

SUBSTITUTE FOR SENATE BILL No. 206

By Committee on Financial Institutions and Insurance

3-10

1 AN ACT concerning surplus lines insurance; relating to the surplus lines
2 insurance multi-state compliance compact; amending K.S.A. 40-246c
3 and 40-246e and K.S.A. 2010 Supp. 40-246b and repealing the existing
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. This act may be cited as the Surplus Lines Insurance
8 Multi-State Compliance Compact.

9 **PREAMBLE**

10 WHEREAS, with regard to Non-Admitted Insurance policies with risk
11 exposures located in multiple states, the 111th United States Congress, has
12 stipulated in Title V, Subtitle B the Non-Admitted and Reinsurance
13 Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer
14 Protection Act, hereafter, the NRRRA, that:

15 (A) The placement of Non-Admitted Insurance shall be subject to the
16 statutory and regulatory requirements solely of the insured's Home State,
17 and

18 (B) Any law, regulation, provision, or action of any State that applies or
19 purports to apply to Non-Admitted Insurance sold to, solicited by, or
20 negotiated with an insured whose Home State is another State shall be
21 preempted with respect to such application; except that any State law, rule,
22 or regulation that restricts the placement of workers' compensation
23 insurance or excess insurance for self-funded workers' compensation plans
24 with a Non-Admitted Insurer shall not be preempted.

25 WHEREAS, in compliance with NRRRA, no State other than the Home
26 State of an insured may require any Premium Tax payment for Non-
27 Admitted Insurance; and no State other than an insured's Home State may
28 require a Surplus Lines Broker to be licensed in order to sell, solicit, or
29 negotiate Non-Admitted Insurance with respect to such insured;

30 WHEREAS, the NRRRA intends that the States may enter into a
31 compact or otherwise establish procedures to allocate among the States the
32 premium taxes paid to an insured's Home State; and that each State adopt
33 nationwide uniform requirements, forms, and procedures, such as an
34 interstate compact, that provide for the reporting, payment, collection, and
35 allocation of premium taxes for Non-Admitted Insurance;

36 WHEREAS, after the expiration of the two-year period beginning on

1 the date of the enactment of the NRRA, a State may not collect any fees
2 relating to licensing of an individual or entity as a Surplus Lines Licensee
3 in the State unless the State has in effect at such time laws or regulations
4 that provide for participation by the State in the national insurance
5 producer database of the NAIC, or any other equivalent uniform national
6 database, for the licensure of Surplus Lines Licensees and the renewal of
7 such licenses;

8 WHEREAS, a need exists for a system of regulation that will provide
9 for Surplus Lines Insurance to be placed with reputable and financially
10 sound Non-Admitted Insurers, and that will permit orderly access to
11 Surplus Lines Insurance in this state and encourage insurers to make new
12 and innovative types of insurance available to consumers in this state;

13 WHEREAS, protecting the revenue of this state and other Compacting
14 States may be accomplished by facilitating the payment and collection of
15 Premium Tax on Non-Admitted Insurance and providing for allocation of
16 Premium Tax for Non-Admitted Insurance of Multi-State Risks among the
17 States in accordance with Uniform Allocation Formulas;

18 WHEREAS, the efficiency of the surplus lines market may be
19 improved by eliminating duplicative and inconsistent tax and regulatory
20 requirements among the States, and by promoting and protecting the
21 interests of Surplus Lines Licensees who assist such insureds and Non-
22 Admitted Insurers, thereby ensuring the continued availability of Non-
23 Admitted Insurance to consumers;

24 WHEREAS, regulatory compliance with respect to Non-Admitted
25 Insurance placements may be streamlined by providing for exclusive
26 single-state regulatory compliance for Non-Admitted Insurance of Multi-
27 State Risks, thereby providing certainty regarding such compliance to all
28 persons who have an interest in such transactions, including but not
29 limited to insureds, regulators, Surplus Lines Licensees, other insurance
30 producers, and Surplus Lines Insurers;

31 WHEREAS, coordination of regulatory resources and expertise
32 between State insurance departments and other State agencies, as well as
33 State surplus lines stamping offices, with respect to Non-Admitted
34 Insurance will be improved;

35 NOW, THEREFORE, in consideration of the foregoing, the State of
36 Kansas and the various other States do hereby solemnly covenant and
37 agree, each with the other as follows:

38 **ARTICLE I**

39 **Purpose**

40 The purposes of this Compact are:

- 41 1. To implement the express provisions of the NRRA.
- 42 2. To protect the Premium Tax revenues of the Compacting States
43 through facilitating the payment and collection of Premium Tax on Non-

- 1 Admitted Insurance; and to protect the interests of the Compacting States
2 by supporting the continued availability of such insurance to consumers;
3 and to provide for allocation of Premium Tax for Non-Admitted Insurance
4 of Multi-State Risks among the States in accordance with uniform
5 Allocation Formulas to be developed, adopted, and implemented by the
6 Commission.
- 7 3. To streamline and improve the efficiency of the surplus lines market
8 by eliminating duplicative and inconsistent tax and regulatory
9 requirements among the States; and promote and protect the interest of
10 Surplus Lines Licensees who assist such insureds and Surplus Lines
11 Insurers, thereby ensuring the continued availability of Surplus Lines
12 Insurance to consumers.
- 13 4. To streamline regulatory compliance with respect to Non-Admitted
14 Insurance placements by providing for exclusive single-state regulatory
15 compliance for Non-Admitted Insurance of Multi-State Risks, in
16 accordance with Rules to be adopted by the Commission, thereby
17 providing certainty regarding such compliance to all persons who have an
18 interest in such transactions, including but not limited to insureds,
19 regulators, Surplus Lines Licensees, other insurance producers, and
20 Surplus Lines Insurers.
- 21 5. To establish a Clearinghouse for receipt and dissemination of
22 Premium Tax and Clearinghouse Transaction Data related to Non-
23 Admitted Insurance of Multi-State Risks, in accordance with Rules to be
24 adopted by the Commission.
- 25 6. To improve coordination of regulatory resources and expertise
26 between State insurance departments and other State agencies, as well as
27 State surplus lines stamping offices, with respect to Non-Admitted
28 Insurance.
- 29 7. To adopt uniform Rules to provide for Premium Tax payment,
30 reporting, allocation, data collection and dissemination for Non-Admitted
31 Insurance of Multi-State Risks and Single-State Risks, in accordance with
32 Rules to be adopted by the Commission, thereby promoting the overall
33 efficiency of the Non-Admitted Insurance market.
- 34 8. To adopt uniform mandatory Rules with respect to regulatory
35 compliance requirements for:
- 36 (i) foreign Insurer Eligibility Requirements;
37 (ii) surplus lines Policyholder Notices;
- 38 9. To establish the Surplus Lines Insurance Multi-State Compliance
39 Compact Commission.
- 40 10. To coordinate reporting of Clearinghouse Transaction Data on Non-
41 Admitted Insurance of Multi-State Risks among Compacting States and
42 Contracting States.
- 43 11. To perform these and such other related functions as may be

1 consistent with the purposes of the Surplus Lines Insurance Multi-State
2 Compliance Compact.

3 **ARTICLE II**

4 **Definitions**

5 For purposes of this Compact the following definitions shall apply:

6 1. "Admitted Insurer" means an insurer that is licensed, or authorized,
7 to transact the business of insurance under the law of the Home State; for
8 purposes of this Compact "Admitted Insurer" shall not include a domestic
9 surplus lines insurer as may be defined by applicable State law.

10 2. "Affiliate" means with respect to an insured, any entity that controls,
11 is controlled by, or is under common control with the insured.

12 3. "Allocation Formula" means the uniform methods promulgated by
13 the Commission by which insured risk exposures will be apportioned to
14 each State for the purpose of calculating Premium Taxes due.

15 4. "Bylaws" means those bylaws established by the Commission for its
16 governance, or for directing or controlling the Commission's actions or
17 conduct.

18 5. "Clearinghouse" means the Commission's operations involving the
19 acceptance, processing, and dissemination, among the Compacting States,
20 Contracting States, Surplus Lines Licensees, insureds and other persons, of
21 Premium Tax and Clearinghouse Transaction Data for Non-Admitted
22 Insurance of Multi-State Risks, in accordance with this Compact and Rules
23 to be adopted by the Commission.

24 6. "Clearinghouse Transaction Data" means the information regarding
25 Non-Admitted Insurance of Multi-State Risks required to be reported,
26 accepted, collected, processed, and disseminated by Surplus Lines
27 Licensees for Surplus Lines Insurance and insureds for Independently
28 Procured Insurance under this Compact and Rules to be adopted by the
29 Commission. Clearinghouse Transaction Data includes information related
30 to Single-State Risks if a state elects to have the Clearinghouse collect
31 taxes on Single-State Risks for such state.

32 7. "Compacting State" means any State which has enacted this
33 Compact legislation and which has not withdrawn pursuant to Article XIV,
34 Section 1, or been terminated pursuant to Article XIV, Section 2.

35 8. "Commission" means the "Surplus Lines Insurance Multi-State
36 Compliance Compact Commission" established by this Compact.

37 9. "Commissioner" means the chief insurance regulatory official of a
38 State including, but not limited to commissioner, superintendent, director
39 or administrator or their designees.

40 10. "Contracting State" means any State which has not enacted this
41 Compact legislation but has entered into a written contract with the
42 Commission to utilize the services of and fully participate in the
43 Clearinghouse.

1 11. "Control" An entity has "control" over another entity if:

2 (A) The entity directly or indirectly or acting through one or more other
3 persons own, controls, or has the power to vote 25% or more of any class
4 of voting securities of the other entity; or

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

7 12. "Home State"

8 (A) IN GENERAL. Except as provided in subparagraph (B), the term
9 "Home State" means, with respect to an insured:

10 (i) the State in which an insured maintains its principal place of
11 business or, in the case of an individual, the individual's principal
12 residence; or

13 (ii) if 100% of the insured risk is located out of the State referred to in
14 subparagraph (A)(i), the State to which the greatest percentage of the
15 insured's taxable premium for that insurance contract is allocated.

16 (B) AFFILIATED GROUPS. If more than one insured from an
17 affiliated group are named insureds on a single Non-Admitted Insurance
18 contract, the term "Home State" means the Home State, as determined
19 pursuant to subparagraph (A), of the member of the affiliated group that
20 has the largest percentage of premium attributed to it under such insurance
21 contract.

22 13. "Independently Procured Insurance" means insurance procured by
23 an insured directly from a Surplus Lines Insurer or other Non-Admitted
24 Insurer as permitted by the laws of the Home State.

25 14. "Insurer Eligibility Requirements" means the criteria, forms and
26 procedures established to qualify as a Surplus Lines Insurer under the law
27 of the Home State provided that such criteria, forms and procedures are
28 consistent with the express provisions of the NRRRA on and after July 21,
29 2011.

30 15. "Member" means the person or persons chosen by a Compacting
31 State as its representative or representatives to the Commission provided
32 that each Compacting State shall be limited to one vote.

33 16. "Multi-State Risk" means a risk with insured exposures in more
34 than one State.

35 17. "Non-Compacting State" means any State which has not adopted
36 this Compact.

37 18. "Non-Admitted Insurance" means Surplus Lines Insurance and
38 Independently Procured Insurance.

39 19. "Non-Admitted Insurer" means an insurer that is not authorized or
40 admitted to transact the business of insurance under the law of the Home
41 State.

42 20. "NRRRA" means the Non-Admitted and Reinsurance Reform Act
43 which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and

1 Consumer Protection Act.

2 21. "Policyholder Notice" means the disclosure notice or stamp that is
3 required to be furnished to the applicant or policyholder in connection with
4 a Surplus Lines Insurance placement.

5 22. "Premium Tax" means with respect to Non-Admitted Insurance,
6 any tax, fee, assessment, or other charge imposed by a government entity
7 directly or indirectly based on any payment made as consideration for such
8 insurance, including premium deposits, assessments, registration fees, and
9 any other compensation given in consideration for a contract of insurance.

10 23. "Principal Place of Business" means with respect to determining the
11 Home State of the insured, the state where the insured maintains its
12 headquarters and where the insured's high-level officers direct, control and
13 coordinate the business activities of the insured.

14 24. "Purchasing Group" means any group formed pursuant to the
15 Liability Risk Retention Act which has as one of its purposes the purchase
16 of liability insurance on a group basis, purchases such insurance only for
17 its group members and only to cover their similar or related liability
18 exposure and is composed of members whose businesses or activities are
19 similar or related with respect to the liability to which members are
20 exposed by virtue of any related, similar or common business, trade,
21 product, services, premises or operations and is domiciled in any State.

22 25. "Rule" means a statement of general or particular applicability and
23 future effect promulgated by the Commission designed to implement,
24 interpret, or prescribe law or policy or describing the organization,
25 procedure or practice requirements of the Commission which shall have
26 the force and effect of law in the Compacting States.

27 26. "Single-State Risk" means a risk with insured exposures in only one
28 State.

29 27. "State" means any state, district or territory of the United States of
30 America.

31 28. "State Transaction Documentation" means the information required
32 under the laws of the Home State to be filed by Surplus Lines Licensees in
33 order to report Surplus Lines Insurance and verify compliance with surplus
34 lines laws, and by insureds in order to report Independently Procured
35 Insurance.

36 29. "Surplus Lines Insurance" means insurance procured by a Surplus
37 Lines Licensee from a Surplus Lines Insurer or other Non-Admitted
38 Insurer as permitted under the law of the Home State; for purposes of this
39 Compact "Surplus Lines Insurance" shall also mean excess lines insurance
40 as may be defined by applicable State law.

41 30. "Surplus Lines Insurer" means a Non-Admitted Insurer eligible
42 under the law of the Home State to accept business from a Surplus Lines
43 Licensee; for purposes of this Compact "Surplus Lines Insurer" shall also

1 mean an insurer which is permitted to write Surplus Lines Insurance under
2 the laws of the state where such insurer is domiciled.

3 31. "Surplus Lines Licensee" means an individual, firm or corporation
4 licensed under the law of the Home State to place Surplus Lines Insurance.

5 **ARTICLE III**

6 **Establishment of the Commission and Venue**

7 1. The Compacting States hereby create and establish a joint public
8 agency known as the Surplus Lines Insurance Multi-State Compliance
9 Compact Commission."

10 2. Pursuant to Article IV, the Commission will have the power to adopt
11 mandatory Rules which establish exclusive Home State authority
12 regarding Non-Admitted Insurance of Multi State Risks, Allocation
13 Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt
14 and distribution of allocated Premium Tax and Clearinghouse Transaction
15 Data, and uniform rulemaking procedures and Rules for the purpose of
16 financing, administering, operating and enforcing compliance with the
17 provisions of this Compact, its Bylaws and Rules.

18 3. Pursuant to Article IV, the Commission will have the power to adopt
19 mandatory Rules establishing foreign Insurer Eligibility Requirements and
20 a concise and objective Policyholder Notice regarding the nature of a
21 surplus lines placement.

22 4. The Commission is a body corporate and politic, and an
23 instrumentality of the Compacting States.

24 5. The Commission is solely responsible for its liabilities except as
25 otherwise specifically provided in this Compact.

26 6. Venue is proper and judicial proceedings by or against the
27 Commission shall be brought solely and exclusively in a court of
28 competent jurisdiction where the principal office of the Commission is
29 located. The Commission may waive venue and jurisdictional defenses to
30 the extent it adopts or consents to participate in alternative dispute
31 resolution proceedings.

32 **ARTICLE IV**

33 **Authority to Establish Mandatory Rules**

34 The Commission shall adopt mandatory Rules which establish:

35 1. Allocation Formulas for each type of Non-Admitted Insurance
36 coverage, which Allocation Formulas must be used by each Compacting
37 State and Contracting State in acquiring Premium Tax and Clearinghouse
38 Transaction Data from Surplus Lines Licensees and insureds for reporting
39 to the Clearinghouse created by the Compact Commission. Such
40 Allocation Formulas will be established with input from Surplus lines
41 Licensees and be based upon readily available data with simplicity and
42 uniformity for the Surplus Line Licensee as a material consideration.

43 2. Uniform Clearinghouse Transaction Data reporting requirements for

1 all information reported to the Clearinghouse.

2 3. Methods by which Compacting States and Contracting States require
3 Surplus Lines Licensees and insureds to pay Premium Tax and to report
4 Clearinghouse Transaction Data to the Clearinghouse, including but not
5 limited to processing Clearinghouse Transaction Data through State
6 stamping and service offices, State insurance departments, or other State
7 designated agencies or entities.

8 4. That Non-Admitted Insurance of Multi-State Risks shall be subject
9 to all of the regulatory compliance requirements of the Home State
10 exclusively. Home State regulatory compliance requirements applicable to
11 Surplus Lines Insurance shall include but not be limited to, (i) person(s)
12 required to be licensed to sell, solicit, or negotiate Surplus Lines
13 Insurance; (ii) Insurer Eligibility Requirements or other approved Non-
14 Admitted Insurer requirements; (iii) Diligent Search; (iv) State Transaction
15 Documentation and Clearinghouse Transaction Data regarding the
16 payment of Premium Tax as set forth in this Compact and Rules to be
17 adopted by the Commission. Home State regulatory compliance
18 requirements applicable to Independently Procured Insurance placements
19 shall include but not be limited to providing State Transaction
20 Documentation and Clearinghouse Transaction Data regarding the
21 payment of Premium Tax as set forth in this Compact and Rules to be
22 adopted by the Commission.

23 5. That each Compacting State and Contracting State may charge its
24 own rate of taxation on the premium allocated to such State based on the
25 applicable Allocation Formula provided that the state establishes one
26 single rate of taxation applicable to all Non-Admitted Insurance
27 transactions and no other tax, fee assessment or other charge by any
28 governmental or quasi governmental agency be permitted.
29 Notwithstanding the foregoing, stamping office fees may be charged as a
30 separate, additional cost unless such fees are incorporated into a state's
31 single rate of taxation.

32 6. That any change in the rate of taxation by any Compacting State or
33 Contracting State be restricted to changes made prospectively on not less
34 than 90 days advance notice to the Compact Commission.

35 7. That each Compacting State and Contracting State shall require
36 Premium Tax payments either annually, semi-annually, or quarterly
37 utilizing one or more of the following dates only: March 1, June 1,
38 September 1, and December 1.

39 8. That each Compacting State and Contracting State prohibit any other
40 State agency or political subdivision from requiring Surplus Lines
41 Licensees to provide Clearinghouse Transaction Data and State
42 Transaction Documentation other than to the insurance department or tax
43 officials of the Home State or one single designated agent thereof.

1 9. The obligation of the Home State by itself, through a designated
2 agent, surplus lines stamping or service office, to collect Clearinghouse
3 Transaction Data from Surplus Line Licensees and from insureds for
4 Independently Procured Insurance, where applicable, for reporting to the
5 Clearinghouse.

6 10. A method for the Clearinghouse to periodically report to
7 Compacting States, Contracting States, Surplus Lines Licensees and
8 insureds who independently procure insurance, all Premium Taxes owed to
9 each of the Compacting States and Contracting States, the dates upon
10 which payment of such Premium Taxes are due and a method to pay them
11 through the Clearinghouse.

12 11. That each Surplus Line Licensee is required to be licensed only in
13 the Home State of each insured for whom Surplus Lines Insurance has
14 been procured.

15 12. That a policy considered to be Surplus Lines Insurance in the
16 insured's Home State shall be considered Surplus Lines Insurance in all
17 Compacting States and Contracting States, and taxed as a Surplus Lines
18 transaction in all states to which a portion of the risk is allocated. Each
19 Compacting State and Contracting State shall require each Surplus Lines
20 Licensee to pay to every other Compacting State and Contracting State
21 Premium Taxes on each Multi-State Risk through the Clearinghouse at
22 such tax rate charged on surplus lines transactions in such other
23 Compacting States and Contracting States on the portion of the risk in
24 each such Compacting State and Contracting State as determined by the
25 applicable uniform Allocation Formula adopted by the Commission. A
26 policy considered to be Independently Procured Insurance in the insured's
27 Home State shall be considered Independently Procured Insurance in all
28 Compacting States and Contracting States. Each Compacting State and
29 Contracting State shall require the insured to pay every other Compacting
30 State and Contracting State the Independently Procured Insurance
31 Premium Tax on each Multi-State Risk through the Clearinghouse
32 pursuant to the uniform Allocation Formula adopted by the Commission.

33 13. Uniform foreign Insurer Eligibility Requirements as authorized by
34 the NRRA.

35 14. A uniform Policyholder Notice.

36 15. Uniform treatment of Purchasing Group Surplus Lines Insurance
37 placements.

38 **ARTICLE V**

39 **Powers of the Commission**

40 The Commission shall have the following powers:

41 1. To promulgate Rules and operating procedures, pursuant to Article
42 VIII of this Compact, which shall have the force and effect of law and
43 shall be binding in the Compacting States to the extent and in the manner

1 provided in this Compact;

2 2. To bring and prosecute legal proceedings or actions in the name of
3 the Commission, provided that the standing of any State insurance
4 department to sue or be sued under applicable law shall not be affected;

5 3. To issue subpoenas requiring the attendance and testimony of
6 witnesses and the production of evidence, provided however, the
7 Commission is not empowered to demand or subpoena records or data
8 from Non-Admitted Insurers;

9 4. To establish and maintain offices including the creation of a
10 Clearinghouse for the receipt of Premium Tax and Clearinghouse
11 Transaction Data regarding Non-Admitted Insurance of Multi-State Risks,
12 Single-State Risks for states which elect to require Surplus Lines
13 Licensees to pay Premium Tax on Single State Risks through the
14 Clearinghouse and tax reporting forms;

15 5. To purchase and maintain insurance and bonds;

16 6. To borrow, accept or contract for services of personnel, including,
17 but not limited to, employees of a Compacting State or stamping office,
18 pursuant to an open, transparent, objective competitive process and
19 procedure adopted by the Commission;

20 7. To hire employees, professionals or specialists, and elect or appoint
21 officers, and to fix their compensation, define their duties and give them
22 appropriate authority to carry out the purposes of the Compact, and
23 determine their qualifications, pursuant to an open, transparent, objective
24 competitive process and procedure adopted by the Commission; and to
25 establish the Commission's personnel policies and programs relating to
26 conflicts of interest, rates of compensation and qualifications of personnel,
27 and other related personnel matters;

28 8. To accept any and all appropriate donations and grants of money,
29 equipment, supplies, materials and services, and to receive, utilize and
30 dispose of the same; provided that at all times the Commission shall avoid
31 any appearance of impropriety and/or conflict of interest;

32 9. To lease, purchase, accept appropriate gifts or donations of, or
33 otherwise to own, hold, improve or use, any property, real, personal or
34 mixed; provided that at all times the Commission shall avoid any
35 appearance of impropriety and/or conflict of interest;

36 10. To sell convey, mortgage, pledge, lease, exchange, abandon or
37 otherwise dispose of any property real, personal or mixed;

38 11. To provide for tax audit Rules and procedures for the Compacting
39 States with respect to the allocation of Premium Taxes including:

40 a. Minimum audit standards, including sampling methods,

41 b. Review of internal controls,

42 c. Cooperation and sharing of audit responsibilities between
43 Compacting States,

- 1 d. Handling of refunds or credits due to overpayments or improper
- 2 allocation of Premium Taxes,
- 3 e. Taxpayer records to be reviewed including a minimum retention
- 4 period,
- 5 f. Authority of Compacting States to review, challenge, or re-audit
- 6 taxpayer records.
- 7 12. To enforce compliance by Compacting States and Contracting
- 8 States with Rules, and Bylaws pursuant to the authority set forth in Article
- 9 XIV;
- 10 13. To provide for dispute resolution among Compacting States and
- 11 Contracting States;
- 12 14. To advise Compacting States and Contracting States on tax-related
- 13 issues relating to insurers, insureds, Surplus Lines Licensees, agents or
- 14 brokers domiciled or doing business in Non-Compacting States, consistent
- 15 with the purposes of this Compact;
- 16 15. To make available advice and training to those personnel in State
- 17 stamping offices, State insurance departments or other State departments
- 18 for record keeping, tax compliance, and tax allocations; and to be a
- 19 resource for State insurance departments and other State departments;
- 20 16. To establish a budget and make expenditures;
- 21 17. To borrow money;
- 22 18. To appoint and oversee committees, including advisory committees
- 23 comprised of Members, State insurance regulators, State legislators or
- 24 their representatives, insurance industry and consumer representatives, and
- 25 such other interested persons as may be designated in this Compact and
- 26 the Bylaws;
- 27 19. To establish an Executive Committee of not less than seven (7) nor
- 28 more than fifteen (15) representatives, which shall include officers elected
- 29 by the Commission and such other representatives as provided for herein
- 30 and determined by the Bylaws. Representatives of the Executive
- 31 Committee shall serve a one year term. Representatives of the Executive
- 32 Committee shall be entitled to one vote each. The Executive Committee
- 33 shall have the power to act on behalf of the Commission, with the
- 34 exception of rulemaking, during periods when the Commission is not in
- 35 session. The Executive Committee shall oversee the day to day activities
- 36 of the administration of the Compact, including the activities of the
- 37 Operations Committee created under this Article and compliance and
- 38 enforcement of the provisions of the Compact, its Bylaws, and Rules, and
- 39 such other duties as provided herein and as deemed necessary.
- 40 20. To establish an Operations Committee of not less than seven (7) and
- 41 not more than fifteen (15) representatives to provide analysis, advice,
- 42 determinations and recommendations regarding technology, software, and
- 43 systems integration to be acquired by the Commission and to provide

1 analysis, advice, determinations and recommendations regarding the
2 establishment of mandatory Rules to be adopted to be by the Commission.

3 21. To enter into contracts with Contracting States so that Contracting
4 States can utilize the services of and fully participate in the Clearinghouse
5 subject to the terms and conditions set forth in such contracts;

6 22. To adopt and use a corporate seal; and

7 23. To perform such other functions as may be necessary or appropriate
8 to achieve the purposes of this Compact consistent with the State
9 regulation of the business of insurance.

10 **ARTICLE VI**

11 **Organization of the Commission**

12 1. Membership, Voting and Bylaws

13 a. Each Compacting State shall have and be limited to one Member.
14 Each State shall determine the qualifications and the method by which it
15 selects a Member and set forth the selection process in the enabling
16 provision of the legislation which enacts this Compact. In the absence of
17 such a provision the Member shall be appointed by the governor of such
18 Compacting State. Any Member may be removed or suspended from
19 office as provided by the law of the State from which he or she shall be
20 appointed. Any vacancy occurring in the Commission shall be filled in
21 accordance with the laws of the Compacting State wherein the vacancy
22 exists.

23 b. Each Member shall be entitled to one (1) vote and shall otherwise
24 have an opportunity to participate in the governance of the Commission in
25 accordance with the Bylaws.

26 c. The Commission shall, by a majority vote of the Members, prescribe
27 Bylaws to govern its conduct as may be necessary or appropriate to carry
28 out the purposes and exercise the powers of the Compact including, but
29 not limited to:

30 i. Establishing the fiscal year of the Commission;

31 ii. Providing reasonable procedures for holding meetings of the
32 Commission the Executive Committee and the Operations Committee;

33 iii. Providing reasonable standards and procedures: (i) for the
34 establishment and meetings of committees, and (ii) governing any general
35 or specific delegation of any authority or function of the Commission;

36 iv. Providing reasonable procedures for calling and conducting
37 meetings of the Commission that consist of a majority of Commission
38 Members, ensuring reasonable advance notice of each such meeting and
39 providing for the right of citizens to attend each such meeting with
40 enumerated exceptions designed to protect the public's interest, the
41 privacy of individuals, and insurers' and Surplus Lines Licensees'
42 proprietary information, including trade secrets. The Commission may
43 meet in camera only after a majority of the entire membership votes to

1 close a meeting in toto or in part. As soon as practicable, the Commission
2 must make public: (i) a copy of the vote to close the meeting revealing the
3 vote of each Member with no proxy votes allowed, and (ii) votes taken
4 during such meeting;

5 v. Establishing the titles, duties and authority and reasonable
6 procedures for the election of the officers of the Commission;

7 vi. Providing reasonable standards and procedures for the establishment
8 of the personnel policies and programs of the Commission.
9 Notwithstanding any civil service or other similar 18 laws of any
10 Compacting State, the Bylaws shall exclusively govern the personnel
11 policies and programs of the Commission;

12 vii. Promulgating a code of ethics to address permissible and prohibited
13 activities of Commission Members and employees;

14 viii. Providing a mechanism for winding up the operations of the
15 Commission and the equitable disposition of any surplus funds that may
16 exist after the termination of the Compact after the payment and/or
17 reserving of all of its debts and obligations;

18 d. The Commission shall publish its Bylaws in a convenient form and
19 file a copy thereof and a copy of any amendment thereto, with the
20 appropriate agency or officer in each of the Compacting States.

21 2. Executive Committee, Personnel and Chairperson

22 a. An Executive Committee of the Commission (“Executive
23 Committee”) shall be established. All actions, of the Executive Committee,
24 including compliance and enforcement are subject to the review and
25 ratification of the Commission as provided in the Bylaws. The Executive
26 Committee shall have no more than fifteen (15) representatives, or one for
27 each State if there are less than fifteen (15) Compacting States, who shall
28 serve for a term and be established in accordance with the Bylaws.

29 b. The Executive Committee shall have such authority and duties as
30 may be set forth in the Bylaws, including but not limited to:

31 i. Managing the affairs of the Commission in a manner consistent with
32 the Bylaws and purposes of the Commission;

33 ii. Establishing and overseeing an organizational structure within, and
34 appropriate procedures for the Commission to provide for the creation of
35 Rules and operating procedures.

36 iii. Overseeing the offices of the Commission; and

37 iv. Planning, implementing, and coordinating communications and
38 activities with other State, federal and local government organizations in
39 order to advance the goals of the Commission.

40 c. The Commission shall annually elect officers from the Executive
41 Committee, with each having such authority and duties, as may be
42 specified in the Bylaws.

43 d. The Executive Committee may, subject to the approval of the

1 Commission, appoint or retain an executive director for such period, upon
2 such terms and conditions and for such compensation as the Commission
3 may deem appropriate. The executive director shall serve as secretary to
4 the Commission, but shall not be a Member of the Commission. The
5 executive director shall hire and supervise such other persons as may be
6 authorized by the Commission.

7 3. Operations Committee

8 a. An Operations Committee shall be established. All actions of the
9 Operations Committee are subject to the review and oversight of the
10 Commission and the Executive Committee and must be approved by the
11 Commission. The Executive Committee will accept the determinations and
12 recommendations of the Operations Committee unless good cause is
13 shown why such determinations and recommendations should not be
14 approved. Any disputes as to whether good cause exists to reject any
15 determination or recommendation of the Operations Committee shall be
16 resolved by the majority vote of the Commission.

17 The Operations Committee shall have no more than fifteen (15)
18 representatives or one for each State if there are less than fifteen (15)
19 Compacting States, who shall serve for a term and shall be established as
20 set forth in the Bylaws.

21 The Operations Committee shall have responsibility for:

22 i. Evaluating technology requirements for the Clearinghouse, assessing
23 existing systems used by state regulatory agencies and state stamping
24 offices to maximize the efficiency and successful integration of the
25 Clearinghouse technology systems with state and state stamping office
26 technology platforms and to minimize costs to the states, state stamping
27 offices and the Clearinghouse.

28 ii. Making recommendations to the Executive Committee based on its
29 analysis and determination of the Clearinghouse technology requirements
30 and compatibility with existing state and state stamping office systems.

31 iii. Evaluating the most suitable proposals for adoption as mandatory
32 Rules, assessing such proposals for ease of integration by states, and
33 likelihood of successful implementation and to report to the Executive
34 Committee its determinations and recommendations.

35 iv. Such other duties and responsibilities as are delegated to it by the
36 Bylaws, the Executive Committee or the Commission.

37 b. All representatives of the Operations Committee shall be individuals
38 who have extensive experience and/or employment in the Surplus Lines
39 Insurance business including but not limited to executives and attorneys
40 employed by Surplus Line Insurers, Surplus Line Licensees, Law Firms,
41 State Insurance Departments and or State stamping offices. Operations
42 Committee representatives from Compacting States which utilize the
43 services of a state stamping office must appoint the Chief Operating

1 Officer or a senior manager of the state stamping office to the Operations
2 Committee.

3 4. Legislative and Advisory Committees

4 a. A legislative committee comprised of State legislators or their
5 designees shall be established to monitor the operations of and make
6 recommendations to, the Commission, including the Executive
7 Committee; provided that the manner of selection and term of any
8 legislative committee member shall be as set forth in the Bylaws. Prior to
9 the adoption by the Commission of any Uniform Standard, revision to the
10 Bylaws, annual budget or other significant matter as may be provided in
11 the Bylaws, the Executive Committee shall consult with and report to the
12 legislative committee.

13 b. The Commission may establish additional advisory committees as its
14 Bylaws may provide for the carrying out of its functions.

15 5. Corporate Records of the Commission

16 The Commission shall maintain its corporate books and records in
17 accordance with the Bylaws.

18 6. Qualified Immunity, Defense and Indemnification

19 a. The Members, officers, executive director, employees and
20 representatives of the Commission, the Executive Committee and any
21 other Committee of the Commission shall be immune from suit and
22 liability, either personally or in their official capacity, for any claim for
23 damage to or loss of property or personal injury or other civil liability
24 caused by or arising out of any actual or alleged act, error or omission that
25 occurred, or that the person against whom the claim is made had a
26 reasonable basis for believing occurred within the scope of Commission
27 employment, duties or responsibilities; provided that nothing in this
28 paragraph shall be construed to protect any such person from suit and/or
29 liability for any damage, loss, injury or liability caused by the intentional
30 or willful or wanton misconduct of that person.

31 b. The Commission shall defend any Member, officer, executive
32 director, employee or representative of the Commission, the Executive
33 Committee or any other Committee of the Commission in any civil action
34 seeking to impose liability arising out of any actual or alleged act, error or
35 omission that occurred within the scope of Commission employment,
36 duties or responsibilities, or that the person against whom the claim is
37 made had a reasonable basis for believing occurred within the scope of
38 Commission employment, duties or responsibilities; provided that nothing
39 herein shall be construed to prohibit that person from retaining his or her
40 own counsel; and provided further, that the actual or alleged act error or
41 omission did not result from that person's intentional or willful or wanton
42 misconduct.

43 c. The Commission shall indemnify and hold harmless any Member,

1 officer, executive director, employee or representative of the Commission,
2 Executive Committee or any other Committee of the Commission for the
3 amount of any settlement or judgment obtained against that person arising
4 out of any actual or alleged act, error or omission that occurred within the
5 scope of Commission employment, duties or responsibilities, or that such
6 person had a reasonable basis for believing occurred within the scope of
7 Commission employment, duties or responsibilities, provided that the
8 actual or alleged act, error or omission did not result from the intentional
9 or willful or wanton misconduct of that person.

10 **ARTICLE VII**

11 **Meetings and Acts of the Commission**

12 1. The Commission shall meet and take such actions as are consistent
13 with the provisions of this Compact and the Bylaws.

14 2. Each Member of the Commission shall have the right and power to
15 cast a vote to which that Compacting State is entitled and to participate in
16 the business and affairs of the Commission. A Member shall vote in person
17 or by such other means as provided in the Bylaws. The Bylaws may
18 provide for Members' participation in meetings by telephone or other
19 means of communication.

20 3. The Commission shall meet at least once during each calendar year.
21 Additional meetings shall be held as set forth in the Bylaws.

22 4. Public notice shall be given of all meetings and all meetings shall be
23 open to the public, except as set forth in the Rules or otherwise provided in
24 the Compact.

25 5. The Commission shall promulgate Rules concerning its meetings
26 consistent with the principles contained in the "Government in the
27 Sunshine Act," 5 U.S.C., § 552b, as may be amended.

28 6. The Commission and its committees may close a meeting, or portion
29 thereof, where it determines by majority vote that an open meeting would
30 be likely to:

31 a. Relate solely to the Commission's internal personnel practices and
32 procedures;

33 b. Disclose matters specifically exempted from disclosure by federal
34 and State statute;

35 c. Disclose trade secrets or commercial or financial information which
36 is privileged or confidential;

37 d. Involve accusing a person of a crime, or formally censuring a person;

38 e. Disclose information of a personal nature where disclosure would
39 constitute a clearly unwarranted invasion of personal privacy;

40 f. Disclose investigative records compiled for law enforcement
41 purposes;

42 g. Specifically relate to the Commission's issuance of a subpoena, or its
43 participation in a civil action or other legal proceeding.

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

12 **ARTICLE VIII**

13 **Rules and Operating Procedures: Rulemaking**

14 Functions of the Commission

15 Rulemaking functions of the Commission:

16 1. Rulemaking Authority.—The Commission shall promulgate
17 reasonable Rules in order to effectively and efficiently achieve the
18 purposes of this Compact. Notwithstanding the foregoing, in the event the
19 Commission exercises its rulemaking authority in a manner that is beyond
20 the scope of the purposes of this Act, or the powers granted hereunder,
21 then such an action by the Commission shall be invalid and have no force
22 or effect.

23 2. Rulemaking Procedure.—Rules shall be made pursuant to a
24 rulemaking process that substantially conforms to the "Model State
25 Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated,
26 Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of
27 the Commission.

28 3. Effective Date — All Rules and amendments, thereto, shall become
29 effective as of the date specified in each Rule, operating procedure or
30 amendment.

31 4. Not later than thirty (30) days after a Rule is promulgated, any
32 person may file a petition for judicial review of the Rule; provided that the
33 filing of such a petition shall not stay or otherwise prevent the Rule from
34 becoming effective unless the court finds that the Petitioner has a
35 substantial likelihood of success. The court shall give deference to the
36 actions of the Commission consistent with applicable law and shall not
37 find the Rule to be unlawful if the Rule represents a reasonable exercise of
38 the Commission's authority.

39 **ARTICLE IX**

40 **Commission Records and Enforcement**

41 1. The Commission shall promulgate Rules establishing conditions and
42 procedures for public inspection and copying of its information and
43 official records, except such information and records involving the privacy

1 of individuals, insurers, insureds or Surplus Lines Licensee trade secrets.
2 State Transaction Documentation and Clearinghouse Transaction Data
3 collected by the Clearinghouse shall be used for only those purposes
4 expressed in or reasonably implied under the provisions of this Compact
5 and the Commission shall afford this data the broadest protections as
6 permitted by any applicable law for proprietary information, trade secrets
7 or personal data. The Commission may promulgate additional Rules under
8 which it may make available to federal and State agencies, including law
9 enforcement agencies, records and information otherwise exempt from
10 disclosure, and may enter into agreements with such agencies to receive or
11 exchange information or records subject to nondisclosure and
12 confidentiality provisions.

13 2. Except as to privileged records, data and information, the laws of any
14 Compacting State pertaining to confidentiality or nondisclosure shall not
15 relieve any Compacting State Member of the duty to disclose any relevant
16 records, data or information to the Commission; provided that disclosure
17 to the Commission shall not be deemed to waive or otherwise affect any
18 confidentiality requirement, and further provided that, except as otherwise
19 expressly provided in this Act, the Commission shall not be subject to the
20 Compacting State's laws pertaining to confidentiality and nondisclosure
21 with respect to records, data and information in its possession.
22 Confidential information of the Commission shall remain confidential
23 after such information is provided to any Member, and the Commission
24 shall maintain the confidentiality of any information provided by a
25 member that is confidential under that Member's State Law.

26 3. The Commission shall monitor Compacting States for compliance
27 with duly adopted Bylaws and Rules. The Commission shall notify any
28 non-complying Compacting State in writing of its noncompliance with
29 Commission Bylaws or Rules. If a non-complying Compacting State fails
30 to remedy its noncompliance within the time specified in the notice of
31 noncompliance, the Compacting State shall be deemed to be in default as
32 set forth in Article XIV.

33 **ARTICLE X**

34 **Dispute Resolution**

35 1. Before a Member may bring an action in a court of competent
36 jurisdiction for violation of any provision, standard or requirement of the
37 Compact, the Commission shall attempt, upon the request of a Member, to
38 resolve any disputes or other issues that are subject to this Compact and
39 which may arise between two or more Compacting States, Contracting
40 States or Non-Compacting States, and the Commission shall promulgate a
41 Rule providing alternative dispute resolution procedures for such disputes.

42 2. The Commission shall also provide alternative dispute resolution
43 procedures to resolve any disputes between insureds or Surplus Lines

1 Licensees concerning a tax calculation or allocation or related issues
2 which are the subject of this Compact.

3 3. Any alternative dispute resolution procedures shall be utilized in
4 circumstances where a dispute arises as to which State constitutes the
5 Home State.

6 **ARTICLE XI**

7 **Review of Commission Decisions**

8 Regarding Commission decisions:

9 1. Except as necessary for promulgating Rules to fulfill the purposes of
10 this Compact, the Commission shall not have authority to otherwise
11 regulate insurance in the Compacting States.

12 2. Not later than thirty (30) days after the Commission has given notice
13 of any Rule or Allocation Formula, any third party filer or Compacting
14 State may appeal the determination to a review panel appointed by the
15 Commission. The Commission shall promulgate Rules to establish
16 procedures for appointing such review panels and provide for notice and
17 hearing. An allegation that the Commission, in making compliance or tax
18 determinations acted arbitrarily, capriciously, or in a manner that is an
19 abuse of discretion or otherwise not in accordance with the law, is subject
20 to judicial review in accordance with Article III, Section 6.

21 3. The Commission shall have authority to monitor, review and
22 reconsider Commission decisions upon a finding that the determinations or
23 allocations do not meet the relevant Rule. Where appropriate, the
24 Commission may withdraw or modify its determination or allocation after
25 proper notice and hearing, subject to the appeal process in Section 2
26 above.

27 **ARTICLE XII**

28 **Finance**

29 1. The Commission shall pay or provide for the payment of the
30 reasonable expenses of its establishment and organization. To fund the cost
31 of its initial operations the Commission may accept contributions, grants,
32 and other forms of funding from the State stamping offices, Compacting
33 States and other sources.

34 2. The Commission shall collect a fee payable by the insured directly or
35 through a Surplus Lines Licensee on each transaction processed through
36 the Compact Clearinghouse, to cover the cost of the operations and
37 activities of the Commission and its staff in a total amount sufficient to
38 cover the Commission's annual budget.

39 3. The Commission's budget for a fiscal year shall not be approved
40 until it has been subject to notice and comment as set forth in Article VIII
41 of this Compact.

42 4. The Commission shall be regarded as performing essential
43 governmental functions in exercising such powers and functions and in

1 carrying out the provisions of this Compact and of any law relating
2 thereto, and shall not be required to pay any taxes or assessments of any
3 character, levied by any State or political subdivision thereof, upon any of
4 the property used by it for such purposes, or any income or revenue
5 therefrom, including any profit from a sale or exchange.

6 5. The Commission shall keep complete and accurate accounts of all its
7 internal receipts, including grants and donations, and disbursements for all
8 funds under its control. The internal financial accounts of the Commission
9 shall be subject to the accounting procedures established under its Bylaws.
10 The financial accounts and reports including the system of internal
11 controls and procedures of the Commission shall be audited annually by an
12 independent certified public accountant. Upon the determination of the
13 Commission, but not less frequently than every three (3) years, the review
14 of the independent auditor shall include a management and performance
15 audit of the Commission. The Commission shall make an annual report to
16 the Governor and legislature of the Compacting States, which shall include
17 a report of the independent audit. The Commission's internal accounts
18 shall not be confidential and such materials may be shared with the
19 Commissioner, the controller, or the stamping office of any Compacting
20 State upon request provided, however, that any work papers related to any
21 internal or independent audit and any information regarding the privacy of
22 individuals, and licensees' and insurers' proprietary information, including
23 trade secrets, shall remain confidential.

24 6. No Compacting State shall have any claim to or ownership of any
25 property held by or vested in the Commission or to any Commission funds
26 held pursuant to the provisions of this Compact.

27 7. The Commission shall not make any political contributions to
28 candidates for elected office, elected officials, political parties nor political
29 action committees. The Commission shall not engage in lobbying except
30 with respect to changes to this Compact.

31 **ARTICLE XIII**

32 **Compacting States, Effective Date and Amendment**

33 1. Any State is eligible to become a Compacting State.

34 2. The Compact shall become effective and binding upon legislative
35 enactment of the Compact into law by two (2) Compacting States,
36 provided the Commission shall become effective for purposes of adopting
37 Rules, and creating the Clearinghouse when there are a total of ten (10)
38 Compacting States and Contracting States or, alternatively, when there are
39 Compacting States and Contracting States representing greater than forty
40 percent (40%) of the Surplus Lines Insurance premium volume based on
41 records of the percentage of Surplus Lines Insurance premium set forth in
42 Appendix A hereto. Thereafter, it shall become effective and binding as to
43 any other Compacting State upon enactment of the Compact into law by

1 that State. Notwithstanding the foregoing, the Clearinghouse operations
2 and the duty to report Clearinghouse Transaction Data shall begin on the
3 first January 1st or July 1st following the first anniversary of the
4 Commission effective date. For States which join the Compact subsequent
5 to the effective date, a start date for reporting Clearinghouse Transaction
6 Data shall be set by the Commission provided Surplus Lines Licensees and
7 all other interested parties receive not less than 90 days advance notice.

8 3. Amendments to the Compact may be proposed by the Commission
9 for enactment by the Compacting States. No amendment shall become
10 effective and binding upon the Commission and the Compacting States
11 unless and until all Compacting States enact the amendment into law.

12 **ARTICLE XIV**

13 **Withdrawal, Default and Termination**

14 1. Withdrawal

15 a. Once effective, the Compact shall continue in force and remain
16 binding upon each and every Compacting State, provided that a
17 Compacting State may withdraw from the Compact ("Withdrawing State")
18 by enacting a statute specifically repealing the statute which enacted the
19 Compact into law.

20 b. The effective date of withdrawal is the effective date of the repealing
21 statute. However, the withdrawal shall not apply to any tax or compliance
22 determinations approved on the date the repealing statute becomes
23 effective, except by mutual agreement of the Commission and the
24 Withdrawing State unless the approval is rescinded by the Commission.

25 c. The Member of the Withdrawing State shall immediately notify the
26 Executive Committee of the Commission in writing upon the introduction
27 of legislation repealing this Compact in the Withdrawing State.

28 d. The Commission shall notify the other Compacting States of the
29 introduction of such legislation within ten (10) days after its receipt of
30 notice thereof.

31 e. The Withdrawing State is responsible for all obligations, duties and
32 liabilities incurred through the effective date of withdrawal, including any
33 obligations, the performance of which extend beyond the effective date of
34 withdrawal. To the extent those obligations may have been released or
35 relinquished by mutual agreement of the Commission and the
36 Withdrawing State, the Commission's determinations prior to the effective
37 date of withdrawal shall continue to be effective and be given full force
38 and effect in the Withdrawing State, unless formally rescinded by the
39 Commission.

40 f. Reinstatement following withdrawal of any Compacting State shall
41 occur upon the effective date of the Withdrawing State reenacting the
42 Compact.

43 2. Default

1 a. If the Commission determines that any Compacting State has at
2 anytime defaulted ("Defaulting State") in the performance of any of its
3 obligations or responsibilities under this Compact, the Bylaws or duly
4 promulgated Rules then after notice and hearing as set forth in the Bylaws,
5 all rights, privileges and benefits conferred by this Compact on the
6 Defaulting State shall be suspended from the effective date of default as
7 fixed by the Commission. The grounds for default include, but are not
8 limited to, failure of a Compacting State to perform its obligations or
9 responsibilities, and any other grounds designated in Commission Rules.
10 The Commission shall immediately notify the Defaulting State in writing
11 of the Defaulting State's suspension pending a cure of the default. The
12 Commission shall stipulate the conditions and the time period within
13 which the Defaulting State must cure its default. If the Defaulting State
14 fails to cure the default within the time period specified by the
15 Commission, the Defaulting State shall be terminated from the Compact
16 and all rights, privileges and benefits conferred by this Compact shall be
17 terminated from the effective date of termination.

18 b. Decisions of the Commission that are issued on the effective date of
19 termination shall remain in force in the Defaulting State in the same
20 manner as if the Defaulting State had withdrawn voluntarily pursuant to
21 Section 1 of this Article.

22 c. Reinstatement following termination of any Compacting State
23 requires a reenactment of the Compact.

24 3. Dissolution of Compact

25 a. The Compact dissolves effective upon the date of the withdrawal or
26 default of the Compacting State which reduces membership in the
27 Compact to one Compacting State.

28 b. Upon the dissolution of this Compact, the Compact becomes null
29 and void and shall have no further force or effect, and the business and
30 affairs of the Commission shall be wound up and any surplus funds shall
31 be distributed in accordance with the Rules and Bylaws.

32 **ARTICLE XV**

33 **Severability and Construction**

34 1. The provisions of this Compact shall be severable and if any phrase,
35 clause, sentence or provision is deemed unenforceable, the remaining
36 provisions of the Compact shall be enforceable.

37 2. The provisions of this Compact shall be liberally construed to
38 effectuate its purposes.

39 3. Throughout this Compact the use of the singular shall include the
40 plural and vice-versa.

41 4. The headings and captions of articles, sections and sub-sections used
42 in this Compact are for convenience only and shall be ignored in
43 construing the substantive provisions of this Compact.

ARTICLE XVI

Binding Effect of Compact and Other Laws

1
2
3 1. Other Laws

4 a. Nothing herein prevents the enforcement of any other law of a
5 Compacting State except as provided in Paragraph b. of this section.

6 b. Decisions of the Commission, and any Rules, and any other
7 requirements of the Commission shall constitute the exclusive Rule, or
8 determination applicable to the Compacting States. Any law or regulation
9 regarding Non-Admitted Insurance of Multi-State Risks that is contrary to
10 Rules of the Commission, is preempted with respect to the following:

11 (i) Clearinghouse Transaction Data reporting requirements;

12 (ii) Allocation Formula;

13 (iii) Clearinghouse Transaction Data collection requirements;

14 (iv) Premium Tax payment time frames and Rules concerning
15 dissemination of data among the Compacting States for Non- Admitted
16 Insurance of Multi-State Risks and Single-State Risks;

17 (v) Exclusive compliance with surplus lines law of the Home State of
18 the insured; and

19 (vi) Rules for reporting to a Clearinghouse for receipt and distribution
20 of Clearinghouse Transaction Data related to Non-Admitted Insurance of
21 Multi-State Risks;

22 (vii) Uniform foreign Insurers Eligibility Requirements;

23 (viii) Uniform Policyholder Notice; and

24 (ix) Uniform treatment of Purchasing Groups procuring Non-Admitted
25 Insurance.

26 c. Except as stated in paragraph b, any Rule, Uniform Standard or other
27 requirement of the Commission shall constitute the exclusive provision
28 that a Commissioner may apply to compliance or tax determinations.
29 Notwithstanding the foregoing, no action taken by the commission shall
30 abrogate or restrict: (i) the access of any person to State courts; (ii) the
31 availability of alternative dispute resolution under Article X of this
32 Compact (iii) remedies available under State law related to breach of
33 contract, tort, or other laws not specifically directed to compliance or tax
34 determinations; (iv) State law relating to the construction of insurance
35 contracts; or (v) the authority of the attorney general of the State, including
36 but not limited to maintaining any actions or proceedings, as authorized by
37 law.

38 2. Binding Effect of this Compact

39 a. All lawful actions of the Commission, including all Rules
40 promulgated by the Commission, are binding upon the Compacting States,
41 except as provided herein.

42 b. All agreements between the Commission and the Compacting States
43 are binding in accordance with their terms.

1 c. Upon the request of a party to a conflict over the meaning or
 2 interpretation of Commission actions, and upon a majority vote of the
 3 Compacting States, the Commission may issue advisory opinions
 4 regarding the meaning or interpretation in dispute. This provision may be
 5 implemented by Rule at the discretion of the Commission.

6 d. In the event any provision of this Compact exceeds the constitutional
 7 limits imposed on the legislature of any Compacting State, the obligations,
 8 duties, powers or jurisdiction sought to be conferred by that provision
 9 upon the Commission shall be ineffective as to that State and those
 10 obligations duties, powers or jurisdiction shall remain in the Compacting
 11 State and shall be exercised by the agency thereof to which those
 12 obligations, duties, powers or jurisdiction are delegated by law in effect at
 13 the time this Compact becomes effective.

14 **Surplus Line Insurance Premiums by State**

Appendix A

15	Premiums based on	Share of Total
16 State	taxes paid	Premiums
17 Alabama	445,746,000	1.47%
18 Alaska	89,453,519	0.29%
19 Arizona	663,703,267	2.18%
20 Arkansas	201,859,750	0.66%
21 California	5,622,450,467	18.49%
22 Colorado	543,781,333	1.79%
23 Connecticut	329,358,800	1.08%
24 Delaware	92,835,950	0.31%
25 Florida	2,660,908,760	8.75%
26 Georgia	895,643,150	2.95%
27 Hawaii	232,951,489	0.77%
28 Idaho	74,202,255	0.24%
29 Illinois	1,016,504,629	3.34%
30 Indiana	412,265,320	1.36%
31 Iowa	135,130,933	0.44%
32 Kansas	160,279,300	0.53%
33 Kentucky	167,996,133	0.55%
34 Louisiana	853,173,280	2.81%
35 Maine	60,111,200	0.20%
36 Maryland	434,887,600	1.43%
37 Massachusetts	708,640,225	2.33%
38 Michigan	703,357,040	2.31%
39 Minnesota	393,128,400	1.29%
40 Mississippi	263,313,175	0.87%
41 Missouri	404,489,860	1.33%
42 Montana	64,692,873	0.21%
43 Nebraska	92,141,167	0.30%

1	Nevada	354,271,514	1.17%
2	New Hampshire	102,946,250	0.34%
3	New Jersey	1,087,994,033	3.58%
4	New Mexico	67,608,458	0.22%
5	New York	2,768,618,083	9.11%
6	North Carolina	514,965,060	1.69%
7	North Dakota	36,223,943	0.12%
8	Ohio	342,000,000	1.12%
9	Oklahoma	319,526,400	1.05%
10	Oregon	312,702,150	1.03%
11	Pennsylvania	780,666,667	2.57%
12	Rhode Island	71,794,067	0.24%
13	South Carolina	412,489,825	1.36%
14	South Dakota	38,702,120	0.13%
15	Tennessee	451,775,240	1.49%
16	Texas	3,059,170,454	10.06%
17	Utah	142,593,412	0.47%
18	Vermont	41,919,433	0.14%
19	Virginia	611,530,667	2.01%
20	Washington	739,932,050	2.43%
21	West Virginia	130,476,250	0.43%
22	Wisconsin	248,758,333	0.82%
23	Wyoming	40,526,967	0.13%
24	Total	30,400,197,251	100.00%

25 This Data is 2005 Calendar Year Data excerpted from a study dated
 26 February 27, 2007 by Mackin & Company.

27 New Sec. 2. The commissioner of insurance shall represent this state
 28 on the surplus lines insurance multi-state compliance compact.

29 New Sec. 3. The member representing this state on the surplus lines
 30 insurance multi-state compliance compact may be represented thereon by
 31 an alternate designated by the commissioner of insurance. Any such
 32 alternate shall be an assistant commissioner or a division director of the
 33 insurance department.

34 Sec. 4. K.S.A. 2010 Supp. 40-246b is hereby amended to read as
 35 follows: 40-246b. ~~The~~ *Upon receipt of a proper application, the*
 36 *commissioner of insurance may issue to any duly licensed resident agent*
 37 *of this state, who has been licensed as a fire or casualty, or both, resident*
 38 *agent in this or any other state or combination thereof, for three*
 39 *consecutive years immediately prior to application for the type of license*
 40 *herein prescribed, upon proper application, an excess coverage license to*
 41 *negotiate an excess lines coverage license to any licensed property and*
 42 *casualty agent of this state or any other state. Any agent so licensed may*
 43 *negotiate for insureds whose home state is this state, the types of contracts*

1 of fire insurance enumerated in K.S.A. 40-901, and amendments thereto,
2 and the type of casualty insurance contracts enumerated in K.S.A. 40-
3 1102, and amendments thereto, or reinsurance, or to place risks, or to
4 effect insurance or reinsurance for persons or corporations other than such
5 agent, with insurers not authorized to do business in this state. An agent, as
6 defined in K.S.A. ~~40-241e~~ 2010 *Supp.* 40-4902, and amendments thereto,
7 may place the kind or kinds of business specified in this act for which such
8 agent is licensed pursuant to K.S.A. ~~40-240 and 40-241~~ 2010 *Supp.* 40-
9 4903 and subsection (d) of 40-4906, and amendments thereto, with an
10 insurer not authorized to do business in this state by placing such business
11 with a person licensed pursuant to the provisions of this act and may share
12 in the applicable commissions on such business. Before any such license
13 shall be issued, the applicant shall submit proper application on a form
14 prescribed by the commissioner, which application shall be accompanied
15 by a fee of \$50. Such license shall be renewable each year on May 1, upon
16 the payment of a \$50 fee. ~~Excess lines agents licensed by the department~~
17 ~~on the effective date of this act shall be exempt from the experience~~
18 ~~requirement.~~

19 (b) The agent so licensed shall on or before March 1 of each year, file
20 with the insurance department of this state, a sworn affidavit or statement
21 to the effect that, after diligent effort, such agent has been unable to secure
22 the amount of insurance required to protect the property, person, or firm
23 described in such agent's affidavit or statement from loss or damage in
24 regularly admitted companies during the preceding year. Mere rate
25 differential shall not be grounds for placing a particular risk in a
26 nonadmitted carrier when an admitted carrier would accept such risk at a
27 different rate. The licensed excess coverage agent must, prior to placing
28 insurance with an insurer not authorized to do business in this state, obtain
29 the written consent of the prospective named insured and provide such
30 insured the following information in a form promulgated by the
31 commissioner:

32 (a) (1) A statement that the coverage will be obtained from an insurer
33 not authorized to do business in this state;

34 (b) (2) a statement that the insurer's name appears on the list of
35 companies maintained by the commissioner pursuant to K.S.A. 40-246e,
36 and amendments thereto;

37 (c) (3) a notice that the insurer's financial condition, policy forms,
38 rates and trade practices are not subject to the review or jurisdiction of the
39 commissioner;

40 (d) (4) a statement that the protection of the guaranty associations is
41 not afforded to policyholders of the insurer; and

42 (e) (5) a statement or notice with respect to any other information
43 deemed necessary by the commissioner pertinent to insuring with an

1 insurer not authorized to do business in this state.

2 (c) In the event the insured desires that coverage be bound with an
3 insurer not admitted to this state and it is not possible to obtain the written
4 consent of the insured prior to binding the coverage, the excess lines agent
5 may bind the coverage after advising the insured of the information set out
6 above and shall obtain written confirmation that the insured desires that
7 coverage be placed with an insurer not admitted to this state within 30
8 days after binding coverage.

9 (d) When business comes to a licensed excess lines agent *in which*
10 *this state is the home state* for placement with an insurer not authorized to
11 do business in this state from an agent not licensed as an excess lines
12 agent, it shall be the responsibility of the licensed excess lines agent to
13 ascertain that the insured has been provided the preceding information and
14 has consented to being insured with an insurer not authorized to do
15 business in this state. Each excess lines agent shall keep a separate record
16 book in such agent's office showing the transactions of fire and casualty
17 insurance and reinsurance placed in companies not authorized to do
18 business in this state, the amount of gross premiums charged thereon, the
19 insurer ~~in which~~ *with which the policy was* placed, the date, term and
20 number of the policy, the location and nature of the risk, the name of the
21 ~~assured~~ *insured* and such other information as the commissioner may
22 require and such record shall be available at all times for inspection by the
23 commissioner of insurance or the commissioner's authorized
24 representatives. The commissioner may revoke or suspend any license
25 issued pursuant to the provisions of this act in the same manner and for the
26 same reasons prescribed by K.S.A. ~~40-242~~ *2010 Supp. 40-4909*, and
27 amendments thereto.

28 Any policy issued under the provisions of this statute shall have
29 stamped or endorsed in a prominent manner thereon, the following: This
30 policy is issued by an insurer not authorized to do business in Kansas and,
31 as such, the form, financial condition and rates are not subject to review by
32 the commissioner of insurance and the insured is not protected by any
33 guaranty fund.

34 If business is placed with a nonadmitted company that is subsequently
35 determined to be insolvent, the excess lines agent placing such business
36 with such company is relieved of any responsibility to the insured as it
37 relates to such insolvency, if the excess lines agent has satisfactorily
38 complied with all requirements of this section pertaining to notification of
39 the insured, has properly obtained the written consent of the insured and
40 has used due diligence in selecting the insurer. It shall be presumed that
41 due diligence was used in selecting the insurer if such insurer was on the
42 list compiled pursuant to K.S.A. 40-246e, and amendments thereto, at the
43 time coverage first became effective.

1 Sec. 5. K.S.A. 40-246c is hereby amended to read as follows: 40-
2 246c. Each licensed agent shall file with the commissioner on or before
3 March 1 of each year a statement on a form prescribed by the
4 commissioner, accounting for the gross premiums upon all policies written
5 on risks situated in this state up to January 1 in each year for the year next
6 preceding and the licensee shall transmit to the commissioner, with such
7 affidavit or statement, a sum equal to 6% of the gross premiums upon all
8 policies procured by such agent on risks situated in this state written under
9 the provisions of this act. Any individual placing a policy with an insurer
10 not authorized to do business in this state on a risk domiciled in a state
11 other than this state, but also covering a risk or location in Kansas, shall
12 file with the commissioner a statement in the form prescribed by the
13 commissioner, describing the risk and shall pay to the commissioner a sum
14 equal to 6% of the portion of the premium applicable to the risk located in
15 Kansas within 120 days after writing the risk.

16 (a) *On March 1 of each year, each licensed agent shall collect and*
17 *pay to the commissioner a sum based on the total gross premiums*
18 *charged, less any return premiums, for surplus lines insurance provided by*
19 *the licensee pursuant to the license. Where the insurance covers*
20 *properties, risks or exposures located or to be performed both in and out*
21 *of this state, the sum payable shall be computed based on:*

22 (1) *An amount equal to 6% of that portion of the gross premiums*
23 *allocated to this state; plus*

24 (2) *an amount equal to the portion of the premiums allocated to other*
25 *states or territories on the basis of the tax rates and fees applicable to*
26 *properties, risks or exposures located or to be performed outside of this*
27 *state; less*

28 (3) *the amount of gross premiums allocated to this state and returned*
29 *to the insured.*

30 (b) *The tax on any portion of the premium unearned at termination of*
31 *insurance, if any, having been credited by the state to the licensee shall be*
32 *returned to the policyholder directly by the surplus lines licensee or*
33 *through the producing broker. The surplus lines licensee is prohibited from*
34 *rebating any part of the tax for any reason. To the extent that other states*
35 *where portions of the properties, risks or exposures reside have failed to*
36 *enter into a compact or reciprocal allocation procedure with this state, the*
37 *next premium tax collected shall be retained by this state.*

38 (c) *The individual responsible for filing the statement shall be the*
39 *agent who signs the policy or the agent of record with the company. The*
40 *commissioner of insurance shall collect double the amount of tax herein*
41 *provided from any licensee or other responsible individual as herein*
42 *described who shall fail, refuse or neglect to transmit the required affidavit*
43 *or statement or shall fail to pay the tax imposed by this section; to the*

1 commissioner within the period specified.

2 Sec. 6. K.S.A. 40-246e is hereby amended to read as follows: 40-
3 246e. The commissioner shall maintain a list of insurers not authorized to
4 do business in this state for review by any interested person. Only those
5 insurers who have filed a certified copy of their most recent annual
6 statement with the commissioner in the form prescribed by K.S.A. 40-225,
7 and amendments thereto, or, if domiciled outside the United States, have
8 filed their most recent annual statement with the national association of
9 insurance commissioners may appear on the list. No excess lines agent
10 shall place insurance on a Kansas domiciled risk with an insurer whose
11 name does not appear on this list. No company shall appear on the list
12 whose capital or surplus as shown on the annual statement does not equal
13 or exceed ~~\$1,500,000~~ \$4,500,000. Individual unincorporated insurers not
14 listed by the national association of insurance commissioners may appear
15 on the list if they are authorized to transact an insurance business in at
16 least one state of the United States, possess assets which are held in trust
17 for the benefit of American policyholders in the sum of not less than
18 \$50,000,000 and pay the filing fee required by this section. Insurance
19 exchanges who issue contracts on behalf of their members and pay the
20 filing fee required by this section may appear on the list if their individual
21 members have a capital or surplus equal to or in excess of \$1,500,000 and
22 the aggregate capital or surplus of all members of the exchange is at least
23 \$15,000,000. A nonrefundable filing fee of \$200 shall be required of any
24 insurer submitting its annual statement for review by the commissioner for
25 inclusion on such list. The commissioner shall remove an insurer's name
26 from the listing only when: (a) The insurer requests such removal; or (b)
27 the insurer fails to file its latest annual statement and required filing fee
28 prior to May 1 of each year as required by this section; or (c) the
29 commissioner is notified by the insurance supervisory authority of any
30 state of the United States that such insurer has had its authority to transact
31 business restricted; or has been declared insolvent or placed in
32 receivership, conservatorship, rehabilitation or any similar status wherein
33 the business of the insurer is formally supervised by an insurance
34 supervisory authority; or (d) the commissioner is notified by the N.A.I.C.
35 that any insurer domiciled outside the United States has been declared
36 insolvent or placed in receivership, conservatorship, rehabilitation or any
37 similar status wherein the business of the insurer is formally supervised by
38 an insurance supervisory authority pursuant to an order by any court of
39 competent jurisdiction; or (e) the insurer has failed to effectuate reasonably
40 prompt, fair and equitable payment of just losses and claims in this state;
41 or (f) the insurer encourages, promotes or rewards an agent to violate the
42 provisions of K.S.A. 40-246b, and amendments thereto. There shall be no
43 liability on the part of and no cause of action of any nature shall arise

1 against the commissioner, the commissioner's employees, or the state of
2 Kansas as a result of any insurer's name appearing or not appearing on the
3 list required by this section if such list is constructed and maintained in
4 good faith and without malice.

5 Sec. 7. K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-246b
6 are hereby repealed.

7 Sec. 8. This act shall take effect and be in force from and after its
8 publication in the Kansas register.

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