Carole Kessel: I have another handout to show you that (see attached chart).

Vice Chairman Kasper: Does it give the commissioner the power to join any pact they

want to join?

Carole Kessel: That's right.

Chairman Keiser: Anyone else here to testify in support of HB 1123, in opposition,

neutral? Closes the hearing on HB 1123

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1123 February 2, 2011 13902

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Ellen

Surplus lines insurance.

Minutes:

Chairman Keiser: We will open on HB 1123. A condition was created where wither 10 states enter into a compact, and this is not a binding compact, or states whose premium tax represented 40% or more of the premium tax on surplus lines. If agreements could be made between those various states then the federal government would not step in and the deadline is in late July of this coming summer. As you will recall the commissioner took a pretty good approach to this and said that the bill gives him the option of either entering into a compact or a state by state agreement NCOIL, CSG, and NCSL have all endorsed the state driven approach of a compact. I handed out the compact language and I'll leave it up to the committee to decide is we want to pass the bill as it is and give the commissioner the authority. I will tell you that yesterday following session, I was on a national conference call with the surplus line industry people and they are totally opposed and are working as hard as they can to get the language out of every state legislation like the language, which the commissioner has put, in our bill. They do not leaving the regulators with the authority to choose. They said they were slim in representation up here in North Dakota. I did have the amendment drafted and this bill does have a fiscal note on it. What I would like to suggest to you is that you take it, come and review it.

Vice Chairman Kasper: Would you mind giving us an overview of the amendment?

Chairman Keiser: What it basically does is provide the architecture for two states. They appoint members to represent those states and when you get to 10 states then they actually can elect a management group representing those states that would in effect meet and create a financial house. And it really will be FDNAIC in all honesty because they are the only entity that has the capacity to have a clearing house although you could go out and contract for a clearing house. What then happens is every insurance carrier that provides surplus line insurance would pay their premium tax on a rate established by the compact; it would go into the clearinghouse and then be distributed to the home state where the company is domicile as well as to the participating states. I believe we get about 239,000 dollars a year in premium tax or it could be a biennium. For us it big, but it is not the biggest part of our premium tax. For big states it is huge. If some pact is not adopted then I can tell you that the NAIC's approach of on a state by state basis is not going to word and

House Industry, Business and Labor Committee HB 1123 February 2, 2011 Page 2

then you are going to have the temporary net result that the home states will have 100% control of the premium tax and we will lose the 239,000. Texas, New York, California, or Oklahoma or wherever the company is domicile, they will simply say we will keep all the premium tax. Failure to meet either one of those standards will trigger the federal government establishing some kind of program to collect and distribute money. Maybe that is the right solution. I just don't believe the federal government should be involved in anything we do but that is my bias. The NAIC could not come to agreement. The regulators of the NAIC got into a huge battle between the big states and the little states. The big states don't want to play and the little states don't want to play so their solution was to go on a state by state basis so North Dakota could form a contractual agreement with any one, two or three states. It could have 10 contractual agreements with various states and then take their proportion of tax with that state. The problem with that approach is that no state that has the domicile company is going to sign on to that easily. They are looking for a strategy to get all the states to participate and play nicely with each other. One thing I have double checked on is that we are not giving away our sovereignty in this compact. We are just simply agreeing to have the funds deposited and redistributed but that is by our vote. You have to read through it and I think it is best to have the commissioner to come down and explain it. He will explain why he wants the authority and that is because they don't want the pact to go forward so they can do whatever they want to do. Other than that we are in pretty good shape. The insurance commissioner also has an amendment to HB 1123. Unless somebody else wants to bring something up we will close on HB 1123.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

> HB 1123 February 7, 2011 14107

Canfarance Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution: Surplus lines insurance.

Minutes:

Chairman Keiser: The Dodd-Frank Act was passed by the previous congress and was as important a piece of legislation for the financial industry as PPACA was for the health care industry. To say there were sweeping changes might be an understatement if you talk to the financial industry people. It is very close and important to them. One of the issues is that surplus lines issue that has been debated now for about 2 to 3 years. The surplus lines companies have went to the NAIC, NCOIL, NCSL, CSG, ALEC and everybody else and said we have a major problem out here in the surplus lines business. Surplus lines are that unique category of insurance when it is not covered by anything else you go to the surplus lines. It is kind of exotic coverage. Of course there are the states in which companies are domicile and have their operations and then there are states in which they provide coverage. So then what happens to premium tax? How is it distributed to the domicile state and to the states in which the coverage is being provided? The Dodd-Frank Act, and I believe this is correct, has a provision in there, out of frustration, which says in effect that the states have got to resolve the management of surplus lines by July 21, 2011. If the states fail to do it then the feds would in effect take it over. The reality is I don't know why they would want to take it over but that is in theory what the insurance department has been working towards. They brought to us HB 1123 in response to the Dodd-Frank Act. There is a section in here where NCOIL, CSG, and NCSL have met with the industry and produced what is called SLIMPACT-Lite. It is a approach to this problem which involves the states forming a compact. The original legislation said either 10 or more states form a compact or states with 40% of the premium form an agreement of the feds will step in. So the insurance commissioner came to us and we had testimony on the bill that said we don't know what to do. The insurance department at this point doesn't know the right solution so they asked up in this legislation to give the commissioner the authority to make a determination over this next period of time on what would be best for the state of North Dakota. The NAIC has developed an approach called NEMA or there can be some other approach. I did talk with the insurance commissioner and we discussed the situation and it is a difficult one. The big states, or the states that typically have the domicile companies located in their states, are sitting back and are non-communicative. They are sitting back and waiting to see what develops. The general consensus of the big states is that they are going to go at it on their own. If you think about it why wouldn't they. The worse that can happen is the federal government will come back and say they will now redistribute those The commissioner said at this time we could pass the bill with this provision in funds.

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there and then in the next month or two we might find out a lot more and can make a final decision on what to do on the senate side and then come back in and either put in SLIMPACT-Lite, NEMA, or nothing and leave it as is. As I pointed out to the commissioner, if we don't get 10 states to sign on to SLIMPACT then it is dead because the NAIC does not like SLIMPACT at all.

Carole Kessel~Chief Examiner, North Dakota Insurance Department: We've submitted amendments that we have worked out with PCI. PCI wanted to clarify certain areas and you will see that most of the language is an insertion of the phrase "where the insured's home state is this state." That is to clarify that certain provisions are going to be subject to the federal law in that tax imposition. Collections are going to be subject to where North Dakota is the home state of the insured. That is what it primarily does. We do take out one complete sentence that we found was redundant especially with this clarifying provision. (see attachment).

Vice Chairman Kasper: On page 7, item 3, is this the section that gives the insurance commissioner the authority to participate and set the rules and the guidelines? Is there any other section that pertains to that?

Carole Kessel: It is actually the very last section of the bill. Section 12, page 7, also has a provision that is following some model law language there.

Thomas D Kelsch~ Representing National Association of Professional Surplus Lines: (see attached testimony).

Chairman Keiser: On the second page is that a proposed amendment?

Thomas D Kelsch: Mr. Stephan wanted to have that before the committee. It would be an additional proposed amendment although I think it is too late at this time to be considering additional amendments. I apologize that it was on there.

Chairman Keiser: Questions? Anyone else with just information to provide to the committee?

Scott Anderson~Surplus Lines Broker: I was asked by the AAMGA which is the American Association of Manage and General Agents to sit in and listen. We do support the SLIMPACT version. I have not seen the amendments. I think part of the goal at least on the SLIMPACT area is to ensure that states like North Dakota get their share of surplus lines taxes as they are distributed. The home state ruling is part of the confusion within that whole model act and I think that having a separate organization outside of NAIC managing, and that is part of what it brings, the compact in several states has the discretion or the responsibility to distribute those taxes fairly based on the home state of insured.

Chairman Keiser: Carole do you have anything to add or any new developments that the committee should be aware of?

Carole Kessel: I'm not aware that there has been any movement. The NAIC committees are still working on SLIMPACT provisions and putting together procedural issues and

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guidance for the clearing house. To my knowledge I haven't heard of one state that supports SLIMPACT. That may be incorrect but that is my understanding at this point.

Representative N Johnson: When you were discussing about New York and possibly Texas, if there are 10 states that participate in SLIMPACT, would that have any impact on New York? Could they just say to heck with it and if we have any surplus lines insurance that is going through a company in New York that they would just ignore it? Would New York be compelled to share those or would they sit back and say to bad so sad?

Chairman Keiser: That is a 64,000 dollar question. What we know is that if we don't take action by July of this coming summer, according to the Dodd-Frank Act, the federal government will take it over. That will take the state of North Dakota out of the surplus lines collection and administration. The 2 options are to pass some kind of compact in 10 or more states that does not require New York to participate but you have to believe that the federal government would then come back in and say you have met our first stage, now you have to come back somehow. There is not commitment on the part of the feds to do that or anyone else. Another thing you could do is get states with 40% of the premium to concur to an agreement. That is never going to happen because they have a year or two where they can have 100% of the premium tax and then let the feds take over. This is a tough one.

Representative N Johnson: On the amendment 01001 which in essence would be the SLIMPACT, on page 18 it has a listing of the states and the share of total premiums. What you are saying is that it would have to be a total of 40% of those numbers?

Chairman Keiser: 40% of those numbers or 10 states. Either one would work. But it is 290,000 dollars. That is what is at risk.

Vice Chairman Kasper: The SLIMPACT amendments which establish the commission provide rules of getting in and out the compact. I think the key that I like is on page 5, item 2 at the bottom. It says the commission may adopt mandatory rules that establish exclusive home state authority regarding non-admitted insurance. So we maintain the right to potentially establish and have our rules the way we wish. This SLIMPACT to me keeps the states involved the way we ought to be and makes all the sense in the world compared to the bill before us. Without regard to the insurance department's amendments I would move that we amend HB 1123 and substitute in its place amendment 11.8107.01001.

Representative N Johnson: Second.

Chairman Keiser: Further discussion?

Representative N Johnson: I think since we are in limbo no knowing what is going to wash out in the next month, that would bring this one over and it would keep both in the playing field.

Chairman Keiser: I do want to point out that SLIMPACT-Lite could technically be in play if we don't adopt this amendment because that language gives the commissioner to join a



House Industry, Business and Labor Committee HB 1123 February 7, 2011 Page 4

multi-state compact or do whatever. This is the intent of the mover and seconder to say the legislature wants to play a role in this.

Representative Ruby: If I understand this, it is making some changes in the body of the bill but then it is just replacing page 12 with this language.

Chairman Keiser: We will have to ask the Insurance Department but we are just taking the one amendment. It is not a hog house amendment. Further discussion? We will take the roll on the amendment.

Roll call vote: 14 yeas, 0 nays, 0 absent. Motion carries.

Representative N Johnson: I've went through the amendments and all the amendments that the commissioner's office brought forth would impact the part of the bill that is still intact. I would move the amendments submitted by the insurance department.

Representative Vigesaa: Second.

Chairman Keiser: Further discussion? Seeing none we will take a voice vote.

Voice vote: Motion carries.

Chairman Keiser: Both amendments are on the bill and we have HB 1123 before us. What are the wishes of the committee?

Vice Chairman Kasper: I move a do pass as amended.

Representative Ruby: Second.

Chairman Keiser: Further discussion? We will take the roll on a do pass as amended on HB 1123. We will close on HB 1123.

14 YEAS 0 NAYS 0 ABSENT DO PASS as Amended CARRIER: Representative Kasper

FISCAL NOTE

Requested by Legislative Council 03/30/2011

REVISION

Amendment to:

HB 1123

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to

funding levels and appropriations anticipated under current law.

	2009-2011	Biennium	2011-2013	Biennium	2013-2015 Biennium		
· .	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds	
Revenues						= :	
Expenditures							
Appropriations		- 					

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

200	9-2011 Bienr	nium	201	1-2013 Bienr	nium	201	3-2015 Bieni	nium
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).



This bill revises ND law relating to surplus lines insurance to conform to federal law and allows ND to collect all premium tax on surplus lines multistate polices where ND is the insured's home state and to share premium tax with other states in SLIMPACT.

B. Fiscal impact sections: Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 5 creates a new section that continues to impose North Dakota's premium tax on surplus lines insurance and to require the producer to collect and remit the tax. The new language provides that, on multistate policies where North Dakota is the insured's home state, the Insurance Commissioner will collect the tax on the risks located both in and out of this state at the applicable rates.

Section 12 enters the State of North Dakota into SLIMPACT. If nine other states also join SLIMPACT, we will share multistate premium tax with those states based on where the risk is located. All fifty states and the District of Columbia would need to join SLIMPACT for North Dakota to remain revenue neutral. If less than 10 states join SLIMPACT, or the SLIMPACT states do not collect taxes on North Dakota risks, there could be an estimated revenue loss of \$290,000.

The amendment to this bill increases the risk that North Dakota will not collect as much premium tax as is currently collected.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
 - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Current law imposes premium tax on risks located in North Dakota. Federal law, effective July 21, will not allow us to collect tax on policies where North Dakota is not the home state of the insured. This bill will allow us to collect premium tax on risks located outside North Dakota if North Dakota is the insured's home state. The bill adopts SLIMPACT so that North Dakota will trade tax collected on risks located in a SLIMPACT state in exchange for taxes collected by the other SLIMPACT states for risks located in North Dakota.



The amendment to this bill increases the risk that North Dakota will not collect as much premium tax as is currently collected.

Premium tax collections are deposited into the general fund.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

This bill will not affect expenditures.

The amendment to this bill does not affect expenditures.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

This bill will not affect approprations.

The amendment to this bill does not affect appropriations.

Name:	Larry Martin	Agency:	Insurance Department	
Phone Number:	701-328-2930	Date Prepared:	03/31/2011	

FISCAL NOTE

Requested by Legislative Council 12/23/2010

Bill/Resolution No.:

HB 1123

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$290,000		\$290,000	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

200	9-2011 Bienr	nium	201	1-2013 Bienr	nium	201	3-2015 Bienr	nium
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).



This bill revises North Dakota law relating to surplus lines insurance to conform to the requirements of the United States Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) and would allow the state to collect premium taxes on multistate policies where North Dakota is the insured's home state.

B. Fiscal impact sections: Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

Section 5 creates a new section that continues to impose North Dakota's premium tax on surplus lines insurance and to require the producer to collect and remit the tax. The new language provides that, on multistate policies where North Dakota is the insured's home state, the Insurance Commissioner will collect the tax on the risks located in and out of this state at the applicable rates and gives the Insurance Commissioner the authority to enter into tax sharing agreements with other states.

- 3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:
 - A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Due to federal preemption, North Dakota is no longer allowed to collect premium tax on non-resident policies with risks located in North Dakota. Based on 2009 data, this revenue loss is estimated at \$290,000. Federal law and this bill allows North Dakota to start collecting additional tax on multistate resident policies which is now being paid to other states. No data is available to estimate any additional revenue.

Premium tax collections are deposited into the general fund.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

This bill will not affect expenditures.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, for each agency



and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

This bill will not affect approprations.

Name:	Larry Martin	Agency:	Insurance Department
Phone Number:	328-2930	Date Prepared:	01/07/2011

11.8107.01001 Title.



Prepared by the Legislative Council staff for Representative Keiser

January 31, 2011



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

Page 1, line 3, after "insurance" insert "and enactment of the surplus lines insurance multistate compliance compact"

Page 1, line 3, remove the first "and"

Page 1, line 5, after "insurance" insert "; and to declare an emergency"

Page 7, remove line 10

Page 7, line 11, replace "with other states" with:

"3. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact"

Page 12, replace lines 3 through 11 with:

"26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.

The surplus lines insurance multistate compliance compact is enacted into law and entered by this state with all other states legally joining therein in the form substantially as follows:

Article I. - Purpose

The purposes of this compact are:

- 1. To implement the express provisions of the Nonadmitted and Reinsurance Reform Act.
- 2. To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on nonadmitted insurance; and to protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for nonadmitted insurance of multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission.
- 3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers.
- 4. To streamline regulatory compliance with respect to nonadmitted insurance placements by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions.

- must be entitled to one vote each. The executive committee must have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including the activities of the operations committee created under this article and compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such other duties as provided herein and as deemed necessary:
- 20. Establish an operations committee of not less than seven and not more than fifteen representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations, and recommendations regarding the establishment of mandatory rules to be adopted by the commission;
- 21. Enter contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;
- 22. Adopt and use a corporate seal; and
- 23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance:

Article VI. - Organization of the Commission

- 1. a. Each compacting state must have and is limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member must be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which that member must be appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state wherein the vacancy exists.
 - b. Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws.
 - c. The commission, by a majority vote of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
 - Establishing the fiscal year of the commission;
 - (2) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
 - (3) Providing reasonable standards and procedures for the establishment and meetings of committees, and governing any

- general or specific delegation of any authority or function of the commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the commission which consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting:
- (5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
- (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws must exclusively govern the personnel policies and programs of the commission;
- (7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and
- (8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving or both of all of its debts and obligations.
- d. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.
- 2. a. An executive committee of the commission is established. All actions of the executive committee, including compliance and enforcement, are subject to the review and ratification of the commission as provided in the bylaws. The executive committee may have no more than fifteen representatives, or one for each state if there are less than fifteen compacting states, who shall serve for a term and be established in accordance with the bylaws.
 - b. The executive committee must have such authority and duties as may be set forth in the bylaws, including:
 - (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
 - (2) Establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures;

- (3) Overseeing the offices of the commission; and
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.
- c. The commission annually shall elect officers from the executive committee, with each having such authority and duties as may be specified in the bylaws.
- d. The executive committee, subject to the approval of the commission, shall appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission, but may not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.
- 3. a. An operations committee is established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee must accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee must be resolved by the majority vote of the commission.

The operations committee may not have more than fifteen representatives or one for each state if there are fewer than fifteen compacting states, who shall serve for a term and must be established as set forth in the bylaws.

The operations committee must have responsibility for:

- (1) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms, and to minimize costs to the states, state stamping offices, and the clearinghouse.
- (2) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
- (3) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations.
- (4) Such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.

- b. All representatives of the operations committee must be individuals who have extensive experience or employment or both in the surplus lines insurance business, including executives and attorneys employed by surplus lines insurers, surplus lines licensees, law firms, state insurance departments or state stamping offices or any combination of these entities. Operations committee representatives from compacting states, which utilize the services of a state stamping office, shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.
- 4. a. A legislative committee composed of state legislators or their designees is established to monitor the operations of and make recommendations to, the commission, including the executive committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.
 - b. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.
- 5. The commission shall maintain its corporate books and records in accordance with the bylaws.
- 6. a. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision may be construed to protect any such person from suit or liability or both for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
 - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Article VII. - Meetings and Acts of the Commission

- 1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
- 2. Each member of the commission may cast a vote to which that compacting state is entitled and may participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
- 3. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
- 4. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or otherwise provided in the compact.
- 5: The commission shall promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act [5:U.S.C. 552b], as may be amended.
- 6. The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:
 - Relate solely to the commission's internal personnel practices and procedures;
 - b. <u>Disclose matters specifically exempted from disclosure by federal and</u> state statute;
 - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
 - d. Involve accusing a person of a crime, or formally censuring a person;
 - e. <u>Disclose information of a personal nature where disclosure would</u> constitute a clearly unwarranted invasion of personal privacy;
 - f. <u>Disclose investigative records compiled for law enforcement purposes; or</u>
 - g. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

7. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

Article VIII. - Rules and Operating Procedures - Rulemaking Functions

of the Commission

- 1. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.
- 2. Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.
- 3. All rules and amendments, thereto, must become effective as of the date specified in each rule, operating procedure, or amendment.
- 4. Not later than thirty days after a rule is adopted, any person may file a petition for judicial review of the rule, provided that the filing of such a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

Article IX. - Commission Records and Enforcement

1. The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse must be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter agreements with such agencies to receive or exchange

- information or records subject to nondisclosure and confidentiality provisions.
- Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this section, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession.

 Confidential information of the commission must remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.
- 3. The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state must be deemed to be in default as set forth in article XIV.

Article X - Dispute Resolution

- 1. Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states, or noncompacting states; and the commission shall promulgate a rule providing alternative dispute resolution procedures for such disputes.
- 2. The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.
- 3. Any alternative dispute resolution procedures must be utilized in circumstances where a dispute arises as to which state constitutes the home state.

Article XI. - Review of Commission Decisions

- 1. Except as necessary for adopting rules to fulfill the purposes of this compact, the commission may not otherwise regulate insurance in the compacting states.
- 2. Not later than thirty days after the commission has given notice of any rule or allocation formula, any third-party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such

- review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 6 of article III.
- 3. The commission may monitor, review, and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection 2.

Article XII. - Finance

- 1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.
- 2. The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.
- 3. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in article VIII.
- 4. The commission must be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and may not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.
- The commission shall keep complete and accurate accounts of all its <u>5.</u> internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission must be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts may not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request, provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of

- individuals, and licensees' and insurers' proprietary information, including trade secrets, must remain confidential.
- 6. A compacting state may not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.
- 7. The commission may not make any political contributions to candidates for elected office, elected officials, political parties, or political action committees. The commission may not engage in lobbying except with respect to changes to this compact.

Article XIII. - Compacting States, Effective Date, and Amendment

- 1. Any state is eligible to become a compacting state.
- <u>2.</u> The compact must become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission must become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in subsection 4. Thereafter, it must become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data must begin on the first January first or July first following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data must be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety days' advance notice.
- 3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment may not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.
- 4. Surplus lines insurance premiums by state:

<u>State</u>	Premiums Based on Taxes Paid	Share of Total Premiums
<u>Alabama</u>	\$445,746,000	<u>1.47%</u>
<u>Alaska</u>	<u>89,453,519</u>	<u>0.29%</u>
<u>Arizona</u>	<u>663,703,267</u>	<u>2.18%</u>
<u>Arkansas</u>	<u>201,859,750</u>	<u>0.66%</u>
<u>California</u>	<u>5,622,450,467</u>	<u> 18.49%</u>
<u>Colorado</u>	<u>543,781,333</u>	<u>1.79%</u>
Connecticut	<u>329,358,800</u>	<u> 1.08%</u>
<u>Delaware</u>	<u>92,835,950</u>	<u>0.31%</u>
<u>Florida</u>	<u>2,660,908,760</u>	<u>8.75%</u>
Georgia	<u>895,643,150</u>	2.95%

Hawaii	232,951,489	0.77%
Idaho	74,202,255	0.24%
Illinois	1,016,504,629	3.34%
Indiana	412,265,320	1.36%
lowa	135,130,933	0.44%
Kansas	160,279,300	0.53%
Kentucky	167,996,133	0.55%
Louisian <u>a</u>	853,173,280	2.81%
<u>Maine</u>	60,111,200	0.20%
Maryland	434,887,600	1.43%
Massachusetts	708,640,225	2.33%
Michigan	703,357,040	2.31%
Minnesota	393,128,400	1.29%
Mississippi	263,313,175	0.87%
<u>Missouri</u>	404,489,860	1.33%
Montana	64,692,873	0.21%
Nebraska	92,141,167	0.30%
Nevada	354,271,514	1.17%
New Hampshire	102,946,250	0.34%
New Jersey	1,087,994,033	3.58%
New Mexico	67,608,458	0.22%
New York	2,768,618,083	9.11%
North Carolina	514,965,060	1.69%
North Dakota	36,223,943	0.12%
Ohio	342,000,000	<u>1.12%</u>
<u>Oklahoma</u>	319,526,400	<u>1.05%</u>
Oregon	312,702,150	<u>1.03%</u>
Pennsylvania	780,666,667	<u>2.57%</u>
Rhode Island	71,794,067	<u>0.24%</u>
South Carolina	412,489,825	<u>1.36%</u>
South Dakota	<u>38,702,120</u>	<u>0.13%</u>
<u>Tennessee</u>	<u>451,775,240</u>	<u>1.49%</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06%</u>
<u>Utah</u>	<u>142,593,412</u>	<u>0.47%</u>
Vermont	<u>41,919,433</u>	<u>0.14%</u>
<u>Virginia</u>	<u>611,530,667</u>	<u>2.01%</u>
<u>Washington</u>	<u>739,932,050</u>	<u>2.43%</u>
West Virginia	<u>130,476,250</u>	<u>0.43%</u>
Wisconsin	<u>248,758,333</u>	<u>0.82%</u>
Wyoming	<u>40,526,967</u>	0.13%
<u>Total</u>	<u>\$30,400,197,251</u>	<u>100.00%</u>

Total \$30,400,197,251 100.00%

This data is 2005 calendar year data excerpted from a study dated Febuary 27, 2007, by Mackin & Company.

Article XIV. - Withdrawal, Default, and Termination

- 1. a. Once effective, the compact must continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact, "withdrawing state", by enacting a statute specifically repealing the statute which enacted the compact into law.
 - <u>The effective date of withdrawal is the effective date of the repealing</u>
 <u>statute. However, the withdrawal may not apply to any tax or</u>

- compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.
- c. The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.
- d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
- e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal must continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.
- f. Reinstatement following withdrawal of any compacting state must occur upon the effective date of the withdrawing state reenacting the compact.
- <u>2.</u> If the commission determines that any compacting state has at any time defaulted "defaulting state", in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.
 - b. Decisions of the commission that are issued on the effective date of termination must remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection 1.
 - c. Reinstatement following termination of any compacting state requires a reenactment of the compact.

- 3. a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
 - b. Upon the dissolution of this compact, the compact becomes null and void and must have no further force or effect, and the business and affairs of the commission must be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

Article XV. - Severability and Construction

- 1. The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact must be enforceable.
- 2. The provisions of this compact must be liberally construed to effectuate its purposes.
- 3. Throughout this compact the use of the singular includes the plural and vice versa.
- 4. Any headings and captions of articles, subsections, and subdivisions used in this compact are for convenience only and must be ignored in construing the substantive provisions of this compact.

Article XVI. - Binding Effect of Compact and Other Laws

- 1. a. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision b.
 - b. Decisions of the commission, and any rules, and any other requirements of the commission must constitute the exclusive rule, or determination applicable to the compacting states. Any law or regulation regarding nonadmitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:
 - (1) Clearinghouse transaction data reporting requirements;
 - (2) Allocation formula;
 - (3) Clearinghouse transaction data collection requirements;
 - (4) Premium tax payment timeframes and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single-state risks;
 - (5) Exclusive compliance with surplus lines law of the home state of the insured;
 - (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks;
 - (7) Uniform foreign insurers eligibility requirements;
 - (8) Uniform policyholder notice; and

- (9) <u>Uniform treatment of purchasing groups procuring nonadmitted insurance.</u>
- c. Except as stated in subdivision b, any rule, uniform standard, or other requirement of the commission must constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under article X; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the attorney general of the state, including maintaining any actions or proceedings, as authorized by law.
- 2. a. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.
 - b. All agreements between the commission and the compacting states are binding in accordance with their terms.
 - c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.
 - d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission must be ineffective as to that state and those obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date:	Fcb	7-201,
Roll Ca	ıll Vote #	

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 123						
House Industry, Business	and La	bor		Committ	ee	
☐ Check here for Conference Committee						
Legislative Council Amendment Number						
Action Taken: Do Pass Do Not Pass 🔀 Amended 🔲 Adopt Amendment						
Motion Made By Rep. Kasper Seconded By Rep. Johnson						
Representatives	Yes	No	Representatives	Yes	No	
Chairman Keiser	7		Representative Amerman	7		
Vice Chairman Kasper	7		Representative Boe	77		
Representative Clark	7		Representative Gruchalla	7		
Representative Frantsvog	7		Representative M Nelson	7		
Representative N Johnson Representative Kreun	7 7			<u> </u>		
Representative Nathe	7					
Representative Ruby	7					
Representative Sukut	7			1		
Representative Vigesaa	7					
Total Yes No						
Floor Assignment						
If the vote is on an amendment, briefly indicate intent:						





PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

Page 5, line 2, after "search" insert "nor file the affidavit in subsection 7"

Page 6, line 23, replace "In" with "Where the insured's home state is this state, in"

Page 7, line 20, remove "If a surplus lines policy procured through a surplus lines producer covers properties,"

Page 7, remove lines 21 and 22

Page 7, line 23, replace "properties, risks, or exposures located or to be performed in this state. In" with "Where the insured's home state is this state, in"

Page 8, line 23, replace "The" with "Where the insured's home state is this state, the"

Page 9, line 16, replace "Each" with "Where the insured's home state is this state, each"

Page 10, line 20, replace "On" with "Where the insured's home state is this state, on"

Page 11, line 26, replace "In" with "Where the insured's home state is this state and in"

Renumber accordingly

Date: _	teb	- 2011
Roll Call	Vote#_	2_

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO.					
House House Industry, Business and Labor				Committee	
☐ Check here for Conference Committee					
Legislative Council Amendment Number					
Action Taken: Do Pass Do Not Pass X Amended Adopt Amendment					
Motion Made By Rep. Johnson Seconded By Rep. Vigasaa					
Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	,		Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					<u> </u>
Representative Vigesaa					
Total YesNo					
Absent					
Floor Assignment					
If the vote is on an amendment, briefly indicate intent:					
In sure Dept.					

February 7, 2011



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1123

- Page 1, line 3, after "insurance" insert "and enactment of the surplus lines insurance multistate compliance compact"
- Page 1, line 3, remove the first "and"
- Page 1, line 5, after "insurance" insert "; and to declare an emergency"
- Page 5, line 2, after "search" insert "or to file the affidavit in subsection 7"
- Page 6, line 23, replace "In" with "If the insured's home state is this state, in"
- Page 7, remove line 10
- Page 7, line 11, replace "with other states" with:
 - "3. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact"
- Page 7, line 20, remove "If a surplus lines policy procured through a surplus lines producer covers properties,"
- Page 7, remove lines 21 and 22
- Page 7, line 23, replace "properties, risks, or exposures located or to be performed in this state.

 In" with "If the insured's home state is this state, in"
- Page 8, line 23, replace "The" with "If the insured's home state is this state, the"
- Page 9, line 16, replace "Each" with "If the insured's home state is this state, each"
- Page 10, line 20, replace "On" with "If the insured's home state is this state, on"
- Page 11, line 26, replace "In" with "if the insured's home state is this state, in"
- Page 12, replace lines 3 through 11 with:

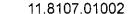
"26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.

The surplus lines insurance multistate compliance compact is enacted into law and entered by this state with all other states legally joining therein in the form substantially as follows:

Article I. - Purpose

The purposes of this compact are:

- 1. To implement the express provisions of the Nonadmitted and Reinsurance Reform Act.
- 2. To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on nonadmitted insurance; and to protect the interests of the compacting states by



20/22

- supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for nonadmitted insurance of multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission.
- 3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers.
- 4. To streamline regulatory compliance with respect to nonadmitted insurance placements by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.
- 5. To establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission.
- 6. To improve coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to nonadmitted insurance.
- 7. To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for nonadmitted insurance of multistate risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the nonadmitted insurance market.
- 8. To adopt uniform mandatory rules with respect to regulatory compliance requirements for:
 - a. Foreign insurer eligibility requirements.
 - b. Surplus lines policyholder notices.
- 9. To establish the surplus lines insurance multistate compliance compact commission.
- 10. To coordinate reporting of clearinghouse transaction data on nonadmitted insurance of multistate risks among compacting states and contracting states.
- 11. To perform these and such other related functions as may be consistent with the purposes of the surplus lines insurance multistate compliance compact.

Article II. - Definitions

For purposes of this compact, the following definitions apply:

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- 1. "Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state; for purposes of this compact, "admitted insurer" does not include a domestic surplus lines insurer as may be defined by applicable state law.
- 2. "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- 3. "Allocation formula" means the uniform methods promulgated by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.
- 4. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
- 5. "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for nonadmitted insurance of multistate risks, in accordance with this compact and rules to be adopted by the commission.
- 6. "Clearinghouse transaction data" means the information regarding nonadmitted insurance of multistate risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules to be adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.
- 7. "Commission" means the surplus lines insurance multistate compliance compact commission established by this compact.
- 8. "Commissioner" means the chief insurance regulatory official of a state, including commissioner, superintendent, director, or administrator or their designees.
- 9. "Compacting state" means any state that has enacted this compact legislation and which has not withdrawn pursuant to article XIV, subsection 1, or been terminated pursuant to article XIV, subsection 2.
- 10. "Contracting state" means any state that has not enacted this compact legislation but has entered a written contract with the commission to utilize the services of and fully participate in the clearinghouse.
- 11. "Control", an entity has "control" over another entity if:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.



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12. "Home state":

- a. Except as provided in subdivision b, the term "home state" means, with respect to an insured:
 - (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.
- b. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision a, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
- 13. "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other nonadmitted insurer as permitted by the laws of the home state.
- 14. "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of the Nonadmitted and Reinsurance Reform Act on and after July 21, 2011.
- 15. "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state is limited to one vote.
- 16. "Multistate risk" means a risk with insured exposures in more than one state.
- 17. "Nonadmitted insurance" means surplus lines insurance and independently procured insurance.
- 18. "Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.
- "Nonadmitted and Reinsurance Reform Act" means the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203;
 124 Stat. 1589; 15 U.S.C. 8201 et seq.] which is subtitle B of title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- 20. "Noncompacting state" means any state that has not adopted this compact.
- 21. "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.

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- 22. "Premium tax" means with respect to nonadmitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.
- 23. "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.
- 24. "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations and is domiciled in any state.
- 25. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.
- 26. "Single-state risk" means a risk with insured exposures in only one state.
- 27. "State" means any state, district, or territory of the United States of America.
- 28. "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.
- 29. "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the home state; for purposes of this compact, "surplus lines insurance" also means excess lines insurance as may be defined by applicable state law.
- 30. "Surplus lines insurer" means a nonadmitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this compact, "surplus lines insurer" also means an insurer that is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.
- 31. "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

Article III. - Establishment of the Commission and Venue

Podo:

- The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multistate compliance compact commission.
- 2. Pursuant to article IV, the commission may adopt mandatory rules that establish exclusive home state authority regarding nonadmitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.
- 3. Pursuant to article IV, the commission may adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.
- 4. The commission is a body corporate and politic, and an instrumentality of the compacting states.
- 5. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.
- 6. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

Article IV. - Authority to Establish Mandatory Rules

The commission shall adopt mandatory rules that establish:

- Allocation formulas for each type of nonadmitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus lines licensee as a material consideration.
- 2. Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.
- 3. Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state-designated agencies or entities.
- 4. That nonadmitted insurance of multistate risks must be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines

insurance must include persons required to be licensed to sell, solicit, or negotiate surplus lines insurance; insurer eligibility requirements or other approved nonadmitted insurer requirements; diligent search; and state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission. Home state regulatory compliance requirements applicable to independently procured insurance placements must include providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.

- 5. That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all nonadmitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.
- 6. That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than ninety days' advance notice to the compact commission.
- 7. That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly utilizing one or more of the following dates only: March first, June first, September first, and December first.
- 8. That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.
- 9. The obligation of the home state by itself, through a designated agent, surplus lines stamping, or service office, to collect clearinghouse transaction data from surplus lines licensees and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.
- 10. A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees, and insureds who independently procure insurance all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due, and a method to pay them through the clearinghouse.
- 11. That each surplus lines licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.
- 12. That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting

states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state must be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.

- 13. Uniform foreign insurer eligibility requirements as authorized by the Nonadmitted and Reinsurance Reform Act.
- 14. A uniform policyholder notice.
- 15. <u>Uniform treatment of purchasing group surplus lines insurance placements.</u>

Article V. - Powers of the Commission

The commission may:

- Promulgate rules and operating procedures, pursuant to article VIII of this compact, which must have the force and effect of law and must be binding in the compacting states to the extent and in the manner provided in this compact;
- 2. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law may not be affected;
- Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided, however, the commission is not empowered to demand or subpoena records or data from nonadmitted insurers;
- 4. Establish and maintain offices, including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding nonadmitted insurance of multistate risks, single-state risks for states that elect to require surplus lines licensees to pay premium tax on single-state risks through the clearinghouse, and tax reporting forms;
- 5. Purchase and maintain insurance and bonds;
- 6. Borrow, accept, or contract for services of personnel, including employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;

- 7. Hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel, and other related personnel matters;
- 8. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
- 9. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
- 10. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- 11. Provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:
 - a. Minimum audit standards, including sampling methods;
 - b. Review of internal controls;
 - <u>Cooperation and sharing of audit responsibilities between compacting states:</u>
 - d. Handling of refunds or credits due to overpayments or improper allocation of premium taxes:
 - e. Taxpayer records to be reviewed, including a minimum retention period; and
 - f. Authority of compacting states to review, challenge, or reaudit taxpayer records;
- 12. Enforce compliance by compacting states and contracting states with rules and bylaws pursuant to the authority set forth in article XIV;
- 13. Provide for dispute resolution among compacting states and contracting states;
- 14. Advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents, or brokers domiciled or doing business in noncompacting states, consistent with the purposes of this compact;
- Make available advice and training to those personnel in state stamping offices, state insurance departments, or other state departments for recordkeeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;

- 16. Establish a budget and make expenditures;
- 17. Borrow money;
- 18. Appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
- Establish an executive committee of not less than seven nor more than fifteen representatives, which must include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one-year term. Representatives of the executive committee must be entitled to one vote each. The executive committee must have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including the activities of the operations committee created under this article and compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such other duties as provided herein and as deemed necessary;
- 20. Establish an operations committee of not less than seven and not more than fifteen representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations, and recommendations regarding the establishment of mandatory rules to be adopted by the commission;
- 21. Enter contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;
- 22. Adopt and use a corporate seal; and
- 23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article VI. - Organization of the Commission

1. a. Each compacting state must have and is limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member must be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which that member must be appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state wherein the vacancy exists.

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- b. Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws.
- c. The commission, by a majority vote of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
 - (1) Establishing the fiscal year of the commission;
 - (2) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
 - (3) Providing reasonable standards and procedures for the establishment and meetings of committees, and governing any general or specific delegation of any authority or function of the commission;
 - (4) Providing reasonable procedures for calling and conducting meetings of the commission which consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting:
 - (5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
 - (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws must exclusively govern the personnel policies and programs of the commission:
 - (7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and
 - (8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving or both of all of its debts and obligations.
- d. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

- 2. a. An executive committee of the commission is established. All actions of the executive committee, including compliance and enforcement, are subject to the review and ratification of the commission as provided in the bylaws. The executive committee may have no more than fifteen representatives, or one for each state if there are less than fifteen compacting states, who shall serve for a term and be established in accordance with the bylaws.
 - b. The executive committee must have such authority and duties as may be set forth in the bylaws, including:
 - (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
 - (2) Establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures;
 - (3) Overseeing the offices of the commission; and
 - (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.
 - c. The commission annually shall elect officers from the executive committee, with each having such authority and duties as may be specified in the bylaws.
 - d. The executive committee, subject to the approval of the commission, shall appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission, but may not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.
- 3. a. An operations committee is established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee must accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee must be resolved by the majority vote of the commission.

The operations committee may not have more than fifteen representatives or one for each state if there are fewer than fifteen compacting states, who shall serve for a term and must be established as set forth in the bylaws.

The operations committee must have responsibility for:

(1) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems

- with state and state stamping office technology platforms, and to minimize costs to the states, state stamping offices, and the clearinghouse.
- (2) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
- (3) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations.
- (4) Such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.
- b. All representatives of the operations committee must be individuals who have extensive experience or employment or both in the surplus lines insurance business, including executives and attorneys employed by surplus lines insurers, surplus lines licensees, law firms, state insurance departments or state stamping offices or any combination of these entities. Operations committee representatives from compacting states, which utilize the services of a state stamping office, shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.
- 4. a. A legislative committee composed of state legislators or their designees is established to monitor the operations of and make recommendations to, the commission, including the executive committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.
 - b. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.
- 5. The commission shall maintain its corporate books and records in accordance with the bylaws.
- 6. a. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision may be construed to protect any such person from suit or liability or both for any damage, loss, injury, or



- liability caused by the intentional or willful or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Article VII. - Meetings and Acts of the Commission

- The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
- 2. Each member of the commission may cast a vote to which that compacting state is entitled and may participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
- 3. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
- 4. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or otherwise provided in the compact.
- 5. The commission shall promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act [5 U.S.C. 552b], as may be amended.
- 6. The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:

- a. Relate solely to the commission's internal personnel practices and procedures;
- b. <u>Disclose matters specifically exempted from disclosure by federal and</u> state statute;
- c. Disclose trade secrets or commercial or financial information that is privileged or confidential:
- d. Involve accusing a person of a crime, or formally censuring a person;
- e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- f. <u>Disclose investigative records compiled for law enforcement purposes; or</u>
- g. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
- 7. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

Article VIII. - Rules and Operating Procedures - Rulemaking Functions

of the Commission

- The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission is invalid and has no force or effect.
- Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.
- 3. All rules and amendments, thereto, must become effective as of the date specified in each rule, operating procedure, or amendment.
- 4. Not later than thirty days after a rule is adopted, any person may file a petition for judicial review of the rule, provided that the filing of such a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission

consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

Article IX. - Commission Records and Enforcement

- The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse must be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
- Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this section, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession.

 Confidential information of the commission must remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.
- 3. The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state must be deemed to be in default as set forth in article XIV.

Article X. - Dispute Resolution

1. Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states, or noncompacting states, and the commission shall promulgate a rule providing alternative dispute resolution procedures for such disputes.

- 2. The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.
- Any alternative dispute resolution procedures must be utilized in circumstances where a dispute arises as to which state constitutes the home state.

Article XI. - Review of Commission Decisions

- 1. Except as necessary for adopting rules to fulfill the purposes of this compact, the commission may not otherwise regulate insurance in the compacting states.
- 2. Not later than thirty days after the commission has given notice of any rule or allocation formula, any third-party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 6 of article III.
- 3. The commission may monitor, review, and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection 2.

Article XII. - Finance

- The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.
- The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.
- 3. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in article VIII.
- 4. The commission must be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and may not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.

- 5. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission must be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts may not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request, provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, must remain confidential.
- 6. A compacting state may not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.
- 7. The commission may not make any political contributions to candidates for elected office, elected officials, political parties, or political action committees. The commission may not engage in lobbying except with respect to changes to this compact.

Article XIII. - Compacting States, Effective Date, and Amendment

- 1. Any state is eligible to become a compacting state.
- The compact must become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission must become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in subsection 4. Thereafter, it must become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data must begin on the first January first or July first following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data must be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety days' advance notice.
- 3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment may not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

4. Surplus lines insurance premiums by state:

<u>State</u>	Premiums Based on Taxes Paid	Share of Total Premiums
<u>Alabama</u>	<u>\$445,746,000</u>	<u>1.47%</u>
<u>Alaska</u>	89,4 <u>53,519</u>	0.29%
<u>Arizona</u>	663 <u>,703,267</u>	<u>3.23 %</u> 2.18%
Arkansas	201,859,750	<u>0.66%</u>
California	<u>5,622,450,467</u>	<u>18.49%</u>
Colorado	543,781,333	<u>1.79%</u>
Connecticut	329,358,800	1.08%
<u>Delaware</u>	92,835,950	<u>0.31%</u>
Florida	2,660,908,760	8.75%
Georgia	895,643,150	2.95%
Hawaii	232,951,489	0.77%
<u>Idaho</u>	74,202,255	0.24%
<u>Illinois</u>	1,016,504,629	3.34%
Indiana	412,265,320	1.36%
lowa	135,130,933	0.44%
Kansas	160,279,300	0.53%
Kentucky	167,996,133	0.55%
Louisiana	853,173,280	<u>2.81%</u>
Maine	60,111,200	0.20%
Maryland	434,887,600	1.43%
Massachusetts	708,640,225	2.33%
Michigan	703,357,040	2.31%
<u>Minnesota</u>	393,128,400	1.29%
<u>Mississippi</u>	263,313,175	0.87%
<u>Missouri</u>	<u>404,489,860</u>	<u>1.33%</u>
<u>Montana</u>	<u>64,692,873</u>	<u>0.21%</u>
<u>Nebraska</u>	<u>92,141,167</u>	<u>0.30%</u>
<u>Nevada</u>	<u>354,271,514</u>	<u>1.17%</u>
New Hampshire		<u>0.34%</u>
<u>New Jersey</u>	<u>1,087,994,033</u>	<u>3.58%</u>
New Mexico	<u>67,608,458</u>	<u>0.22%</u>
New York	<u>2,768,618,083</u>	<u>9.11%</u>
North Carolina		<u>1.69%</u>
North Dakota	<u>36,223,943</u>	<u>0.12%</u>
<u>Ohio</u>	342,000,000	<u>1.12%</u>
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05%</u>
<u>Oregon</u>	<u>312,702,150</u>	<u>1.03%</u>
<u>Pennsylvania</u>	<u>780,666,667</u>	<u>2.57%</u>
Rhode Island	<u>71,794,067</u>	<u>0.24%</u>
South Carolina	<u>412,489,825</u>	<u>1.36%</u>
South Dakota	<u>38,702,120</u>	<u>0.13%</u>
<u>Tennessee</u>	451,775,240	<u>1.49%</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06%</u>
<u>Utah</u> Vormant	142,593,412	<u>0.47%</u>
<u>Vermont</u>	41,919,433	<u>0.14%</u> 3.01%
<u>Virginia</u>	611,530,667	<u>2.01%</u> 2.43%
Washington	739,932,050 130,476,250	<u>2.43%</u> 0.43%
West Virginia Wisconsin	130,476,250 248,758,333	<u>0.43%</u> 0.82%
VVIDUUIIII	<u> </u>	<u>U.OZ 70</u>

<u>Wyoming</u>

<u>40,526,967</u> \$30,400,197,251 0.13% 100.00%

Total \$30,400.197,251 100.00%

This data is 2005 calendar year data excerpted from a study dated Febuary 27, 2007, by Mackin & Company.

Article XIV. - Withdrawal, Default, and Termination

- 1. a. Once effective, the compact must continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact, "withdrawing state", by enacting a statute specifically repealing the statute which enacted the compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal may not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.
 - c. The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.
 - d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
 - e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal must continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.
 - f. Reinstatement following withdrawal of any compacting state must occur upon the effective date of the withdrawing state reenacting the compact.
- 2. a. If the commission determines that any compacting state has at any time defaulted, "defaulting state", in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the

- defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.
- b. Decisions of the commission that are issued on the effective date of termination must remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection 1.
- c. Reinstatement following termination of any compacting state requires a reenactment of the compact.
- 3. a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
 - b. Upon the dissolution of this compact, the compact becomes null and void and must have no further force or effect, and the business and affairs of the commission must be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

Article XV. - Severability and Construction

- 1. The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact must be enforceable.
- 2. The provisions of this compact must be liberally construed to effectuate its purposes.
- 3. Throughout this compact the use of the singular includes the plural and vice versa.
- 4. Any headings and captions of articles, subsections, and subdivisions used in this compact are for convenience only and must be ignored in construing the substantive provisions of this compact.

Article XVI. - Binding Effect of Compact and Other Laws

- 1. a. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision b.
 - b. Decisions of the commission, and any rules, and any other requirements of the commission must constitute the exclusive rule, or determination applicable to the compacting states. Any law or regulation regarding nonadmitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:
 - (1) Clearinghouse transaction data reporting requirements:
 - (2) Allocation formula:
 - (3) Clearinghouse transaction data collection requirements:

- (4) Premium tax payment timeframes and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single-state risks:
- (5) Exclusive compliance with surplus lines law of the home state of the insured;
- (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks;
- (7) Uniform foreign insurers eligibility requirements:
- (8) Uniform policyholder notice; and
- (9) <u>Uniform treatment of purchasing groups procuring nonadmitted</u> insurance:
- c. Except as stated in subdivision b, any rule, uniform standard, or other requirement of the commission must constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under article X; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the attorney general of the state, including maintaining any actions or proceedings, as authorized by law.
- a. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.
 - b. All agreements between the commission and the compacting states are binding in accordance with their terms.
 - c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.
 - d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission must be ineffective as to that state and those obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 126	2011
Roll Call Vote	# <u>3</u>

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RES	OLUTI	ON NO	D. 1125				
House House Industry, Business and Labor			Committee				
Check here for Conference Conference	mmitte	е					
Legislative Council Amendment Numb	er _	11. 8	8107.01002				
Action Taken: 🔀 Do Pass 🗌 Do Not Pass 💢 Amended 🔲 Adopt Amendment							
Motion Made By Rep. Kasper seconded By Rep. Ruby							
Representatives	Yes	No	Representatives	Yes	No		
Chairman Keiser	77		Representative Ree	77			
Vice Chairman Kasper Representative Clark	77		Representative Boe Representative Gruchalla	77			
<u> </u>	7		Representative M Nelson	17			
Representative Frantsvog Representative N Johnson	7		Trepresentative in reciser				
Representative Kreun	7				 		
Representative Nathe	7						
Representative Ruby							
Representative Sukut	77						
Representative Vigesaa	7						
Total Yes 14 Absent		N	0				
Floor Assignment Rep.	K	<u>as</u> î	per				
If the vote is on an amendment, brief	ly indica	ate inte	ent.				



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REPORT OF STANDING COMMITTEE

- HB 1123: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1123 was placed on the Sixth order on the calendar.
- Page 1, line 3, after "insurance" insert "and enactment of the surplus lines insurance multistate compliance compact"
- Page 1, line 3, remove the first "and"
- Page 1, line 5, after "insurance" insert "; and to declare an emergency"
- Page 5, line 2, after "search" insert "or to file the affidavit in subsection 7"
- Page 6, line 23, replace "In" with "If the insured's home state is this state, in"
- Page 7, remove line 10
- Page 7, line 11, replace "with other states" with:
 - "3. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact"
- Page 7, line 20, remove "If a surplus lines policy procured through a surplus lines producer covers properties."
- Page 7, remove lines 21 and 22
- Page 7, line 23, replace "properties, risks, or exposures located or to be performed in this state. In" with "If the insured's home state is this state, in"
- Page 8, line 23, replace "The" with "If the insured's home state is this state, the"
- Page 9, line 16, replace "Each" with "If the insured's home state is this state, each"
- Page 10, line 20, replace "On" with "If the insured's home state is this state, on"
- Page 11, line 26, replace "In" with "If the insured's home state is this state, in"
- Page 12, replace lines 3 through 11 with:

"26.1-44-11. Enactment of surplus lines insurance multistate compliance compact.

The surplus lines insurance multistate compliance compact is enacted into law and entered by this state with all other states legally joining therein in the form substantially as follows:

Article I. - Purpose

The purposes of this compact are:

- 1. To implement the express provisions of the Nonadmitted and Reinsurance Reform Act.
- 2. To protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on nonadmitted insurance; and to protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and to provide for allocation of premium tax for nonadmitted insurance of

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multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission.

- 3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers.
- 4. To streamline regulatory compliance with respect to nonadmitted insurance placements by providing for exclusive single-state regulatory compliance for nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.
- 5. To establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to nonadmitted insurance of multistate risks, in accordance with rules to be adopted by the commission.
- To improve coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to nonadmitted insurance.
- 7. To adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for nonadmitted insurance of multistate risks and single-state risks, in accordance with rules to be adopted by the commission, thereby promoting the overall efficiency of the nonadmitted insurance market.
- 8. To adopt uniform mandatory rules with respect to regulatory compliance requirements for:
 - a. Foreign insurer eligibility requirements.
 - b. Surplus lines policyholder notices.
- To establish the surplus lines insurance multistate compliance compact commission.
- To coordinate reporting of clearinghouse transaction data on nonadmitted insurance of multistate risks among compacting states and contracting states.
- To perform these and such other related functions as may be consistent with the purposes of the surplus lines insurance multistate compliance compact.

Article II. - Definitions

For purposes of this compact, the following definitions apply:

- "Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home state; for purposes of this compact, "admitted insurer" does not include a domestic surplus lines insurer as may be defined by applicable state law.
- 2. "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.



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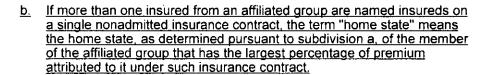
- 3. "Allocation formula" means the uniform methods promulgated by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.
- "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
- 5. "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for nonadmitted insurance of multistate risks, in accordance with this compact and rules to be adopted by the commission.
- 6. "Clearinghouse transaction data" means the information regarding nonadmitted insurance of multistate risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules to be adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.
- "Commission" means the surplus lines insurance multistate compliance compact commission established by this compact.
- 8. "Commissioner" means the chief insurance regulatory official of a state, including commissioner, superintendent, director, or administrator or their designees.
- 9. "Compacting state" means any state that has enacted this compact legislation and which has not withdrawn pursuant to article XIV, subsection 1, or been terminated pursuant to article XIV, subsection 2.
- 10. "Contracting state" means any state that has not enacted this compact legislation but has entered a written contract with the commission to utilize the services of and fully participate in the clearinghouse.
- 11. "Control", an entity has "control" over another entity if:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

12. "Home state":

- a. Except as provided in subdivision b, the term "home state" means, with respect to an insured:
 - (1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - (2) If one hundred percent of the insured risk is located out of the state referred to in paragraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

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- 13. "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other nonadmitted insurer as permitted by the laws of the home state.
- "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of the Nonadmitted and Reinsurance Reform Act on and after July 21, 2011.
- 15. "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state is limited to one vote.
- 16. "Multistate risk" means a risk with insured exposures in more than one state.
- 17. "Nonadmitted insurance" means surplus lines insurance and independently procured insurance.
- 18. "Nonadmitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.
- 19. "Nonadmitted and Reinsurance Reform Act" means the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203; 124 Stat. 1589; 15 U.S.C. 8201 et seq.] which is subtitle B of title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- 20. "Noncompacting state" means any state that has not adopted this compact.
- "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.
- 22. "Premium tax" means with respect to nonadmitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.
- 23. "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.
- 24. "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations and is domiciled in any state.

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- 25. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.
- 26. "Single-state risk" means a risk with insured exposures in only one state.
- 27. "State" means any state, district, or territory of the United States of America.
- 28. "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.
- 29. "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other nonadmitted insurer as permitted under the law of the home state; for purposes of this compact, "surplus lines insurance" also means excess lines insurance as may be defined by applicable state law.
- 30. "Surplus lines insurer" means a nonadmitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this compact, "surplus lines insurer" also means an insurer that is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.
- 31. "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

Article III. - Establishment of the Commission and Venue

- The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multistate compliance compact commission.
- 2. Pursuant to article IV, the commission may adopt mandatory rules that establish exclusive home state authority regarding nonadmitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.
- Pursuant to article IV, the commission may adopt mandatory rules
 establishing foreign insurer eligibility requirements and a concise and
 objective policyholder notice regarding the nature of a surplus lines
 placement.
- The commission is a body corporate and politic, and an instrumentality of the compacting states.
- 5. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.
- Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.



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Article IV. - Authority to Establish Mandatory Rules

The commission shall adopt mandatory rules that establish:

- 1. Allocation formulas for each type of nonadmitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus lines licensee as a material consideration.
- Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.
- 3. Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state-designated agencies or entities.
- 4. That nonadmitted insurance of multistate risks must be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance must include persons required to be licensed to sell, solicit, or negotiate surplus lines insurance; insurer eligibility requirements or other approved nonadmitted insurer requirements; diligent search; and state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission. Home state regulatory compliance requirements applicable to independently procured insurance placements must include providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.
- 5. That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all nonadmitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.
- 6. That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than ninety days' advance notice to the compact commission.
- 7. That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly utilizing one or more of the following dates only: March first, June first, September first, and December first.
- 8. That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.



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9. The obligation of the home state by itself, through a designated agent, surplus lines stamping, or service office, to collect clearinghouse transaction data from surplus lines licensees and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.

- 10. A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees, and insureds who independently procure insurance all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due, and a method to pay them through the clearinghouse.
- 11. That each surplus lines licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.
- That a policy considered to be surplus lines insurance in the insured's home 12. state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state must be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.
- Uniform foreign insurer eligibility requirements as authorized by the Nonadmitted and Reinsurance Reform Act.
- 14. A uniform policyholder notice.
- 15. Uniform treatment of purchasing group surplus lines insurance placements.

Article V. - Powers of the Commission

The commission may:

- Promulgate rules and operating procedures, pursuant to article VIII of this
 compact, which must have the force and effect of law and must be binding
 in the compacting states to the extent and in the manner provided in this
 compact;
- Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law may not be affected;
- Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided, however, the commission is not empowered to demand or subpoena records or data from nonadmitted insurers;
- 4. Establish and maintain offices, including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding nonadmitted insurance of multistate risks, single-state risks for states that



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elect to require surplus lines licensees to pay premium tax on single-state risks through the clearinghouse, and tax reporting forms;

- 5. Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services of personnel, including employees
 of a compacting state or stamping office, pursuant to an open, transparent,
 objective, competitive process and procedure adopted by the commission;
- 7. Hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel, and other related personnel matters;
- Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
- Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest or both;
- Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- 11. Provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:
 - a. Minimum audit standards, including sampling methods;
 - b. Review of internal controls;
 - <u>Cooperation and sharing of audit responsibilities between compacting states;</u>
 - <u>d.</u> Handling of refunds or credits due to overpayments or improper allocation of premium taxes;
 - Taxpayer records to be reviewed, including a minimum retention period; and
 - f. Authority of compacting states to review, challenge, or reaudit taxpayer records;
- 12. Enforce compliance by compacting states and contracting states with rules and bylaws pursuant to the authority set forth in article XIV:
- 13. Provide for dispute resolution among compacting states and contracting states;
- 14. Advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents, or brokers domiciled or doing business in noncompacting states, consistent with the purposes of this compact;



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- 15. Make available advice and training to those personnel in state stamping offices, state insurance departments, or other state departments for recordkeeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;
- 16. Establish a budget and make expenditures:
- 17. Borrow money.
- Appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
- 19. Establish an executive committee of not less than seven nor more than fifteen representatives, which must include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one-year term. Representatives of the executive committee must be entitled to one vote each. The executive committee must have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including the activities of the operations committee created under this article and compliance and enforcement of the provisions of the compact, its bylaws, and rules, and such other duties as provided herein and as deemed necessary;
- 20. Establish an operations committee of not less than seven and not more than fifteen representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations, and recommendations regarding the establishment of mandatory rules to be adopted by the commission.
- 21. Enter contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts:
- 22. Adopt and use a corporate seal; and
- 23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article VI. - Organization of the Commission

1. a. Each compacting state must have and is limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member must be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which that member must be appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the compacting state wherein the vacancy exists.

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- Each member is entitled to one vote and must have an opportunity to participate in the governance of the commission in accordance with the bylaws.
- The commission, by a majority vote of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including:
 - (1) Establishing the fiscal year of the commission;
 - (2) Providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;
 - (3) Providing reasonable standards and procedures for the establishment and meetings of committees, and governing any general or specific delegation of any authority or function of the commission;
 - (4) Providing reasonable procedures for calling and conducting meetings of the commission which consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting:
 - (5) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission:
 - (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws must exclusively govern the personnel policies and programs of the commission;
 - (7) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and
 - (8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving or both of all of its debts and obligations.
- d. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.
- 2. a An executive committee of the commission is established. All actions of the executive committee, including compliance and enforcement, are subject to the review and ratification of the commission as provided in the bylaws. The executive committee may have no more than fifteen representatives, or one for each state if there are less than fifteen compacting states, who shall serve for a term and be established in accordance with the bylaws.



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- b. The executive committee must have such authority and duties as may be set forth in the bylaws, including:
 - (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
 - (2) Establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures;
 - (3) Overseeing the offices of the commission; and
 - (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.
- c. The commission annually shall elect officers from the executive committee, with each having such authority and duties as may be specified in the bylaws.
- d. The executive committee, subject to the approval of the commission, shall appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission, but may not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.
- 3. a. An operations committee is established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee must accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee must be resolved by the majority vote of the commission.

The operations committee may not have more than fifteen representatives or one for each state if there are fewer than fifteen compacting states, who shall serve for a term and must be established as set forth in the bylaws.

The operations committee must have responsibility for:

- (1) Evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms, and to minimize costs to the states, state stamping offices, and the clearinghouse.
- (2) Making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems.
- (3) Evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations.

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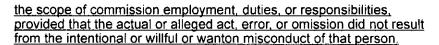
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(4) Such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.

- b. All representatives of the operations committee must be individuals who have extensive experience or employment or both in the surplus lines insurance business, including executives and attorneys employed by surplus lines insurers, surplus lines licensees, law firms, state insurance departments or state stamping offices or any combination of these entities. Operations committee representatives from compacting states, which utilize the services of a state stamping office, shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.
- 4. a. A legislative committee composed of state legislators or their designees is established to monitor the operations of and make recommendations to, the commission, including the executive committee, provided that the manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.
 - b. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.
- 5. The commission shall maintain its corporate books and records in accordance with the bylaws.
- 6. a. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission must be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision may be construed to protect any such person from suit or liability or both for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
 - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel, and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
 - c. The commission shall indemnify and hold harmless any member, officer, executive director; employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within

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Article VII. - Meetings and Acts of the Commission

- The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
- Each member of the commission may cast a vote to which that compacting state is entitled and may participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.
- 3. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
- Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or otherwise provided in the compact.
- The commission shall promulgate rules concerning its meetings consistent with the principles contained in the Government in the Sunshine Act [5 U.S.C. 552b], as may be amended.
- 6. The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:
 - Relate solely to the commission's internal personnel practices and procedures;
 - <u>b.</u> <u>Disclose matters specifically exempted from disclosure by federal and state statute;</u>
 - <u>Disclose trade secrets or commercial or financial information that is privileged or confidential;</u>
 - d. Involve accusing a person of a crime, or formally censuring a person;
 - <u>Disclose information of a personal nature where disclosure would</u> constitute a clearly unwarranted invasion of personal privacy;
 - <u>f.</u> <u>Disclose investigative records compiled for law enforcement purposes;</u> <u>or</u>
 - g. Specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
- 7. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which must fully and clearly describe all matters discussed in a meeting and must provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission.

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Article VIII. - Rules and Operating Procedures - Rulemaking Functions

of the Commission

- The commission shall adopt reasonable rules in order to effectively and
 efficiently achieve the purposes of this compact. Notwithstanding the
 foregoing, in the event the commission exercises its rulemaking authority in
 a manner that is beyond the scope of the purposes of this compact, or the
 powers granted hereunder, then such an action by the commission is invalid
 and has no force or effect.
- Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, Uniform Laws Annotated, vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.
- 3. All rules and amendments, thereto, must become effective as of the date specified in each rule, operating procedure, or amendment.
- 4. Not later than thirty days after a rule is adopted, any person may file a petition for judicial review of the rule, provided that the filing of such a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

Article IX. - Commission Records and Enforcement

- 1. The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse must be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
- 2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure may not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission may not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this section, the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission must remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.
- The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying

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compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state must be deemed to be in default as set forth in article XIV.

Article X. - Dispute Resolution

- 1. Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states, or noncompacting states, and the commission shall promulgate a rule providing alternative dispute resolution procedures for such disputes.
- The commission shall also provide alternative dispute resolution procedures
 to resolve any disputes between insureds or surplus lines licensees
 concerning a tax calculation or allocation or related issues which are the
 subject of this compact.
- Any alternative dispute resolution procedures must be utilized in circumstances where a dispute arises as to which state constitutes the home state.

Article XI. - Review of Commission Decisions

- Except as necessary for adopting rules to fulfill the purposes of this compact, the commission may not otherwise regulate insurance in the compacting states.
- 2. Not later than thirty days after the commission has given notice of any rule or allocation formula, any third-party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 6 of article III.
- 3. The commission may monitor, review, and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection 2.

Article XII. - Finance

- The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.
- The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

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- 3. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in article VIII.
- 4. The commission must be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and may not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.
- The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission must be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which must include a report of the independent audit. The commission's internal accounts may not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request, provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, must remain confidential.
- A compacting state may not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.
- 7. The commission may not make any political contributions to candidates for elected office, elected officials, political parties, or political action committees. The commission may not engage in lobbying except with respect to changes to this compact.

Article XIII. - Compacting States, Effective Date, and Amendment

- 1. Any state is eligible to become a compacting state.
- The compact must become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission must become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in subsection 4. Thereafter, it must become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data must begin on the first January first or July first following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data must be set by the commission provided surplus lines licensees and all other interested parties receive not less than ninety days' advance notice.

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3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment may not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

4. Surplus lines insurance premiums by state:

Premiums Ba State on Taxes		Share of Total Premiums	
Alabama \$4 Alaska	445,746,000 89,453,519		
Arizona 6	63,703,267	7 2 100/	
Arkanana (003,703,207	<u>2.18%</u>	
	201,859,750		
	322,450,467		
	<u>543,781,333</u>		
	329,358,800	<u>1.08%</u>	<u> </u>
<u>Delaware</u>	92,835,950	0.31%	2
Florida 2,6	60,908,760	8.75%	•
	395,643,150)
	232,951,489		
<u>ldaho</u>	74,202,255		<u>-</u>
Illinois 1,0	016,504,629	3.34%	`
Indiana 4	112,265,320	1.36%	
	135,130,933		
	160,279,300		
	167,996,133	0.55% 0.55%	
	353,173,280		
<u>Maine</u>	<u>60,111,200</u>		
	434 <u>.887,600</u>		
<u>Massachusetts</u>	708,640,225	5 <u>2.33%</u> 2.31%	2
	703,357,040	<u>2.31%</u>	3
	393,128,400		
	263,313,175		
	<u> 104,489,860</u>		
<u>Montana</u>	64,692,873		
<u>Nebraska</u>	92,141,167		
	354,271,514		
New Hampshire	<u> 102,946,250</u>	0.34%	
New Jersey 1.0	087,994,033	<u>3.58%</u>	2
New Mexico	67,608,458		
	768,618,083		
North Carolina 5	514,965,060	<u>1.69%</u>	
North Dakota	36,223,943	<u>0.12%</u>	<u>)</u>
	342,000,000		
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05%</u>	<u>)</u>
Oregon 3	312 <u>,702,150</u>) <u>1.03%</u>	2
Pennsylvania 7	780,666,667	<u>2.57%</u>	2
Rhode Island	71,794,067	0.24%	2
	112,489,825	1.36%	2
South Dakota	38,702,120	0.13%	2
<u>Tennessee</u>	4 <u>51,775,240</u>		
Texas 3,0	059,170,454		
<u>Utah</u>	142,593,412	0.47%	
Vermont	41,919,433		
	311,530,667		
	739,932,050		
West Virginia	130,476,250		
	248,758,333		
Wyoming	40,526,967		
	100,197,251		

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This data is 2005 calendar year data excerpted from a study dated Febuary 27, 2007, by Mackin & Company.

Article XIV. - Withdrawal, Default, and Termination

- a. Once effective, the compact must continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact, "withdrawing state", by enacting a statute specifically repealing the statute which enacted the compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal may not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.
 - c. The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.
 - d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.
 - e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal must continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.
 - f. Reinstatement following withdrawal of any compacting state must occur upon the effective date of the withdrawing state reenacting the compact.
- If the commission determines that any compacting state has at any time defaulted, "defaulting state", in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state must be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.
 - Decisions of the commission that are issued on the effective date of termination must remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection 1.



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- c. Reinstatement following termination of any compacting state requires a reenactment of the compact.
- 3. a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
 - b. Upon the dissolution of this compact, the compact becomes null and void and must have no further force or effect, and the business and affairs of the commission must be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

Article XV. - Severability and Construction

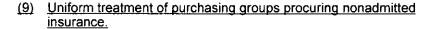
- The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact must be enforceable.
- The provisions of this compact must be liberally construed to effectuate its purposes.
- Throughout this compact the use of the singular includes the plural and vice versa.
- 4. Any headings and captions of articles, subsections, and subdivisions used in this compact are for convenience only and must be ignored in construing the substantive provisions of this compact.

Article XVI. - Binding Effect of Compact and Other Laws

- 1. a. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision b.
 - b. Decisions of the commission, and any rules, and any other requirements of the commission must constitute the exclusive rule, or determination applicable to the compacting states. Any law or regulation regarding nonadmitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:
 - (1) Clearinghouse transaction data reporting requirements:
 - (2) Allocation formula;
 - (3) Clearinghouse transaction data collection requirements:
 - (4) Premium tax payment timeframes and rules concerning dissemination of data among the compacting states for nonadmitted insurance of multistate risks and single-state risks:
 - (5) Exclusive compliance with surplus lines law of the home state of the insured;
 - (6) Rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to nonadmitted insurance of multistate risks;
 - (7) Uniform foreign insurers eligibility requirements:
 - (8) Uniform policyholder notice; and

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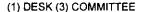
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- c. Except as stated in subdivision b, any rule, uniform standard, or other requirement of the commission must constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission may abrogate or restrict: the access of any person to state courts; the availability of alternative dispute resolution under article X; remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; state law relating to the construction of insurance contracts; or the authority of the attorney general of the state, including maintaining any actions or proceedings, as authorized by law.
- 2. a. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.
 - All agreements between the commission and the compacting states are binding in accordance with their terms.
 - c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.
 - d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission must be ineffective as to that state and those obligations, duties, powers, or jurisdiction must remain in the compacting state and must be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly



2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1123

2011 SENATE STANDING COMMITTEE MINUTES



Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1123 March 8, 2011 Job Number 15109

[Conference Committee
Committee Clerk Signature	Evi Lutell
Explanation or reason for intro	eduction of bill/resolution:
Relating to surplus lines insuran- compliance compact	ce and enactment of the surplus lines insurance multistate
Minutes:	Testimony Attached

Chairman Klein: Opened the hearing.



Carole Kessel, Chief Examiner and Director of the Examinations and Company Licensing Division of the North Dakota Insurance Department: Testimony Attached.

Representative Keiser: He said the bill that was initially presented to the house would provide to the commissioner the authority in the interim to make a decision as to whether to join a state negotiated arrangement for the sharing of surplus lines tax or whether to join some kind of compact between the states. He said the NCSL, NCOIL and CSG have all adopted after four years of work, collect the tax. He said they have a great number of companies that sell surplus line coverage in our state. He said they looked at the options and met with the Commissioner. He said he wanted to clarify that those same organizations CSG, NCSL, NCOIL, and the NIIC have all sent written as well as personal contacts to members of congress requesting an extension of the guidelines contained in the NRRA ruling. They don't want it operational on July 2011, because it is difficult to achieve. The industry supports SLIMPACT, but does not support NIMA. He said that CSG participated in the development of SLIMPACT. CSG has part of the organization that is dedicated to the development of compacts and there is an individual that has submitted to different organizations a document that says they believe the NIMA approach is unconstitutional. That is because authority is being delegated prior to a decision being made. He doesn't know if there is merit or not in what the person from CSG had stated but they believe SLIMPACT is the appropriate approach. He said he hopes they can be granted an extension on NRRA.



Chairman Klein: Said that Carol had indicated that they needed to remove the SLIMPACT provision to restore the original language because of the negative 290,000 dollar tax impact. He asked if he would give an oversight to the SLIMPACT provisions that had been put in.

Senate Industry, Business and Labor Committee HB 1123 March 8, 2011 Page 2

Representative Keiser: He said he hadn't had a chance to talk to them to see how they developed the fiscal note. He said that was the fiscal note on the bill if they don't resolve the issue. If on July it becomes law and they don't have a satisfactory solution and the Feds take it over or they allow the home state to take those monies that is the impact regardless. He said he would argue that there is the same issue with NIMA. If they don't have an agreement with them they will lose the same money. He would be happy to debate the fiscal note.

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Chairman Klein: The issue isn't whether it is NIMA or SLIMPACT, the issue is if we get something adopted that we can move forward with. There are a variety of things the department has concerns with if they maintain the SLIMPACT provisions.

Carole: She goes over the graphic and states it is meant to explain where they are now and where they hope to get to.

Chairman Klein: Said that the comment that Representative Keiser made about whether it is SLIMPACT or NIMA we pose a risk of having a 290,000 dollar impact regardless.

Carole: The impact will be greatest if North Dakota is on the wrong side of the fence. If we are not aligned with the majority of the states and that is where they have a problem with SLIMPACT, because they are not at the point right now where they are convinced that SLIMPACT will be the majority compact. If it is not the majority the impact will be greater.

Chairman Klein: Asked if NIMA was model legislation from somewhere.

Carole: It is a model regulation that is NIC.

Chairman Klein: What we are doing is NIC verses industry.

Carole: That is correct.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1123 March 8, 2011 Job Number 15109

☐ Conference Committee

Committee Clerk Signature	Eon Setbold
Explanation or reason for int	roduction of bill/resolution:
Relating to surplus lines insura compliance compact	ince and enactment of the surplus lines insurance multistate
Minutes:	No testimony

Chairman Klein: Stated that the commissioner's office did not mind the bill they just don't like section 12 which is adopting the NCOIL model which is also endorsed by the CSG and the NCSL. The Insurance Commissioner would like to have his model which is the NIIC model which is NIMA. The concern that they have as a state is they need to move a model forward and that they have the state moving in the right directions so the federal government will not be coming in and impose more restrictions on the state and regulate us. The question is, is it SLIMPACT or NIMA. He said if they amend it to the commissioner's bill there will be a conference committee. The house past it with the section 12 being the SLIMPACT version verses the amendment that Carole proposed on page 3 of her testimony.

Senator Andrist: Said that it could always be changed.

Chairman Klein: Said that is correct. They will take a little more time with this.

Comments and Discussion

Senator Laffen: Stated that everybody likes the bill but the only issue is that they have to join a compact and there are two out there to join. The bill sponsor is very knowledgeable in this industry and supports SLIMPACT and the Insurance Commissioner supports the other one.

Chairman Klein: He supports NIMA which is part of his organization which is a product of NAIC, National Association of Insurance Commissioners.

Senator Laffen: The issue is that these compacts share the revenue from policies that go across states, so if there are more states we have more revenue sharing. That is why she desires to be in a state with more revenue in it.

Senate Industry, Business and Labor Committee HB 1123 March 8, 2011 Page 2

Chairman Klein: Said he would like an amendment so it will go into conference so they can learn more about it. They need more information.

Senator Schneider: Asked if there was a substantive difference between the two of them. It was said that NIMA involves a group of states that have contracts with each other verses a compact, under SLIMPACT, that everybody signs on to.

Chairman Klein: Said that it is his understanding that NIMA gives the insurance commissioner more authority in working with the compact, whereas SLIMPACT would give the legislature more authority. The hearing was closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1123 March 22, 2011 Job Number 15819

Conference Committee

Committee Clerk Signature	Ein Lalet
Explanation or reason for inte	roduction of bill/resolution:
Relating to surplus lines insura compliance compact	nce and enactment of the surplus lines insurance multistate
Minutes:	Discussion

Chairman Klein: Called the meeting to order on 1123. He said it has a fiscal note is a couple hundred thousand dollars of income. As you recall Representative Keiser suggested that we keep the bill as it is. Carole from the insurance department would like us to go to the NIMA compact and remove the SLIMPACT provisions.

Senator Larsen: Said that there was eight states involved in the SLIMPACT and seventeen in the NIMA but where they were, was not the SLIMPACT the east to west coast and the one with the less states would help us better in our compact better.

Chairman Klein: The SLIMPACT provisions allow for North Dakota to operate and make more earn more dollars then they would under the NIMA provisions. NIMA is the NIC model, which is national association of insurance commissioners and SLIMPACT is the ENCOIL model, which is national conference of insurance legislators. We have regulators with one bill and legislators with the other bill and that is the difference.

Senator Murphy: Said that in Carole's testimony she said the fiscal affect for North Dakota if SLIMPACT is adopted here and not in the majority and it is way behind as you just noted, it an estimated loss of 290,000 dollars. That is why she wants to go with NIMA.

Senator Schneider: Said he was looking for clarification. Doesn't she want the flexibility to choose which compact she would pick?

Senator Andrist: He said he does remember that.

Chairman Klein: Said he thought he could Representative Keiser come over and explain the ENCOIL model and why we want to be in that venue.

Senator Laffen: Asked if they could enter two compacts.



Senate Industry, Business and Labor Committee HB 1123 March 22, 2011 Page 2

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Chairman Klein: He went over Carole's amendment.

Senator Nodland: Said that they want this amendment that it would give them the authority to enter into a compact when it becomes clearer in the future months which compact is chosen by a majority of the states and will become the standard for uniformity.

Chairman Klein: Said that his thought would be if you look at the original House Bill 1123 it would be the insurance commissioner's version because that is where it came from. If you read the engrossed version it would be the ENCOIL model. The insurance commissioner wants to go back to the original model. Senator Nodland will get some amendments to put it back to the way it was. He closed the meeting.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1123 March 23, 2011 Job Number 15871

Conference Committee

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Committee Clerk Signature	Son Leetell
Explanation or reason for intro	duction of bill/resolution:
Relating to surplus lines insurance compliance compact	ce and enactment of the surplus lines insurance multistate
Minutes:	Discussion and Attachments

Chairman Klein: Reconvened the committee. Senator Nodland, do you want to talk about your amendments.

Senator Nodland: Said he placed a couple amendments before them on 1123. He said he visited with Carole in the insurance department about these and asked her and Commissioner Hamm what they are really looking at. We talked about it a little bit yesterday and tried to recall what it was all about. Attachment (1).

Chairman Klein: Said they were trying to figure out why they would amend it back to the original form. He asked if they were looking to adopt the NIMA provisions.

Carole Kessel, Director of the North Dakota Insurance Department: She said no, they are not even talking NIMA at this point. It is whether to go ahead and adopt SLIMPACT into this bill or replace the SLIMPACT provisions with reverting back to the departments initial proposal to allow the Commissioner authority to enter into a compact or agreement whether it is SLIMPACT or NIMA, maybe not entering a compact at all but contracting with one of those clearing houses. They want to base it on a cost benefit analyzes and they don't feel they have enough information at this point to determine which approach would be best. She said she wanted to present a third option, the Ohio provision. Attachment (2).

Chairman Klein: Said that these initial amendments would provide the flexibility for the commissioner to determine which direction we would go so that we have the most states possible joining in.



Carole: Said the Ohio provisions would indicate that the superintendent, commissioner in our case would have the authority to enter into SLIMPACT if it was found to be advantages to the state or another agreement/compact if in the state's financial best interest.

Senate Industry, Business and Labor Committee HB 1123 March 23, 2011 Page 2

Senator Murphy: Said you would like to wait and Representative Keiser would like to go with SLIMPACT but this option would be good for both of you?

Carole: Said that would be true. She talks about there not being enough information available to make their decision and it would be best to wait. The law will go into effect on July 21st of this year and the federal law states that states may enter a compact but regardless or not if states enter into a compact or agreement the home state authority will still go into effect, that we can't side step that is not going to be impacted by a compact that is going to happen. She said that sections one through eleven addresses those and try to bring them into conformity with those changes. The compact question is not one that has to be determined now; it certainly doesn't look like it according to what the federal bill says.

Senator Andrist: Said that the purpose of the compact was to enhance insurance tax revenue?

Carole: Said that the purpose of the compact is to set up a clearing house which would collect the premium tax on multistate policies and distribute it to the correct state, will it enhance collections, are fiscal note indicates 290,000 for the biennium that we will lose at as result of not being able to tax. She said that they hope through a compact they would be able to receive those dollars.

Senator Andrist: Said it would not enhance your revenue but it would protect your revenue?

Carole: Said that is correct, it would hopefully bring us back to where we are right now.

Senator Andrist: Asked if there was a problem with joining one and then changing it.

Carole: Said she thinks legislators would have authority to do so and would there be a problem, probably not, maybe a little extra effort and resources spent doing that.

Chairman Klein: Said that we are being pushed by Dodd-Frank, that we have to do something are we not?

Carole: She read from the handout and said the language says that the states may enter, may enter into a compact or otherwise establish procedures to allocate amongst states the premium taxes paid to the insurance home state. She said she doesn't believe there is a mandate to enter into a compact by July 21st; their interpretation is they have time.

Senator Nodland: Said that what's really important is for the monetary gain or loss for the insurance department is to make sure it is the right compact for North Dakota.

Carole: Yes, choosing a compact that works best for North Dakota.

Senator Nodland: Said so that is why you want the latitude?

Carole: Said yes, it would give each party what they want.

Senate Industry, Business and Labor Committee HB 1123 March 23, 2011 Page 3

Chairman Klein: Said whatever they do here it will probably be in some sort of conference. I am going as Representative Keiser to come in to give his interpretation to where we are at, so we can be in a little bit of an agreement before we pass this through.

Representative Keiser: Said that in review from a different perspective, this information was provided by ENCOIL because we are monitoring SLIMPACT in all the states and we are sharing what we like and what we don't like. He said this hear is just a restatement of NIMA, which is not a proposal of that ENCOIL nor the industry has endorsed. He said this is not acceptable. He said the act that did this was the NNRA act of 2010. He went on to read what the act stated. He said congress said you have two options, get ten states to join a compact and then the hammer comes in from congress that they demonstrated they are going to go the compact route now we are going to require the compact to be implemented. The second one is you can go the NIMA route but you need to have forty percent of the premium dollars. He said that is the big states and the big states aren't going to do it, maybe if they do their financial analyzes they will enter into an interstate agreement with Texas, New York and Connecticut because it is beneficial for them. He said follow the money is what this is about. He is here to tell you that with certainty that the industry recognizes that the only solution is SLIMPACT. The only option for a small state, where we can win is a compact; you will not win with the other options.

Questions for Representative Keiser



Senator Andrist: Asked would the downside be to joining SLIMPACT and figuring two years from now that NIMA might have been the better choice.

Representative Keiser: He said there is no downside that he can see. He goes over his feelings on the compact.

Senator Schneider: Said that it seems like they are being asked in this bill to make a hard choice when they don't have enough information. It doesn't seem like the commissioner is committed to joining NIMA over SLIMPACT, just wants to see how things settle out in the coming months, and is there any sense in allowing that choice to be made at a later date and maybe requiring budget section approval in addition to the commissioner's recommendation?

Representative Keiser: He said that everything you said argues for SLIMPACT. He goes over again why he believes SLIMPACT is the better choice. He said that NIMA would give away legislative authority and SLIMPACT would allow legislators to stay somewhat engaged in the process.

Senator Schneider: Said knowing all of that wouldn't the commissioner chose SLIMPACT under those circumstances? What I like about the flexibility it gives us a chance to make a different decision it things don't work out as we are anticipating they will. The commissioner is fully capable of choosing SLIMPACT if he wants to.



Representative Keiser: Said that nothing is going to change that he is aware of between now and then. This is the only opportunity we have to say from a policy standpoint were going to join SLIMPACT.

Senate Industry, Business and Labor Committee HB 1123 March 23, 2011 Page 4

Questions for Representative Keiser followed

Representative Keiser: Said that it is imperative that state legislature sends a message to congress that this time while we are in session we are supportive of a compact. Any delay by any of our states sends a different message and that's the problem.

Chairman Klein: He said they had a great discussion and this is the information they need to take a look at. He closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1123 March 23, 2011 Job Number 15870

☐ Conference Committee
Committee Clerk Signature Son Lebell
Explanation or reason for introduction of bill/resolution:
Relating to surplus lines insurance and enactment of the surplus lines insurance multistate compliance compact
Minutes: Discussion and Vote
Chairman Klein: Said the committee will reconvene. Said he would like to see what they could do with 1123. He said he isn't going to support the amendments.
Senator Nodland : Said it is a decision between us and the insurance commissioner in deciding what to do. He said he thinks Representative Keiser knows what he is talking about. I will vote against the amendment after I brought it forward after all the testimony we received from Representative Keiser.
Senator Schneider: Moved to adopt the amendment
Senator Murphy: Seconded the motion.
Roll Call Vote: Yes-2 No-5
Senator Nodland: Moved a do pass and rerefer to appropriations.
Senator Laffen: Seconded the motion.
Roll Call Vote: Yes-7 No-0
Senator Klein to carry the bill

Date:	3/23/11	
Roll Ca	all Vote #/_	

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. <u>HB 112.3</u>

Senate <u>Industry, Business and Lab</u>	or			Comm	ittee
Check here for Conference Co	mmitte	е			
_egislative Council Amendment Num	ber _				
Action Taken: Do Pass 🗍	Do Not	Pass	☐ Amended ☐ Adopt	Amend	ment
Rerefer to Ap	propriat	ions	Reconsider		
Motion Made By <u>Senator Sc</u>	hneid	er Se	conded By <u>Senator 1</u>	Muri	ohy
Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein			Senator Mac Schneider	V	
VC George L. Nodland		V	Senator Philip Murphy	V	<u> </u>
Senator John Andrist	ļ	~			
Senator Lonnie J. Laffen		<u>/</u>			
Senator Oley Larsen	<u> </u>	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		<u> </u>	
	 				
					
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If the vote is on an amendment, bri	efly indi	cate inte	ent:		

Date:	3	/23 <u></u>	<u> </u>	<u> </u>
Roll Call	Vo	te # _	2	

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. #8.112.3

Senate <u>Industry, Business and Labo</u>	or			Comm	ittee
Check here for Conference Co	mmitte	€			
Legislative Council Amendment Numb	per			<u>,</u>	
Action Taken: 🔀 Do Pass 🔲 [Do Not	Pass	☐ Amended ☐ Adopt	Ameno	iment
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Motion Made By <u>Senator An</u>	ndrisi	<u> </u>	conded By <u>Senator</u> 2	aff.	en
Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	V		Senator Mac Schneider	V	
VC George L. Nodland			Senator Philip Murphy	V	
Senator John Andrist	V]
Senator Lonnie J. Laffen	V				
Senator Oley Larsen	V/			<u> </u>	
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Total (Yes) 7		1	No		
Absent O					
Floor Assignment Senat	or K	lein			
If the vote is on an amendment, bri	efly indi	cate int	ent:		

Com Standing Committee Report March 23, 2011 1:11pm

Module ID: s_stcomrep_52_009 Carrier: Klein

REPORT OF STANDING COMMITTEE

HB 1123, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1123 was rereferred to the Appropriations Committee.

2011 SENATE APPROPRIATIONS

HB 1123

2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee

Harvest Room, State Capitol

HB 1123 .03-30-2011 Job #16170

	Conference Committee	
Committee Clerk Signature	Mie Telser	
Explanation or reason for intro	oduction of bill/resolution:	

A ROLL CALL VOTE FOR A DO PASS relating to surplus lines insurance and enactment of the surplus lines insurance multistate compliance compact, and to declare an emergency.

Minutes: Discussion and Vote

Chairman Holmberg: Called the committee to order on Wednesday, March 30, 2011 at 9:15 am in reference to HB 1123. He explained the reason why this bill is here before this committee. This bill increases the income of the state, now we will open our hearing on 1123. Things are very fluid this time of session. We want to focus on the dollar amount and the fiscal note so tell us what the bill does; we might pass on this bill after the hearing.

Rebecca Ternes, Deputy Insurance Commissioner: I brought Peggy Brintnell; we will do the best we can. There has been a federal law change with regards to the surplus lines tax collection it was driven by the industry, surplus lines are the odd ball types of insurance in the admitted market, from the really strange to some risky, the fed law requires us to make a change on how we collect a tax and if we don't' make a change, we would lose about \$290,000 a year. We have an opportunity to get into an agreement with other states, the decision we make will impact whether we are able to collect the \$290,000 or not. This decision has to be made by July 2; we were hoping more states would make the decision. It was amended on the house side, and they agreed on one, if 10 states agree no problem and if 10 don't we have a problem. We estimate the 290,000 dollars on the 2009 amounts, it is a rough estimate and that would be the worst case scenario.

Becky J. Keller: The fiscal note has a positive \$290,000 and you're speaking of negative revenue affect.

Rebecca: That is because this gets us into a multi state agreement if nine other states also join that agreement, ENCOIL agreement; if we do that we are fine and if we don't we have a potential to lose those funds.

Peggy Brintnell, Agent Licensing Supervisor of the Insurance Department: The estimated \$290,000, federal law is going to exempt us from collecting that starting in July, if we can enter into an agreement with the others state, this is only multistate policies, if we don't enter into

any agreement we estimate the loss to be \$290,000, we are sharing based on allocating monies on multistate policies.

Senator Robinson: This is a proactive effort to cover the basis, and the other question is in the policy committee was there any opposition to the bill?

Peggy: The issue has been what agreement and that seems to be a national issue the bill as amended ties us to the SLIMPACT agreement so we would be sharing with other states that are in, if no other states are involved in SLIMPACT then we aren't sharing and it is a real guessing came to what states will have the multistate policy.

Chairman Holmberg: There are some similarities between trying to stay ahead of the game with health care reform and with this measure, the difference is with health care reform the reason we have put off a number of tough decisions until November is because we have more time but with this case we have to be in place prior to July in order to take advantage of this.

V. Chair Bowman: When you enter into this agreement with other states does that tie are hands in any way as to any flexibility in insurance, are we then obligated to do what the compact says?

Peggy: When we enter into the agreement it depends on the other states. The law has been amended we were limited to the states that are also going to be SLIMPACT states. When we originally drafted the bill, we left it for more flexibility because we didn't know what states would end up in SLIMPACT and what would be the best option for the State of North Dakota.

Chairman Holmberg: Going back to understand this, if we do not pass this bill, your best estimate is we will lose \$290,000 of money we are already collecting; if we pass it we should not lose that money.

Peggy: With the SLIMPACT language, we will be able to share with all other SLIMPACT states and trade in effect what we are collecting from our residence that covers risks in their states and they would share with us from their residence for risks in North Dakota. What we would recover depends on what states are in the agreement with us.

Chairman Holmberg: The best case scenario this bill would be revenue neutral.

Peggy: I think that is a fair statement.

Chairman Holmberg: The fiscal note is what is confusing. It does say if we pass this bill we are going to gain \$290,000 dollars.

Peggy: That would be true if every other state joined SLIMPACT.

Chairman Holmberg: Do you all agree that it should be 0 with a potential of a \$290,000 loss?

Rebecca: On section 3, it says due to federal preemption North Dakota is no longer allowed to collect based on 2009 data. This revenue loss is estimated at \$290,000.

Chairman Holmberg: I think we will want to do something on the bill but if you would have a revised fiscal note so when it hits the floor and the IBL committee has to carry it they will know we did our job.

Senator Wanzek: As I understand this, I serve on the board of Nodak Mutual board of Directors and I know they have purchased a mutual company in Nebraska they are going to operate it as a separate entity but that wouldn't apply to them because those are risks that apply in Nebraska. You are talking about companies that are outside the state; develop policy for a risk inside the state?

Rebecca: Held up sheet and said this is how we explain this bill.

Peggy: This only affects surplus lines policies and only affects surplus lines policies that cover risks in North Dakota and another state so multistate. The federal law has said you cannot collect any surplus lines premium tax unless the insured is a resident of your state. What we have been doing is allocating, what risks are in North Dakota on this policy regardless of the insured residents, we will no longer be able to collect those if the insured is a resident of another state. They have a multistate policy some of the risks are in North Dakota.

Senator Wanzek: Would reinsurance policy be a surplus line?

Peggy: I don't think so.

Senator Fischer: When you introduced the bill, you did not choose one of the compacts, are you comfortable with this one? Why did you not choose one of the compacts?

Rebecca: We did not choose because we felt like we would prefer to find out how many other states joined which agreement to make sure there were ten to meet the federal law so we could collect. So as it is now we would be joining SLIMPACT.

Senator Krebsbach: Was there an amendment brought forward to the Senate Policy Committee that heard the bill to do exactly what you said?

Rebecca: I wasn't in that hearing.

Chairman Holmberg: There were no amendments by the Senate.

Rebecca: I don't know that we brought one forward, we did mention that was what the Ohio Senate had done.

Chairman Holmberg: The policy committee made their choice from whatever they had in front of them.

V. Chair Bowman: Can we get out of this pact, if it doesn't work the way it is suppose to work?

Senate Appropriations Committee HB 1123 03-30-11 Page 4

Rebecca: That is a good question that has been asked before and there is no answer yet, we are not sure what will happen.

Senator Wanzek: Would this be an example, an insurance company sponsors a hole in one and someone makes it and gets a combine.

Rebecca: You're right on, usually that's a surplus line or insuring a nuclear power plant, hard market coming forward.

Senator Robinson: I am not an insurance expert, given the testimony we heard because of deadline and the potential I move a do pass on the bill.

Senator Robinson moved a do pass on HB 1123. Seconded by Senator Erbele:

Senator Warner: The bill should pass. I am uncomfortable with the policy decisions made by the House, it should have been open and at the discretion of the Insurance Commissioner.

Senator Krebsbach: I feel it would be appropriate to attach an amendment, it would not change the bill as it stands but in the event of a change in policy it would leave an out for us to do the other.

Chairman Holmberg: It is a decision the committee has to make. We have a motion before us.

Senator Robinson moved a do pass. Seconded by Senator Erbele

A ROLL CALL VOTE WAS TAKEN ON A DO PASS ON HB 1123. YEA: 7; NAY: 5; ABSENT: 1.

This bill goes back to IB & L and Senator Klein will carry the bill.

The hearing was closed on HB 1123.

Date: _	3 -	3	0	_	1/
Roll Cal	l Vote#		1		

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1/23

Senate APPROPRIATIONS						mittee
☐ Check here	for Conference Co	ommitte	ee			
Legislative Counc	cil Amendment Num	ber _				
Action Taken:	☑ Do Pass □	Do Not	Pass	Amended Add	opt Amen	dment
_	☐ Rerefer to Ap	propria	tions	Reconsider		
Motion Made By	Robers	, <u>~</u>	Se	conded By Entel		
Sen	ators	Yes	No	Senators	Yes	No
Chairman Hal	b			Senator Warner		
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If the vote is on a	n amendment, brief	ly indica	até inter	nt: In Klei		

Com Standing Committee Report March 30, 2011 12:00pm

Module ID: s_stcomrep_57_007 Carrier: Klein

REPORT OF STANDING COMMITTEE

HB 1123, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1123 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1123

HOUSE BILL NO. 1123

Presented by: Carole Kessel

Company Licensing Director

North Dakota Insurance Department

Before: House Industry, Business and Labor Committee

Representative George Keiser, Chairman

Date: January 18, 2011

TESTIMONY

Good morning, Chairman Keiser and Industry, Business and Labor Committee members. For the record, my name is Carole Kessel and I am Chief Examiner and Director of the Examinations and Company Licensing Division of the North Dakota Insurance Department. I appear before you today in support of House Bill No. 1123.

This bill revises North Dakota law relating to surplus lines insurance to conform to the requirements of the United States Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) that is effective July 21, 2011. The NRRA is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which was enacted by Congress and signed into law on July 21, 2010. Dodd-Frank is a comprehensive overhaul and restatement of the U.S. financial regulatory system with implications for the insurance industry.

In the event you are not familiar with what the surplus lines market is, let me explain it this way. The Insurance Department regulates the admitted insurance market. Admitted companies, such as State Farm, Farmers Union, Nodak Mutual, and American Family, are subject to licensing and taxation; to filing requirements for policies, forms and rates; to financial reporting and oversight; and they have the protection of the Guaranty Fund in the event of failure. There also exists the nonadmitted, or surplus line, market in which companies like Lloyds of London and Lexington transact business. All states

acknowledge and permit the operation of a surplus lines market for the sole purpose of providing an insurance outlet for unusual, unique, or hazardous risks that the admitted companies will not insure. Nonadmitted companies are not subject to the same level of regulatory oversight and protections, for instance, there are no policy, form, or rate filing requirements and policyholders do not have Guaranty Fund protection. In the case of nonadmitted insurance, insurance producers (agents) must remit the premium tax. This bill is directed solely at the nonadmitted market.

The passage of the NRRA is intended to increase the efficiency and uniformity in transacting surplus lines insurance by implementing the following reforms:

- 1. Simplify payment of premium taxes by mandating that only the home state of the insured can collect the premium tax;
- 2. Establish home state authority for the placement of nonadmitted insurance by a surplus lines producer and the licensure of a surplus lines producer;
- 3. Streamline access to the surplus lines market for large commercial purchasers; and
- 4. Create uniform surplus lines insurer eligibility standards.

Congress intends that states adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance. This bill is the Insurance Department's first step in this process to reach uniformity.

Section 1 of the bill amends the term "unauthorized" insurer, changing it to "nonadmitted" insurer to be consistent with the NRRA.



Section 2 creates a new section incorporating the definitions from the NRRA and certain uniform definitions that have been adopted by other states. These definitions assist insurance producers (agents), surplus lines insurers and purchasers of nonadmitted insurance to understand the revised provisions of the law.

Section 3 amends language to clarify current producer affidavit and reporting requirements and to incorporate the NRRA commercial purchaser exemption. A producer selling a surplus lines policy must file a report and affidavit with the Insurance Commissioner documenting a diligent search of admitted insurers prior to seeking coverage from a nonadmitted insurer. New language in this section clarifies the requirements of the report which is given confidential treatment. The NRRA requires an exemption for qualifying commercial purchasers. New language includes this exemption.



Section 4 amends the eligibility requirements for a nonadmitted insurer to conform to federal solvency requirements and to incorporate uniform standards. A nonadmitted insurer must meet specific criteria to be eligible to insure risks, such as, being licensed in its domiciliary state to write the same lines of insurance, demonstrating good reputation and financial integrity, and maintaining a minimum capital and surplus of \$15 million. The Insurance Commissioner is given discretion to accept capital and surplus of less than \$15 million but not less than \$4.5 million under certain circumstances.

Section 5 creates a new section that continues to impose North Dakota's premium tax on surplus lines insurance and to require the producer to collect and remit the tax. The new language provides that, on multistate policies where North Dakota is the insured's home state, the Insurance Commissioner will collect the tax on the risks located in and out of this state at the applicable rates and gives the Insurance Commissioner the authority to enter into tax-sharing agreements with other states. The NRRA definition of home state is in Section 2 of the bill. Basically, the home state of an individual is the individual's place of residence and the home state of a business entity is its principal place of business.



Section 6 changes the term "surplus lines insurance producer" to the more uniform term "surplus lines producer."

Section 7 replaces the current requirement for an endorsement notifying the insured of the absence of Guaranty Association protection with a consumer notice that must be signed by the insured, retained by the producer, and given to the insured when the policy is delivered.

Section 8 requires producers to retain specific information relating to each surplus lines contract for examination by the Commissioner, including the amount of the risks insured, a brief description of the property insured and its location, the premium charged, the name and address of the insured, and the allocation of taxes by state so that there are records that will demonstrate where the insurance was sold and the amount of tax that is due to the state. This section also requires producers to keep these records according to a uniform record retention provision. The producer's yearly transaction form filing requirement is moved to Section 9.

Section 9 replaces the annual filing requirement from Section 8 above and sets out certain aggregate information required on the report, including the tax allocation of multistate policies for the previous year to determine the amount of tax attributable to this state under those policies.

Section 10 amends language to conform to the changes in Section 9 above.

Section 11 creates a new section to clarify that independently procured insurance, as defined and addressed in NRRA, is considered to be nonadmitted insurance. Any person or entity that procures insurance directly from a nonadmitted insurer is subject to the same requirements with which a surplus lines producer must comply, including payment of premium tax and reporting.

Section 12 authorizes the Insurance Commissioner to participate in a multistate agreement that provides the means to collect premium taxes allocable to North Dakota under multistate policies where North Dakota is not the insured's home state. Under such multistate policies, NRRA does not permit North Dakota to collect premium taxes directly from the producer. The purposes of such a multistate agreement are to establish procedures for collecting, allocating, and disbursing premium taxes; for sharing information with other states; and to adopt uniform eligibility standards for nonadmitted insurers.

Since the total surplus lines premium written can vary from year to year, it is difficult to estimate the tax impact related to the NRRA's restriction that no state other than the home state may collect premium tax on multistate policies. The current process for collecting surplus lines premium taxes requires the producer to submit the applicable tax payment with an annual tax report due April1. For the year 2009, the total taxable surplus lines premium and fees reported was \$53,828,000 on which \$942,000 tax was paid. Based on our identification of policyholders having an out-of-state address, 2009 tax collections of \$145,000 presumably relate to a home state other than North Dakota. Through November 2010, we have identified 2010 tax collections of \$127,000 presumably related to a home state other than North Dakota. We are not able to quantify the additional taxes that North Dakota will collect as the home state on multistate policies as these are taxes that are currently being paid to other states

Enacting this bill allows North Dakota to collect premium on 100% of multistate policies when the insured's home state is North Dakota; this effect would offset to some degree the loss of taxes attributable to multistate policies when the home state is other than North Dakota. However, enacting this bill and participating in a multistate agreement or compact would have no net effect on the taxes collected currently.

Mr. Chairman, members of the committee, I am happy to answer any questions and urge a vote of "do pass" on House Bill No. 1123. Thank you.





NORTH DAKOTA INSURANCE DEPARTMENT HOUSE BILL NO. 1123

SLIMPACT Lite - Primary Elements	NIMA - Primary Elements
 Compact Commission established as "joint public agency" with powers to adopt mandatory rules addressing: Exclusive home state authority for multi-state risks; Allocation formulas; Uniform Cleaninghouse transaction data; Clearinghouse to receive/disseminate premium tax and data for multi-state risks; Uniform surplus lines insurer eligibility requirements; Uniform surplus lines policyholder notice; and Financing, administering, operating & enforcing compliance w/ Compact. 	Participating states through joint & cooperative action agree to: Establish procedures to facilitate payment and allocation of premium taxes on multi-state risks according to allocation and formula in Annex and based on the rates of each state; Coordinate reporting of premium tax data and transaction data; Establish a Clearinghouse to receive/disseminate premium tax and data for multi-state risks.
Allocation Formulas – will adopt by rule, uniform methods by which insured risk exposures will be apportioned to each state for purpose of calculating premium taxes due. Specifies input from surplus lines licensees, with simplicity and uniformity for the licensee as a material consideration.	Allocation Formula - participating states will contract with the Clearinghouse to allocate a portion of the premium based on the Allocation Formula listed in Annex B. Surplus lines licensee is responsible for how the premium is allocated based on the exposure in each state and will report the amounts or percentages for each risk. The Clearinghouse manages a computer software system that will compute premium tax on the allocated premium based on each state's tax rate.
Each state may charge its own rate of tax on premium allocated to the state, provided that each state has one single rate. Stamping office fees may be charged as a separate, additional cost.	Each state to establish a single statewide premium tax rate that will apply to all lines of non-admitted insurance.
Each state must require the surplus lines licensee to pay premium tax on each multi-state risk through the Clearinghouse to every other Compact/Contracting state at that state's tax rate on the portion of the state's risk under the allocation formula.	By rule or statute, each state to require premium taxes due on home state policies to be forwarded to the Clearinghouse account, along with transaction data specified under Exhibit 1. Authority of the Clearinghouse is limited to transfer of premium taxes collected from the Clearinghouse account to the accounts of each participating state. Where transaction data is submitted, but not tax, the Clearinghouse may send invoice.
	The Home State agrees to enforce unpaid tax, interest due, and applicable penalties.
	Each state may use the Clearinghouse for any single state risks.

SLIMPACT Lite – Primary Elements	NIMA - Primary Elements
Commission's rules & operating procedures to have force and effect of law and shall be binding. Powers include bring legal actions, issue subpoenas, contract for services, hire employees, lease, purchase, hold property, provide for tax audit procedures, enforce compliance, provide for dispute resolution, budget and make expenditures, borrow money, appoint committees.	
Each Compact State to have one Member and one vote on Commission. Enabling legislation should include method of selecting Member, otherwise the Member shall be appointed by the governor.	
Executive Committee comprised of 7-15 representatives shall include officers elected by the Commission and such other representatives as provided by the Bylaws.	
Operations Committee comprised of 7-15 representatives who must have extensive experience and/or employment in the surplus lines business including executives and attorneys employed by surplus lines insurers or licensees, law firms, state insurance departments and/or state stamping offices.	
A legislative committee comprised of state legislators or their designees to be established to monitor the operations of and make recommendations to the Commission, provided that the manner of selection and term of members shall be set out in the Bylaws.	
Includes immunity, defense and indemnification provisions for members, officers, executive director, employees and representatives of the Commission, the Executive Committee and any other Committee.	
Rules concerning meetings to be consistent with principles in Government in the Sunshine Act, 5 U.S.C., Section 552b. Provisions for closed meetings specified.	
Rulemaking process to conform to Model State Administrative Procedures Act of 1981 Act, Uniform Laws Annotated, Vol 15, p1 (2000)	
Confidentiality provisions include Commission is not subject to state's laws pertaining to confidentiality and nondisclosure of records, data and information in its possession; such information shall remain confidential after it is provided to Member.	Confidentiality provision states each state agrees to abide by applicable laws, regulations and statutes concerning confidentiality and nondisclosure of information to the extent allowable by the law.



SLIMPACT Lite – Primary Elements	NIMA – Primary Elements
Rules to provide for alternative dispute resolution procedures.	States agree to dispute mediation by American Arbitration Association before resorting to arbitration, litigation, or other procedure.
Any rule or Allocation Formula may be appealed to a review panel appointed by the Commission.	
Cost of initial operations may be funded by contributions, grants, and other forms of funding from state stamping offices, states and other sources. Commission to collect fees from insureds on each transaction processed through the Cleaninghouse to cover operations.	The Clearinghouse is authorized to collect a reasonable fee from the insured on each transaction processed through the Clearinghouse to cover operations. This fee is in addition to stamping office service fees. States that have existing stamping offices may continue to process surplus lines policies.
Commission will be audited annually by an independent CPA and at least every 3 years will have a management and performance audit. Annual reports to be made to the governor and legislature of Compacting States.	The Clearinghouse will report to the participating states and surplus lines licensees all premium taxes owed to each state, the dates on which the taxes are due and a method to pay the taxes through the Clearinghouse.
Compacting state has no claim to or ownership of any property held by the Commission or any Commission funds. Commission shall not make political contributions. Commission shall not lobby except as to changes to the Compact.	The Clearinghouse is prohibited from: lobbying, accepting gifts for donations, political activity of any kind; or conflicts of interest.
Compact is effective when 2 states enact it legislatively. Commission to adopt rules and create Clearinghouse when there are 10 Compacting & Contract states or states with more than 40% surplus lines insurance premium volume as set out in Appendix A showing 2005 data.	Agreement is effective upon execution by 2 states.
Withdrawal from Compact done through repealing statute. The Commission's determinations prior to the withdrawal continue to be effective and be given full force and effect. For defaulting state, the Commission's decisions shall remain in force in the state.	A participating state may withdraw by providing 60 days written notice. A defaulting state is suspended.
Commission's decisions and rules preempt any contrary law or regulation regarding Non-admitted Insurance of Multi-State Risks.	
Allows a Contracting State that hasn't enacted the Compact legislation but has entered into a written contract to utilize the services of and fully participate in the Clearinghouse.	



National Association of Professional Surplus Lines Offices, Ltd.

200 N.E. 54th Street • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409 www.napslo.org

Richard M. Bouhan Executive Director

Chairman George Keiser
Members of the Industry, Business & Labor Committee
North Dakota House of Representatives

RE: Amendments to HB 1123

Date: February 6, 2011

Dear Chairman Keiser and Committee members:

The National Association of Professional Surplus Lines Offices (NAPSLO) would like briefly to comment on the proposed amendments to HB 1123. NAPSLO is a trade association representing surplus lines brokers and surplus lines insurers in all 50 states and the District of Columbia. NAPLSO was a primary proponent of the Nonadmitted and Reinsurance Reform Act (NRRA) and is thoroughly familiar with the spirit and the letter of the NRRA.

NAPSLO supports the proposed amendments (#11.8107.01001) offered to include the terms of SLIMPACT into HB 1123. SLIMPACT was created with industry input and was intended to create an efficient system and create uniform treatment for multistate surplus lines policies.

NAPSLO previously suggested that the definition of "qualified risk manager" could be added to the statute and we continue to believe HB 1123 would be more complete it this provision were added.

We also support the proposed amendments presented by Carole Kessel dated January 31, 2011 as was suggested by the Property and Casualty Insurers of America and NAPSLO. We believe the amendments are consistent with the letter and the spirit of the NRRA.

Finally, the surplus lines tax section could be simplified because the provisions of SLIMPACT deal with same issues addressed by this section. If both sections deal with the same issues there is the possibility of conflicting interpretations. For example, SLIMPACT addresses the tax computation for multi-state risks and tax allocation methodologies. SLIMAPACT deals with these issues in more detail and allows a compact commission to fine-tune these issues so they are harmonized between states. The tax provisions in the North Dakota Century Code could be abbreviated because SLIMPACT addressed many of these issues.

The tax provisions could be revised to read as follows:

26.1 - 44 - 03.1. Surplus lines tax.

- 1. In addition to the full amount of gross premiums charged by the insurer for the insurance, every surplus lines producer shall collect and pay to the commissioner a sum equal to one and three-fourths percent of the gross premiums charged, assessments, membership fees, subscriber fees, policy fees, and service fees, less any return premiums, for surplus lines insurance provided by the surplus lines producer to policyholders with a home state in this state. Where the insurance covers-properties, risks, or exposures located or to be performed both in and out of this state, the sumpayable must be computed based on:
 - a. An amount equal to one and three fourths percent on that portion of the gross premiums allocated to this state plus;
 - b. An amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to other properties, risks, or exposures located or to be performed outside of this state less:
 - c. The amount of gross premiums allocated to this state and returned to the insured.
- 2. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines producer must be returned to the policyholder directly by the surplus lines producer. The surplus lines producer is prohibited from rebating, for any reason, any part of the tax.
- 3. The commissioner may participate in <u>SLIMPACT</u> a multistate compact or reciprocal agreement <u>wwi</u>th other states for the purpose of collecting, allocating, and disbursing to reciprocal states any funds collected pursuant to subdivision b of subsection 1 applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into <u>SLIMPACT</u> a compact or reciprocal allocation procedure with this state, the net premium tax collected must be retained by this state.
- 4. At the time of filing the verified report as set forth in section 26.1 44 06.1, each surplus lines producer shall pay the premium tax due for the policies written during the period covered by the report.
- 5. If a surplus lines policy <u>issued to a policyholder with a home state in this states is procured</u> through a surplus lines producer covers properties, risks, or exposures only partially located or to be performed in this state, the tax due must be computed <u>pursuant to SLIMPACT</u> on the portions of the premiums which are attributable to the properties, risks, or exposures located or to be performed in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state must be considered written on properties, risks, or exposures located or to be performed in this state, except premiums which are properly allocated or <u>shared and apportioned and</u> reported as taxable premiums of a reciprocal SLIMPACT state.

NAPSLO would like to thank you for addressing these issues and your efforts to keep the surplus lines code current. NAPSLO supports HB 1123 with the proposed amendments. If NAPSLO can be of further assistance, please contact me.

Yours Truly,

Steve Stephan

NAPSLO Director of Government Relations

Steven P. Stephan



Presented by: Carole Kessel

Company Licensing Director

North Dakota Insurance Department

Before: Senate Industry, Business and Labor Committee

Senator Jerry Klein, Chairman

Date: March 8, 2011

TESTIMONY

Good morning, Chairman Klein and Industry, Business and Labor Committee members. For the record, my name is Carole Kessel and I am Chief Examiner and Director of the Examinations and Company Licensing Division of the North Dakota Insurance Department. I appear before you today in support of House Bill No. 1123.

This bill revises North Dakota law relating to surplus lines insurance to conform to the requirements of the United States Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) that is effective July 21, 2011. The NRRA is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which was enacted by Congress and signed into law on July 21, 2010. Dodd-Frank is a comprehensive overhaul and restatement of the U.S. financial regulatory system with implications for the insurance industry.

In the event you are not familiar with what the surplus lines market is, let me explain it this way. The Insurance Department regulates the admitted insurance market. Admitted companies, such as State Farm, Farmers Union, Nodak Mutual, and American Family, are subject to licensing and taxation; to filing requirements for policies, forms and rates; to financial reporting and oversight; and they have the protection of the Guaranty Fund in the event of failure. There also exists the nonadmitted, or surplus line, market in which companies like Lloyds of London and Lexington transact business. All states

acknowledge and permit the operation of a surplus lines market for the sole purpose of providing an insurance outlet for unusual, unique, or hazardous risks that the admitted companies will not insure. Nonadmitted companies are not subject to the same level of regulatory oversight and protections, for instance, there are no policy, form, or rate filing requirements and policyholders do not have Guaranty Fund protection. In the case of nonadmitted insurance, insurance producers (agents) must remit the premium tax. This bill is directed solely at the nonadmitted market.

The passage of the NRRA is intended to increase the efficiency and uniformity in transacting surplus lines insurance by implementing the following reforms:

- 1. Simplify payment of premium taxes by mandating that only the home state of the insured can collect the premium tax;
- 2. Establish home state authority for the placement of nonadmitted insurance by a surplus lines producer and the licensure of a surplus lines producer;
- Streamline access to the surplus lines market for large commercial purchasers; and
- 4. Create uniform surplus lines insurer eligibility standards.

Congress intends that states adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance. The purpose of a compact is to distribute the tax revenue from a multi-state policy, collected by a "home state," to each state in which property and risks covered by the policy are located.

The House Industry, Business and Labor Committee selected an interstate compact model commonly called SLIMPACT (Surplus Lines Insurance Multi-State Compliance Compact) to serve this purpose. The SLIMPACT agreement is included in its entirety



under Section 12 of the bill. It replaces language that would have authorized the Insurance Commissioner to choose and participate in one of the two prevalent compact versions: SLIMPACT as developed by the surplus lines industry, or the Nonadmitted Insurance Multi-State Agreement (NIMA) as developed by insurance regulators. The Insurance Department strongly recommends that Section 12 be amended to remove the SLIMPACT provisions and to restore the original language as follows:

26.1-44-11. Interstate insurance regulatory cooperation. To carry out the purposes of the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203; 124 Stat. 1589; 15 U.S.C. 8201 et seq.], the commissioner may participate in a nonadmitted insurance multistate agreement or compact for the purposes of collecting, allocating, and disbursing premium taxes attributable to the placement of nonadmitted insurance, providing for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, sharing information among states relating to nonadmitted insurance premium taxes, and providing for the determination of recommended uniform eligibility standards for nonadmitted insurers.



It will be to North Dakota's advantage to join a compact that a majority of states will ultimately adopt. This can be accomplished by giving the Insurance Commissioner authority to enter into a compact when it comes clear in future months which compact is chosen by the majority of states and will become the standard for uniformity. According to a survey of state regulators completed yesterday:

- 8 states (including North Dakota) have legislation pending to enter into SLIMPACT.
- 17 states have legislation pending to adopt NIMA, including South Dakota where the Governor has signed legislation to enable NIMA.
- 5 states have competing legislation on SLIMPACT and NIMA.
- 4 states are likely to propose NIMA but have not yet introduced legislation.
- 6 states are proposing changes to conform to the NRRA, but are specifying neither SLIMPACT nor NIMA.
- 11 states are still studying the issue and have not proposed legislation.





The consequences of joining a minority compact are that North Dakota producers will be forced to use two systems for reporting multi-state policies when one state is under the SLIMPACT compact and other states are under NIMA. Tax revenue for multi-state policies will not be allocated and paid to the proper states when one state is under the SLIMPACT compact and other states are under NIMA. Additionally, the fiscal effect for North Dakota if SLIMPACT is adopted here but not in a majority of other states is an estimated loss of \$290,000. The fiscal note prepared by the Department does not include any start-up costs for SLIMPACT because it is not clear from the financing provisions on page 31, lines 24 through 27, of the bill what the funding obligation of compact states will be.

I would emphasize that Sections 1 through 11 of the bill are the basic provisions that we need to conform North Dakota law to the NRRA. Whatever decision is made by this committee regarding Section 12 and the Commissioner's authority to enter into a compact does not affect Sections 1 through 11.



Section 1 of the bill amends the term "unauthorized" insurer, changing it to "nonadmitted" insurer to be consistent with the NRRA.

Section 2 creates a new section incorporating the definitions from the NRRA and certain uniform definitions that have been adopted by other states. These definitions assist insurance producers (agents), surplus lines insurers and purchasers of nonadmitted insurance to understand the revised provisions of the law.

Section 3 amends language to clarify current producer affidavit and reporting requirements and to incorporate the NRRA commercial purchaser exemption. A producer selling a surplus lines policy must file a report and affidavit with the Insurance Commissioner documenting a diligent search of admitted insurers prior to seeking coverage from a nonadmitted insurer. New language in this section clarifies the requirements of the report which is given confidential treatment. The NRRA requires an





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Section 5 creates a new section that continues to impose North Dakota's premium tax on surplus lines insurance and to require the producer to collect and remit the tax. The new language provides that, on multi-state policies where North Dakota is the insured's home state, the Insurance Commissioner will collect the tax on the risks located in and out of this state at the applicable state rates. The NRRA definition of home state is in Section 2 of the bill. Basically, the home state of an individual is the individual's place of residence and the home state of a business entity is its principal place of business.

Section 6 changes the term "surplus lines insurance producer" to the more uniform term "surplus lines producer."

Section 7 replaces the current requirement for an endorsement notifying the insured of the absence of Guaranty Association protection with a consumer notice that must be signed by the insured, retained by the producer, and given to the insured when the policy is delivered.

Section 8 requires producers to retain specific information relating to each surplus lines contract for examination by the Commissioner, including the amount of the risks insured, a brief description of the property insured and its location, the premium charged, the name and address of the insured, and the allocation of taxes by state so





that there are records that will demonstrate where the insurance was sold and the amount of tax that is due to the state. This section also requires producers to keep these records according to a uniform record retention provision. The producer's yearly transaction form filing requirement is moved to Section 9.

Section 9 replaces the annual filing requirement from Section 8 above and sets out certain aggregate information required on the report, including the tax allocation of multi-state policies for the previous year to determine the amount of tax attributable to this state under those policies.

Section 10 amends language to conform to the changes in Section 9 above.

Section 11 creates a new section to clarify that independently procured insurance, as defined and addressed in NRRA, is considered to be nonadmitted insurance. Any person or entity that procures insurance directly from a nonadmitted insurer is subject to the same requirements with which a surplus lines producer must comply, including payment of premium tax and reporting.



Section 12 contains the SLIMPACT compact which establishes a Clearinghouse as the vehicle for SLIMPACT states to distribute and receive tax revenue collected from multistate policies by the home state that is allocable to the SLIMPACT states. The compact creates a Commission as a joint public agency with broad authority to adopt mandatory rules for multi-state and single-state policies relating to tax payment, reporting, allocation, and data collection along with rules for financing, administering, operating and enforcing compliance with the compact. As an example of its broad authority, the Commission's rules will preempt any conflicting North Dakota law (page 37, lines 19-20) and there is no provision in the compact making the Commission's rules subject to legislative approval, in contrast with all state agency rules.



If this committee retains the SLIMPACT compact in Section 12, then you should be aware of our concerns with the following provisions and that we have an amendment available to address these concerns.

- On page 23, lines 5-13, the agreement speaks to the method of selecting a state's member to the compact's Commission. We recommend amending this language to designate the Insurance Commissioner as North Dakota's member on the Commission.
- On page 30, lines 13-15, the purpose of the phrase "the commission may not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession" is not clear. We believe that the Commission should be subject to North Dakota law without exception and we recommend adding "unless contrary to the state's open records law" at the end of the phrase.

Section 13, page 39, line 3, is an emergency measure added to the bill by the House Industry, Business and Labor Committee. We believe the provisions of the bill should have an effective date of July 21, 2011, consistent with the effective date of most of the NRRA requirements. If the bill becomes effective prior to July 21, 2011, then North Dakota's taxation of 100% of multi-state policies, where North Dakota is the home state, will conflict with the implementation of the home state taxing requirement by other states causing confusion for producers and potential double taxation issues.

Enacting this bill allows North Dakota to collect premium tax on 100% of multi-state policies when the insured's home state is North Dakota, meaning more tax will be collected on those policies. However, North Dakota will collect less tax on multi-state policies where the insured's home state is not North Dakota. If the Insurance Commissioner is given the authority to enter into a widely adopted compact, then the distribution of tax to and from the compact states should leave North Dakota nearly



flush as compared to tax collected under current law. If SLIMPACT is chosen and it is not widely adopted, then tax distributions to and from compact states would be minimal.

SLIMPACT will become operative when 10 states enact the compact or when any number of states, comprising 40% of premium volume shown on pages 33-35 of the bill, enact the compact. We believe a widespread adoption of SLIMPACT is unlikely and so have taken a conservative approach in preparing a fiscal note.

The current process for collecting surplus lines premium taxes requires the producer to submit the applicable tax payment with an annual tax report due April1. For the year 2009, the total taxable surplus lines premium and fees reported was \$53,828,000 on which \$942,000 tax was paid. Based on our identification of policyholders having an out-of-state address, 2009 tax collections of \$145,000 presumably relate to a home state other than North Dakota. Through November 2010, we have identified 2010 tax collections of \$127,000 presumably related to a home state other than North Dakota. The negative \$290,000 tax impact shown in the fiscal note is based on our 2009 analysis, doubled for the biennium. We are not able to quantify the amount of additional taxes North Dakota will collect as the home state on multi-state policies because we have no information on taxes currently paid to other states.

Mr. Chairman, members of the committee, I am happy to answer any questions and, subject to our proposed changes to Section 12, urge a vote of "do pass" on House Bill No. 1123. Thank you.



HB 1123 Surplus lines

Now

We collect tax on risks in North Dakota

ND residents



Not collected Collected

Nonresidents



After federal law (effective July 21, 2011) with no change to our law

- No compact
- We can no longer collect tax when insured is not a North Dakota resident

ND residents



Collected

Not collected

Nonresidents



Not collected Not collected

*Represents \$290,000 per biennium

New state law

- No compact
- We can collect 100% of tax on multi-state policy of our North Dakota residents

ND residents



Collected

Collected

Nonresidents



Not collected Not collected

New law + compact

We share tax with other states allocated to risks in North Dakota

ND residents





Collected



Share with and receive from other states



Not collected



Report of the

LEGISLATIVE COMPENSATION COMMISSION

submitted to the NORTH DAKOTA LEGISLATIVE ASSEMBLY January 2011

inmission Members les Axtman, Chairman Carlisle Meyer Kinnoin John Mahoney Margaret Sitte

Legislative Council Staff
Roxanne Woeste, Assistant Legislative Budget Analyst and Auditor
Allen H. Knudson, Legislative Budget Analyst and Auditor

LEGISLATIVE COMPENSATION COMMISSION

The Legislative Compensation Commission was originally established by the 1969 Legislative Assembly. Consisting of five members appointed by the Governor, the commission was responsible for determining appropriate, levels, of expense allowance and compensation to be paid to members of the North Dakota Legislative Assembly. In 1979 after 10 years of existence, the law that created the original Legislative Compensation Commission was repealed.

The Legislative Compensation Commission was recreated by passage of Senate Bill No. 2360 (1983). The bill, codified as North Dakota Century Code Sections 54-03-19.1 and 54-03-19.2, once again established a Legislative Compensation Commission to determine appropriate levels of expense allowance and compensation to be paid to members of the Legislative Assembly.

In 1993, Section 54-03-19.1 was amended to direct the Legislative Compensation Commission to develop recommendations for a long-term policy on legislative compensation, expense allowance, and insurance benefits. In addition, the 1993 Legislative Assembly amended Section 54-03-19.2 to allow the commission to

file with the Legislative Council a bill incorporating its recommendations.

The membership of the Legislative Compensation Commission has traditionally been bipartisan. The 1995-96 Legislative Compensation Commission recommended a bill draft to make bipartisan membership a requirement of the commission. The 1997 Legislative Assembly adopted the commission's recommendation and amended Section 54-03-19.1 to provide that no more than three of the five appointees to the Legislative Compensation Commission can represent the same political party.

Commission members are Charles Axtman (Chairman), Ron Carlisle, Meyer Kinnoin, John Mahoney, and Margaret Sitte. The commission met on June 21, 2010.

BACKGROUND INFORMATION History of Legislative Compensation and Expense Reimbursement Rates

The commission reviewed information on legislative compensation and expense reimbursement rates in effect from 1889 to 2010 summarized as follows:

	Expense Reimbursement During Session				/ Expense	Ages 1	
Year	Compensation for Each Calendar Day During Session	Per Session	For Each Day During Session	For Each Month During Session	Reimbursement or Compensation for Each Month During Term of Office	Compensation for Each Day Attending Interim Meetings	
1889	\$5	10 cents per mile			<u> </u>		
1945	\$5	\$300			·	\$5.00	
1949	\$5	\$600			1	\$10.00	
1957	\$5	\$1,200 ¹		1	1	\$10.00	
1965	\$5	\$1,200 ²		<i>*</i>	\$35²	\$10.00	
1987	\$5		\$25		\$35	\$20.00	
1969	\$5	ľ	\$35		\$35	\$30.00	
1971	\$5		\$40		\$50	\$30.00	
1973	\$5		\$50		\$50	\$30.00	
1975	\$5	i	\$60		\$75	\$45.00	
1977	\$5		\$60		\$150	\$45.00	
1979	\$5		\$70		\$150	\$52.00	
1981	\$5	.	\$85		\$180	\$82.50	
1983	\$40³	j	\$50 ³	,	\$180	\$82.50	
1985	\$90	ľ		\$6004	\$180	\$82.50	
1997	\$111			\$650	\$250	\$62.50	
1999	\$111			\$650	\$250	\$75.00	
2001	\$125			\$650	\$250	\$100.00	
2005	\$125			\$900 ⁸	\$350°	\$100.00	
2007	\$130			\$900	\$384	\$104.00 ⁷	
2008	\$135			\$900	\$378	\$108.00 ⁷	
2009	\$141		ł	\$1,040 ^a	\$396	\$141.00 ^{7,9}	
2010	\$148	, ,		\$1,040 ⁸	\$415	\$148.00 ^{7,9}	

Section 54-03-20 was amended in 1959 to provide that the \$1,200 payment was reimbursement for expenses incurred during the interim and during the session.

²Section 54-03-20 was amended in 1965 to provide that the \$1,200 payment was reimbursement for expenses incurred during the session only and to provide for payments of \$35 per month during each legislator's term of office for uncompensated expenses.

Bismarck legislators received \$90 per day during session as compensation and did not receive any amount for daily expense reimbursement.

Section 54-03-20 was amended to provide that legislators receive reimbursement for lodging or mileage at the rates provided for state employees, to a maximum of \$600 per month.

⁵House Bill No. 1243 (1985) amended Section 54-03-20 to provide that the monthly amount paid to legislators during the interim was compensation, not reimbursement for expenses.

The 2005 Legislative Assembly increased the maximum lodging expense reimbursement allowed during legislative sessions from \$650 to \$900 per month, effective January 1, 2005, and increased legislators' monthly compensation from \$250 to \$350, effective July 1, 2005.

In addition to the compensation for each day attending Interim meetings, legislators are entitled to receive up to \$25 per day for expense reimbursement for meals.

The 2009 Legislative Assembly increased the maximum lodging expenses reimbursement allowed during legislative sessions from \$900 per r to 30 times 55 percent of the state daily lodging expense reimbursement rate. This increase was effective August 1, 2009. Based on the cuestimated state daily lodging reimbursement rate of \$83 per night, the maximum monthly lodging expense reimbursement is estimated to be \$1,040 per month.

The 2007 Legislative Assembly in House Bill No. 1001 Increased legislators' interim meeting pay to \$135, beginning July 1, 2009. The 2009 Legislative Assembly in Senate Bill No. 2064 increased legislators' interim meeting pay by 5 percent per year from \$135 to \$141 per day, effective August 1, 2009, and to \$148 per day, effective July 1, 2010.

Current Compensation, Per Diem, and Expense Reimbursement Rates

The commission reviewed information on the current compensation, per diem, and expense reimbursement

rates provided to members of the Legislative Assembly summarized as follows:

Compensation for Regular, Special, or Organizational Sessions Salary (Section 54-03-20)

Additional compensation (Section 54-03-10)

Speaker of the House

House majority leader

Senate majority leader

House minority leader

Senate minority leader

Chairmen of substantive standing committees

House assistant majority leader Senate assistant majority leader

House assistant minority leader

Senate assistant minority leader

Expense Reimbursement for Regular, Special, or Organizational Sessions

Lodging expenses (Sections 44-08-04 and 54-03-20)

Mileage (Sections 54-03-20 and 54-08-09)

Compensation During Term of Office

Compensation paid monthly to legislators during their term of office (Section 54-03-20)

Additional compensation for majority and minority leaders and Legislative Management chairman (Section 54-03-20)

Compensation for Interim Meetings

Compensation for attendance at meetings of the Legislative Management and its committees (Section 54-35-10)

Additional compensation

Legislative Management chairman (Section 54-35-10) Committee chairmen (Section 54-35-10)

Expense Reimbursement for Interim Meetings Meals (Section 44-08-04)

Lodging (Section 44-08-04)

Mileage (Section 54-06-09)

\$141 per calendar day (effective August 1, 2009 - June 30, 2010) \$148 per calendar day (effective July 1, 2010 - June 30, 2011)

\$10 per calendar day

\$5 per calendar day

\$5 per calendar day \$5 per calendar day

\$5 per calendar day

\$5 per calendar day

Ninety percent of the rate established by the United States General Services Administration for lodging reimbursement in the state plus to calendar day up to 30 times 55 percent of the state daily lodging experimbursement rate for legislators who reside outside Bismarch Mandan (currently \$89.30 plus tax per calendar day up to \$1,040 per month for legislators who reside outside Bismarck or Mandan)

Federal mileage reimbursement rate per mile for legislators who reside outside of Bismarck for one round trip each calendar week going to and from the meeting of the Legislative Assembly. (The current federal mileage reimbursement rate is 50 cents per mile.)

\$396 per month (effective August 1, 2009 - June 30, 2010) \$415 per month (effective July 1, 2010 - June 30, 2011)

\$284 per month (effective July 1, 2009 - June 30 2010) \$298 per month (effective July 1, 2010 - June 30, 2011)

\$141 per day (effective August 1, 2009 - June 30, 2010)

\$141 per day (effective August 1, 2009 - June 30, 2010) \$148 per day (effective July 1, 2010 - June 30, 2011)

\$5 per day \$5 per day

Up to \$25 per day in state; an amount equal to the federal per diem meals rate for out-of-state travel

Actual expenses per day not to exceed 90 percent of the rate established by the United States General Services Administration for lodging reimbursement in the state (current federal lodging reimbursement rate is \$77 per night), plus any applicable state or local taxes in state; actual expenses for out-of-state travel (currently \$69.30 per day)

Federal mileage reimbursement rate per mile by motor vehicle (current federal mileage reimbursement rate is 50 cents); 18 cents per mile by motor vehicle 300 miles beyond the state border; 1.5 times the mileage reimbursement rate by motor vehicle per mile by private ain

Previous Recommendations of the Legislative Compensation Commission

The commission reviewed previous recommendations

of the Legislative Compensation Commission summarized as follows:

Legislative Compensation Commission Recommendations The 1999-2000 Legislative Compensation Commission recommended three bills for consideration by the 2001 Legislative Assembly:

- Senate Bill No. 2175 (2001) increased the regular, special, or organizational session compensation rate from \$111 to \$125 per day.
- Senate Bill No. 2176 (2001) increased the interim compensation rate from \$75 to \$100 per day for each day spent in attendance at sessions of the Legislative Council and its committees.
- House Bill No. 1197 (2001) increased the state mileage reimbursement rate from 25 cents to 31 cents per mile.

The 2001-02 Legislative Compensation Commission recommended to the 2003 Legislative Assembly that legislative compensation and expense reimbursement remain at the current level.

Action by the Legislative Assembly

The 2001 Legislative Assembly:

- Amended 2001 Senate Bill No. 2175 to provide that the effective date of the bill apply retroactively to January 1, 2001.
- Passed 2001 Senate Bill No. 2176 without change.
- Amended 2001 House Bill No. 1197 to also increase the state reimbursement for travel by private airplane from 35 cents to 70 cents per mile and to declare the measure an emergency.

The 2003 Legislative Assembly did not make any legislative compensation and expense reimbursement changes; however, the Legislative Assembly considered increasing the maximum lodging expense reimbursement allowed during legislative sessions from \$650 per month to 50 percent of the daily federal per diem lodging rate for the city of Bismarck for 30 days. The increased reimbursement for lodging during any month of a regular session was not to exceed \$100 over the maximum allowed for lodging per month during the last regular session. During the 2003 legislative session, 50 percent of the daily federal per diem lodging rate for North Dakota of \$55 for 30 days would have totaled \$825. Due to the provision that the increased reimbursement for lodging was not to exceed \$100 over the maximum allowed during the last regular session, the maximum lodging reimbursement allowed would have been \$750 per month.

The 2003-04 Legislative Compensation Commission recommended the compensation for regular, special, or organizational sessions; monthly compensation paid to legislators during their term of office; and compensation for interim meetings remain at the current level. The commission also recommended two bills for consideration by the 2005 Legislative Assembly:

- Senate Bill No. 2059 (2005) Increased the maximum lodging expense reimbursement allowed during legislative sessions from \$650 to \$900 per month for licensed lodging establishments and \$750 per month for any other lodging. The effective date of the bill was August 1, 2005.
- Senate Bill No. 2058 (2005) increased the state mileage reimbursement rate from 31 cents to 37.5 cents per mile.
- The 2005-06 Legislative Compensation Commission recommended:

 House Bill No. 1106 (2007) to increase the compensation for
- rouse Bill No. 1106 (2007) to increase the compensation for regular, special, or organizational sessions from \$125 to \$130 per calendar day. The effective date of the bill was August 1, 2007.
- House Bill No. 1107 (2007) to increase the state mileage reimbursement rate from 37.5 cents to 42.5 cents per mile.
- The other legislative compensation and reimbursement levels, including compensation during a term of office, compensation for interim meetings, additional compensation for committee chairmen and majority and minority leaders, and lodging expense reimbursement, remain at the current level.

The 2005 Legislative Assembly:

- Amended 2005 Senate Bill No. 2059 to increase the maximum lodging expense reimbursement from \$650 to \$900 per month.
 The effective date of the bill was changed to apply retroactively to January 1, 2005.
- Amended 2005 Senate Bill No. 2058 to also provide the same mileage reimbursement rate—37.5 cents per mile—for travel by car or truck. Previously, the reimbursement rate for trucks was 27 cents.

The 2007 Legislative Assembly:

- Amended 2007 House Bill No. 1108 to increase legislators' monthly compensation, daily pay during legislative sessions, and interim meeting pay by 4 percent for the first year of the 2007-09 blennium and by 3.85 percent for the second year of the blennium.
- Amended 2007 House Bill No. 1107 to increase the state mileage reimbursement rate from 37.5 cents to 45 cents per mile.
- Increased legislative leaders' monthly compensation of 4 percent for the first year of the 2007-09 blennium and 3.85 percent for the second year of the blennium (Section 9 of 2007 House Bill No. 1001).
- Increased legislators' interim meeting pay to \$135 per day, beginning July 1, 2009 (Section 11 of 2007 House Bill No. 1001).

The following is a summary of compensation adjustments enacted by the 2007 Legislative Assembly:

	Rate Effective Prior to August 1, 2007	Rate Effective August 1, 2007	Rate Effective July 1, 2008	Rate Effective July 1, 2009
Monthly compensation	\$350	\$364	\$378	
Leaders' additional monthly compensation	\$250	\$260	\$270	
Daily session pay	\$125	\$130	\$135	
Interim meeting daily pay	\$100	\$104	\$108	\$135

Legislative Compensation Commission Recommendations

The 2007-08 Legislative Compensation Commission recommended 2009 Senate Bill No. 2064 to:

- Increase legislators' monthly compensation by 4 percent, or \$15, from \$378 to \$393, effective July 1, 2009.
- Increase the compensation for regular, special, or organizational sessions by \$5 per calendar day from \$135 to \$140 per calendar day, effective July 1, 2009.
- Increase the interim compensation rate by \$5 per day from \$135 to \$140 per day, effective July 1, 2009.
- Increase the maximum monthly lodging expense reimbursement allowed during legislative sessions by \$100 from \$900 to \$1,000 per month, effective January 1, 2009.
- Increase the state daily lodging expense reimbursement rate by \$5 per night from \$55 plus tax to \$60 plus tax per night, effective July 1, 2009.
- Provide that the state mileage expense reimbursement rate be equal to the federal mileage reimbursement rate.

Action by the Legislative Assembly

The 2009 Legislative Assembly amended 2009 Senate Bill No. 2064 to:

- Increase legislators' monthly compensation by 5 percent per inform \$378 to \$396, effective August 1, 2009, and to effective July 1, 2010.
- Increase the compensation for regular, special, or organizational sessions by 5 percent per year from \$135 to \$141 per calendar day, effective August 1, 2009, and to \$148 per calendar day, effective July 1, 2010.
- Increase the interim compensation rate by 5 percent per year from \$135 to \$141 per day, effective August 1, 2009, and to \$148 per day, effective July 1, 2010.
- Increase the maximum monthly lodging expense reimbursement allowed during legislative sessions from \$900 per month to 30 times 55 percent of the state daily lodging expense reimbursement rate in effect on August 1 of each even-numbered year. This increase was effective August 1, 2009. (Based on the state daily lodging reimbursement rate as of August 2009 of \$63 per night, the maximum monthly lodging expense reimbursement is estimated to be \$1,040 per month.)
- Increase the state daily lodging expense reimbursement rate from \$55 plus tax per night to 90 percent of the rate established by the United States General Services Administration for lodging reimbursement in the state plus tax, effective August 1, 2009. (The current federal lodging reimbursement rate is \$77 per night plus tax; therefore, 90 percent of the federal lodging reimbursement rate is \$69.30 per night plus tax.)
- Provide that the state mileage expense reimbursement rate be equal to the federal mileage expense reimbursement rate, effective August 1, 2009. (The current federal mileage expense reimbursement rate is 50 cents per mile.)
- Increase the reimbursement for travel by private airplane from 70 cents per mile to the sum of 1.5 times the m reimbursement by motor vehicle, effective August 1, 2009.

In addition, the Legislative Assembly in Senate Bill No. 2001 increased legislative leaders' additional monthly compensation by approximately 5 percent per year from \$270 to \$284, effective July 1, 2009, and to \$298, effective July 1, 2010.

The following is a summary of compensation adjustments enacted by the 2009 Legislative Assembly:

	Rate Effective Prior to July 1, 2009	Rate Effective July 1, 2009	Rate Effective August 1, 2009	Rate Effective July 1, 2010
Monthly compensation	\$378		\$396	\$415
Leaders' additional monthly compensation	\$270	\$284		\$298
Daily session pay	\$135	ı	\$141	\$148
Interim meeting daily pay	\$135		\$141	\$148

Other Information

The commission reviewed:

- The provisions of Sections 54-03-19.1 and 54-03-19.2 relating to the duties of the Legislative Compensation Commission.
- A Legislative Council memorandum entitled Legislative Compensation Increases Compared to

Inflation and State Employee Salary Increases - 1981 Through 2010. The following schedule compares actual 2010 legislative compensation rates to 1981 rates adjusted annually for inflation and percentage salary increases provided to state employees:

	'Actual 2010 Compensation Rates	1981 Compensation Rates Adjusted for Inflation	1981 Compensation Rates Adjusted for Salary Increr Provided to State Emplo
Interim daily compensation	\$148.00	\$153.74	\$1.
Session daily compensation	\$148.00	\$221.37	\$212.16
Monthly compensation during term of office	\$415.00	\$442.84	\$424.41

 Information prepared by the National Conference of State Legislatures regarding legislative compensation levels in other states, including legislative compensation, expense reimbursements, and other benefits provided to legislators in each of the 50 states.

DISCUSSION AND COMMENTS

The following comments were made by members of the Legislative Compensation Commission or by members of the Legislative Procedure and Arrangements Committee during a joint meeting held with that committee:

- The Public Employees Retirement System preliminary estimates indicate health insurance premiums may increase from \$826 per month to approximately \$1,000 per month for the 2011-13 biennium.
- The commission should consider increasing legislators' daily pay during legislative sessions and interim compensation by the same

- percentage as the authorized salary increase for state employees for the 2011-13 biennium.
- The commission should consider no changes to legislators' monthly compensation during each legislator's term of office for the 2011-13 biennium.

RECOMMENDATIONS

The commission recommends:

- House Bill No. 1062 to increase legislators' daily pay during legislative sessions and the interim meeting compensation rate by 3 percent per year for the 2011-13 biennium, from \$148 per day effective July 1, 2010, to \$152 effective July 1, 2011, and \$157 effective July 1, 2012. This is the same percentage as recommended by the Governor for state employee salaries for the 2011-13 biennium.
- The other legislative compensation and reimbursement levels, including compensation during a term of office, remain at the current level.

72A.08 LAWS AGAINST REBATE.

Subdivision 1. Rebate defined and prohibited. No insurance company or association, however constituted or entitled, including any affiliate of the insurance company or association, doing business in this state, nor any officer, agent, subagent, solicitor, employee, intermediary, or representative thereof, shall make or permit any advantage or distinction in favor of any insured individual, firm, corporation, or association with respect to the amount of premium named in, or to be paid on, any policy of insurance, or shall offer to pay or allow directly or indirectly or by means of any device or artifice, as inducements to insurance, any rebate or premium payable on the policy, or any special favor or advantage in the dividends or other profit to accrue thereon, or any valuable consideration or inducement not specified in the policy contract of insurance, or give, sell, or purchase, offer to give, sell or purchase, as inducement to insure or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, partnership, or individual, or any dividends or profits accrued or to accrue thereon, or anything of value, not specified in the policy. For purposes of this section, "affiliate" has the meaning given in section 60D.15, subdivision 2.

Subd. 2. Insured prohibited from receiving rebates. No person shall receive or accept from any such company or association, including any affiliate of the insurance company or association, or from any of its officers, agents, subagents, solicitors, employees, intermediaries, or representatives, or any other person any such rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued, or to accrue, thereon, or any valuable consideration or inducement not specified in the policy of insurance. No person shall be excused from testifying, or from producing any books, papers, contracts, agreements, or documents, at the trial of any other person, copartnership, association, or company charged with violation of any provision of this section on the ground that the testimony or evidence may tend to incriminate; but no person shall be prosecuted for any act concerning which the person shall be compelled to so testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying.

Subd. 3. **Penalty for rebate.** Any company, association, or individual violating any provisions of this section, whether the violation be in the giving or accepting of anything herein prohibited, shall be punished by a fine of not less than \$60 nor more than \$200. In the case of a violation by an affiliate or by an individual on behalf of an affiliate, this subdivision applies to the insurance company or association.

Subd. 4. Exceptions. (a) The provisions of this section shall not apply to any policy procured by officers, agents, subagents, employees, intermediaries, or representatives wholly and solely upon property of which they are, respectively, the owner at the time of procuring the policy, where the officers, agents, subagents, employees, intermediaries, or representatives are, and have been for more than six months prior to the issuing of the policy, regularly employed by, or connected with, the company or association issuing the policy; and any life insurance company doing business in this state may issue industrial policies of life or endowment insurance, with or without annuities, with special rates of premiums less than the usual rates of premiums for these policies, to members of labor organizations, credit unions, lodges, beneficial societies, or similar organizations, or employees of one employer, who, through their secretary or employer, may take out insurance in an aggregate of not less than 50 members and pay their premiums through the secretary or employer.

(b) A promotional advertising item of \$25 or less or a gift of \$25 or less per year is not a rebate if the receipt of the item or gift is not conditioned upon purchase of an insurance policy or product.

History: 1967 c 395 art 12 s 8; 1986 c 444; 1998 c 375 s 1-3; 2002 c 330 s 30,34; 2002 c 331 s 18; 2002 c 342 s 11; 2002 c 357 s 2; 2010 c 384 s 29

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1123

Page 1, line 6, replace "declare an emergency" with "provide an effective date"

Page 23, line 5, replace "Each state shall" with "The commissioner or the commissioner's designee shall act as the member or the state representative for the purpose of this section."

Page 23, remove lines 6 through 13

Page 30, line 15, insert after "possession" and before the period ", unless contrary to the state's open records laws"

Page 39, remove line 3

Page 39, after line 3, insert:

"SECTION 12. EFFECTIVE DATE. This Act becomes effective on July 21, 2011."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1123

- Page 1, line 3, remove "and enactment of the surplus lines insurance multistate compliance compact"
- Page 1, line 6, replace "declare an emergency" with "provide an effective date"
- Page 7, line 15, replace "<u>Under section 26.1-44-11, the state has entered the surplus lines insurance multistate</u>" with "<u>The commissioner may participate in a multistate compact or reciprocal agreement with other states</u>"
- Page 7, line 16, remove "compliance compact"
- Page 12, remove lines 3 through 30
- Page 13, remove lines 1 through 31
- Page 14, remove lines 1 through 31
- Page 15, remove lines 1 through 31
- Page 16, remove lines 1 through 30
- Page 17, remove lines 1 through 30
- Page 18, remove lines 1 through 31
- Page 19, remove lines 1 through 31
- Page 20, remove lines 1 through 31
- Page 21, remove lines 1 through 31
- Page 22, remove lines 1 through 30
- Page 23, remove lines 1 through 31
- Page 24, remove lines 1 through 29
- Page 25, remove lines 1 through 31
- Page 26, remove lines 1 through 31

Page 27, remove lines 1 through 31

Page 28, remove lines 1 through 31

Page 29, remove lines 1 through 31

Page 30, remove lines 1 through 30

Page 31, remove lines 1 through 31

Page 32, remove lines 1 through 31

Page 33, remove lines 1 through 31

Page 34, remove lines 1 through 31

Page 35, remove lines 1 through 31

Page 36, remove lines 1 through 31

Page 37, remove lines 1 through 29

Page 38, remove lines 1 through 31

Page 39, remove lines 1 through 3

Page 39, after line 3, insert:

"SECTION 12. Section 26.1-44-11 of the North Dakota Century Code is created and enacted as follows:

26.1-44-11. Interstate insurance regulatory cooperation. To carry out the purposes of the Nonadmitted and Reinsurance Reform Act of 2010 [Pub. L. 111-203; 124 Stat. 1589; 15 U.S.C. 8201 et seq.], the commissioner may participate in a nonadmitted insurance multistate agreement or compact for the purposes of collecting, allocating, and disbursing premium taxes attributable to the placement of nonadmitted insurance, providing for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, sharing information among states relating to nonadmitted insurance premium taxes, and providing for the determination of recommended uniform eligibility standards for nonadmitted insurers.

SECTION 13. EFFECTIVE DATE. This Act becomes effective on July 21, 2011."

Renumber accordingly



NORTH DAKOTA INSURANCE DEPARTMENT March 23, 2011

Ohio has passed its surplus lines bill (http://www.legislature.state.oh.us/bills.cfm?ID=129 HB 122) with the following provision granting authority to the superintendent to enter into SLIMPACT if advantageous to the state or another agreement/compact if in the state's financial best interest.

For the purpose of carrying out the "Nonadmitted and Reinsurance Reform Act of 2010," 124 Stat. 1589, 15 U.S.C. 8201 et seq., or any successor or replacement law, the superintendent shall conduct a fiscal analysis of the impact of entering into a multi-state agreement or compact for determining eligibility for placement of unauthorized insurance and for payment, reporting, collection, and allocation of the tax on unauthorized insurance. If the fiscal analysis indicates that entering into a multi-state agreement or compact is advantageous to this state, the superintendent may enter into the surplus lines insurance multi-state compliance compact adopted by the national conference of insurance legislators and known as "SLIMPACT," as amended on December 21, 2010, and including any subsequent amendment; or, if it is in this state's financial best interest, the superintendent shall request that the general assembly authorize the superintendent to enter into a different multi-state agreement or compact.



ATTACHMENT

Keiser, George J.

Erom:

Kessel, Carole J.

Tuesday, February 01, 2011 11:02 AM

Keiser, George J.

'Patrick Ward'; Hauer, Melissa A.; Hamm, Adam W.; Ternes, Rebecca L.; Palsgraaf, Johnny

N.

Subject: Attachments: HB 1123 Amendment 1123 amendment.docx

To: House Industry, Business and Labor Committee and Chairman Keiser,

The Insurance Department respectfully submits the attached amendment to HB1123 which addresses the surplus lines insurance statute. The amendment contains changes suggested by Pat Ward on behalf of PCI and by NAPSLO. The primary change is to add the phrase "where the insured's home state is this state" to various provisions which will clarify the intent of HB1123. Other minor changes are made to clarify the commercial purchaser exemption under Section 3 and to remove redundant language under Section 5.

If you have any questions please contact me.

Carole Kessel, Chief Examiner North Dakota Insurance Department ckessel@nd.gov

phone: 701-328-9602



National Association of Professional Surplus Lines Offices, Ltd.

200 NE 54th Street • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409 www.napslo.org

Richard M. Bouhan Executive Director

December 6, 2010

Dear Insurance Commissioner, Legislator, Committee Staff:

Due to the Nonadmitted and Reinsurance Reform Act (NRRA), which was passed earlier this year by Congress as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, every state legislature will be faced in its next session with enacting legislation to reform its surplus lines code to meet the requirements of the NRRA which becomes effective on July 21, 2011. If such amendments are not made, surplus lines brokers, companies and insureds will be faced on July 21, 2011 with state laws that, while pre-empted by the NRRA, are inconsistent, if not in conflict, with the various provisions of the NRRA. This will result in:

- 1. **confusion** on the part of brokers and regulators over which regulatory requirements apply,
- 2. **market disruption** for the insureds as surplus lines producers and companies try and "sort out" competing regulatory requirements delaying the consummation of insurance transactions for needed insurance, and
- possible double taxation on surplus lines premiums between the states that have amended their laws to comply with NRRA and those states that have not.

As a national organization representing the surplus lines marketplace, the National Association of Professional Surplus Lines Offices (NAPSLO) along with its 1,100 member broker offices located in all fifty states and its150 member companies operating on a surplus lines basis throughout the United States are committed to doing all they can to assure a smooth implementation to the NRRA requirement in the states. As part of this commitment, NAPSLO forwards to you resource material and information about the new NRRA law. NAPSLO hopes you and your colleagues will find this material useful as your state deals with the necessary changes in surplus lines insurance law and regulation brought about by the NRRA.

This material includes:

- 1. A copy of the Nonadmitted and Reinsurance Reform Act as passed by Congress,
- A Model Surplus Lines Law, which incorporates changes required by the NRRA. This "model" is based upon
 existing state surplus lines insurance codes and generally tracks the relevant provisions of the NAIC
 Nonadmitted Model Act and it can serve as a guide in amending state surplus lines insurance codes to conform
 to the NRRA.
- 3. An *Open Letter to Regulators and Legislators* written by NAPSLO, The Council of Insurance Agents and Brokers (the Council), and the American Association of Managing General Agents (AAMGA) which itemizes the changes required to bring state surplus lines insurance codes into line with the NRRA,
- 4. A **resolution** adopted by the National Conference of Insurance Legislators (NCOIL) in "Support of Amending Insurance Law to Conform to the Nonadmitted and Reinsurance Reform Act (NRRA)"

NAPSLO is committed to the state based insurance regulatory system and wishes to work closely with state regulators and legislators to assure that the framework Congress has established in the NRRA for state regulation of surplus lines insurance is implemented in as effective and efficient manner as intended. Should you have any questions about this material or about the NRRA in general, please do not hesitate to contact Steve Stephan, NAPSLO Government Relations Director or Richard Bouhan, NAPSLO Executive Director at: 816-741-3910.

Sincerely.

Richard M. Bouhan

NAPSLO Executive Director

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NonAdmitted & Reinsurance Reform Act (NRRA)

111TH CONGRESS

2d Session

HOUSE OF REPRESENTATIVES

REPORT 111-517

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

CONFERENCE REPORT

, TO ACCOMPANY

H.R. 4173



JUNE 29, 2010.—Ordered to be printed

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and
(3) by adding at the end the following new paragraph:
"(9) advise the President on major domestic and inter-

national prudential policy issues in connection with all lines of insurance except health insurance."

- (c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:
- "Sec. 312. Terrorism and financial intelligence.
- "Sec. 313. Federal Insurance Office.
 "Sec. 314. Covered agreements.
- "Sec. 315. Continuing in office.".

Subtitle B-State-Based Insurance Reform

SEC. 511. SHORT TITLE.

This subtitle may be cited as the "Nonadmitted and Reinsurance Reform Act of 2010".

SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) Allocation of Nonadmitted Premium Taxes.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact

or other procedures-

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted dur-

ing such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such

insured.

(c) ENFORCEMENT PROVISION.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-

admitted insurer.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not-

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the

Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PUR-CHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—
(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance
companies and insurance holding companies providing such
business in the 18-month period that begins upon the effective
date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the non-admitted insurance market.

admitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and non-admitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market. (c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective

date of this subtitle. SEC. 527, DEFINITIONS.

For purposes of this part, the following definitions shall apply:
(1) ADMITTED INSURER.—The term "admitted insurer" means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under

common control with the insured.

(3) AFFILIATED GROUP.—The term "affiliated group" means any group of entities that are all affiliated.

(4) CONTROL.—An entity has "control" over another entity

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk

manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following cri-

teria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii)

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth Janu-

ary 1 occurring thereafter, the amounts in subclauses (1), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. (6) HOME STATE.

(A) In GENERAL.—Except as provided in subparagraph (B), the term "home State" means, with respect to an in-

sured-

(i) the State in which an insured maintains its principal place of business or, in the case of an indi-

vidual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable pre-mium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term "independently procured insurance" means insurance procured

directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term "NAIC" means the National Associa-

tion of Insurance Commissioners or any successor entity.
(9) NONADMITTED INSURANCE.—The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a

nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term "nonadmitted in-

surer"-

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State;

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Re-

tention Act of 1986 (15 U.S.C. 3901(a)(4)).

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(12) PREMIUM TAX.—The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) QUALIFIED RISK MANAGER.—The term "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party con-

sultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insur-

ance; or

(bb) has---

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(1) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in

subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) REINSURANCE.—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken origi-

nally by another insurer.

(15) SURPLUS LINES BROKER.—The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State

with nonadmitted insurers.
(16) STATE.—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin

Islands, and American Samoa.

PART II—REINSURANCE

SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICA-TION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that

is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they-

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance con-

tract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.-

(1) LIMITATION ON FINANCIAL INFORMATION REQUIRE-MENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

For purposes of this part, the following definitions shall apply: (1) CEDING INSURER.—The term "ceding insurer" means an

insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms "State of domicile" and "domiciliary State" mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC.—The term "NAIC" means the National Associa-

tion of Insurance Commissioners or any successor entity.

(4) REINSURANCE.—The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) REINSURER.-

(A) IN GENERAL.—The term "reinsurer" means an insurer to the extent that the insurer-

(i) is principally engaged in the business of rein-

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the busi-

ness of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the

State of domicile in accordance with this paragraph.

(6) STATE.—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART III—RULE OF CONSTRUCTION

SEC. 541. RULE OF CONSTRUCTION,

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

Model Surplus Lines Law

Model Surplus Lines Law

(Compliant with Non Admitted & Reinsurance Reform Act of 2010)

[NAPSLO Draft - December 2010]

NOTE: New material required to conform to Dodd-Frank Wall Street Reform and Consumer Protection Act and other changes to general surplus lines provisions is in bold text. Material inconsistent with the NRRA to be deleted is bracketed [] and in *italics*.

Section 1 Short title

Sections 1-24 shall be known and may be cited as "The Surplus Lines Law."

Section 2 Application of general insurance code provisions to surplus lines insurers. Except where general insurance code provisions are made specifically applicable to surplus lines, Sections 1-24 shall be the insurance code provisions applicable to surplus lines.

Section 3 Purpose

Sections 1-24 shall be liberally construed and applied to promote its underlying purposes which include:

- (1) Protecting persons seeking insurance in this state;
- (2) Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this state when it is the home state of an insured pursuant to Sections 1-24;
- [(3) Establishing a system of regulation which will permit orderly access to surplus lines insurance in this state; and
- (3) Protecting revenues of this state.

Section 4. Definitions for Sections 1-24.

As used in Sections 1-24:

- (1) "Admitted insurer" means an insurer authorized to do an insurance business in this state.
- (2) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- (3) "Affiliated Group" means any group of entities that are all affiliated.
- [(2)] (4) "Capital" means funds paid in for stock or other evidence of ownership.
- (5) "Control" an entity has control over another entity if:
- (a) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or
- (b) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.
- [(3)] (6) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance.
- (7) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:
- (a) The person employs or retains a qualified risk manager to negotiate insurance coverage.
- (b) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.
- (c) The person meets at least 1 of the following criteria:

- (A) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to subsection (7)(d).
- (B) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to subsection (7)(d).
- (C) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.
- (D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to subsection (7)(d).
- (E) The person is a municipality with a population in excess of 50,000 persons.
- (d) Effective on the fifth January 1 occurring after the date of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and each fifth January 1 occurring thereafter, the amounts in sections (7)(c)(A), (B), & (D) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.
- [(4)] (8) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- (9) "Home state" Except as provided in subsection (9)(c), the term "home state" means, with respect to an insured:
- (a) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
- (b) if 100 percent of the insured risk is located out of the state referred to in subsection (9)(a), the state to which the greatest percentage of the insured's taxable premium for that insurance is allocated.
- (c) If more than 1 insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term "home state" means the home state, as determined pursuant to subsection (9)(a) or (b), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
- (10) "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.
- [(5)] (11) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the Commissioner by authorized insurers.
- [(6)] (12) "Nonadmitted insurer" means an insurer not authorized to do an insurance business in this state. This definition does not include a risk retention group, as that term is defined in (Insert state code or US code provision here).
- (13) "Premium tax" means any tax, fee, assessment, or other charge imposed by this state directly or indirectly based on any payment made as consideration for an insurance contract for such insurance.
- (14) "Principal place of business" means, with respect to determining the home state of the insured, the principal place of business is the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.
- [(7)] (15) "Producing insurance producer" means the individual insurance producer dealing directly with the party seeking insurance.
- (16) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:
- (a) The person is an employee of, or third-party consultant retained by, the commercial policyholder.
- (b) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

- (c) The person:
- (A) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate minimum competence in risk management; and has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or
- (aa) a designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America;
- (bb) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;
- (cc) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;
- (dd) a designation as a RIMS Fellow issued by the Global Risk Management Institute; or (ee) any other designation, certification, or license determined by the Commissioner to demonstrate minimum competency in risk management; or
- (B) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any 1 of the designations specified in subsections (17)(c)(A)(aa) through (ee); or
- (C) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or
- (D) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management.
- [(8)] (17) "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.
- [(9)] (18) "Surplus" means funds over and above liabilities and capital of the insurer for the protection of policyholders.
- (19) "Surplus lines insurance" means any insurance where this state is the home state of the insured [in this state of risks resident, located or to be performed in this state,]permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance other than reinsurance, wet marine and transportation insurance, independently procured insurance, [and] life insurance, [and] health insurance and annuities.
- (20) "Surplus lines licensee" means an insurance producer licensed to place insurance where this state is the home state of the insureds [resident, located or to be performed in this state] with nonadmitted insurers[eligible to accept such insurance].

Section 5. Conditions for procuring insurance through nonadmitted insurer; rules.

- (1) When this state is the home state of the insured, i[/]nsurance may be procured through a surplus lines licensee from a nonadmitted insurer if:
- (a) The insurer is an eligible surplus lines insurer;
- (b) A diligent search has first been made among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state, and it is determined that the full amount or kind of insurance cannot be obtained from those insurers; and
- (c) All other requirements of Sections 1-24 are met.
- (2) Subsection (1)(b) of this section does not apply to a surplus lines licensee seeking to procure or place nonadmitted insurance in this state for an exempt commercial purchaser if:

(A) the surplus lines licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and (B) the exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance from a nonadmitted insurer.

Section 6 Qualifications for placement of coverage with nonadmitted insurer; rules. When this state is the home state of the insured, a/A/ surplus lines licensee may not place any coverage with a nonadmitted insurer unless at the time of placement the nonadmitted insurer has done all of the following:

- (A) As to an insurer domiciled in a United States jurisdiction, [Established satisfactory evidence of good repute and financial integrity] established that it is authorized to write the type of insurance in its domiciliary jurisdiction, and
- (1) Qualifies under one of the following subparagraphs:
- (a) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of either
- (i) (1) the minimum capital and surplus requirements under the laws of this state, or (11) \$15 million.
- (ii) except that the requirements of this paragraph (a)(i) may be satisfied by an insurer possessing less than [\$5 million] the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the commissioner make an affirmative finding of acceptability when the [surplus lines] nonadmitted insurer's capital and surplus is less than \$4.5 million.
- (B) Is fon the most current list of alien insurers approved by listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners and meets additional requirements regarding the use of the list established by rule of the commissioner. (NOTE: A state may have additional ways under which an alien insurer may be eligible. That appears acceptable under the federal law. This section B however is mandated.)
- (C) Unless qualified under paragraph (B) of this subsection, provided to the commissioner no more than six months after the close of the period reported upon a certified copy of its current annual statement that is:
- (1) Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer;
- (2) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile.

Section 7 Declaration of ineligibility of surplus lines insurer.

- (1) After notice to the insurer and a hearing for verifying the findings of the Commissioner, the Commissioner may declare a surplus lines insurer described in Section 4 ineligible if the Commissioner has determined [reason to believe] that the surplus lines insurer:
- (a) Is in unsound financial condition;
- (b) Is no longer eligible under Section 4;
- (c) Has engaged in a pattern of willfully violating/ed/ the laws of this state; or

(d) Has engaged in a pattern of [Does] not paying valid claims in a timely manner [make reasonably prompt payment of just losses and claims in this state or elsewhere.]

(2) The commissioner shall promptly mail notice of all such declarations to each surplus lines licensee.

Section 8 Filing by licensee after placement of surplus lines insurance; rules.

- (1) Within 90 days after the placing of any surplus lines insurance in this state where this state is the home state of the insured, each surplus lines licensee shall file with the Commissioner:
- (a) A statement signed by the licensee regarding the insurance, which shall be kept confidential as provided in (Insert state record confidentiality provision here), including the following:
- (A) The name and address of the insured;
- (B) The identity of the insurer or insurers;
- (C) A description of the subject and location of the risk;
- (D) The amount of premium charged for the insurance; [and]
- (E) The amount of tax on the gross premium.
- (b) A statement on a standardized form furnished by the commissioner, as to the diligent efforts by the producing insurance producer to place the coverage with admitted insurers and the results thereof. The statement shall affirm that the insured was expressly advised prior to placement of the insurance that:
- (A) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and
- (B) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.
- (2) A surplus lines licensee placing nonadmitted insurance where this state is the home state of the insured [in this state] for an exempt commercial purchaser satisfies the requirements of subsection (1)(b) of this section if proof of compliance with Section 3(2) is provided.
- [(2)](3) The commissioner may direct that filings required under subsection (1) of this section be made to the Surplus Line Association of this state (Optional where the state has such an association).
- (4) The commissioner also may [also] require that such filings be made electronically but may exempt a licensee from the requirement for good cause shown.
- [(4)](6) Facsimile signatures and electronic signatures are acceptable and have the same force as original signatures.

Section 9 Surplus Line Association (Optional, should the state have such an association) (Note: Should the state have a surplus lines association or an equivalent it may wish to consider provisions relating to taxation and reporting. The following are suggested subjects for modification of a state's surplus lines association provisions)

At the request of the commissioner, r[R] ecceive and collect on behalf of this state the state premium [receipts] tax and relevant reports for surplus lines insurance[.] where this state is the home state of the insured, which may include, but is not limited to, the following activities:[;]

(A) (Optional if the association is empowered to collect taxes: Collect and remit the premium tax based on gross premium

The Surplus Line Association may charge licensees a fee for reviewing surplus lines policies where this state is the home state of the insured and, if applicable, for collecting, on behalf of the state, taxes imposed in Sections 1-24. The association shall adopt bylaws implementing this subsection.

Section 10 Evidence of insurance; contents; change; penalty; notice regarding Insurance Guaranty Association; rules.

- (1) Upon placing surplus lines insurance where this state is the home state of the insured, the surplus lines licensee shall promptly deliver to the insured or the producing insurance producer the policy, or if such policy is not then available, a certificate as described in subsection (4) of this section, cover note or binder. The certificate, as described in subsection (4) of this section, cover note or binder shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number. With respect to a surplus lines wholesale broker, delivery to the producing broker shall constitute delivery to the insured.
- (2) No surplus lines licensee shall issue or deliver any insurance policy where this state is the home state of the insured or certificate of insurance or represent that insurance will be or has been written by any eligible surplus lines insurer, unless the licensee has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.
- (3) If, after delivery of an insurance policy or certificate of insurance where this state is the home state of the insured, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original insurance policy, or in any other material as to the insurance coverage, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing insurance producer an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.
- (4) As soon as reasonably possible after the placement of any such insurance the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing insurance producer to replace an insurance policy or certificate of insurance theretofore issued. Each certificate or policy of insurance shall contain or have attached thereto a record of all policy insuring agreements, conditions, exclusions, clauses, and endorsements that would regularly be included in the policy.
- (5) Any surplus lines licensee who fails to comply with the requirements of this section shall be subject to the penalties provided.
- (6) Each insurance policy or certificate of insurance where this state is the home state of the insured negotiated, placed or procured under the provisions of Sections 1-24 by the surplus lines licensee shall bear the name of the licensee and the following legend: "A nonadmitted insurer is issuing the insurance policy that you have applied to purchase. The insurer is not subject to the regulation and enforcement that applies to licensed insurers in your home state. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised."
- **Section 11** Validity of contracts. Insurance contracts procured under Sections 1-24 shall be valid and enforceable as to all parties.
- Section 12 Effect of payment of premium to surplus lines licensee. A payment of premium to a surplus lines licensee acting for a person other than the surplus lines licensee in negotiating, continuing or renewing any policy of insurance under Sections 1-24 shall be deemed to be payment

to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding.

Section 13 Requirements for license as surplus lines insurance licensee.

[(1)] A person shall not procure any contract of surplus lines insurance with any nonadmitted insurer where this state is the home state of the insured unless the person is licensed by this state to transact surplus lines insurance. (Note: if needed to retain the ability to collect surplus lines broker licensing fees): The Commissioner may participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

Section 14 Authority of licensee; rules.

- (1) A surplus lines licensee may originate surplus lines insurance where this state is the home state of the insured or accept such insurance from any other insurance producer duly licensed as to the kinds of insurance involved, and the surplus lines licensee may compensate the insurance producer therefore.
- (2) A surplus lines licensee may charge a producing insurance producer a fee or a combination of a fee and a commission when transacting surplus lines for the producing insurance producer. When a surplus lines licensee transacts surplus lines insurance directly for a prospective insured, the surplus lines licensee may charge the prospective insured a fee or a combination of a fee and a commission.
- (3) A producing insurance producer may charge a fee to a prospective insured when the producing insurance producer pays a fee or a combination of a fee and a commission to a surplus lines licensee under subsection (2) of this section. The fee may not exceed the amount of compensation paid by the producing insurance producer to the surplus lines licensee.
- (4) For the purpose of determining the charge under subsection (2) of this section, the producing insurance producer and the surplus lines licensee may agree to any allocation of the fee that the producing insurance producer charges the prospective insured under this section.

Section 15 Records of licensee; examination.

- (1) Each surplus lines licensee shall keep a full and true record of each surplus lines insurance contract placed where this state is the home state of the insured by or through the licensee [on each risk resident in this state] as required by (insert state licensee recordkeeping provisions), including a copy of the policy, certificate, cover note or other evidence of insurance showing any of the following items that are applicable:
- (a) Amount of the insurance and perils insured;
- (b) Brief description of the property insured and its location;
- (c) Gross premium charged;
- (d) Any return premium paid;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract and the terms thereof;
- (g) Name and address of the insured;
- (h) Name and address of the insurer:
- (i) Amount of tax and other sums to be collected from the insured; [and]
- (j) Identity of the producing insurance producer, any confirming correspondence from the insurer or its representative and the application.
- (2) The record of each contract shall be kept open at all reasonable times to examination by the Commissioner without notice for a period not less than five years following termination of the contract.

Section 16 Monthly reports; rules.

- (1) On or before the end of each month, each surplus lines licensee shall file with the Commissioner, as prescribed by the commissioner, a verified report of all surplus lines insurance transacted where this state is the home state of the insured [resident in this state] during the preceding 90 days. The report need not show transacted surplus lines insurance that was reported in an earlier report. The report shall show:
- (a) Aggregate gross premiums written;
- (b) Aggregate return premiums; [and]
- (c) Amount of aggregate tax/./
- (2) The commissioner may also require that reports required under subsection (1) of this section be made electronically but may exempt a licensee from the requirement for good cause shown.

 (3)optional if the state has a surplus lines association) The commissioner may direct that reports required under subsection (1) of this section be made to the Surplus Line Association and that the Surplus Line Association file a combined report thereof with the commissioner.

Section 17 Premium tax; collection; payment; refund; rules.

- (1) Where this state is the home state of the insured, the surplus lines licensee shall pay the Commissioner a surplus lines premium [an amount equal to the]tax equal to (insert tax rate here) percent [for] of the gross amount of premiums shown in the report required above. The tax shall be collected by the surplus lines licensee as specified by the commissioner, in addition to the [full amount of the]gross amount of premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing insurance producer, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. As used in this subsection, "gross amount of premium" shall mean the consideration paid by insureds to an insurer for policies of insurance where this state is the home state of the insured, and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefore, by whatever term known.
- (2) The surplus lines tax is due quarterly on the XXX day following the calendar quarter in which the premium is collected. The tax shall be paid to and reported on forms prescribed by the commissioner (Optional: or upon the commissioner's order paid to and reported on forms prescribed by the Surplus Line Association or any other entity.)
- (3) Notwithstanding subsection (2) of this section, if a surplus lines license is terminated or nonrenewed for any reason, the taxes described in this section are due on the 30th day after the termination or nonrenewal.
- (4) (Optional) The commissioner [by rule] shall establish procedures that facilitate the collection, payment, as well as the reporting of premium tax data and transaction data, in accordance with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act[for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state].
- Section 18 (Optional) Insurance Independently Procured—Duty to Report and Pay Tax A. Each insured whose home state is this state who procures or continues or renews insurance with a nonadmitted insurer [on properties, risks or exposures located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines broker, shall, file an annual written report with the commissioner, upon forms or systems prescribed by the

commissioner, showing the name and address of the insured or insured's, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information reasonably requested by the commissioner.

B. When this state is the insured's home state [on properties, risks or exposures located or to be performed in whole in this state,] other than insurance procured through a surplus lines broker gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of [insert number] percent. At the time of filing the report required in Subsection A of this section, the insured shall pay the tax to the commissioner as provided in Sections 1-24, who shall transmit the same for distribution.

Section 19 Suit to recover unpaid tax. If the tax collectible by a surplus lines licensee under Sections 1-24 is not paid within the time prescribed, the same shall be recoverable in a suit brought by the Commissioner against the surplus lines licensee.

Section 20 Suspension or revocation of license; refusal to renew; grounds.

The Commissioner may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provision of this state's laws upon any one or more of the following grounds:

- (1) Removal of the surplus lines licensee's office from this state, if the licensee is a resident insurance producer;
- (2) Removal of the surplus lines licensee's office accounts and records from the principal place of business of the licensee during the period during which such accounts and records are required to be maintained as provided above;
- (3) Closing of the surplus lines licensee's office for a period of more than 30 business days, unless permission is granted by the commissioner;
- (4) Failure to make and file required reports;
- (5) Failure to transmit required tax on surplus lines premiums;
- (6) Material /V/violation of any provision of Sections 1-24; or
- (7) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under (insert provisions relating to suspension and revocation of license).

Section 21 Actions against surplus lines insurer.

- (1) A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract where this state is the home state of the insured made by it or evidence of insurance issued or delivered by the surplus lines licensee pursuant to the procedure provided in Sections 1-24. Any surplus lines policy issued by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom process shall be delivered.
- (2) The remedies provided in this section are in addition to any other methods provided by law for service of process upon insurers.

Section 22 Jurisdiction in action against insurer; service of summons and complaint; response. (1) An insurer transacting insurance where this state is the home state of the insured under the provisions of Sections 1-24 may be sued upon any cause of action, arising under any policy of insurance so issued and delivered by it, in the courts for the county where the insurance producer who registered or delivered the policy resides or transacts business, by the service of summons and complaint made upon the insurance producer for the insurer.

- (2) Any insurance producer served with summons and complaint in any such cause shall forthwith mail the summons and complaint, or a true and complete copy thereof, by registered or certified mail with proper postage affixed and properly addressed, to the insurer being sued.
- (3) The insurer shall have 40 days from the date of the service of the summons and complaint upon the insurance producer in which to plead, answer or defend any such cause.
- (4) Upon service of summons and complaint upon the insurance producer for the insurer, the court in which the action is begun shall be deemed to have duly acquired personal jurisdiction of the defendant insurer so served.
- (5) An insurer and policyholder may agree to waive the provisions of subsections (1) to (4) of this section governing service and venue with respect to a surplus lines insurance contract for commercial property and casualty risk if the waiver is specifically referred to in the contract or in an endorsement attached to the contract.

Section 23 Legal or Administrative Procedures

- A. Before any ineligible nonadmitted insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against the person or insurer, by services made as provided in this Act, the insurer shall either:
- (1) Deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the Commissioner of Insurance in administrative proceedings before the commissioner, cash or securities, or file with the clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or
- (2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph the commissioner need not assert the provisions of [insert sections of insurance laws relating to retaliation] against the insurer with respect to its application if the commissioner determines that the company would otherwise comply with the requirements for a certificate of authority.
- B. The Commissioner of Insurance, in any administrative proceeding in which service is made as provided in this Act, may in the commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend the action.
- C. Nothing in Subsection A of this section shall be construed to prevent a nonadmitted insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in this Act, on the ground that the nonadmitted insurer has not done any of the acts enumerated in the pleadings.
- D. Nothing in Subsection A of this section shall apply to placements of insurance which were lawful in the state in which the placement took place and which were not unlawful placements under the laws of this state. Without limiting the generality of the foregoing, nothing in Subsection A shall apply to a placement made pursuant to Section 5 of this Act.

Section 24 Short title; severability.

If any provisions of Sections 1-24, or the application of such provision to any person or circumstance, is held invalid, the remainder of Sections 1-24 and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Open Letter
from NAPSLO, The
Council & the AAMGA
Encouraging States to
Bring Codes Into
Compliance with the NRRA



An Open Letter to Insurance Regulators and Legislators

On July 21, 2011, most provisions of the Nonadmitted and Reinsurance Reform Act title of the Dodd-Frank Act (NRRA) go into effect. Many of these provisions preempt state law or regulation that is inconsistent with the NRRA. In a short eight months, many of the existing state laws and regulations addressing placements of non-admitted insurance will be preempted by federal law.

We, the National Association of Professional Surplus Lines Offices (NAPSLO), the American Association of Managing General Agents (AAMGA), and The Council of Insurance Agents & Brokers (The Council), jointly urge the regulators and legislatures of the various states and territories to work as swiftly as possible to bring code and regulation into compliance with the NRRA. Failure to act will result in confusion for regulators and licensees alike, arising from the existence of inapplicable, inaccurate and unenforceable code and regulation.

Compliance with the provisions of the NRRA will require most states to address each of the following six items:

Surplus Lines Premium Tax: Surplus lines premium tax, including tax on independent procured coverage, is applicable to the gross premium on surplus lines policies only in the "home state" of the insured. The state should be empowered to collect tax on 100 percent of the premium.

Regulatory Authority: Producer licensing and surplus lines placement laws are applicable to surplus lines transactions / placements only when the state is the "home state" of the insured.

Eligibility (Foreign): Eligibility criteria for U.S. based (foreign) surplus lines insurers must be amended to comply with the two provisions of NAIC Nonadmitted Model Act that are cited in the NRRA: A.) licensed in the domiciliary state and B.) meet the greater of \$15 million or the state's capitalization requirement.

Eligibility (Alien): Eligibility requirements for surplus lines insurers outside the U.S. (alien) must be amended so that any insurer listed on the NAIC/IID Quarterly Listing is eligible. (The NRRA provides that a state cannot prohibit a licensed surplus lines broker from placing business with an IID listed alien insurer.)

Exempt Commercial Purchaser: The NRRA definition of an "exempt commercial purchaser" must be incorporated into state law, along with procedures, consistent with NRRA, to allow surplus lines brokers to place insurance for "exempt commercial buyers" without requiring a diligent search.

National Insurance Producer Database: The state must participate in the national insurance producer database of the NAIC or an equivalent uniform national database for licensure (and renewal) of surplus lines brokers by July 21, 2012. Failure to participate will preclude the state's ability to collect licensing fees for surplus lines brokers.

Each of the states will need to conduct a comprehensive review of its code and regulations to identify inconsistencies with the NRRA.

Together, with our members, NAPSLO, the AAMGA and The Council stand ready to assist the regulators and legislators of the various states and territories as they endeavor to draft and ultimately pass appropriate, consistent and efficient legislation and regulatory revisions, to realize the uniform and more efficient standards, mandated by the NRRA.

Letha Heaton

NAPSLO President

Mark Rothert

AAMGA President

Ken A. Crerar

The Council President

NAPSLO - 200 NE 54th St. Suite 200, Kansas City, MO 64118 (816) 741-3910

AAMGA - 150 South Warner Road, Suite 156 King of Prussia, PA 19406 (610) 225-1999

The Council - 701 Pennsylvania Avenue, NW, Suite 750, Washington, DC 20004 (202) 783-4400

NCOIL Resolution in Support of Amending Insurance Laws to Conform to the NRRA



PRESIDENT: REP. ROBERT DAMBON, KY PRESIDENT-REPCT: REP. GEORGE KREER, NO VICE PRESIDENT: SEN. CARROLL LEAVELL, NM SECRETARY: SEN. VI SIMPSON, IN TRUSSITERS: REP. CHARLES CURTIES. TN

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution in Support of Amending the Insurance Law to Conform to the Nonadmitted and Reinsurance Reform Act (NRRA)

Adopted by the NCOIL Executive Committee on November 21, 2010, and State-Federal Relations Committee on November 19, 2010.

WHEREAS, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* was signed into law by President Obama on July 21, 2010; and

WHEREAS, the *Nonadmitted and Reinsurance Reform Act of 2009* (NRRA) was incorporated into and signed into law as part of the Dodd-Frank Act; and

WHEREAS, the NRRA, by its various provisions, will preempt or supercede portions of the excess and surplus lines law as they exist today in each of the United States when most of the NRRA's provisions becomes effective on July 21, 2011; and

WHEREAS, the excess and surplus lines insurance statutes in all states must be amended to conform to the mandatory provisions and definitions contained in the NRRA, in order to expressly set forth the current law clearly and unambiguously; and

WHEREAS, licensed excess and surplus lines brokers need to change their operating procedures, technology systems and compliance protocols in order to operate properly under the laws as amended due to enactment of the NRRA; and

WHEREAS, licensed excess and surplus lines brokers need as much lead time as is reasonably possible to make changes to their operating procedures, technology systems and compliance protocols in advance of July 21, 2011; and

NOW, THEREFORE BE IT RESOLVED that the National Conference of Insurance Legislators (NCOIL) urges each state insurance department to meet with and work with industry representatives so as to account for all views and issues in the process of drafting legislation necessary to implement and conform state insurance laws to the mandatory provisions of the NRRA; and

BE IT FURTHER RESOLVED, that time be considered of the essence by all state insurance departments and legislatures to draft, introduce and seek passage of such legislation in order to assure a timely implementation and smooth transition for all persons and licensees who will be materially impacted by the required statutory changes, and

BE IT FINALLY RESOLVED that a copy of this resolution be delivered to the governor, attorney general and insurance commissioner of every state and to the ALEC, CSG, NAIC, NCSL, and NGA.

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