

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1123  
(Industry, Business and Labor Committee)  
(At the request of the Insurance Commissioner)

AN ACT to create and enact sections 26.1-44-01.1, 26.1-44-03.1, 26.1-44-06.1, 26.1-44-10, and 26.1-44-11 of the North Dakota Century Code, relating to surplus lines insurance and enactment of the surplus lines insurance multistate compliance compact; to amend and reenact sections 26.1-44-01, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06, and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 26.1-44-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-01. Surplus lines insurance valid.**

Insurance contracts procured as surplus lines coverage from ~~unauthorized~~nonadmitted insurers in accordance with this chapter are valid and enforceable as to all parties and must be given recognition in all matters and respects to the same effect as like contracts issued by ~~authorized~~admitted insurers.

**SECTION 2.** Section 26.1-44-01.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-01.1. Definitions.**

1. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this state.
2. "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines producer may place surplus lines insurance pursuant to section 26.1-44-03.
3. "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 one hundred thousand dollars in the immediately preceding twelve months.
  - c. (1) The person meets at least one of the following criteria:
    - (a) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to paragraph 2.
    - (b) The person generates annual revenues in excess of fifty million dollars, as such amount is adjusted pursuant to paragraph 2.
    - (c) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate.

- (d) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to paragraph 2.
    - (e) The person is a municipality with a population in excess of fifty thousand persons.
  - (2) Each fifth January first occurring after July 21, 2010, and ongoing thereafter, the amounts in subparagraphs a, b, and d of paragraph 1 will be adjusted to reflect the percentage change for such five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the department of labor.
4. "Home state".
- a. Except as provided in subdivision b, "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.
5. "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.
6. "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 admitted insurers.
7. "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
8. "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this state but does not include a risk retention group as defined in paragraph 4 of subdivision a of section 2 of the Liability Risk Retention Act of 1986 [15 U.S.C. 3901(a)(4)].
9. "Reciprocal state" means a state that has:
- a. Entered into a nonadmitted insurance compact; or
  - b. Otherwise adopted the allocation schedule and reporting forms prescribed by a multistate agreement for nonadmitted insurance.
10. "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks, or exposures, located or to be performed in this state, permitted to be placed through a surplus lines producer with a nonadmitted insurer eligible to accept such insurance pursuant to section 26.1-44-03.
11. "Surplus lines producer" means a person licensed under chapter 26.1-26 to place insurance on properties, risks, or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance pursuant to section 26.1-44-03.

12. "Type of insurance" means coverage afforded under the particular policy that is being placed.

**SECTION 3. AMENDMENT.** Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-02. Affidavit as prerequisite of insurance -- ContentsDuty to file evidence of insurance and affidavits.**

~~A~~Each surplus lines insurance producer licensed under chapter 26.1-26, within sixty days after the placing of any surplus lines insurance where the insured's home state is this state, shall in every case execute and file with a written report regarding the insurance which must be kept confidential by the commissioner within sixty days of the effective date of any surplus lines insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state. The report must include:

1. The name and address of the insured;
2. The identity of the insurer or insurers;
3. A description of the subject and location of the risk;
4. The amount of premium charged for the insurance;
5. A tax allocation spreadsheet detailing the portion of premium attributable to properties, risks, or exposures located in each state;
6. Any other pertinent information as the commissioner may reasonably require; and
7. An affidavit on a form prescribed by the commissioner as to the diligent efforts to place the coverage with admitted insurers and the results of that effort. The affidavit must be open to public inspection. The affidavit must affirm that the insured was expressly advised in writing 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 the state's 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.

A surplus lines producer seeking to place nonadmitted insurance for an exempt commercial purchaser is not required to make a due diligence search or to file the affidavit in subsection 7 if the surplus lines producer 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 the exempt commercial purchaser has subsequently requested in writing the surplus lines producer to procure or place such insurance from a nonadmitted insurer.

**SECTION 4. AMENDMENT.** Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-03. Surplus lines in solvent insurersinsurance.**

~~A~~ surplus lines insurance producer may not knowingly place surplus lines insurance with an insurer that is financially unsound. The surplus lines insurance producer shall ascertain the financial condition

~~of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance producer may not so insure with:~~

- ~~1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.~~
- ~~2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States. The placement of nonadmitted insurance is subject to this section only if the insured's home state is this state. Surplus lines insurance may be placed by a surplus lines producer if:~~
  1. Each insurer is an eligible surplus lines insurer;
  2. Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction;
  3. The full amount or type of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it;
  4. At the time of placement the surplus lines producer has determined that the nonadmitted insurer:
    - a. Has established satisfactory evidence of good repute and financial integrity and has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:
      - (1) (a) The minimum capital and surplus requirements under the law of this state; or
      - (b) Fifteen million dollars.
    - (2) The requirements of paragraph 1 may be satisfied by an insurer possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the commissioner. The finding must 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. The commissioner may not make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars; or
  - b. For an insurer not domiciled in the United States or its territories, the insurer is listed on the quarterly listing of alien insurers maintained by the national association of insurance commissioners international insurers department; and
5. All other requirements of this chapter are met.

**SECTION 5.** Section 26.1-44-03.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-03.1. Surplus lines tax.**

1. If the insured's home state is this state, 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.

Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable 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. Under section 26.1-44-11, the state has entered the surplus lines insurance multistate compliance compact 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 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 the insured's home state is 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 apportioned and reported as taxable premiums of a reciprocal state.

**SECTION 6. AMENDMENT.** Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-04. Service of process.**

Any insurer desiring to transact any business under this chapter, by any surplus lines insurance producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

**SECTION 7. AMENDMENT.** Section 26.1-44-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-05. Endorsement of policyConsumer notice.**

~~Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES PRODUCER'S LICENSE OF \_\_\_\_\_.~~ THE INSURER IS A QUALIFIED SURPLUS LINES INSURER;

~~BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance producer shall properly complete the endorsement by typing or printing the producer's full name in the space provided and shall sign and date the endorsement. If the insured's home state is this state, the surplus lines producer shall give the following consumer notice to every person applying for insurance with a nonadmitted insurer. The notice must be printed in sixteen-point type on a separate document affixed to the application. The applicant shall sign and date a copy of the notice to acknowledge receiving it. The surplus lines producer shall maintain the signed notice in its file for a period of five years from expiration of the policy. The surplus lines producer shall tender a copy of the signed notice to the insured at the time of delivery of each policy the producer transacts with a nonadmitted insurer. The copy must be a separate document affixed to the policy.~~

"Notice: 1. An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. These companies are called "nonadmitted" or "surplus lines" insurers. 2. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. 3. 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. 4. Some states maintain lists of approved or eligible surplus lines insurers and surplus lines producers may use only insurers on the lists. Some states issue orders that particular surplus lines insurers cannot be used. 5. For additional information about the above matters and about the insurer, you should ask questions of your insurance producer or surplus lines producer. You may also contact your insurance department consumer help line."

**SECTION 8. AMENDMENT.** Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-06. Record of business -- Filing of statement -- ContentRecords of surplus lines producer.**

~~Every~~If the insured's home state is this state, each surplus lines insurance producer shall keep a separate account of the business under the producer's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of authorized insurance companies. If a surplus lines policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.in this state a full and true record of each surplus lines insurance contract placed by or through the producer, including a copy of the policy, certificate, cover note, or other evidence of insurance showing each of the following applicable items:

1. Amount of the insurance, risks, and perils insured;
2. Brief description of the property insured and its location;
3. Gross premium charged;
4. Any return premium paid;
5. Rate of premium charged upon the several items of property;
6. Effective date and terms of the contract;
7. Name and address of the insured;

8. Name and address of the insurer;
9. Amount of tax and other sums to be collected from the insured;
10. Allocation of taxes by state;
11. Identity of the producer of record;
12. Any confirming correspondence from the insurer or its representative; and
13. The application.

The surplus lines producer shall keep open the record of each contract at all reasonable times to examination by the commissioner without notice for a period not less than five years following termination of the contract. In lieu of maintaining offices in this state, each nonresident surplus lines producer shall make available to the commissioner any and all records that the commissioner deems necessary for examination.

**SECTION 9.** Section 26.1-44-06.1 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-06.1. Reports - Summary of exported business.**

If the insured's home state is this state, on or before April first of each year, each surplus lines producer shall file with the commissioner on forms prescribed by the commissioner a verified report of all surplus lines insurance transacted during the preceding calendar year, including:

1. Aggregate gross premiums written;
2. Aggregate return premiums;
3. Amount of aggregate tax remitted to this state; and
4. Amount of aggregate tax due or remitted to each other state for which an allocation is made pursuant to section 26.1-44-03.1.

A verified report is not required to be filed when a surplus lines producer has transacted no surplus lines insurance during the preceding calendar year.

**SECTION 10. AMENDMENT.** Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review.**

Every such surplus lines insurance producer who fails or refuses to make and file the ~~annual statement~~verified report required by section 26.1-44-06.1, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of ~~delinquencedelinquency~~. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the ~~annual statement~~verified report and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner may revoke or suspend the surplus lines insurance producer's license ~~of the producer~~ if any surplus lines insurance producer fails to make and file the ~~annual statement~~verified report and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines insurance producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines insurance producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

**SECTION 11.** Section 26.1-44-10 of the North Dakota Century Code is created and enacted as follows:

**26.1-44-10. Independently procured insurance - Duty to report and pay tax.**

If the insured's home state is this state, in accordance with subsection 9 of section 26.1-02-05, each insured in this state who independently 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 producer, is subject to the same requirements under this chapter as apply to a surplus lines producer.

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

**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, 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:

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.
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.
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.
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.

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**

1. 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:

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.
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. Uniform treatment of purchasing group surplus lines insurance placements.

#### **Article V. - Powers of the Commission**

The commission may:

1. 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;

3. 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;
  - c. Cooperation and sharing of audit responsibilities between compacting states;
  - 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;

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;
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;
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.
  - 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



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:
  - a. Relate solely to the commission's internal personnel practices and procedures;
  - b. Disclose matters specifically exempted from disclosure by federal and 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. Disclose investigative records compiled for law enforcement purposes; or
  - 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.
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.
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.
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.

2. 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>Premiums Based State</u> | <u>Share of Total on Taxes Paid</u> | <u>Premiums</u> |
|-----------------------------|-------------------------------------|-----------------|
| Alabama                     | \$445,746,000                       | 1.47%           |
| Alaska                      | 89,453,519                          | 0.29%           |
| Arizona                     | 663,703,267                         | 2.18%           |
| Arkansas                    | 201,859,750                         | 0.66%           |
| California                  | 5,622,450,467                       | 18.49%          |
| Colorado                    | 543,781,333                         | 1.79%           |
| Connecticut                 | 329,358,800                         | 1.08%           |
| Delaware                    | 92,835,950                          | 0.31%           |
| Florida                     | 2,660,908,760                       | 8.75%           |
| Georgia                     | 895,643,150                         | 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%           |
| Iowa                        | 135,130,933                         | 0.44%           |
| Kansas                      | 160,279,300                         | 0.53%           |
| Kentucky                    | 167,996,133                         | 0.55%           |
| Louisiana                   | 853,173,280                         | 2.81%           |
| Maine                       | 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%           |
| Missouri                    | 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      | 1.12%   |
| Oklahoma       | 319,526,400      | 1.05%   |
| Oregon         | 312,702,150      | 1.03%   |
| Pennsylvania   | 780,666,667      | 2.57%   |
| Rhode Island   | 71,794,067       | 0.24%   |
| South Carolina | 412,489,825      | 1.36%   |
| South Dakota   | 38,702,120       | 0.13%   |
| Tennessee      | 451,775,240      | 1.49%   |
| Texas          | 3,059,170,454    | 10.06%  |
| Utah           | 142,593,412      | 0.47%   |
| Vermont        | 41,919,433       | 0.14%   |
| Virginia       | 611,530,667      | 2.01%   |
| Washington     | 739,932,050      | 2.43%   |
| West Virginia  | 130,476,250      | 0.43%   |
| Wisconsin      | 248,758,333      | 0.82%   |
| Wyoming        | 40,526,967       | 0.13%   |
| Total          | \$30,400,197,251 | 100.00% |

This data is 2005 calendar year data excerpted from a study dated February 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) Uniform treatment of purchasing groups procuring nonadmitted 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.
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.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1123 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 92                      Nays 1                      Absent 1

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 47                      Nays 0                      Absent 0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State